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THE HONOURABLE GUY CHARBONNEAU
SPEAKER

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THE SPEAKER

THE HONOURABLE GUY CHARBONNEAU

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THE HONOURABLE LOWELL MURRAY, P.C.

THE LEADER OF THE OPPOSITION

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GENTLEMAN USHER OF THE BLACK ROD

RENÉ M. JALBERT, C.V., C.D.

THE SENATE

Wednesday, January 20, 1988

The Senate met at 3 p.m., the Speaker *pro tempore* in the Chair.

Prayers.

[*Translation*]

THE HONOURABLE MARTIAL ASSELIN, P.C.

FELICITATIONS TO SPEAKER *PRO TEMPORE* ON ELECTION AS PRESIDENT OF L'ASSOCIATION INTERNATIONALE DES PARLEMENTAIRES DE LANGUE FRANÇAISE

Hon. Norbert Thériault: Honourable senators, today I would like to congratulate the Speaker *pro tempore* of the Senate on his election as president of the Association internationale des parlementaires de langue française.

Hon. Senators: Hear, hear!

Senator Thériault: I had the privilege of being with him in Cameroon when he was elected, and I believe he still is head of the Canadian delegation. We could not have hoped for a better choice, and our Speaker *pro tempore* is well known in Francophone parliamentary circles throughout the world. I am sure he will be a credit to us.

I am sure you will all agree that this is indeed an honour for the Senate and Senator Asselin.

Hon. Senators: Hear, hear!

Hon. Arthur Tremblay: Honourable senators, I am of course delighted to join Senator Thériault in congratulating our Speaker *pro tempore* and president of the Association internationale des parlementaires de langue française.

Unfortunately, I was not present when the election took place. However, on many other occasions I was able to witness the role played by Senator Asselin within the association and his contribution to its policies.

The fact that a member of the Canadian Senate was elected president of the association and that his predecessor was from the African continent has special significance.

If I am not mistaken, it is the first time that a Canadian or even a North American—the association includes members from North America who are not from Canada—was elected president. This fact is very significant and it reflects the role played by Canada on the international scene among French-speaking countries, a role similar to the one it had started to play in the Commonwealth. In the case of the international "Francophonie", however, this role is becoming quite substantial. The fact that Senator Asselin is now president of the association would seem to reinforce that view.

It is with great pride that I join Senator Thériault, on behalf of my colleagues, in extending our congratulations to Senator Asselin.

Hon. Gildas Molgat: Honourable senators, I would like to add my comments to those made by Senators Thériault and Tremblay. Those among us who have had the pleasure of working with Senator Asselin realize that this decision reflects the recognition that non-Canadian members of the AIPLF have for his work and we can only rejoice in that decision.

As Senator Tremblay pointed out, I think it is the first time in many years that the AIPLF elected a president from a country outside the African continent. I think that for Canada this is particularly significant, and that for us it is particularly significant that Senator Asselin was chosen.

The Hon. the Speaker *pro tempore:* Honourable senators, I wish to thank Senators Thériault, Tremblay and Molgat for their kind words.

The reason the delegates decided to elect me president of the Association internationale des parlementaires de langue française was mainly their desire to recognize the major role played by Canada today within the international "Francophonie", as was pointed out by Senator Tremblay.

I accept this tribute with great humility. I may add that in Cameroon, at the time of my election, I headed a Canadian delegation that was a credit to this country.

[*English*]

REGULATIONS AND OTHER STATUTORY INSTRUMENTS

STANDING JOINT COMMITTEE—CHANGE OF NAME—MESSAGE FROM COMMONS REFERRED TO STANDING RULES AND ORDERS COMMITTEE

The Hon. the Speaker *pro tempore* informed the Senate that the following message had been received:

HOUSE OF COMMONS
CANADA

Friday, December 18, 1987

ORDERED,—That a Message be sent to the Senate requesting that House to unite with this House for the purpose of altering the name of the present Standing Joint Committee on Regulations and other Statutory Instruments to the Standing Joint Committee for Regulatory Scrutiny.

ATTEST

Robert Marleau
The Clerk of the House of Commons.

The Hon. the Speaker *pro tempore:* Honourable senators, when shall this message be taken into consideration?

On motion of Senator Doody, message referred to Standing Committee on Standing Rules and Orders.

PRINCE RUPERT GRAIN HANDLING OPERATIONS BILL

FIRST READING

The Hon. the Speaker *pro tempore* informed the Senate that a message had been received from the House of Commons with Bill C-106, to provide for the resumption of grain handling operations at the Port of Prince Rupert, British Columbia.

Bill read first time.

SECOND READING

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

Hon. William Kelly: Honourable senators, I move, with leave of the Senate and notwithstanding rule 44(1)(*f*), that this bill be read the second time now.

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

Hon. Senators: Agreed.

Senator Kelly: Honourable senators, this bill requires an immediate return to work by the 69 striking workers employed by Prince Rupert Grain Limited at its grain elevator at Prince Rupert, British Columbia.

Prince Rupert Grain Limited is a consortium of the six largest grain handling companies in western Canada. These companies came together in 1979 to build a state-of-the-art facility at Prince Rupert. This was in response to a study by the Canadian Wheat Board that forecast a shortfall in grain handling capacity.

With your permission, honourable senators, I would like to go through the chronology of the major events that have led up to this bill and the major points that are at issue. I will be brief, because the full chronological road has many twists and turns. This is not a straightforward or routine matter.

The origins of the current dispute reach back to December 1984 when Prince Rupert Grain Limited closed one of its terminals at Prince Rupert (PRG-1) and opened another (PRG-2) on Ridley Island. PRG-1 had been government-owned until it was privatized in 1980. Employees were given the option to move to the new union, Local 333 of the Grain Workers' Union, or be transferred within the Public Service Union.

PRG-2 is Canada's newest and most technologically advanced grain handling facility. It became evident that the move from PRG-1 to PRG-2, and a major shortfall in the anticipated volume of grain to be moved, would result in the displacement of some workers and the reorganization of some job categories.

In particular, there was the question of who—unionized employees or supervisors—would man the so-called "Grain Centre", the central computer facility that monitors and controls virtually all the operations at PRG-2. Consequently, the union representing the employees held that the commencement of operations at PRG-2 constituted a technological change under the Canada Labour Code. What this meant was if it were found that technological change had in fact occurred, the collective agreement would be opened up to allow parties to negotiate whatever transitional arrangements might be required. In this case, of course, the collective agreement was already open.

Parallel to this particular dispute there was also a wider dispute involving the British Columbia Terminal Elevators' Association and the Grain Workers' Union. This wider dispute was settled in May 1985. By informal arrangement this general agreement was applied to PRG-2, leaving only the transitional issues peculiar to PRG-2 in dispute.

From the period February 1985 through to today a number of initiatives were taken to try to resolve the issues in dispute at PRG-2. In February 1985 Conciliation Commissioner Vince Ready was appointed. He reported on the PRG-2 issues in January 1986, but the report was rejected by the union.

In March 1986 Mike Collins was appointed as mediator, under section 195 of the Canada Labour Code, but no agreement could be reached between the parties.

Meanwhile, the union pursued its efforts through the Canada Labour Relations Board and the Federal Court of Appeal to have the scope of its bargaining unit expanded to cover PRG-2. These efforts also ultimately proved unsuccessful.

Negotiations between the parties continued intermittently between April 1986 and November 1987, with neither party showing any willingness to compromise on the fundamental issues.

On December 9, 1987, the union commenced strike action. Six days later the Minister of Labour instructed mediator J.M. Collins to reconvene the parties once again. However, by early January these discussions had reached an impasse.

On January 7 the Minister of Labour sent a telegram to the parties asking that they come to Ottawa to meet with Associate Deputy Minister Bill Kelly.

I might say at this point that there is no relationship between myself and that Bill Kelly, although I receive many congratulatory messages and telephone calls telling me what a great job I do on labour mediation. I have long since ceased to deny that I am that Bill Kelly. I simply thank those people for their comments and their compliments. As long as Mr. Kelly continues in his present role I suppose I will continue to get these messages. I enjoy them thoroughly.

Mediation sessions under Kelly began on January 11, but it quickly became clear to him that neither side was prepared to

compromise. He therefore made a formal proposal to the parties that would have, if accepted, resolved the dispute and ensured the immediate resumption of operations at PRG-2.

The major elements of Kelly's proposal were as follows: one, that the parties implement formally the terms of the agreement now in effect for the Vancouver Grain Terminals under the collective agreement negotiated in 1985, and, two, that the parties submit the outstanding differences with respect to job classifications, et cetera, to an arbitrator for final and binding determination.

It was the second element that proved to be the sticking point. It was acceptable to the union only if a specific individual—Justice Emmett Hall—was appointed as the arbitrator.

By insisting on the appointment of a particular individual the union was inviting questions about his impartiality and, therefore, the impartiality of the arbitration process.

By making the appointment a condition of acceptance the union was creating a precedent that would have undermined the quasi-judicial arbitration process not only for this dispute but perhaps for future disputes.

The company refused to submit to binding arbitration on matters it sees as being "one of the few remaining rights of management in most collective agreements."

Honourable senators, I am sure we all wish that the parties to this dispute could be left to work out a solution. However, I understand from those who have been directly involved in trying to reach a solution that there is no end in sight to the dispute and to the recalcitrance of the two parties. More importantly, there are innocent third parties whose interests are at stake and who could sustain irreparable harm, namely, western grain producers who cannot get their grain to international markets. We must also consider its effects on the overseas reputation of Canada as a reliable source of export grain at a time when we are trying to compete in an increasingly competitive and fluid international grain market; and the Canadian economy for which this work stoppage constitutes an unacceptable cost.

In that regard, let me quote from the Bairstow Report of 1978, which states:

● (1510)

> Canada's grain handling system occupies a position of tremendous importance to the Canadian economy. It intimately connects a wide range of economic activity in the primary, secondary and tertiary sectors, encompassing in the process the manufacture of farm implements, supplies and materials; the processing of food products for domestic consumption; and the preparation of a wide variety of grain and grain products for export to some of the world's largest consumer nations. In an industry of this magnitude, the coordination, timing, and efficiency of resource employment are essential to the maintenance of our domestic food supplies and to Canada's reputation as a reliable source of grain exports.

Honourable senators, having given a brief glimpse of the background to this legislation, allow me to review quickly the major provisions of the bill.

In addition to providing for an immediate resumption of terminal operations at PRG-2, the bill requires the parties to incorporate the terms of the agreement between the B.C. Terminal Elevator Operators' Association and the Grain Workers' Union in Vancouver into their collective agreement.

This merely formalizes the existing informal arrangement in which the employer has been implementing many changes which have arisen from time to time as a consequence of the Vancouver agreement.

With respect to the issues which caused the impasse in negotiations, the bill calls for the appointment by the Minister of Labour of an arbitrator to make a final and binding determination. A 45-day time limit is established for this process, subject to extension only if both parties to the dispute agree.

Honourable senators, I do not like back-to-work legislation. I do not like governments having to wade into and resolve private sector labour-management disputes. I am sure most honourable senators share my distaste.

However, of greater concern to this Parliament is the public good, and in particular the plight of western farmers who cannot get their grain to market while one of Canada's most modern grain handling facilities lies dormant.

Given the precedence that the public good must take over private interests, and given the resources and time that have already been committed to try to find a solution, I believe that we have no option but to approve this legislation.

Honourable senators, I therefore urge you to give this bill speedy and positive consideration.

Hon. Hazen Argue: Honourable senators, I agree with Senator Kelly when he says that we regret having this legislation before us today. It is almost becoming a pattern with this government that dispute after dispute goes unsettled and finally Parliament is asked to provide a legislated framework for the settlement of the dispute. I believe that that flies in the face of normal collective bargaining. I, as well as others, regret that the free collective bargaining process has not resulted in a settlement in any of these disputes.

I have interests, I guess, on both sides of this dispute because I am a grain farmer. For some time I had the honour to be responsible for the Canadian Wheat Board. It is essential to the agricultural industry and to farmers that grain be moved on to the world markets. However, I believe that the position that has been taken by the grain handlers' union over a period of some years now—because they have been without a contract now for about four years—has been generally responsible.

When I was a minister I had dealings with this union on behalf of the government, and I can say that I found Mr. Henry Kancs to be a responsible labour leader. I found him to be a labour leader who kept in mind the interests of the grain producers as well as the interests of the workers in his union,

and I very much regret that a settlement was not reached through the normal bargaining process.

I think management has taken a rigid position. The workers were prepared to submit to arbitration. It is correct to say that they put forward the name of Mr. Justice Emmett Hall as their choice for an arbitrator, and I do not think that should have cancelled the negotiations towards finding an arbitrator. Certainly, I believe that the union, while that was their first choice, would have been prepared to consider alternative names had they been put forward.

Management has refused to budge on the question of computer operators and has refused to agree that they should be in any way members of the union.

The Leader of the Opposition, the Right Honourable John Turner, issued a press release in which he encouraged the Minister of Labour to meet the two sides in the dispute to try to work out an agreement with regard to an arbitrator. I personally think that that would have been a useful meeting to have undertaken. However, it is clear that the government has taken the position that both parties are to blame.

Yesterday, in the House of Commons, the minister said that these parties have effectively said to the Canadian public, "We don't care about your interests or about collective bargaining." He said, "This attitude is absolutely unacceptable . . . What is unacceptable is that the parties have made up their minds that they are not going to settle their differences through the democratic mechanisms which are provided by our Labour Code."

Honourable senators, it seems to me that it was management who decided that under no circumstances would they agree to arbitration of the issue respecting workers who operate the computers.

I can understand the position taken by the union. The union membership has been reduced from 115 to 64. In terms of computer operators, outside the union the number increased from 6 to 15, a 150 per cent increase. Therefore, the union feels that it has to take a position to protect, if it can, the union membership.

On December 4, 1987, in a press release having to do with the Vancouver situation, Mr. Henry Kancs is quoted as having said:

> We knew we had to sign a three-year agreement and settle for less than a five per cent increase over the three years if we were to retain the confidence and support of the producing farmers. Their welfare has to be as much concern to us as our welfare.

● (1520)

In a press release of January 13 the union had this to say:

> We are not on strike for money. We recently signed a three-year agreement with the five Vancouver elevators without government intervention. We simply want the same agreement and practices in Prince Rupert. The Company has used the excuse of the introduction of technological change to eliminate 64 of 115 union positions while increasing supervisors from 6 to 15 and contracting out work. At the same time, our productivity in tonnes and tonnes per man is increasing phenomenally.
>
> This dispute is about jobs—union jobs. The sacrifices our members are making on the picket line are not for selfish reasons. It is so union members can share in the future world of computer technology and not become a relic of the past like the grain shovels we once used. We are intelligent enough to participate in the future. We already do it at other elevators.

Honourable senators, I think this is a major issue. Whether the operation of computers in this industry or in other industries is to be exclusively a function of management, and is not to form part of a normal collective bargaining agreement, is a matter of principle. In my judgment, until that particular principle is decided upon we will have more and more strikes and disputes with that as the central issue.

From the standpoint of the grain producers, exports over this period have not been going forward, and they are of a value of $70 million. Nobody can say that the farmers have had taken from them $70 million that they will never recover, because the fact is that the physical grain has not been lost; it has not been destroyed. The physical grain over the last few weeks has not gone to market, and that grain, as I have said, is valued at $70 million.

When I was the minister in charge of the Wheat Board there was a dispute at Thunder Bay which lasted for some two weeks. After the settlement of that dispute, the workers returned to work with enthusiasm. Their productivity was very high, and they succeeded in exporting out of Thunder Bay in 50 weeks the largest quantity of grain in history. This terminal was designed to handle 3.5 million tonnes annually. Last year it handled 4.2 million tonnes. The workers performed well—they performed in such a way that they dealt with 20 per cent over what was stated to be the normal capacity of that terminal.

Honourable senators, I am sure that these workers will return to work and will perform well. I am sure they will get the grain moving. Let us hope for the recovery of a large part if not, perhaps, all of the $70 million worth of grain that over this period of time has not been moving forward to market.

Honourable senators, I think the situation we find ourselves in today is absolutely unnecessary. Management, led by the cooperatives—led by the wheat pools of which I am a strong and consistent supporter—has dug in its heels and has said that it will not submit willingly to arbitration as part of this process. I do not think that the two or three people who occupy the top management positions are really speaking for the 100,000 farmers who are the members of these cooperatives. I think there would be a much greater chance of an amicable settlement of this dispute all round if the farmers themselves took part in the process.

Cooperative management sometimes is no more able to foresee the future than can the management of some private corporations. Management did not see that the fertilizer industry was going to be in trouble. So Western Cooperative

[Senator Argue.]

Fertilizers has lost many millions of dollars. Today the operation is closed and the company is virtually out of business. CSP Foods, which processes canola, has been in great trouble. It is all part of the downturn in the grain business in this country.

I read in the newspapers that the Canadian Cooperative Credit Society has underwritten Osler Incorporated, one of the brokerage firms which deal on the Toronto Stock Exchange. I only know what I read in the press, and I read that the company has an exposure of $40 million and may incur very heavy losses.

I am saying that management often demonstrates that it is not infallible, whether it be management of large cooperatives or of certain large businesses. In my judgment, in this instance the government, the minister, should have brought the parties together and should have made one more try to have agreement reached between the parties concerning the appointment of an arbitrator. I believe that management has been too rigid in holding to the position that under no circumstances would they agree to arbitration and the appointment of an arbitrator. It seems to me that when two parties are unable to agree, the least they could do is agree voluntarily that a third party should be called in to resolve their differences.

This legislation has received speedy consideration in the other place. I believe the debate occupied less than two hours in total, and I know that the Senate will not hold up the legislation, because it is necessary that the grain should move once again. I regret that the legislation is before us. I believe the union has taken a reasonable position. I was pleased to read the speech of the Liberal critic in the House of Commons, Jacques Guilbault, who, on behalf of the opposition, took a very responsible and balanced point of view on this very difficult question.

The other day I was privileged to meet with Shirley Carr, President of the Canadian Labour Congress, and I found her attitude toward this dispute and to the positions held by the union and the farmers to be reasonable. I know the members of the union and the farmers well. What stood in the way of an agreement was not the attitude of the rank and file cooperative members but the attitude of management, which said that under no circumstances would employees operating computers be part of the collective bargaining agreement.

The challenge for Canada in the future will be to have a system that will allow for free collective bargaining and for unions to represent a very large proportion of the employees in those industries with which they are associated, and this to include computer operators.

• (1530)

Hon. H.A. Olson: Honourable senators, the background and history leading up to the situation where the government felt it necessary to bring in back-to-work legislation—namely, Bill C-106—has been reasonably well described by Senator Kelly and reviewed by Senator Argue, so I shall not go into that part of the problem. I expect that the Minister of Labour, or at least some of his officials, will be here to answer questions. I have not been informed as to whether or not we are going into Committee of the Whole, but I take it from the nodding heads I see that that is probably the next stage.

Honourable senators, I have one or two questions I would like to ask now so that the officials can be prepared to answer them when they get here. Bill C-106 is reasonably standard back-to-work legislation, which we have seen a number of times. In fact, some people have mentioned that we have seen it far too often. The bill contains the penalties, and so on, for non-compliance by labour union officials and provides for prevention of lock-outs, and that sort of thing. However, one clause in the bill is very different, and that is subclause 5(2). Subclause 5(1) extends the collective agreement for a specified period, to December 31, 1989, which is fairly standard procedure. However, subclause 5(2) reads in part:

> —the collective agreement shall be deemed to be amended by the incorporation therein of the terms and conditions of the collective agreement between the B.C. Terminal Elevator Operators' Association and the union and in effect for the period—

And it goes on to describe the period. It amends the agreement that is to be extended to the Prince Rupert Terminal by something that is included in the agreement that is applicable to the Vancouver Terminal. Senator Kelly referred to this matter more than once, but he did not describe exactly what would be included in this agreement.

As I understand the dispute, it is over who will run the computers in Prince Rupert. This is an important issue in this particular terminal, because, as has been described, it is the most modern grain terminal in Canada and perhaps in the world. It has a lot of modern, sophisticated machinery that is managed or controlled by computers, which is a phenomenon that is happening in a lot of industries. The legislation does not say whether or not it is this aspect of computers in the agreement for Vancouver that will be brought into the union-management agreement for Prince Rupert. Who will run the computers? Will it be the supervisors and management or will it be members of the labour union? That is a question I would like answered. Senator Kelly tried to indicate that this aspect was, in the view of the government, or in the view of the Minister of Labour, a reasonable amendment to the agreement. However, I have read with some interest the press reports from time to time and I have not seen anything that would indicate to me that the agreement between the union and management at the Vancouver Terminal is such that it deals with all the advanced and advancing technology, if I may put it that way. I hope that in closing the debate Senator Kelly will tell us whether it is this aspect of the agreement in Vancouver that is being included in the Prince Rupert agreement to make it acceptable.

That is my main question. I have a number of other questions with respect to ongoing amendments to the Labour Code so that such matters can be dealt with in the future. I did not hear the sponsor of the bill give any indication as to what the government intends to do with respect to this matter, but obviously they have run up against a problem. Management says that there is no way they will allow the labour union to

run this part of the plant. Yet, the computer operators are, in fact, providing the human element of the service that was previously provided by labour union members. So there is some justification for the union's stance, even though the operation at the terminal has moved to a higher stage of technology.

I shall not repeat the figures with regard to the decrease in the number of labour union members required to operate that terminal and the tonnage per worker, which, of course, has gone up tremendously, even though I have them here. This terminal is far larger than the old PRG No.1 Terminal, and that is clear. The output at the Prince Rupert Terminal is far more than two or three times the amount dealt with at this old terminal. Of course, labour union members are concerned about what the new rules will be in the application of advanced technology. I refer not only to the members at this terminal but to the members at other terminals as they face the situation of what happens after modern machinery and technology is installed.

I have heard no discussion on the guidelines for the arbitrator. Is the government simply going to turn the matter over to an arbitrator with, or perhaps without, some recommendations?

The bill calls for binding third-party arbitration. It seems to me that there ought to be in the bill some guidelines within which the arbitrator's recommendations will be binding. Perhaps Senator Kelly, or whoever will be here from the Labour Department, would like to deal with that question as well.

Senator Kelly: Honourable senators—

The Hon. the Speaker *pro tempore:* Honourable senators, I must inform the Senate that if Senator Kelly speaks now his speech will have the effect of closing the debate on the motion for second reading of this bill.

Senator Kelly: Honourable senators, I would like to comment on a couple of matters, but before I do I wish to confirm that the minister and some of his officials are here, and I shall be moving that we consider the bill in Committee of the Whole.

I would like to comment on one item raised by an honourable senator from across the way, and that is the question of the naming of a proposed arbitrator. The union has suggested that Mr. Justice Emmett Hall act as arbitrator. I did not mean to imply in my earlier remarks that Mr. Justice Hall would not be an impartial arbitrator; rather, I was referring to the need for arbitration processes to be seen to be impartial. While I am certain that Mr. Justice Emmett Hall would have been impartial, it would be hard to expect the other party to the dispute to feel the same way. For the success of arbitration of this sort I think it must be seen and felt to be totally impartial. I was not trying to be critical in any way.

On the question of the Vancouver agreement affecting the agreement at Prince Rupert, I am sure that a full answer will be provided by the officials. My understanding is that certain common issues are involved. Since the same union was negotiating, and since certain issues were common to Vancouver and Prince Rupert, there was an informal understanding and, in fact, an agreement that where some of those matters that were common had been settled at Vancouver, that settlement would apply equally to Prince Rupert. In other words, it simply formalized what has been an informal understanding and what has, in fact, been taking place. At least, that is my understanding.

• (1540)

Honourable senators, I do not have any comment to make on the general question of who should be managing a computer centre. That is clearly something on which there will probably be as many views as there are people thinking about it. However, again I think the minister and his officials can answer that question more effectively and fully than I can.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE OF THE WHOLE

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

Hon. William Kelly: Honourable senators, I move, seconded by the Honourable Senator Tremblay, that the bill be referred to a Committee of the Whole and that the Senate do now resolve itself into a Committee of the Whole for that purpose.

The Hon. the Speaker *pro tempore:* It is moved by the Honourable Senator Kelly, seconded by the Honourable Senator Tremblay, that this bill be now referred to Committee of the Whole.

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

Motion agreed to.

CONSIDERED IN COMMITTEE OF THE WHOLE

The Senate was accordingly adjourned during pleasure and put into a Committee of the Whole on the bill, the Honourable Rhéal Bélisle in the Chair.

Senator Doody: Mr. Chairman, with leave, I would like to ask that the Honourable Pierre Cadieux, Minister of Labour, be invited to participate in the deliberations of the Committee of the Whole, and that he be accompanied by his Associate Deputy Minister, Mr. Bill Kelly.

The Chairman: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Pursuant to rule 18 of the rules of the Senate, the Honourable Pierre H. Cadieux, Minister of Labour, was escorted to a seat in the Senate chamber.

Senator Doody: Honourable senators, once again I welcome to this chamber the Minister of Labour, the Honourable Pierre Cadieux. As I have already said, he is accompanied by his Associate Deputy Minister, Mr. Bill Kelly. I am sure the minister would be pleased to answer any questions that senators might have on this piece of legislation.

The Chairman: Honourable senators, before commencing with the minister's statement I would like to welcome all honourable senators back to this distinguished chamber. That welcome includes the minister and his associate. I also hope that everyone will enjoy a very good year.

Honourable senators, it is my intention to take the names of those senators who wish to speak and, in rotation, they will be given the chance to ask their questions.

[*Translation*]

Mr. Minister, it is your turn to speak.

[*English*]

Hon. Pierre H. Cadieux, Minister of Labour: Honourable senators, first of all, permit me to wish you a happy New Year. I did not think I would be here so soon in the new year dealing with such a matter once again. If there is anything that I agree with in Senator Argue's speech it is the fact that we do not like this type of legislation. I think that is the one point on which we all agree one hundred per cent.

Unfortunately, however, circumstances have given me no other option but to introduce this particular bill in the House of Commons. It was passed speedily yesterday with the cooperation of all three parties, and therefore I am here today at your disposal to answer any questions.

Senator Argue: Honourable senators, as I said earlier, we regret that the minister has felt it necessary to appear before us so frequently. Perhaps if we were picking a minister on the basis of cordiality and friendliness, we would probably pick you. However, we regret the basis on which you appear before us today.

You have with you your Associate Deputy Minister, Bill Kelly—another William Kelly. I can understand the mix-up, because my vision is not so good and the two Mr. Kellys look somewhat alike. I hope that Senator William Kelly will be very active in this chamber in the days and months ahead. Also, I hope that the distinguished Associate Deputy Minister of Labour, Bill Kelly, will not find it necessary to come back here again for a long, long time. Further, I hope that any projects he undertakes in the future to knock heads together and to bring management and union together in agreement will be successful.

In my long, rambling statement I made the point that there is a very fundamental principle involved here. Years ago Chief Justice Rand made a very important determination on union rights with regard to check-offs, and I am sure the minister is familiar with that fact. This matter is not before a court but it is before an arbitrator, and, as with everything else, it will create a precedent. I hope that in this matter the country will be fortunate enough to have an arbitrator of such a calibre that he will bring in an enlightened solution to this dispute which will set a precedent for the future so that the union's collective agreement will cover large areas within any industry, including support for the principle that trade unionists are quite capable of receiving training and of functioning as supervisors or computer operators.

Further, if it is the government's intention to go in the general direction that the country seems to be taking, and if the arbitrator—whoever he may be—also goes in that direction, the result will be that a substantial and growing percentage of employees will be outside the normal collective bargaining agreements as technology improves, and that will be bad for labour relations in the future. It will also be bad for industrial productivity and bad for Canada. That is my conviction, but as I say that I am wishing you well; I am not ill-wishing you. Let me just say that I hope you, Mr. Minister, will have the judgment of a Solomon in your efforts to appoint an arbitrator who will bring forward a solution that will make a contribution to industrial peace and increase productivity in this country. I think one of the greatest ways to increase productivity is to have a union membership that is happy and satisfied and has a high morale.

I would now like to ask the minister specifically, when you are attempting to arrive at the name of an arbitrator, will you be discussing that name with the two parties involved? Further, will you be asking those parties to attempt to reach an agreement by themselves? It may look impossible at this stage, but it might be a good thing if they gave it another chance.

I ask you further, will you be meeting with them and endeavouring to reach as much agreement as possible? Then perhaps you would explain to us how you see the problem and how you intend to deal with it.

Mr. Cadieux: Senator Argue, I would like to thank you for your kind remarks with regard to my cordiality. I suppose any means that results in that sort of reputation is good. However, I would have preferred another means for you to come to that conclusion. If my five or six appearances here have contributed to your conclusion, then that is the positive side.

I would like to comment very briefly on one of your comments with respect to good labour relations. You are absolutely right—as other senators have mentioned—that through legislation a means may be found to settle an issue. Unfortunately, by that means good working relations are not necessarily established between the parties.

In my opinion, in this particular dispute the parties were given all the opportunities that are afforded in our collective bargaining system under the Canada Labour Code. Unfortunately, the parties—and one party in particular, that being management—refused the concept of arbitration. Their reason for that refusal was that the issues are within the scope of management. I regret that management came to that conclusion, because I believe that if they had accepted the concept of arbitration, as the union did, presumably an arbitration could have been found who would have satisfied both parties. They could then have proceeded with voluntary arbitration.

Because of the firm positions taken I had no other choice but to move with this particular legislation, which imposes a solution that could have been voluntarily accepted.

With respect to the choice of arbitrator, that question was raised yesterday in the other place. At that time I made a

commitment that there would be consultation with the parties, as there was consultation with the parties for the appointment of an arbitrator with respect to Bill C-85, the railway bill.

Senator Argue: Could you elaborate a little more? Are you going to consult with the parties? Are you going to try to get them to agree on an arbitrator? Is that the reason to consult with them? Will you ask them for their suggestions? Will you be taking suggestions to them yourself? Do you want to settle it all in one meeting? Are you prepared to meet with the parties from time to time if you can make some progress towards getting an arbitrator in place?

Mr. Cadieux: As I indicated in the House of Commons yesterday, suggestions will be accepted from the parties, as was the case in the railway legislation. We will be asking each party to submit a list of names of potential arbitrators. I will make my decision once I receive those suggestions, bearing in mind that I may have my own suggestions. Perhaps my suggestions will coincide with theirs.

Senator Olson: Honourable senators, I believe the minister was in the gallery when I asked what clauses are being brought into this agreement from the collective agreement in Vancouver. As the minister knows, that refers to clause 5.

Clause 7 says that all matters relating to staffing will be sent to the arbitrator for his recommendations, and I presume once the arbitrator has made those recommendations they will be binding. Does that mean that the question in dispute is, who decides how the plant is going to managed? Up to this point in time management have said that the question of who will operate the computers is a decision of management. The union, of course, for all kinds of reasons—including a decline in the number of workers in the plant—say that they ought to have something to say about that.

There is no clause in the Vancouver agreement that deals with the distribution of positions, particularly the positions relating to the operating of computers. There must be another part of the Vancouver agreement, then, that would have to be incorporated into this agreement in order to amend the period that is outlined in clause 5.

Mr. Cadieux: The main issue in dispute—and I am not saying that this is the only issue in dispute—is the one that is commonly known as manning of the grain centre. In clause 7 the word "staffing" appears rather than the word "manning", because the Department of Justice suggested that the word "manning" is a sexist expression. Consequently, we had to use a non-sexist word. As one of the Bill Kellys mentioned to me the other day, on ships, if a disaster occurs, we will not say, "Let's man the boats," but we will have to say,"Let's staff the boats."

The staffing issue relates to the number of union members who will be working in a particular grain centre. On all the other issues the parties agree with the Vancouver collective agreement, and in fact they want those terms and conditions to apply to them. The only exception is the staffing issue, which was not resolved in that other agreement and which obviously was not resolved during the lengthy negotiations that occurred here. As you are aware, they have been negotiating the various stages of the process for close to four years, including some appearances before the CLRB and the Federal Court of Appeal of Canada.

The position of management is based on a CLRB decision, which has, unfortunately, been misinterpreted. That CLRB decision dealt with inclusion or exclusion of foremen in the bargaining unit, which is not the question of manning or staffing that we are dealing with right now. Notwithstanding the fact that management was informed of that misinterpretation on their part, they still refused to go ahead with voluntary arbitration, nothwithstanding the suggestion that was apparently made by the Right Honourable Leader of the Opposition that I try to get them to agree on an arbitrator.

Senator Olson: Thank you for that information.

When you talk about staffing, that is clearly the designation of positions by management, either as a supervisory position or a union position, or is there more involved than that?

Mr. Cadieux: Staffing is strictly the number of people who are working in a particular grain centre.

Senator Olson: Is it then possible for management to designate certain positions, wherever they may be—and in this case obviously it is in the room where the computer controls are located—as management positions? I understand we can talk about the issue of the number of members in the union, but the designation of positions is important to both sides. It is particularly important to management, because they have said over and over again—or at least the press has reported—that they are going to decide how to manage the grain centre, which includes the designation of positions, either within the labour union or outside of the labour union, in a supervisory or management role.

Mr. Cadieux: That issue is within the jurisdiction of the CLRB. They have already gone to the CLRB in order to determine whether or not the foreman should be included or excluded from that particular bargaining unit.

Senator Argue: Honourable senators, I would like to ask another question. This question could be asked with regard to a particular clause, but if we get the answers on clause 1 we will not need to take as much time with the individual clauses.

The penalties are very severe: a maximum of $10,000 and a minimum of $500 for individuals. An amendment asking that the minimum penalty be removed so that a judge could set a small penalty if he thought the infraction deserved a smaller penalty than the current minimum was negatived in the other place. I think that that is the way for legislation to be drafted in a democracy. The judge should be given that authority rather than to have a specific provision that a high minimum payment or minimum fine shall be imposed. Perhaps the minister could comment on that.

● (1600)

I welcome what I believe to be a fact, namely, that the punitive provisions in this bill are not as severe as the punitive provisions in Bill C-86, which provided for the resumption and

continuation of postal services. Clause 11 of that particular bill said:

> No individual who is convicted of an offence under this Act that was committed while the individual was acting in the capacity of an officer or representative of the union shall be employed in any capacity by, or act as an officer or representative of, the union at any time in the five years immediately after the date of the conviction.

It was stated strongly from time to time in debates that that type of penalty seemed far reaching and was interpreted—as I would interpret it—to be an undue infringement of basic rights. I am pleased that that particular feature is not included in this bill, but I would ask the minister why it is not there. What prompted the minister to leave it out?

Senator MacEachen: We objected to it in the past. We hope that the minister has had a conversion, that his appearances before us have had some effect!

Mr. Cadieux: Permit me to disagree with that in part, senator.

First, I would point out that it is my personal understanding that Bills C-24, C-85 and C-86 were passed and adopted in a democratic society, as I presume Bill C-106 will also be later on in the day.

Bill C-85, which dealt with the railway, included specifically the same penalties as the ones that are included in this particular bill. Bill C-86 contained the same penalties as those included in Bill C-24, which has already been passed.

Clause 11, as it was referred to, was excluded in relation to railway operations, and more particularly in this case because I believe the parties to this particular dispute are good, law-abiding citizens. As a matter of fact, Mr. Kancs has indicated publicly that he would obey the law and go back to work immediately, so I did not feel that in this particular case such a clause was necessary.

Senator Argue: I am glad to have that statement from the minister. However, I do not think that it was necessary in the post office legislation. The minister felt that it might be necessary, but my reading of the dispute and the attitude of Mr. Parrot was that this particular penalty, then, was not required. Since that penalty is not included in this bill, it is a less onerous bill. I think the minister's reading of the attitude of Henry Kancs and the Grain Workers' Union is accurate.

I am confident that when they are back on the job, even though they go back in circumstances that from their point of view were unnecessary and unpleasant—and they probably feel imposed upon—nonetheless, they will go back and do a commendable job.

As I said earlier, they operated last year at 120 per cent of capacity. That is pretty good. If you take the capacity of a terminal and you do 20 per cent better, that is good. In spite of the provocation—and I think there has been provocation—I think that the union will function well. The measure of goodwill that this union has amongst, at least, a substantial section of the grain producers will be maintained, and the confidence of that particular section of the grain producers will be demonstrated to have been warranted.

Mr. Cadieux: I would like to add a comment particularly on the attitude of the parties and on their attitude once they are back to work.

The honourable senator mentioned in his speech, I believe, an experience that he had in Thunder Bay, when he was the minister responsible for the Wheat Board, where, unfortunately, there was a two-week work stoppage. He stated that when the parties went back to work, they rolled up their sleeves and outdid the capacity that they normally would have produced without missing two weeks.

I must also underline an incident during my term as Minister of Labour when I had to deal with the Thunder Bay situation in October of last year. There was a work stoppage of six weeks in Thunder Bay. Eventually there was a settlement. There again, the parties rolled up their sleeves and exceeded the record of the preceding year, notwithstanding that six-week work stoppage.

I sincerely believe that in this case the grain will again be rolling and the parties—particularly the union—will work so that the damage caused to the farmers in particular will be minimal, and Canada's reputation as an exporter will be reinstated and will be, perhaps, even better.

I do not suggest that this is a solution to get a better record, but I believe that they will do their utmost in order to ensure that the unfortunate work stoppage here will not penalize anyone.

Senator Argue: I agree with the general remarks of the minister. The only difficulty here, of course, is that it is a period longer than two weeks so that the backlog is greater. The effort and good luck will have to be even greater than it has been in the past.

We have an excellent grain marketing system in Canada. I think it is the best in the world by far. The Canadian Wheat Board does a superb job of holding our markets and supplying on time grain of a guaranteed high quality. The Americans have been doing everything they can to capture our share of the grain markets, including giving away wheat. You cannot get it much cheaper than zero, and that is what they have been doing. Even under these circumstances our Canadian Wheat Board system—a board that operates in the interests of the public, but is responsible to a minister; works with all of the various components of the grain industry of this country, the cooperatives and the private grain trade—is an excellent operation.

On previous occasions I have raised in this house the absolute necessity of this government taking extraordinary measures to try to bring about an improvement in the balance of trade between Canada and the Soviet Union. The Soviet Union is our biggest customer, and we buy little from them. The response to date from the government has not been satisfactory in any way. But there has been an indication—and I believe it is now in the public domain—that the government has recently appointed Mr. Frank Rowan, a senior manager in

the Canadian Wheat Board, to the Department of External Affairs. He was appointed to a position—I do not know his correct title; whether it is with the Soviet trade desk or whatever it is called—in the Department of External Affairs. His particular job will be to do everything he can to facilitate trade between Canada and the Soviet Union, including doing what he can, with others, to improve the market for Soviet goods in Canada. I think that is a constructive step forward, and I would hope that governments would look at the Canadian Wheat Board system with that kind of marketing arrangement as not only the best way to market Canadian grain but as also containing within it elements of a system which might help bring about a better balance.

When Frank Rowan takes up this position and talks to the Soviets, they will know him and have confidence in him. I think that a man of his stature, fully bilingual, raised in this part of Canada, and having spent most of his working life in western Canada, is an ideal person to undertake this particular program.

• (1610)

This is not the precise matter now before the Senate, but I think it is essential that the system we have in place be used to improve and expand trade with our biggest grain market.

Senator Turner: Let us be honest about it, labour relations are nothing more than human relations.

Why did the Department of Labour allow this dispute to go on for four years with no contract? Technological change is nothing new. In 1959 the CNR had to deal with technological change as it related to the railroad and the matter was settled. To the average person, who thinks only about his home, his job, his wife and family, and supporting his kids through university, four years is a long time. That type of person needs security, but no one in this country has that type of security any more. It seems that every dispute we hear of nowadays revolves around pensions, the indexing of pensions and technological change.

What are you as the minister of the department doing to prevent these types of disputes? I would suggest that you should be looking ahead in order to prevent these situations arising. To my mind, if workers have to go for four years with no contract, there is something wrong. What was the main obstacle which prevented the parties from coming to an agreement?

Mr. Cadieux: In order to have had that type of foresight in this particular dispute I would have had to have been the Minister of Labour in 1984. Unfortunately, that was not the case.

This dispute has been a long and difficult one. The parties have used all levels of the process afforded by the Canada Labour Code, and also chose in certain circumstances to go to the CLRB and to the Federal Court of Appeal in order to have certain points clarified. As you know, senator, certain legal proceedings, unfortunately, are sometimes more lengthy than one would want them to be. That is one of the main explanations why this has taken so long.

[Senator Argue.]

Senator Turner: You do not need to have a B.A. to figure out that sooner or later a man will have to retire. The main issues today—and Mr. Bob White has said this many times—are pensions, the indexing of pensions and technological change. What is the Department of Labour doing to ensure that we come up with a dispute-settlement arrangement to eliminate these strikes which this country can no longer afford? No matter what the job entails, strikes are outdated. We must come up with something else. The boys are asking for some security, but there is no security today. That issue is raised again and again.

Mr. Cadieux: I would also like to point out, senator, that the recourses before the CLRB and the Federal Court of Appeal were instituted by the union.

With respect to the present collective bargaining process, with all due respect, and nothwithstanding the unfortunate major or bigger issues which become obviously more public because of the media, in particular, last year 11,000 collective agreements were reached and signed in Canada and more than 90 per cent of those were reached and signed without one single day lost due to strike or lock-out. Over all, and notwithstanding unfortunate cases like this one, our system works pretty well.

Senator Turner: The average worker in Canada does not trust the unions and he does not trust management, and that is where the government should move in and set up a platform. If you give them the basics they will take it from there, but you are not doing that.

Mr. Cadieux: I thank the honourable senator for his advice. I am personally of the opinion right now that the system works pretty well. As a matter of fact, each time I intervene some members of the opposing parties, of course not in this place but in the other place, say that I should not intervene and let the process work.

Senator Turner: For years there were 132,000 employees in the CNR. With the introduction of diesel locomotives that number dropped to 80,000, and now Mr. Lawson is talking about 41,000. This is all as a result of technological change. More employees are going to find themselves on the street. They are asking for job security, and I believe that it is the government's job to ensure that they have that security. Today management will not hire a man aged 40 or 45 or a woman aged 30 or 35. If they are hired they will end up in minimum-paying jobs. In my opinion, that is not democracy.

Senator MacEachen: Free trade will fix that!

Senator Doody: I was going to say that.

The Chairman: Honourable senators, the Senate is in Committee of the Whole on Bill C-106, an act to provide for the resumption of grain handling operations at the Port of Prince Rupert, British Columbia.

Shall the title be postponed?

Hon. Senators: Agreed.

The Chairman: Shall clause 1, the short title, stand?

Hon. Senators: Agreed.

The Chairman: Shall clause 2 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 3 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 4 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 5 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 6 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 7 carry?

Senator MacEachen: Honourable senators, on clause 7, I want to ask whether there is an agreement between the parties as to the matters in dispute. Have they already agreed what exactly is in dispute? That is my first question. My second question is: Will the minister formulate a statement constituting the matters under dispute for the arbitrator?

Mr. Cadieux: The parties do agree on the questions that are at issue in this particular dispute, and the arbitrator appointed will work according to the clauses in this particular bill.

Senator MacEachen: In addition to this clause 7, will a statement be provided to the arbitrator by the minister listing the matters in dispute, or will he derive that from the parties or from his own researchers?

Mr. Cadieux: The matters in dispute are indicated in that particular clause and, of course, the arbitrator will be speaking with the parties, and obviously he could be guided by the proposal that was made by Mr. Kelly when he was active in this particular dispute.

Senator MacEachen: The clause is general. I am not going to pursue this, but it does say, "... all matters relating to staffing ...", and I would take it that there would be some precision required to list the matters. I am really asking whether the arbitrator will determine that for himself, based upon his discussions with the parties, or will the minister provide him with a statement of the matters in dispute as has been undoubtedly garnered in the course of the work of the Department of Labour and, particularly, by Mr. Kelly?

• (1620)

Mr. Cadieux: I am sure that the arbitrator will read clause 7 of this bill, will be meeting with the parties, and will establish the specific questions at issue within these guidelines; that is, this article and what the parties are going to tell the arbitrator.

Senator MacEachen: The minister's answer raises an interesting point—that, really, the matters in dispute are not known now but will only be known when the arbitrator determines them by discussions with the parties. I take it for granted that a series of questions has been discussed between the two parties, that these questions are identifiable, and that, indeed, it would be reasonable for us to ask now what these matters are.

Mr. Cadieux: The matters in dispute are staffing at the Grain Centre, job classification and security personnel. At the time of the appointment these questions are in dispute between the employer and the union. I am sure that the parties will be more than happy to explain to the arbitrator, if need be, specifically what they have been arguing about for the past four years. The issues are very well known to the parties. The arbitrator has enough to arbitrate on concerning the issues in dispute, which, again, are staffing at the Grain Centre, job classification and security personnel.

Senator MacEachen: That is right, but the minister will note that the clause says, "matters relating to staffing ... job classification and security personnel." Persumably there are matters relating to staffing under dispute. What are those matters? What are the matters relating to job classification that are under dispute? What are the matters relating to security personnel that are under dispute? I would like to know now rather than having to wait for the arbitrator to find out.

Mr. Cadieux: With respect to staffing, the matter under dispute has to do with the number of people, as I indicated to another honourable senator earlier on. With respect to classification, I will seek the advice of my deputy minister so as to give you the specific information. Those matters are well known to the parties and will be well known to the arbitrator, I am sure. Perhaps you will just give me a moment.

With respect to classification, the matter in dispute is the type required in highly automated plants. With respect to security personnel, the matter in dispute is whether they are within the bargaining unit or whether they are within the management disposition.

The Chairman: Shall clause 7 carry?

Senator Olson: Honourable senators, I have a question on clause 8, but it is partially related to what was discussed with respect to clause 7.

Senator Doody: Mr. Chairman, we have not yet carried clause 7.

The Chairman: Shall clause 7 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 8 carry?

Senator Olson: Honourable senators, I would like to raise this question now. Clause 8 begins by saying, "When the arbitrator has decided all matters ..." Could the minister explain how the process is terminated when the arbitrator has reached a conclusion? I do not understand what happens. Is the matter referred to cabinet, and does cabinet make it legal? Is it perhaps merely necessary that the arbitrator declare that he has reached a decision, after which it becomes part of the law? Perhaps I could also ask who the arbitrator is obliged to listen to. Is he obliged to listen only to representatives of each of the two parties, or will other interested third parties have any right to intervene? I know there is some reference to the

arbitrator's powers under the Canada Labour Code, but I am not familiar with that. My question, more specifically, is: Does anyone other than the two parties or representatives of the two parties have a right, and will such a party have an opportunity to express his views to the arbitrator?

Mr. Cadieux: The arbitrator determines his own rules of procedure. I am sure that the arbitrator will listen to the parties and to whoever they determine to be their spokesperson. I know that the parties in the mediation process were represented by legal counsel, for example, so I presume that they will be going before the arbitrator with whatever help they need. The parties are not new to these proceedings, because they have gone through the arbitration procedure before. They know specifically what it is all about. I am confident that they will make sure that they are heard—and well heard—by the arbitrator.

Senator Olson: In reviewing recent history—and you have the expert with you this afternoon—have other parties been allowed to attend or invited to present their interests and their views, based on those interests, to an arbitrator? I am speaking of parties other than the two directly involved.

Mr. Cadieux: This arbitration will not be like an industrial commission, such as the one set up in connection with Bill C-24, where obviously the industrial commissioner went broadly because the questions were broad and had perhaps a bigger ambit. I am informed that normally the arbitrator will deal with the parties themselves, and their representatives, of course.

Senator Olson: Those are the only ones invited?

Mr. Cadieux: Normally, yes.

Senator Olson: Is that to be the case in this situation?

Mr. Cadieux: As I mentioned earlier, the arbitrator will establish his own rules.

The Chairman: Shall Clause 8 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 9 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 10 carry?

Senator MacEachen: Honourable senators, I want to make a comment with respect to the punishment that is provided for refusal to obey the legislation. On previous occasions the minister appeared before the Senate with a provision which would permit the stripping of a union officer of his post. At the time I found that provision to be extremely offensive. I remember expressing my disagreement with it and the hope that the minister would find it possible not to include such a provision in future back-to-work legislation.

I intended to congratulate the minister today on the omission of that provision, but I must say that my congratulations will be severely qualified by the reason he gave for not including the provision; namely, that he had reached a judgment in former cases where this provision was included that the union or union officers were not likely to obey the law and that therefore he put a special provision in. In this case he decided that they were likely to obey the law and so he did not include the provision.

I find that to be a pretty awful way to make law, that it flows from an arbitrary decision by a minister as to what is likely to be the conduct of a particular union. In other words, this is not a policy of general application; it is a selective policy based upon nothing other than the arbitrary judgment of the minister. If I am in the Senate and that provision is included in a bill which requires urgent passage, I will not cooperate, particularly when I have learned that the reason for the inclusion is as arbitrary as the reason given by the minister today. I did not like it from the beginning, said so, and urged that it not be done again. But to hear that it is included on such an arbitrary, whimsical basis rather than on a general principle is an added reason why I would be inclined to refuse cooperation to give a bill containing this provision such speedy passage. It is not in the bill today, so the question does not arise. All I say to the minister is: Would he reconsider and not base its inclusion on such an arbitrary basis as a personal or departmental judgment as to the particular character of a particular union? It sounds like law tailormade to each particular case, and there is something wrong with that. I am sorry that the President of the Canadian Bar Association is not here, because I am sure he would tell me that this is contrary to the principles of natural justice.

• (1630)

Mr. Cadieux: First, clause 11, to which the honourable senator referred, dealt in the past not only with union officers but also with management officers. Both parties were subject to that particular clause. As you know, the clause was based on past experience. I do not like to qualify certain unions, but in connection with Bill C-86, that union had defied previous legislation. Consequently, past experience existed, and that was one of the reasons why that particular clause was in that bill.

Senator MacEachen: I think it is appropriate to punish citizens for failure to obey the law, but it is extraordinary to include an additional punishment which removes a person from his or her job. I say it is extraordinary to punish an individual, as was done in clause 11. If persons are convicted of an offence, they are punished by a series of fines. In addition, they lose their job as a union officer or as a representative of management for five years. It says:

> No individual who is convicted of an offence under this Act that was committed while the individual was acting in the capacity of an officer or representative of the union shall be employed in any capacity by, or act as an officer or representative of, the union . . .

So they lose their job and their ability to hold office. That is an additional punishment which, it seems to me, is very questionable.

The Chairman: Honourable senators, shall clause 10 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 11 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 12 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 1, the short title, carry?

Hon. Senators: Carried.

The Chairman: Shall the title carry?

Hon. Senators: Carried.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.

The Chairman: Honourable senators, before leaving the Chair may I thank all honourable senators for their contributions, and also the minister for his appearance in the Senate so early in the year.

The Hon. the Speaker *pro tempore:* Honourable senators, the sitting of the Senate is resumed.

REPORT OF COMMITTEE OF THE WHOLE

Hon. Rhéal Bélisle: Honourable senators, the Committee of the Whole, to which was referred Bill C-106, to provide for the resumption of grain handling operations at the port of Prince Rupert, British Columbia, has examined the said bill and has directed me to report the same to the Senate without amendment.

THIRD READING

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

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*b*), I move that the bill be read the third time now.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

Motion agreed to and bill read third time and passed.

ROYAL ASSENT

NOTICE

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

RIDEAU HALL
Ottawa

THE SECRETARY TO THE GOVERNOR GENERAL

20 January 1988

Sir,

I have the honour to inform you that the Honourable Antonio Lamer, Puisne Judge of the Supreme Court of Canada, in his capacity as Deputy Governor General, will proceed to the Senate Chamber today, the 20th day of January, 1988, at 5:05 p.m., for the purpose of giving Royal Assent to a Bill.

Yours sincerely,
Léopold H. Amyot
Secretary to the Governor General

The Honourable
The Speaker of the Senate
Ottawa

ADJOURNMENT

Hon. C. William Doody (Deputy Leader of the Government), with leave of the Senate and notwithstanding rule 45(1)(*g*), moved:

That when the Senate adjourns today, it do stand adjourned until Tuesday next, January 26, 1988, at two o'clock in the afternoon.

Motion agreed to.

THE SENATE

ABSENCE OF GOVERNMENT LEADER FROM CHAMBER

On Question Period:

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have to inform the Senate that Senator Murray is absent this afternoon on government business. I will be pleased to take as notice any questions which honourable senators might wish to pose.

BUSINESS OF THE SENATE

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I ask that all Orders, Inquiries and Motions stand.

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

Hon. Senators: Agreed.

The Senate adjourned during pleasure.

At 5 p.m. the sitting of the Senate was resumed.

The Senate adjourned during pleasure.

ROYAL ASSENT

The Honourable Antonio Lamer, Puisne Judge of the Supreme Court of Canada, in his capacity as Deputy Governor General, having come and being seated at the foot of the Throne, and the House of Commons having been summoned, and being come with their Deputy Speaker, The Honourable the Deputy Governor General was pleased to give the Royal Assent to the following bill:

An act to provide for the resumption of grain handling operations at the port of Prince Rupert, British Columbia (*Bill C-106, Chapter 1, 1988*)

The House of Commons withdrew.

The Honourable the Deputy Governor General was pleased to retire.

The sitting of the Senate was resumed.

The Senate adjourned until Tuesday, January 26, 1988, at 2 p.m.

THE SENATE

Tuesday, January 26, 1988

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

Prayers.

NEW SENATOR

The Hon. the Speaker *pro tempore:* Honourable senators, I have the honour to inform the Senate that the Clerk has received a certificate from the Registrar General of Canada showing that Gerald R. Ottenheimer has been summoned to the Senate.

INTRODUCTION

The Hon. the Speaker *pro tempore* having informed the Senate that there was a senator without, waiting to be introduced:

The following honourable senator was introduced; presented Her Majesty's writ of summons; took the oath prescribed by law, which was administered by the Clerk; and was seated:

Hon. Gerald R. Ottenheimer, of St. John's, Newfoundland, introduced between Hon. Lowell Murray, P.C., and Hon. C. William Doody.

The Hon. the Speaker *pro tempore* informed the Senate that the honourable senator named above had made and subscribed the declaration of qualification required by the Constitution Act, 1867 in the presence of the Clerk of the Senate, the Commissioner appointed to receive and witness the said declaration.

MISCELLANEOUS STATUTE LAW AMENDMENT BILL, 1987

FIRST READING

The Hon. the Speaker *pro tempore* informed the Senate that a message had been received from the House of Commons with Bill C-104, to correct certain anomalies, inconsistencies, archaisms and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada.

Bill read first time.

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

On motion of Senator Doody, with leave of the Senate and notwithstanding rule 44(1)(*f*), bill placed on the Orders of the Day for second reading later this day.

CURRENCY ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker *pro tempore* informed the Senate that a message had been received from the House of Commons with Bill C-99, to amend the Currency Act.

Bill read first time.

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

On motion of Senator Doody, with leave of the Senate and notwithstanding rule 44(1)(*f*), bill placed on the Orders of the Day for second reading at the next sitting of the Senate.

FRUIT AND VEGETABLE CUSTOMS ORDERS VALIDATION BILL

FIRST READING

The Hon. the Speaker *pro tempore* informed the Senate that a message had been received from the House of Commons with Bill C-96, to validate certain customs duty orders relating to fresh fruits and vegetables.

Bill read first time.

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

On motion of Senator Doody, with leave of the Senate and notwithstanding rule 44(1)(*f*), bill placed on the Orders of the Day for second reading at the next sitting of the Senate.

● (1410)

CORPORATIONS AND LABOUR UNIONS RETURNS ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker *pro tempore* informed the Senate that a message had been received from the House of Commons with Bill C-91, to amend the Corporations and Labour Unions Returns Act.

Bill read first time.

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

On motion of Senator Doody, with leave of the Senate and notwithstanding rule 44(1)(*f*), bill placed on the Orders of the Day for second reading at the next sitting of the Senate.

THE ESTIMATES, 1987-88

SUPPLEMENTARY ESTIMATES (D) REFERRED TO NATIONAL FINANCE COMMITTEE

Hon. C. William Doody (Deputy Leader of the Government), with leave of the Senate and notwithstanding rule 45(1)(*e*), moved:

> That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in the Supplementary Estimates (D) for the fiscal year ending the 31st March, 1988 (Sessional Paper No. 332-664).

Motion agreed to.

NOTICE OF COMMITTEE MEETING

Hon. Fernand-E. Leblanc: Honourable senators, I would like to advise the Senate that the Standing Senate Committee on National Finance will be sitting tomorrow evening at six o'clock to examine Supplementary Estimates (D). This announcement will give notice to the members of that committee.

LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Joan Neiman, Chairman of the Standing Senate Committee on Legal and Constitutional Affairs, with leave of the Senate and notwithstanding rule 45(1)(*a*), moved:

> That the Standing Senate Committee on Legal and Constitutional Affairs have power to sit at three fifteen o'clock in the afternoon on Thursday next, 28th January, 1988, even though the Senate may then be sitting, and that Rule 76(4) be suspended in relation thereto.

Motion agreed to.

BUSINESS OF THE SENATE

On Notices of Motions:

Hon. Joan Neiman: Honourable senators, I wish to present another motion, asking for permission for the Standing Senate Committee on Legal and Constitutional Affairs to meet today at 3:30 p.m. However, I do not yet have the motion, and I would therefore ask leave to revert to Notices of Motions later today.

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

Hon. Senators: Agreed.

QUESTION PERIOD

[*English*]

PHARMACEUTICAL INDUSTRY

DRUG PRICE INCREASES—ROLLBACK—GOVERNMENT ACTION

Hon. M. Lorne Bonnell: Honourable senators, the headlines on the front page of the *Globe and Mail* of Friday, January 22, 1988, read: "Drug firms increase prices faster than inflation rate". The drug firms promised the Government of Canada that they would not do this, and that they would try to keep the price of drugs within the CPI. What does the government intend to do to ensure that these prices will revert to lower than the CPI until the Drug Prices Review Board has been set up?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, without attempting to revisit an old controversy and an old bill that took a very long time to pass in this house, let me say that the intentions of the government on this matter were made well known more than a year ago, when Bill C-22 was brought in. Had the bill been passed sooner and had the Drug Prices Review Board been in place, the board would have been in a position to act more effectively on this matter.

I expect the board will be in place within the next month or so. There can be no doubt that its existence means that there will be a downward pressure on the prices of drugs, with the rate of inflation as the marker.

Senator Bonnell: Honourable senators, the Leader of the Government must know that Bill C-22 has been passed and that it is law. He must know that the drug manufacturers had promised the Senate and the House of Commons—and I suspect they had promised the minister, although I do not know that—that they would not do what they have already done a month and a half after this legislation was passed. According to the Ministry of Health in Ontario, some drug prices have been increased by 100 per cent.

Some Hon. Senators: Shame!

Senator Bonnell: If we cannot trust the pharmaceutical companies a month and a half after the bill has been passed into law, are we going to be able to trust them with research money and with jobs? Is Canada going to be out all those billions of dollars and lose the 9,000 jobs in the generic drug companies and other companies? Our economy will be destroyed by paying this extra money for drugs and by losing the competition of the generic companies. Is the government going to say to these people, "You are breaking your promise a month and a half after the bill has been passed, and we are going to do something about it."? Is the government going to make it known that they are not happy about it? The minister has yet to say a word.

Senator Murray: Honourable senators, the Drug Prices Review Board will be in place by March. I am glad to welcome the honourable senator as a belated convert to the usefulness of this organization.

Let me simply remind him that in the last full year for which his party had the responsibility of government the rate of inflation had been 5.8 per cent.

Senator Frith: Now we know that they are in trouble. They are still blaming the Grits!

Senator Murray: However, the drug prices, including generic drug prices, went up in that year by 12.8 per cent. It was precisely to avoid this kind of situation—

• (1420)

Senator Frith: What has that got to do with the price of tea in China or the price of drugs in Toronto?

Senator Murray: —that the government moved with Bill C-22 over a year ago to establish the Drug Prices Review Board.

Senator Bonnell: Honourable senators, I am not talking about what happened years ago; I am talking about Bill C-22 and the promises given by the Pharmaceutical Manufacturers Association of Canada. It states in this news release:

> In a few cases, drug prices rose by more than 100 per cent, and in one case the increase was 250 per cent, Mr. Archer said. He would not release the name of the drugs in question.
>
> Ontario is attempting to impose a 5 per cent limit . . . The Pharmaceutical Manufacturers Association of Canada, which represents the large multinational drug companies, pledged that drug price increases would not outstrip increases in the CPI when it lobbied successfully last fall for increased patent protection for brand-name drugs.

Let us not throw out these red herrings about what happened years ago under a Liberal administration or some other administration; let us talk about what happened with the CPI, the multinational drug companies and last year's Bill C-22. What is the government going to do about it?

ROLE OF DRUG PRICES REVIEW BOARD—ROLLBACK OF PRICES—GOVERNMENT ACTION

Hon. Sidney L. Buckwold: Honourable senators, I did not think that we would be back on Bill C-22 as quickly as is happening now, but certainly every dire prediction that was made on this side, especially by those of us who sat on Senator Bonnell's committee and those of us who sat on Senator Sinclair's committee, is coming true. We predicted almost exactly what would happen.

Honourable senators, we could see that develop as we travelled across the country. Drug prices were going up very quickly. It was told to me personally by a druggist who knew the scene that the drug companies, knowing that it was most likely they would get their proposed Bill C-22 operational, wanted to set the standard of price as high as possible. That is the first point.

We were aware, as I indicated in a speech I gave in the Senate during the debate on Bill C-22, that the drug companies were gouging the public on the basis of trying to establish basic prices before the Drug Prices Review Board came into play. I suppose that was good business, but it was not in keeping with the assertion of the minister, who indicated that that would not be the case.

I say to the Leader of the Government that we are just beginning to see what the effect of Bill C-22 is going to be on the Canadian taxpayer and prescription drug users in Canada. We are just seeing the beginning!

There are no miracles. If the drug companies are going to put a billion dollars into research over the next ten years, as they said they would, they are not going to pay for that out of their own pockets. It has been a long time since I have heard of that kind of generosity. Those funds will come from higher drug prices, and those higher drug prices will not only pay for research but will mean enhanced profits for the drug companies.

I am not satisfied that the Drug Prices Review Board, which has been referred to by the Leader of the Government, is going to be the answer. Senator Sinclair may have something to say on this, but we were convinced that under the present legislation, which the minister refused to change, the Drug Prices Review Board did not have enough teeth to control the price of drugs, especially new drugs. We knew that then.

I have a few questions to pose to the leader. First of all, what control does the Drug Prices Review Board have on the price of new drugs being introduced to the market for the first time? Second, in view of the fact that the legislation was passed just last year, will the government immediately roll back the prices to what they should be, in keeping with the pledge that they would not increase more than the increase in the cost of living?

I think that is only fair to those who buy drugs; only fair to the people who listened to the government's absolute assertion that there would be no increase in drug prices. I would like to remind the leader that the Government of Ontario, in its submission to our committee, said that there would be an increase in cost of up to $1 billion over the next ten years. Let's not forget it. We see the scenario unfolding now.

Could the Leader of the Government in the Senate respond, then, as to whether in fact a serious effort will be made to roll back drug prices immediately, in keeping with the government's promises?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, the Drug Prices Review Board is the response of the government to the kind of problem raised by increases in the price of drugs. We believe that it is a good and constructive response, and we can only regret that honourable senators did not see fit to pass that bill at an earlier date.

As for the—

Some Hon. Senators: Shame!

An Hon. Senator: That's nonsense!

An Hon. Senator: It was up to you to set the time!

Senator Frith: Flimflam!

Senator Murray: As for the statistical information sought by the honourable senator, I suggest that he put that question on the order paper and a reply will be forthcoming in due course.

Senator Frith: The flimflam is on!

Senator Bosa: The chickens have come home to roost!

Hon. L. Norbert Thériault: Honourable senators, I think I have heard the Honourable Leader of the Government in the Senate state that the Drug Prices Review Board will be in place by March, and that that will put pressure on lowering the price of drugs.

I know that the Leader of the Government in the Senate does not want to mislead this house. Could he tell me what section of Bill C-22 would give the authority to the Drug Prices Review Board to put pressure on anyone to lower the price of drugs?

Senator Murray: I have said that the existence of the Drug Prices Review Board will exert downward pressure on drug prices with the consumer price index as the marker—that was my statement.

Senator Frith: As "a marker"; it is not "the marker."

Senator Murray: Well, as a marker, if you wish.

In any case, I do not have the act in front of me at the moment, and the honourable senator is quite capable of looking up the reference himself.

Senator Thériault: Well, honourable senators, yes, I have gone over that bill a thousand times and more. That is one of the reasons why I was not satisfied with the section in the bill that created the Drug Prices Review Board. Not only was I not satisfied but a great majority of people in Canada were not satisfied. I can only speak for myself, but had I known that the drug companies would take advantage of the short time that would elapse—

Senator Murray: —you would have passed the bill right away.

Senator Thériault: I would never have passed the bill, and I do not think many of us in the Senate would have passed it.

Some Hon. Senators: Hear, hear!

An Hon. Senator: Right on!

Senator Thériault: Honourable senators, I am not surprised at all to hear the government and the Leader of the Government in the Senate trying to place the blame on the opposition for delaying the bill. Yes, we should be blamed—not for delaying but for passing that bill, which will cost the people of Canada, the senior citizens of Canada, the poor people of Canada, and the working poor of Canada billions of dollars in the next few years—

Some Hon. Senators: Hear, hear!

Senator Thériault: —which will be taken by the drug companies across the border to the United States to satisfy the whim of the Conservative Government of Canada and the drug companies. Yes, you had better blame somebody, because there is going to be a lot of blame to be taken.

• (1430)

Senator Frith: It was a scam, and we were all the marks.

Senator Murray: My honourable friends' comments have been noted.

DRUG PRICES REVIEW BOARD—COMING INTO FORCE OF POWERS

Hon. Ian Sinclair: Honourable senators, the minister stated on two occasions that the board would be in place next month or so, and then he stated later that it would be in place in March. He went on to say that "It"—the board—"would exert downward pressure on prices with the CPI as a marker." That is my note.

My question to the Leader of the Government is: When did the powers of the Drug Prices Review Board become effective?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I am sorry, but I cannot answer that question. It seems to me that there are regulations yet to be passed for the establishment of that board. Whether it became effective with proclamation, I do not know.

Senator Sinclair: I would suggest to the Leader of the Government that the bill indicates that certain sections will not come into force until later, but, as I recall, those are technical sections dealing with the Patent Act and have nothing to do with the provisions in the bill dealing with the Drug Prices Review Board. Perhaps the Leader of the Government would check that.

My further question is: If the sections dealing with the Drug Prices Review Board came into effect on proclamation, is that the effective date when downward pressure on prices with the CPI as a marker would run from?

Senator Murray: I can only convey to the Senate the statement of my colleague, the Minister of Consumer and Corporate Affairs, who told the House of Commons—

Senator Guay: "There will be no increases," he said.

Senator Murray: —the other day—on January 22, to be exact—that it will be necessary to get the regulations promulgated before the Drug Prices Review Board is able to exercise that authority.

Senator Sinclair: On what date does the authority become operative? Is it when the board is set up or when the bill was proclaimed?

Senator Murray: Honourable senators, I will have to inquire.

DRUG PRICE INCREASES—BASIS OF STATISTICS

Hon. Ian Sinclair: Honourable senators, earlier the Leader of the Government made reference to certain statistics. Could he tell us whether those were based on figures from Statistics

Canada covering all drugs or whether they were based on drugs subject to patents or drugs subject to generic competition? Just what were they? Were they rough figures furnished by Statistics Canada?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): The information I conveyed to the house a few moments ago indicates the increase in 1983 drug prices, including generic drugs. That was the information I had before me. I do not have any further information as to the methodology that was used in calculating those.

Senator Sinclair: My question is: Do those figures from Statistics Canada deal with drugs generally? If they do, that is not germane to the issues which were dealt with in Bill C-22. I would ask the Leader of the Government to check the basis upon which those figures were given. Would he do that for us?

Senator Murray: I do not understand why the honourable senator believes that the argument would not be germane. I do not have the figure in front of me at the moment, but, as I recall, the rate of inflation in that year was something between 5 and 6 per cent, and the increase in drug prices, including generic drug prices, was in excess of 12 per cent. That was the point I was making.

Senator Sinclair: My question really is: Are the figures furnished by Statistics Canada based on prescription drugs or drugs generally?

Senator Murray: I have heard the question and will see whether I can get a more precise answer for the honourable senator.

REQUESTS RE DRUG PRICING

Hon. Ian Sinclair: Could the government leader advise us whether the government has received any requests from Cancer Research or organizations such as that dealing with the issue being discussed here today, the movement of prices of prescription drugs?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): I will try to get an answer for the honourable senator.

DRUG PRICE INCREASES—GOVERNMENT ACTION

Hon. H.A. Olson: Can the government leader tell us whether the reliance on what the Drug Prices Review Board may do will be the only action taken by the government to deal with the problem of these enormous price increases? When the Minister of Consumer and Corporate Affairs appeared before the committee, I believe he volunteered—I do not think it was in response to a question—that he understood that price control was *ultra vires* of the federal government's authority; in other words, that the government could not set up a Drug Prices Review Board which had the power to set or control prices, and that this board's authority would be limited either to granting or to withdrawing the exclusivity under the patent rights. That is where the authority of the Drug Prices Review Board was to be exercised.

As a number of senators have already pointed out, the drug companies came before the committee and gave a solemn undertaking that they would not increase drug prices in excess of the CPI. Can the minister tell us whether the government intends to take any action to see that that is done? The committee and the public of Canada were led to believe that the minister had obtained a pledge from the drug companies such that they would stay within the CPI in terms of the increases in drug prices. Is the government planning to do anything about this situation other than to rely on the Drug Prices Review Board some weeks down the road? Is the government going to do something now to try to persuade the drug companies to keep their word?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, believing as we do that the various powers contained in that act, including those of the Drug Prices Review Board, are more than adequate, we do not contemplate any further measures at this time.

Senator Olson: I take it, then, that these increases to which Senator Bonnell and others have referred—some as high as 230-odd per cent—will be allowed. Is the government going to stand idly by and watch the drug companies take these enormous increases that are completely contrary to their undertakings?

Senator Murray: Honourable senators, the entire series of questions is based upon one article in the *Globe and Mail*. I think that should be put on the record.

Senator Olson: Honourable senators, it is not difficult to go to some of the prescription drugstores to find out the percentage of increase in various prices. If the government is not going to take its responsibility and do that itself, then we will try to do some of its homework for it.

DATE OF RESTRICTION OF DRUG PRICE INCREASES

Hon. John B. Stewart: Honourable senators, I should like to ask the Leader of the Government if it is not true that the act to which Royal Assent was given on November 19, 1987, brings into effect the new regime with regard to exclusivity as of June 27, 1986. The government leader will recall that members of the opposition protested against that early date, but that the government was insistent that that was the date as of which the new exclusivity regime would be in effect.

My question to the Leader of the Government is this: If that is the date on which the benefits of the drug companies under this legislation become effective, why is it not also true that the restrictions on price increases should be effective as of June 27, 1986?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I cannot add to the statement that was made on January 22 by my colleague, Mr. Andre, which I quoted to the

Senate a few moments ago, but I will inquire to see whether he has anything further to add on that subject.

● (1440)

GENERIC DRUGS—REMOVAL FROM SALE

Hon. Sidney L. Buckwold: Following on from the last question to the Leader of the Government, as of June 1986, the date on which this legislation was to apply, the reason for one of the significant Senate amendments was that generic drugs which came on the market after that date would be withdrawn from the shelf.

Senator Frith: That's right.

Senator Buckwold: Honourable senators will recall, as a significant factor, that a widely sold drug for ulcers was to be taken off the market—and, so far as I know, is now off the shelf at a cost of literally millions of dollars to Canadians—as of that date, back to 1986. Senator Sinclair's committee, of which I was proud to be a member, recommended that that retroactivity be eliminated; in other words, that if Bill C-22 was going to be passed we should at least leave on the shelf those generic drugs that were on sale as of the date of proclamation. That was rejected by the minister.

To follow up the on last question, if that is the case—namely, that prices will not be rolled back all the way to June 1986—then how can we really accept the fairness, the equality, of removing generic drugs from the shelf which are now not for sale?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): The honourable senator—and this is not for the first time today—is seeking to debate and re-open the whole issue and many of the matters that were discussed here before.

Senator Frith: In other words, he doesn't have an answer!

Senator Murray: I don't doubt its legitimacy; but I tell the honourable senator that I will refer his question to my colleague, Mr. Andre, for a reply.

DRUG PRICE INCREASES—ROLLBACK POWERS OF MINISTER

Hon. Jerahmiel S. Grafstein: Honourable senators, on the same issue, it appears that the Leader of the Government is telling the Senate that there appears to be a powerless period on the part of the Canadian government extending from the time the act was promulgated until the time the Drug Prices Review Board is established; and even when it is established it will not have the power under this act to roll back prices during that period.

It also appears, based on the information that is available to all honourable senators, that there has been an extraordinary increase in prices during the past several months that does not seem to relate to costs or to the economy. As a matter of fact, during that period the economy took a bit of a nose dive in the market. I guess that when the market goes down drug prices go up. That seems to be the only connection, which obviously is a tenuous one at best.

My question to the Leader of the Government, and through him to the minister, is whether there are other powers available to the minister under other acts dealing with this matter—namely, prices—which may in effect give the minister some power to examine or investigate these extraordinary increases in such a short period. It may appear that these prices were raised by a number of companies perhaps in concert. Perhaps some thought was given by the senior executives of those corporations to raising the prices and therefore raising the base during that period of time. If that is the case, then that appears to be an anti-competitive practice, a combines practice. Surely the Minister of Consumer and Corporate Affairs—

An Hon. Senator: Question!

Senator Grafstein: —must have some powers available to him to deal with the circumstance; and perhaps the Leader of the Government might report back to us after he has had an opportunity to consider that with the minister.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): As the honourable senator has suggested, I will refer the question to my colleague, the Minister of Consumer and Corporate Affairs. I invite the honourable senator's attention, however, to Mr. Andre's statement of January 22 in the House of Commons to the effect that prior to Bill C-22 providing a capability through the Patent Medicine Prices Review Board there had not been ability on the part of the federal government to monitor the prices of drugs and keep them within reasonable levels.

Senator Frith: Look at what he said in the House months ago about prices not exceeding the CPI.

DRUG PRICE INCREASES—REQUEST FOR RESIGNATION OF CONSUMER AFFAIRS MINISTER

Hon. M. Lorne Bonnell: Honourable senators, I have a supplementary question for the Leader of the Government. As I look over this news release, I find that it says that 1,099 drugs have gone up in price—I repeat, 1,099 drugs. Those are drugs which affect consumers: the aged, the infirm, the sick, people in institutions and hospitals, the unemployed, and so on. Would the Leader of the Government ask the Minister of Consumer and Corporate Affairs, if he is not going to do something to protect the consumers will he, for the sake of the consumers and the Canadian people in general, resign? He should stay on as Minister of Corporate Affairs, but he should resign as Minister of Consumer Affairs, because he is certainly not protecting the consumers of this country.

Some Hon. Senators: Hear, hear!

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I can only conclude that the fuss that is being made

by honourable senators opposite on this matter today is the product of a guilty conscience—

Some Hon. Senators: Oh, oh!

Senator Murray: —for not having passed the bill at an earlier date.

Senator Argue: What crap!

Senator Frith: First prize for bare-faced gall!

DRUG PRICE INCREASES—COMPENSATION TO PROVINCES

Hon. L. Norbert Thériault: Honourable senators, the Leader of the Government will recall that in conjunction with the discussion and implementation of Bill C-22 there was a commitment made to the provinces that a sum of $25 million per year would be given to the provinces in compensation for the increase in drug prices based on the CPI. Now that the government knows that the drug companies did not abide by that, that the increases being imposed on the provinces and consumers will be much more than the CPI, will the Leader of the Government undertake to review that amount and increase it so that provinces can retain their drug programs for the poor, the sick and the aged?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I will refer that question also to my colleague.

Hon. Ian Sinclair: Honourable senators, if it is no longer in the legislation, would the Leader of the Government ask the minister whether he will volunteer to put it in the legislation, because I think he will find that it was taken out?

Senator Murray: Honourable senators, we are not contemplating any amendments to Bill C-22 at the moment.

DRUG PRICE INCREASES—REQUEST FOR COMMITTEE APPEARANCE OF DRUG COMPANY SPOKESMEN

Hon. H.A. Olson: Honourable senators, would the Leader of the Government give us an undertaking to support a reference to a committee of the Senate—probably the Banking, Trade and Commerce Committee—to recall the spokesmen for the drug companies in order to have them try to explain why they did not keep their pledge to keep prices within the CPI?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, the committee is master of its own procedures and can do that if it wishes to do so.

Senator Olson: Then I take it that you would support that kind of action?

Senator Murray: Honourable senators, it is not my habit to interfere with the work of the committees. This is perhaps not germane to the present discussion, but I would ask that some care be taken with budgetary matters if assignments are being given or new committees contemplated.

Senator Frith: The drug companies might be able to pay their own costs!

RELATIONSHIP BETWEEN PMAC AND UNITED STATES PHARMACEUTICAL MANUFACTURERS

Hon. Charles Turner: Honourable senators, may I ask the Leader of the Government whether there is any direct connection between the pharmaceutical manufacturers in the United States and the PMAC in Canada?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I think my honourable friend should direct that question to the parties concerned.

Senator Turner: Can the Leader of the Government answer the following question: Is the PMAC Canadian, or are all of its members American or multinational drug companies?

Senator Murray: Honourable senators, that is not a circle in which I travel. I do not know those people, nor do I know very much about them.

Senator Frith: Good for you!

Senator Murray: I would therefore suggest that my honourable friend direct his inquiries to the president, if it has one, or to the executive director, if it has one, of the PMAC or its American counterpart. That is not information that comes to me. I am reminded that Mrs. Erola is their spokesperson in the capital, and she would be someone well known to my honourable friend. He could make a telephone call to her and obtain the information he is seeking.

Senator Frith: We don't travel in that circle either!

An Hon. Senator: Not any more.

Senator Frith: We are more careful about our travelling companions!

● (1450)

ACTIVITIES IN UNITED STATES OF MULTINATIONAL AND U.S. DRUG COMPANIES

Hon. Charles Turner: Honourable senators, can the honourable minister tell me what is going on in the United States of America with these multinational and American drug corporations? Let me give him a little information. I have here a quotation taken from that great magazine the *National Examiner*.

Senator Doody: We don't travel in that circle either.

Senator Turner: The article reads, in part:

> Some drug companies are trying to scare consumers and doctors away from government-approved generic drugs in favor of more expensive brand names, says Democratic Senator Howard Metzenbaum, of Ohio. Some have offered doctors airline tickets in exchange for prescribing certain products, drugs, he said.
>
> Outraged doctors are protesting the companies' policies, Metzenbaum added.

Further, I have a quotation from the United Transportation Union publication entitled *Retiree News*. I referred to this publication several times during the committee hearings. The

article is entitled "Drug makers accused of waging campaign based on disinformation". The honourable senator is smiling, but people will be paying higher prices for their drugs, especially seniors, so he had better take this question seriously. The article reads:

> Brand-name pharmaceutical manufacturers are using scare tactics and disinformation in a campaign to sink a measure which would provide for the first time Medicare coverage of prescription drugs, according to Sen. Howard M. Metzenbaum (D-Ohio).
>
> Earlier this year, the House passed a catastrophic health care bill that included Medicare coverage for prescription drugs, and the Senate is considering its own package which includes an amendment that would reimburse Medicare patients for annual drug costs above $600.
>
> The amendment to the Senate measure requires that the drugs be less costly generic drugs unless a doctor specifically states that a brand-name drug is medically necessary.
>
> Metzenbaum said the multi-million-dollar campaign by the Pharmaceutical Manufacturers Association has been trying to convince seniors that generic drugs are less safe than brand-name drugs, the Senate measure will ultimately cost them more and that it will reduce incentives to develop new medicines because of lost profits.
>
> "Don't buy it. Not a word of it," Metzenbaum said.
>
> "This issue has to do with profits and greed," he said. "Nothing More. Nothing less."
>
> Metzenbaum said seniors spend about $9 billion a year for prescription drugs and it is time they had some help.

That $9 billion figure is for the United States. I suggest that the government look into these charges—either that or sue the companies.

DRUG PRICE INCREASES—POSSIBLE GOVERNMENT REQUEST FOR EXPLANATION FROM PMAC OR MULTINATIONAL DRUG COMPANIES

Hon. Stanley Haidasz: Honourable senators, I have a question for the Leader of the Government in the Senate. Has the Minister of National Health and Welfare or the Minister of Consumer and Corporate Affairs communicated in any way with PMAC or any multinational pharmaceutical company to obtain an explanation for the exorbitant rise in over 1,000 prescription drug prices in the past two years? These increased prices have brought great hardship on low-income Canadians, as well as added to the financial burden of many provincial drug plans.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I shall make inquiries.

[Senator Turner.]

ANSWER TO ORDER PAPER QUESTION NATIONAL DEFENCE

COMMITTEE STUDY OF CONCERNS OF MILITARY FAMILIES—PRESENTATION AND PUBLICATION OF REPORT

Question No. 38 on the Order Paper—**By Hon. Lorna Marsden.**

> 2nd December 1987—Regarding the committee study of concerns of military families (i) will the committee present its report to Parliament before the Christmas adjournment; (ii) if not, when is the committee expected to present its report to Parliament; and (iii) will the committee's report be published and made available?

Reply by the Minister of National Defence:

(i) The release of the report is expected before the end of January 1988.

(ii) The Advisory Group was not a Parliamentary Committee and therefore the report was submitted to the Minister rather than to Parliament.

(iii) Yes.

LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Leave having been given to revert to Notices of Motions:

Hon. Joan Neiman, with leave of the Senate and notwithstanding rule 45(1)(*a*), moved:

> That the Standing Senate Committee on Legal and Constitutional Affairs have power to sit at three thirty o'clock in the afternoon today, even though the Senate may then be sitting, and that Rule 76(4) be suspended in relation thereto.

Motion agreed to.

CONSTITUTION ACT, 1867

BILL TO AMEND (QUALIFICATIONS OF SENATORS)—SECOND READING—ORDER STANDS

On the Order:

> Resuming the debate on the motion of the Honourable Senator Marchand, P.C., seconded by the Honourable Senator Robichaud, P.C., for the second reading of the Bill S-12, An Act to amend the Constitution Act, 1867 (Qualifications of Senators).—(*Honourable Senator Doody*).

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, this order stands in my name. I have no intention of trying to hold up the debate on this order. I merely stood the order in my name in case other honourable senators wanted to speak to it.

Order stands.

MISCELLANEOUS STATUTE LAW AMENDMENT BILL, 1987

SECOND READING—DEBATE ADJOURNED

Hon. Nathan Nurgitz moved the second reading of Bill C-104, to correct certain anomalies, inconsistencies, archaisms and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada.

He said: Honourable senators, I will just be a minute or two in explanation. If honourable senators have seen the *House of Commons Debates* of January 22, last Friday, they will have noted that there was—I was going to say, "little debate", but, in fact, there was no debate with respect to the passage of Bill C-104. The reason is that a bill of this nature has its own procedure, a procedure which provides for no debate in either of the houses. The purpose of this design is to have such bills reviewed by the two committees—that is, the Justice Committee of the House of Commons and our own Legal and Constitutional Affairs Committee.

For example, when this matter came before our committee as a draft bill objections were raised with regard to one matter which we considered to be of a controversial nature. Therefore, we asked that it be eliminated from the bill, and it was.

Senator Frith: What was the matter?

Senator Nurgitz: It was with regard to incorporating the Internal Economy Committee of the House of Commons.

Senator Frith: Incorporate?

Senator Nurgitz: Yes, "incorporate"—I hope I have the right word. In any event, it is the committee of the House of Commons which, for example, negotiates with staff on behalf of management, and the purpose of the measure was to give it, in essence, legal entity to negotiate with either unions or the public service in one fashion or another. It may well have been a good idea, but it was not our purpose to become involved in such a question. We thought at the time that the measure should not be dealt with in this fashion, that it deserved to be in a bill of its own.

Bill C-104 is the fifth bill of this kind, where various little anomalies or, with the passage of time, archaic matters are removed. I might also mention that because of the bilingual nature of our laws many translation errors are also corrected. Briefly, that covers the matter. So, what honourable senators have before them now is a bill which has received the unanimous approval of all parties in the House of Commons committee and of the Senate Committee on Legal and Constitutional Affairs in the form of a report, which report was unanimously accepted in the House of Commons without debate on Friday of last week.

Honourable senators, I urge upon you similar treatment of this bill.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, the Deputy Leader of the Government was good enough to send me a copy of a memorandum on this bill from the minister's office which would seem to explain why lengthy debate on this bill is not called for. As Senator Nurgitz has also pointed out, the memorandum stated:

> Bill C-104 has already been studied by the Standing Committee on Justice and Solicitor General and the Senate Committee on Legal and Constitutional Affairs. In fact all provisions in the bill have been agreed to unanimously in both committees.

That is, I take it, with the exception of the provision that was referred to by Senator Nurgitz.

• (1500)

The memorandum also points out that this is the fifth bill under the program. Senator Nurgitz has told us that this is an ongoing program to pick up inconsistencies, mistakes and including, I assume, purely typographical errors that sometimes escape attention when the bill is passed, because all of the provisions of this bill deal with law. That is, we are not dealing with bills but with matters that have now been passed into law.

The memorandum also goes on to state:

> The 4 previous bills have all been passed at all stages without debate.

I may say that I am reassured by the statement that this particular bill has been studied by the Standing Senate Committee on Legal and Constitutional Affairs and has received the unanimous support of that committee. However, I intend to adjourn the debate on this bill for one day simply because I want the opportunity to study that report. Perhaps Senator Nurgitz or Senator Neiman can tell me where I might find the report of the Standing Senate Committee on Legal and Constitutional Affairs dealing with this bill. That information could be conveyed to me sometime today, or at least before our sitting tomorrow, so that I can have a look at the report.

On motion of Senator Frith, debate adjourned.

TAX REFORM 1987

CONSIDERATION OF REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE—ORDER STANDS

On the Order:

> Resuming the debate on the motion of the Honourable Senator Sinclair, seconded by the Honourable Senator Stewart (*Antigonish-Guysborough*), for the adoption of the Twentieth Report of the Standing Senate Committee on Banking, Trade and Commerce (Tax Reform in Canada), tabled in the Senate on 1st December, 1987.—(*Honourable Senator Frith*).

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I do not intend to intervene in the debate on this order. However, as Senator Doody said with respect to another order, I am inviting anyone who wishes to speak on this matter to do so. I therefore wish to stand the order so that that opportunity will continue.

Order stands.

[*Translation*]

POST-SECONDARY EDUCATION

FORUM IN SASKATOON, OCTOBER 25-28, 1987—DEBATE CONCLUDED

On the Order:

Resuming the debate on the inquiry of the Honourable Senator Hicks calling the attention of the Senate to the Forum on Post-secondary Education held in Saskatoon, Saskatchewan, from October 25—October 28, 1987.—(*Honourable Senator Leblanc (Saurel)*).

Hon. Fernand-E. Leblanc: Honourable senators, Senator Hicks was so kind as to adjourn the debate on my behalf, and as Chairman of the Standing Senate Committee on National Finance, I want to thank him and congratulate him on his comments after attending the Forum on Post-secondary Education as an active participant.

I also want to thank him for his invaluable contribution to the committee's report on a question of vital importance to the social, cultural and economic future of our country.

I was anxious to take part in this debate since the question of the need for a national forum was discussed at length by the Committee on National Finance during preparations for its Report on Federal Policy on Post-secondary Education. In the report we concluded that post-secondary education will continue to be, as it always has been, the responsibility of the provinces. We also concluded that the federal government clearly had a role to play in certain areas of post-secondary education such as research, and that it shared responsibility for accessibility, and more specifically for student assistance.

I noted that forum participants had determined that governments and the provinces should co-operate in five specific areas of post-secondary education: foreign students, student assistance, research, upgrading data and providing a better program for research on education. I also noted the absence of any discussion of EPF, in other words, the federal government's transfer payments to the provinces for post-secondary education. However, that was predictable, especially since one can hardly discuss this question without the active participation of the finance ministers, whose concerns would, of course, extend to many other aspects, including equalization.

What worried me most, however, was the absence of any final statement on specific follow-up mechanisms by the Secretary of State or by the Honourable Roland Penner, Manitoba's Minister of Education and President of the Council of Ministers of Education.

It is true that although there was no statement about a new structure that would support this kind of national responsibility, the Council of Ministers agreed to meet with the Secretary of State in 1988 to discuss measures emanating from the conclusions of the forum.

I hope it will be a positive statement, although sometimes I have my doubts. In the National Finance Committee's report on this question, we pointed out that in his annual report to Parliament last year, the Secretary of State included a section on federal-provincial consultations. This is what we said in our report:

> The . . . annual report . . . included a section of federal-provincial consultations. This section makes extensive reference to the number of meetings which took place, but conspicuously omits mentioning any conclusions or results emanating from these meetings.

This quote is taken from page 30 of our report.

I hope the meeting in February will be a confirmation of the kind of co-operation without which the Saskatoon forum could not have been organized, and that it will not perpetuate the lack of communication that has long been characteristic of federal-provincial relations in this field. The good intentions of Mr. Crombie and Mr. Penner alone will not do the trick. All provincial Ministers of Education will have to make their contribution as well.

I may be raising this question again later this year, after the meeting scheduled with the Secretary of State and the Council of Ministers of Education, depending on what transpires from the meeting.

The Hon. the Acting Speaker: Honourable senators, if no other senator wishes to participate, this inquiry is considered as having been debated.

[*English*]

NATIONAL FILM BOARD

FILM ENTITLED "THE KID WHO COULDN'T MISS"—PUBLIC RESPONSE TO PETITION—ORDER STANDS

On the Order:

Resuming the debate on the inquiry of the Honourable Senator Marshall calling the attention of the Senate to the response of Canadians to a petition mailed out, calling upon Parliament to urge the government to act on the motion dealing with the production of the NFB film "The Kid Who Couldn't Miss".—(*Honourable Senator Marshall*).

Hon. Jack Marshall: Honourable senators, I would like to say a word on this order. In view of the circumstances, namely, the fact that the National Film Board has decided to produce another documentary on Billy Bishop, the Senate Subcommittee on Veterans Affairs will be meeting tomorrow in order to obtain a consensus on how we should deal with Order No. 13.

Order stands.

FISHERIES

INTERIM COMMITTEE REPORT ON FRESHWATER FISHERIES—RESPONSE OF MANITOBA MINISTER—INQUIRY WITHDRAWN

Hon. Jack Marshall rose, pursuant to notice of Thursday, November 19, 1987:

That he will call the attention of the Senate to a response from the Minister of Natural Resources of the Government of Manitoba relating to the recommendations made by the Standing Senate Committee on Fisher-

ies in its Interim Report on the Freshwater Fisheries, tabled in the Senate on the 2nd October, 1987, and on other matters arising therefrom.

He said: Honourable senators, in view of the fact that the Standing Senate Committee on Fisheries has produced its second interim report on the west coast fisheries, I ask that this item be removed from the order paper because it is redundant.

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

Hon. Senators: Agreed.

Inquiry withdrawn.

NEWFOUNDLAND AND ITS PEOPLE

CONCERNS AND INTERESTS—DEBATE CONCLUDED

Hon. Ethel Cochrane rose, pursuant to notice of Thursday, November 19, 1987:

That she will call attention of the Senate to concerns and interests of Newfoundland and its people.

She said: Honourable senators, I had intended to make these remarks in late 1987; however, speaking engagements and other pressures both inside and outside this chamber prevented me from doing so. I did rise earlier to say goodbye to our colleague and friend, Senator Rowe, on the occasion of his retirement, and I moved third reading of a bill. However, I hope that this chamber will not consider those few brief remarks as my maiden address. I understand that senators are accorded a certain degree of freedom in their maiden address, and while this is a time-honoured tradition I will be as brief as possible. Before proceeding I want to join my colleagues in extending a warm welcome to an outstanding Newfoundlander who joins us today. Senator Ottenheimer has a long and distinguished career of public service in Newfoundland and Labrador, and I look forward to working with him.

I want to begin by expressing my sincere appreciation to all senators and the Senate staff who advised and helped me during my first year on Parliament Hill. The transition from the teaching profession to the Senate was made much easier because of the very kind consideration extended to me by so many kind and helpful people here on Parliament Hill. In particular, I want to thank Senator Doody and his secretary, Mary Lascelles; Senator Marshall and his staff; and Senator Murray and his staff, for their patience and assistance. I am also grateful to the staff of the Research Branch of the Library of Parliament for the numerous articles they prepared for me and for their help with the statistics I will be using today. I also express my appreciation to Premier Peckford for his advice on the issues that should be raised.

Before I came to the Senate, and while I was a teacher back in Newfoundland, one would hear criticism about how teachers were overpaid for working only five hours a day. This type of undeserved criticism was really born out of ignorance. By far the vast majority of teachers that I know back in Newfoundland are very hard working, totally dedicated and totally committed to their profession and to their students. Many work long hours, and many work six or seven days a week. Of course, there are a few who do only what they have to do, but, by and large, they are certainly in a very small minority. When I left the teaching profession to come to Ottawa I naively thought I would no longer have to listen to unfounded criticisms about my profession. It really came as a great surprise to me to discover that the Senate and teachers from Newfoundland and Labrador had a great deal in common. The perception that both groups are overpaid and underworked was, and is, unfounded. I am really appalled at this misconception, because, speaking from my own point of view, I have been extremely busy in the short time I have been a senator. I work between ten and twelve hours a day. Often I work six days a week, and sometimes I work seven. I have not had a week yet since my appointment where I worked only five days. I know of other senators who work equally hard or even harder than I. Perhaps we are guilty of not really keeping the public as fully informed as we should about what we do.

A couple of years ago the Newfoundland Teachers' Association was quite concerned about the negative image of teachers in our province and decided to do something about it. They recognized that a serious information gap existed, and they started a public relations campaign to inform fully the citizens of Newfoundland and Labrador about the importance of teachers in the educational process. Criticism of the teaching profession has dramatically declined since the public relations campaign began, and an ongoing effort will always be required to keep it down to minimal levels.

In view of the constant criticism of the Senate, perhaps the time has come when the Senate should consider making a more conscious effort to inform Canadians of its role. I am not suggesting that a public relations campaign similar to the Newfoundland teachers' be launched, but I merely point out their strategy to show that a lot of unfounded criticism can be reduced once the public is informed. However, I did not rise to address that problem; I just mention it in passing, because senators and teachers had and have one thing in common: both groups receive a lot of undeserved criticism. The Newfoundland Teachers' Association addressed its problem, and it seems to have worked for them to a certain extent. Perhaps we need to assess our situation here and start letting the public know how busy senators are and the role the Senate plays in our democratic process.

During the past 12 months I have read several articles expressing the opinion that the Senate was no longer looking after the regional interests of the country, as it was intended to do. Today I intend to focus on some of the concerns and interests of Newfoundland and its people, and I would like to address six of the major issues facing our province. These are: regional disparity, transfer payments, regional and economic development, defence spending, resources and transportation.

As you know, joining Confederation in 1949 was not an easy decision for the people of our province, and there are those today who continue to debate the merits of that decision, just as there are similar debates in other provinces about the

relative merits of Confederation. Newfoundland entered Confederation for the same primary reason as the other provinces did—the hope that it would lead to a higher standard of living for its people and an accelerated rate of economic development. There have been tremendous gains in terms of our standard of living since we became a province, and there have been quantum leaps in the quality and availability of education and health care, transportation, roads, airports, municipal services, and in many other areas where gains could not have been made without federal monetary contributions. In spite of these gains, which have been numerous, the people of Newfoundland continue to suffer the highest unemployment rate in Canada, 24.4 per cent in March of 1987, and a per capita earned income just 52 per cent of the national average in 1986. The unemployment rate was down to 17.1 per cent in October 1987, a welcome decline indeed, but it is still approximately twice the national average. The province's fiscal capacity—as defined by the federal government to reflect each province's ability to raise revenue from its own sources—was only 59 per cent of the national average in 1985. The Honourable John Collins, Provincial Minister of Finance, said in his 1987 budget speech:

> ... ever since Confederation, our gain in per capita income has been small, slow and uncertain, with significant gaps persisting throughout, leaving us the chronically poorest in the nation, and especially negatively affected by the recent recession.

The minister went on to say:

> ... it is particularly noteworthy that the fiscal capacity spread between ourselves and the Maritime Provinces' average widened from seven percentage points in 1980 to ten percentage points by 1985, confirming that the basic economic problem in this province cannot be considered as simply one aspect of a general Atlantic Canada problem, but is an inherent structural disorder unique to Newfoundland and Labrador and demanding particular approaches for its correction.

● (1520)

Honourable senators, Newfoundland and Labrador still faces some serious problems 40 years after we became a province; the efforts to overcome regional disparity have not been all that successful and were recently called into question by the Macdonald royal commission.

A research report by N. Harvey Lithwick, entitled "Federal Government Regional Economic Development Policies: An Evaluative Survey", Volume 64, *Disparities and Inter-Regional Adjustment*, in the series of studies prepared for the Royal Commission on the Economic Union and Development Prospects for Canada, concluded:

> Our most important finding is that regional disparities have not disappeared. Despite widely varying policy thrusts and economic circumstances, there has been little improvement in the relative position of most of the poorer provinces ...

Since Newfoundland entered Confederation then, the availability of such services as educational and medical care, to cite two examples, has improved dramatically, but relative incomes have remained extremely low, unemployment chronically high, and economic development has been spotty at best. It is against that background that I would like to paint some impression of the other economic issues facing Newfoundland today.

Respecting transfer payments, because of our depressed economy, low income levels, high unemployment and small fiscal capacity Newfoundland has been heavily dependent on fiscal transfer payments both to individual citizens and to the provincial government to support services to those citizens. The costs of social programs continue to rise, particularly health and educational expenditures, far more rapidly than the rate of inflation. This current fiscal year Newfoundland will spend over $577 million on education, an increase of $57 million over the previous fiscal year, and will spend $546 million as well on health care, a $35 million increase in this field. But revenues from Established Programs Financing, which subsidizes costs of health and post-secondary education, will be reduced by an estimated $6.7 million; equalization payments to Newfoundland will decline by an estimated $36 million; and transfers under the Canada Assistance Plan are expected to be over $1 million lower than in the 1986-87 fiscal year. Transfer payments are made on a per capita basis, and the preliminary 1986 census data indicate a decline of about 10,000 in our province's population. Given the present formula for calculating transfer payments, those reductions are perfectly legitimate, but it is extremely difficult for a smaller province to try to stimulate economic recovery and development when costs are increasing and major sources of revenue are declining significantly. If we are even to maintain the levels of social services we have achieved perhaps the transfer payments system needs to be revised to give some protection against the very serious budgetary effects of population decline.

Respecting regional economic development, a reading of the "Federal Government Regional Economic Development Policies: An Evaluative Survey" by Harvey Lithwick, prepared for the Macdonald royal commission, shows that over the last quarter of a century or so numerous efforts have been made to overcome regional disparities. I am told by my advisers back in Newfoundland that the disbandment of the Department of Regional Economic Expansion in 1981 and its replacement with the Department of Regional Industrial Expansion was seen by many as a negative blow against regional economic development in our province, because in many respects the wealthier provinces could qualify for funding, thus, in effect, competing with the poorer provinces and negating the whole purpose of the program.

A review of the 1987-88 federal estimates shows that overall spending for the economic and regional development envelope declined from $14,851 million in 1984-85 to a projected $11,955 million in 1987-88. The economic and regional development envelope share of total federal expenditure has fallen from 13.1 per cent in 1981-82 to 9.9 per cent in

1987-88. No doubt there are many good reasons why this decline occurred, including the need to reduce the deficit, the need to evaluate programs, the need to change direction, and so on, but it is encouraging to see an increase in spending this fiscal year over the previous fiscal year. I am aware that when considering the regional and economic impact one should consider the total expenditures from all government sources to get an overall picture. However, I will only comment on the areas where shortfalls are causing concerns and hardships for our province.

Another section of Harvey Lithwick's article commenting on the impact of regional economic development policies from the mid-1960s to 1983 concluded:

> The widely discussed "improvement" in personal incomes that is supposed to have taken place in the eastern half of Canada has been due to the eastern provinces' increased share of transfer payments only.
>
> It seems reasonable to conclude that there has been no discernible progress with regard to regional development. This finding alone would appear to be a serious indictment of the many policy efforts, and very large public sector outlays, that were designed to achieve that goal.
>
> In any event, there are grounds for serious doubt about the depth of federal concern over regional development. In fact, most federal regional efforts have gone into compensatory policies, with very few programs directed to actual development. To demonstrate this point . . . from a high of 9.9 % of transfers in the Pearson era, economic development programs currently add up to only 3.7% of transfers. (Comparing) DREE's departmental expenditures to federal transfers, we observe here another steady decline, from close to 6% in the early years (1968-73) to 2.5% in 1983 . . .
>
> In the most recent period, 1973-81, when regional policy had become a serious and reasonably well articulated goal of public policy, real disparities actually worsened for all the poorer provinces save Quebec, whose position remained roughly stagnant.

Under DRIE, development funding has not only decreased in absolute terms but has also been redirected to the more rather than the less economically developed parts of the country. Premier Brian Peckford drew attention to that problem in his speech to the Rotary Club of St. John's in March 1987. He said:

> In 1976-77 the federal government expended $93 million on regional development in central Canada. Newfoundland's share was $46 million.
>
> In 1984-85 the federal government expended $257 million on central Canada. Newfoundland's share ten years later, again $46 million. Let's break these regional development expenditures down a little further.

The Premier went on to say:

> Under the Industrial Regional Development Program (IRDP) and its forerunner, Regional Development Incentive, Newfoundland received $1.5 million in 1976-77, while central Canada received $41 million. In 1984-85 Newfoundland received $3.8 million, an increase of just over $2 million, while central Canada received almost $177 million—an increase of $136 million.

He went on to say:

> Other federal initiatives designed to stimulate investment and development have little or no positive impact on our province. Take, for example, federal research and development dollars. At a recent meeting of ministers responsible for science and technology, we learned that the federal government intends to spend in the area of $800 million. That's almost $1 billion. But the regional breakdown of this funding is all too familiar. British Columbia, 4%. The Prairies, 7%. Quebec, 32%. Ontario, 29%, and the Atlantic Region, that's all four provinces, 7%. We've learned further that the entire 7% for Atlantic Canada is designed to go to Halifax.

The Premier continued:

> Between January 1986 and January 1987, the total number of jobs in the country rose by 137,000 according to unadjusted figures. But only 5,000 of those jobs were created outside Ontario.

As you can see from the excerpts from Premier Peckford's speech, he too has some concerns about economic development programs as an instrument of achieving equality in Newfoundland and Labrador.

A similar assessment was made by Donald Savoie, an economist at the University of Moncton, who gives an evaluation of DRIE in his book *Regional Economic Development: Canada's Search for Solutions*, published last year. He states:

• (1530)

> DRIE is a sectoral department concerned with Canada's industrial performance. Its program is national in scope and possibilities exist for government funding for projects, even in Toronto . . .
>
> DRIE regional officials report that over time the program will favour even more . . . the more developed regions of the country.

He goes on to say:

> The reason, they point out, is twofold. First, DRIE will invariably focus on sectoral problems and assess all new initiatives from the sectoral perspective without attaching sufficient importance to regional considerations. Specifically, they maintain that initiatives from northern New Brunswick will be assessed from the same perspective as those from southern Ontario . . .

He further writes:

> Second, DRIE never provides the maximum level of assistance available under Tier 4 (the poorest regions). The most that DRIE has agreed to grant thus far under Tier 4 is 60 per cent of the maximum allowed.

The one potentially bright note in the regional development picture is the establishment of the Atlantic Canada Opportunities Agency. This agency, however, must receive sufficient

funding and be autonomous to respond to the specific needs of the Atlantic region. Perhaps the Atlantic Canada Opportunities Agency can develop into a workable vehicle to refocus development funding and establish criteria and goals that will benefit the Atlantic region where other programs have failed. I commend the government on this new initiative.

Turning now to defence issues, defence spending can play a vital role in the development of a provincial economy—especially a small provincial economy. Not only is the direct spending important but the economic spinoffs—spending on services, improving the province's tax base, spurring technological development—are all important. But despite Newfoundland's strategic maritime position and our legacy of an extensive military infrastructure from as recently as the mid-1960s, we have few defence dollars from the Canadian government being spent in Newfoundland. Perhaps it was the great American presence that interfered with Canadian military spending in our province.

During the Second World War and for almost a quarter of a century after, until the mid-1960s, the Americans had numerous bases, stations and other installations spread throughout Newfoundland and Labrador. Tens of thousands of Americans were stationed there. They employed thousands of civilians and thus spent hundreds of millions of dollars. Before 1949 the Americans dealt with Great Britain in getting permission to set up bases in Newfoundland. When Newfoundland entered Confederation in 1949 the American military were already well established in numerous locations around our province, and Canada, I assume, did not want to compete with the American military presence in a province that was already so well protected. Consequently, Canadian defence efforts were concentrated in other provinces—with some of them close to Newfoundland. However, for the most part, the American military have disappeared from Newfoundland and, in reality, have been gone for 20 years or so. Today they only have a skeleton force in Argentia and a small presence in Labrador. There is a common belief in Newfoundland that the Canadian government left the military spending to the Americans. Now that the Americans have pulled out, a great void exists in defence spending in our province, but the commitment is so great in the other provinces that the Canadian government finds it very difficult to increase its level of spending in Newfoundland.

The per capita defence expenditures in Newfoundland are about one-third of the Canadian provincial average and about one-tenth the level of the maritime provinces. In 1982-83 Ontario benefited from 47 per cent of defence expenditures; Newfoundland and Labrador got 0.7 per cent. This is why our province has been pushing so hard for a NATO base in Labrador and a Sea Cadet base in Stephenville, and generally for a more realistic, equitable share of defence spending that would contribute to development. A new submarine base should be established somewhere in our province as well. Unfortunately, a decision has been made against Stephenville as a site for the new Sea Cadet base for the Atlantic region.

[Senator Cochrane.]

In estimated figures provided by the Department of National Defence for the fiscal year 1984-85 it is interesting to highlight the numbers of military and civilians employed in the provinces and the dollars spent in each of the provinces and see how the figures compare for Newfoundland and Labrador.

Honourable senators, I realize that this will take a little time, but I feel it is important that I point this out to you.

Newfoundland—917 military were stationed there and 224 civilians were employed. The total defence spending was $57,239,900.

Prince Edward Island—968 military were stationed there and 268 civilians were employed. The total defence spending was $72,046,900. Approximately 1.2 times more defence dollars were spent in P.E.I. than in Newfoundland.

Saskatchewan—1,614 military were stationed there and 543 civilians were employed. The total defence spending was $127,210,000. Approximately 2.2 times more defence dollars were spent in Saskatchewan than in Newfoundland.

New Brunswick—4,366 military were stationed there and 1,388 civilians were employed. The total defence spending was $269,889,400. Approximately 4.7 times more defence dollars were spent in New Brunswick than in Newfoundland.

Manitoba—4,208 military were stationed there and 1,536 civilians were employed. The total defence spending was $282,053,500. Approximately 4.9 times more defence dollars were spent in Manitoba than in Newfoundland.

Alberta—7,964 military were stationed there and 2,553 civilians were employed. The total defence spending was $513,549,900. Approximately 8.9 times more defence dollars were spent in Alberta than in Newfoundland.

British Columbia—8,511 military were stationed there and 3,746 civilians were employed. The total defence spending was $609,303,500. Approximately 10.6 times more defence dollars were spent in B.C. than in Newfoundland.

Quebec—10,163 military were stationed there and 4,946 civilians were employed. The total defence spending was $700,451,800. Approximately 12.2 times more defence dollars were spent in Quebec than in Newfoundland.

Nova Scotia—11,788 military were stationed there and 5,620 civilians were employed. The total defence spending was $949,883,400. Approximately 16.5 times more defence dollars were spent in Nova Scotia than in Newfoundland.

Ontario—22,555 military were stationed there and 12,449 civilians were employed. The total defence spending was $1,700,887,100. Approximately 29.7 times more defence dollars were spent in Ontario than in Newfoundland.

The Yukon and Northwest Territories—466 military were stationed there and 33 civilians were employed. The total defence spending was $27,330,900.

Honourable senators, these figures speak for themselves. Out of the ten provinces we are tenth. Only the Yukon and Northwest Territories receive less than Newfoundland.

• (1540)

I will now turn to another important issue facing Newfoundland, and that is resources. Newfoundland and Labrador obviously has a resource-based economy, but it has very little control over some of those resources. With Labrador Hydro, Newfoundland will receive virtually no benefits for decades to come. Some way must be found to settle the long-standing dispute between Newfoundland and Quebec over the Upper Churchill Falls contract so that other rivers in Labrador with great hydro potential can also be developed.

In oil we have proven off-shore resources which Canada needs, and every effort should be made to bring those oil-fields into production as soon as possible.

But it is the fishery that is the biggest problem, challenge and hope for Newfoundland. We do not control our major resource. What if British Columbia did not control its forestry, Alberta its oil, or Ontario its mines? The recent Canada-France dispute points to the need for Newfoundland to have much more of a say over the resource that determines the livelihood of so many thousands of its people. Without a meaningful role in fishery policy we will always be at the whims of others who do not really understand the plight of Newfoundlanders and Labradorians who make their living from the sea. The Newfoundland and Labrador Royal Commission on Employment and Unemployment, which reported last fall, paid special attention to the role of the fishery in the province's economy and offered 20 recommendations on the fishery alone. The commission's major recommendation was as follows:

> . . . a Canada-Newfoundland fisheries policy board, with strong directive powers, should be established to devise and implement fisheries policies for Newfoundland consistent with national resource management objectives.

Some such mechanism to provide effective concurrent jurisdiction in fisheries is an essential element in providing Newfoundland with some degree of control over its future economic development.

Concerning transportation issues, Newfoundland's Minister of Finance, the Honourable John Collins, recently appealed to the federal government for a renewed sense of urgency for the implementation and continuation of certain major projects, including the Trans-Labrador Highway and other provincial transportation needs. Given Newfoundland's location and geography, the province has special transportation problems. The Gulf ferry service needs to be improved to preserve our connection with the mainland, as well as our tourist industry, especially if transportation deregulation results in airline cutbacks.

The Trans-Labrador Highway is essential to the development of Labrador and will benefit all of Canada, not just Newfoundland and Labrador.

The Trans-Canada Highway is not built to the same standards as in the rest of Canada, and it is estimated that it would cost several hundred million dollars to bring it up to national standards. Newfoundland cannot afford to share the cost of that on a fifty-fifty basis. As with many other fifty-fifty cost-shared programs, there should be some recognition that our low fiscal capacity should be compensated by a better break on cost sharing.

In conclusion, I have tried to summarize briefly some of the major problems facing Newfoundland today. To deal with all of the major problems facing our province would be a lengthy, if not impossible, task to undertake at one time. The majority of these problems cannot be corrected by Newfoundland alone, but in most cases can be corrected with special help from the federal government. Certainly there have been tremendous benefits from Confederation, but very serious problems remain unresolved, and parity with the rest of Canada remains an elusive dream.

I believe in a strong Canada made up of strong healthy provinces where residents have the opportunity to decide for themselves whether they want to live or work there or go to some other province of their choice.

[*Translation*]

Unfortunately, many people from our poor provinces do not have that choice. A great many have to move away against their will, leaving family and friends behind. Our survival as a strong nation depends on the provinces' ability to make their own contribution. The people of Newfoundland do not want charity. We want to make a positive contribution to the well-being of our country and get rid of our status as a disadvantaged province.

Senator Frith: Well said, Senator Cochrane.

[*English*]

Senator Cochrane: As Premier Peckford would so poetically state, "Some day the sun will shine and 'have not' will be no more!"

Canada has an opportunity that few other countries have. It can virtually decide to eliminate the serious problems facing various regions of the country and has the resources to do so. However, history has proven that there are no quick-fix solutions. Many of these regional problems will be with us for many years to come, and it will take our combined resources and determination to overcome them. I am confident that the political will exists to address and overcome these regional disparities. I am quite pleased that this government has recognized—as previous administrations have—the need for closing the gap between the have and the have-not regions of this great nation, and that it has embarked upon a program to overcome some of these serious problems. Finding solutions to disparity is not a one-time effort; rather, it is an on-going process. In the years to come I hope that I can contribute to a better Canada by drawing attention to problems both regional and national in scope and by contributing to a collective search for solutions to them.

Hon. Senators: Hear, hear!

The Hon. the Speaker *pro tempore:* As no other honourable senator wishes to participate in the debate, this inquiry is considered debated.

VETERANS AFFAIRS

SURVIVOR BENEFITS—ANOMALIES IN LEGISLATION—INQUIRY WITHDRAWN

Hon. Jack Marshall rose, pursuant to notice of Thursday, November 19, 1987:

> That he will call the attention of the Senate to anomalies in veterans legislation regarding payment of survivor benefits to spouses of deceased prisoners of war.

He said: Honourable senators, in view of the fact that Bill C-100, which has to do with the spouses of deceased prisoners of war, has been introduced, it causes Inquiry No. 8 to be redundant, and I therefore ask that it be withdrawn.

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

Hon. Senators: Agreed.

Inquiry withdrawn.

ROYAL ASSENT

ALTERNATIVE PROCEDURE—MOTION WITHDRAWN

On Motion No. 1:

By the Honourable Senator Frith:

> That the present formal procedure of Royal Assent be retained and that it be used (a) at the request of the Governor General or of either House of Parliament and (b) at least once a session, for example at the prorogation of a session;
>
> That, in addition to the present practice, a simpler procedure be established based on the following principles: (a) that the procedure involve representation from both the Senate and the House of Commons, (b) that it be public, and (c) that the declaration of Royal Assent be subsequently reported to both Houses of Parliament; and
>
> That representatives of the Senate meet with representatives of the House of Commons to draft a resolution for a joint Address of both Houses to be presented to Her Excellency the Governor General praying that she approve such changes to the Royal Assent ceremony as described in this motion.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, Motion No. 1, standing in my name, deals with the procedures for Royal Assent.

I had given a speech on this subject under an inquiry some years ago, and this motion deals with the same subject and the views I expressed then. It tries to catch up on some of the developments since then, including the activity of the Standing Committee on Standing Rules and Orders.

The Deputy Leader of the Government in the Senate has advised me that the government may be preparing a bill dealing with the subject of Royal Assent. For that reason, although I have my notes ready or, as Senator Muir would say, "I have my music and I am ready to play!", I think a more appropriate concert setting might well be the debate on the bill, if it ever comes to us. For that reason I ask leave to withdraw my motion. I shall make my views known when the bill comes before us, if it ever does.

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

Hon. Senators: Agreed.

Motion withdrawn.

The Senate adjourned until tomorrow at 2 p.m.

THE SENATE

Wednesday January 27, 1988

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

Prayers.

POVERTY IN CANADA

SENATE REPORT ON POVERTY—POVERTY LINE UPDATE, 1986 PRINTED AS APPENDIX

Hon. David A. Croll: Honourable senators, I ask that the document which I tabled yesterday, being an update to 1986 on the poverty line, be printed as an appendix to today's *Debates of the Senate.*

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

Hon. Senators: Agreed.

(*For text of update see appendix, p. 2582.*)

VISITORS IN GALLERY

PARLIAMENTARY INTERNS, ALBERTA LEGISLATURE

Hon. H.A. Olson: Honourable senators, may I draw to your attention the presence in our gallery of a group of young people from Alberta? They are the parliamentary interns from the legislature in Alberta who have been in Ottawa for a number of days now, watching and learning the federal structures. They are visiting the Senate this afternoon.

Hon. Senators: Hear, hear!

INTER-PARLIAMENTARY UNION

SEVENTY-EIGHTH CONFERENCE, BANGKOK, THAILAND—NOTICE OF INQUIRY

Hon. M. Lorne Bonnell: Honourable senators, I give notice that on Wednesday next, the 3rd February 1988, I will call the attention of the Senate to the Seventy-eighth Conference of the Inter-parliamentary Union, held in Bangkok, Thailand, from 12th to 17th October, 1987.

QUESTION PERIOD

[*English*]

AGRICULTURE

FARM CREDIT CRISIS—REQUEST FOR INFORMATION ON ASSISTANCE PAYMENTS

Hon. H.A. Olson: Honourable senators, I have a question for the Leader of the Government in the Senate that is probably more in the way of a request for some assistance. Ever since mid-December, when the government announced that it intended to make an additional amount of approximately $70 million available to assist people caught in the farm credit crisis, I have been attempting to find out the rules, regulations, criteria or formulae for people to apply for this assistance. So far I have been unable to obtain any information as to the criteria or where the applications for this assistance can be made, although I believe there are some farm credit review boards that will be playing a part in it.

However, there is a new element involved in the program in that the government has committed funds. I am not being critical of that, but I would like to know how to advise farmers in southern Alberta who are experiencing difficulties just where, how and under what conditions they can apply for assistance under the program or, to be more specific, for that part of the program that gives them an opportunity to have all or some of their debt reduced to 6 per cent.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I shall ask my colleague to convey to my friend the information that he seeks as soon as possible.

UNITED STATES SUBSIDIES ON GRAIN EXPORTS—CANADA-U.S. CONSULTATIONS

Hon. Hazen Argue: Honourable senators, I have a question for the Leader of the Government in the Senate. When the Secretary of State for the United States was in Ottawa meeting with our Secretary of State for External Affairs some days ago, a report from the meeting was to the effect that the Americans were not moving on the whole question of acid rain. That, of course, is a very important subject.

However, I was disturbed that no reference came out of that meeting to continuing United States subsidies on the export of wheat and other grains. The deputy commissioner of the Canadian Wheat Board is reported to have said just recently that if the Americans were to cease their wheat giveaways that very action would result in the price of wheat in Canada going up by $1 a bushel. For months I have been saying that, if the Americans were to quit that subsidy, within 72 hours our wheat would go up by $1 or $2 a bushel. That statement is really being confirmed by the deputy chief commissioner of the Canadian Wheat Board, Larry Christenson.

My question is this: Did the Secretary of State for External Affairs raise with the American Secretary of State this question of continuing American subsidies in the export field? If so, in what terms was it raised, and what was the reaction of Secretary of State Shultz?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, for some time we have been making representations on this matter, that is to say, the targeting of traditional Canadian markets by this United States program. Not only did we do so at the most recent meetings of Mr. Clark and Secretary of State Shultz but considerable detail was gone into by Mr. Clark and Mr. Shultz at their meeting in Brussels last October. This matter has also been the subject of representations—very strong representations—by our embassy in Washington. The ambassador, on behalf of the government, objected to recent U.S. targeting of the Soviet Union, China, Algeria and Iraq. There were meetings last month between Ambassador Gottlieb and the United States Secretary of Agriculture and the U.S. special trade representative Clayton Yeuter.

I simply place those instances on the record as an indication of the high importance that we attach to this matter and of our continuing representations bilaterally and our continuing activity multilaterally to give this issue priority.

Senator Argue: I am greatly disappointed, if I may say so, with that answer. The minister is very well informed and, judging from that answer, obviously the question of those subsidies was not raised when Secretary Shultz was here.

The Secretary of State for External Affairs, Mr. Clark, as far as I know, made no mention at all of that subject either before or following his meeting with the American Secretary of State. That says to me, along with the answer from the Leader of the Government, that this matter was not raised.

My question was: Was it raised, and in what terms was it raised? Why was there no publicity attached to its being raised so that Mr. Clark could come out and report the reaction or the response? I think that is a legitimate question. In western Canada we think that these subsidies are important. They are important to us because they are hurting us; they are hurting the whole economy. Why was this question not raised at the meeting just a few days ago, if not last October?

• (1410)

Senator Murray: The honourable senator prefaced his statement by saying, "As far as I know, . . ." I think that covers a multitude of sins.

Senator Argue: The minister knows that the question was not raised—and the minister will not say that it was raised, because it was not raised. Now I can say that I have, I think, definite evidence that it was not raised. The Leader of the Government in the Senate has not said that it was raised.

CANADIAN WHEAT BOARD

REPORTED APPOINTMENT OF BARBARA ISMAN

Hon. Hazen Argue: I have another question for the Leader of the Government in the Senate. I hear—

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Is this another rumour?

[Senator Argue.]

Senator Argue: Yes, this is another rumour which I hope you will dispell.

Senator Murray: Go ahead.

Senator Argue: Just keep on interrupting. The leader is not doing very well today with his responses, but he can try this question.

The reports I hear, usually from well-informed sources, say that the Minister of State (Grains and Oilseeds) is considering the appointment of Barbara Isman, who has been the Executive Director, Western Canadian Wheat Growers Association.

Senator Barootes: That's pronounced *"Izman"*.

Senator Argue: I always pronounced it *"Iceman"* when I met with her, and I was not corrected; but I have been corrected now. In any event, we will simply call her Barbara.

The people who have talked to me—and this rumour is very widespread—are opposed to the appointment of somebody to the Canadian Wheat Board from an organization that has been exceedingly critical and often opposed to the policies of the Canadian Wheat Board. The people who support the system of the orderly marketing of grain will be greatly disturbed if this report should have some substance.

So, I ask the leader to convey to the minister in charge of the Canadian Wheat Board that this would be a very inadvisable appointment.

I hope to receive some response. I say that because I think it is important to the orderly marketing of grain. The Canadian Wheat Board does a good job, and the commissioners should continue to be highly qualified people drawn from organizations that support the orderly marketing system and not from an organization that for many years has been totally opposed to the Canadian Wheat Board.

Senator Murray: Honourable senators, the answer is that responsible ministers do not comment on rumours.

Senator Argue: If the leader is not prepared to discuss this, that is fine, but is he prepared to convey this discussion to the minister responsible for the Canadian Wheat Board, or, as he is now called, the Minister of State (Grains and Oilseeds)?

Senator Murray: My colleague, the Honourable Charles Mayer, is an avid reader of Senate *Hansard*. I am sure he will take note of the honourable senator's representations.

PHARMACEUTICAL INDUSTRY

DRUG PRICE INCREASES—REQUEST FOR RESIGNATION OF CONSUMER AFFAIRS MINISTER

Hon. M. Lorne Bonnell: Honourable senators, I have a question for the Leader of the Government in the Senate. I wonder if since yesterday the leader has had an opportunity to talk to the Minister of Consumer and Corporate Affairs to find out if he is going to take any action because of drug prices being raised by 5 per cent and as much as 250 per cent over the past six months.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I do not believe I undertook to talk to the Minister of Consumer and Corporate Affairs along the line Senator Bonnell suggests. What I did undertake to do was to ask my colleague to furnish replies to those questions that were put by honourable senators during the course of yesterday's oral Question Period.

Senator Bonnell: I wonder if the honourable senator asked him if he was prepared to resign as Minister of Consumer Affairs. Would you convey that message to him?

Senator Doody: He is an avid reader!

Senator Bonnell: Apparently not, but there is not much sense in asking questions of our leader, because he does not convey the messages.

Senator Doody: Our "collective leader."

PRINCE EDWARD ISLAND

PROPOSED FIXED CROSSING TO MAINLAND—STATUS OF MINISTER OF THE ENVIRONMENT

Hon. M. Lorne Bonnell: I have a further question for the Leader of the Government in the Senate. Can he advise the Senate whether the Prime Minister of Canada has accepted the letter of the Minister of the Environment in which he says that he wants to resign from his duties as Minister of the Environment when it comes to the fixed link to Prince Edward Island?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, that matter is still under consideration by the Prime Minister.

Senator Bonnell: Honourable senators, does the Leader of the Government in the Senate think that the Minister of the Environment can have certain duties concerning the environment in certain provinces, but have someone else look after the environment for other provinces—a kind of mixed portfolio?

Senator Frith: You must hear rumours too.

Senator Murray: Honourable senators, my friend will have seen the rationale—and it is an admirable one in personal terms—that my colleague, Mr. McMillan, put forward in making his request of the Prime Minister. Whether this will be accepted by the Prime Minister on administrative and policy grounds is a question for the Prime Minister to decide.

PROPOSED FIXED CROSSING TO MAINLAND—P.E.I. CONDITIONS PRECEDENT TO PREPARATION OF PROPOSALS

Hon. M. Lorne Bonnell: Can the Leader of the Government in the Senate advise me if the Government of Canada has accepted the ten points that the Premier of Prince Edward Island laid down to the Honourable Stewart McInnes as being ten points that they would accept, look into and carry out before they would ask the contractors to prepare proposals for a fixed link?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I must confess that I do not know the answer to that question; I have not seen the ten points to which Senator Bonnell refers. I am aware of the statements that were made by Premier Ghiz on the night of the plebiscite and statements that were quoted in the media a day or so afterwards, but I will ask my colleague, Mr. McInnes, whether there is any information that he can convey on that matter at this time.

PHARMACEUTICAL INDUSTRY

DRUG PRICE INCREASES—REQUEST FOR COMMITTEE APPEARANCE OF DRUG COMPANY SPOKESMEN

Hon. H.A. Olson: Honourable senators, I should also like to ask a question arising out of the answers that the Leader of the Government in the Senate gave yesterday to a series of questions that were put by a number of senators, including me. I asked him whether or not he would support a reference to a committee of the Senate so that we could recall the spokesmen from the pharmaceutical companies to find out what their position is now and to see if we could square that with the undertakings they gave when they appeared before the Senate committee and gave what we regarded as a firm undertaking that they would not raise prices more than the CPI.

I think I understood this yesterday too, but it is even clearer today, now that I can read what was reported in *Hansard*. I asked the minister if he would support that kind of action, and his reply was:

> . . . the committee is master of its own procedures and can do that if it wishes to do so.

Further on he said:

> . . . it is not my habit to interfere with the work of the committees.

I did not ask him to interfere with the work of the committees. He knows, and I know, from the experience that we have had here that if the leader of the party will support a proposition—in this case, a reference to a committee—the possibility of that taking place is raised significantly.

I ask him again today if he will support a reference to the Banking, Trade and Commerce Committee so that we can recall these witnesses from the pharmaceutical companies, who gave an undertaking that they would not increase drug prices in excess of the CPI, but who are obviously doing so now.

The minister responded yesterday that this was based on one report in the *Globe and Mail*. I can tell him now that I went to a prescription drugstore this morning. If he wants absolute, positive proof of increases in prescription drugs that are in excess of the undertakings given by the pharmaceutical companies, I am now prepared to give it to him. I am asking him if he will support a motion so that we can get to the bottom of this and find out whether these people will keep their word or not.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I must observe that the government is outnumbered by more than two to one in this chamber. If my honourable friend wishes to bring forward a motion on behalf of his party to refer a matter to a committee, I suspect that he can do so in the full confidence that such a motion will carry in this place. I have absolutely no objection to the Standing Senate Committee on Banking, Trade and Commerce convening to hear witnesses from the drug industry or anywhere else on this matter; no objection whatsoever. The one plea that I made to my friend yesterday was that he try to do so at the least possible cost, in view of the fact that the overall committee budget has been overspent by a rather considerable amount in the present fiscal year.

● (1420)

Senator Olson: I also have a supplementary question, which is: Why doesn't the minister answer the question? I did not ask him whether or not we could bring forward a motion and have it passed by this kind of majority. I asked him if he would support such a motion, because we have the evidence that there has been something of a deviation from a pledge or an undertaking that was given to the committee. Why doesn't he answer the question? I have asked him four times now. We want to know whether the people in government are going to support the Senate's getting down to finding out what the excuse is for exceeding these price increases.

Senator Murray: Honourable senators, I have already stated quite clearly that I have no objection to such an initiative on the part of the Senate, but the honourable senator, as an experienced parliamentarian and former minister, should know that it would be very imprudent of me to sign on, in advance, to a motion that has not yet been drafted, much less presented in this house.

Senator Olson: I can tell my honourable friend that there are several hundred thousands, and perhaps even millions, of Canadians who would like to know where the government stands on this issue, and I am giving him an opportunity to state that, but, if he chooses not to, then we will have to wait.

GENERAL AGREEMENT ON TARIFFS AND TRADE

PROVINCIAL PARTICIPATION AT MEETING

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, I have a very low-key question!

Some Hon. Senators: Hear, hear!

Senator Argue: Watch out!

Senator MacEachen: It has to do with the information that a number of provincial ministers have been designated to participate in a particular meeting of the GATT. My recollection is that there are four such ministers. I know the Minister of Industry from Nova Scotia was one of those chosen.

I wonder how the selection was made. Did provincial governments decide among themselves who would go, or was it a designation by the Government of Canada?

[Senator Olson.]

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I cannot answer that question fully. I would expect that the Governments of British Columbia, Ontario and Quebec would be the other three provincial governments involved. Certainly Ontario and British Columbia are most concerned with the issue that is being discussed.

There have been discussions with all of the provinces relating to the proposed GATT ruling and to the attempt the government is making to negotiate a settlement of the issue. Discussions have been held with all provinces on that matter. Whether the four provinces were designated by the federal government or selected by the ten, I just do not know.

ANSWERS TO ORDER PAPER QUESTIONS

PUBLIC WORKS

CONTRACTS AWARDED IN PROVINCE OF NEWFOUNDLAND

Question No. 27 on the Order Paper—**By Hon. Jack Marshall:**

13th August 1987—What is the list of contracts awarded by Public Works Canada for the years 1984-85 and 1985-86 in the Province of Newfoundland by federal district under (a) location of contract; (b) successful tender with name of Company; and (c) amount of contract?

Reply by the Minister of Public Works:

Insofar as Public Works is concerned:

1. See Annex A for the year 1984/85.
2. See Annex B for the year 1985/86.

Construction Contracts Awarded During 1984/85 Valued Under $10,000.00. 688–$1,563,931.00

Construction Contracts Awarded During 1985/86 Valued Under $10,000.00. 164–$252,086.00

Annex "A"

CONSTRUCTION CONTRACTS AWARDED DURING 1984/85 VALUED AT $10,000 AND MORE

NEWFOUNDLAND

BONAVISTA-TRINITY-CONCEPTION

Gooseberry Cove	Breakwater Penny Roads Builders Ltd.	$	576,350
	Breakwater Wharf Straight Shore Construction Ltd.	$	359,855
Whitbourne	Rewiring Repairs, Painting, New Flag Pole, CPC Building Frank Gregory Ltd.	$	10,265
Catalina	Recap Pavement on Parking Lot Concord Paving Ltd.	$	10,400

Port de Grave	Exterior Improvements Browne's Const. Ltd.	$ 12,298
	Breakwater Repairs Penney Roads Builders Ltd.	$ 159,330
	Breakwater Repairs W.F. Baird & Assoc. Coastal Engrs. Ltd.	$ 15,000
Port Rexton	Roof Repairs-CPC Weather Tite Ltd.	$ 14,700
Old Perlican	Electric Services to Wharf Bournes Elect. Ltd.	$ 17,815
Bonavista	Exterior Refinishing Quinton's Decorating	$ 23,800
	Reconstruction Longliner Wharf Time Construction Co. Ltd.	$ 575,000
	Resurface Parking Lot GOC Building Concord Paving Ltd.	$ 48,800
	Wharf Repairs Avalon Construction & Eng. Ltd.	$ 147,686
New Chelsea	Wharf Repairs Edward Collins Contracting Ltd.	$ 92,140
Sibley's Cove	Wharf Repairs Bennett's Supply & Contracting	$ 49,265
Carbonear	Wharf Repairs Clayco Const. Ltd.	$ 160,000
Bay Roberts	Wharf Repairs Demcon Const. Ltd.	$ 89,939
BURIN-ST. GEORGE'S		
Grand Bank	RCMP Married Quarters Ailin Const. Co. Ltd.	$ 94,724
	Interior Painting Bill Hodders Painting	$ 10,500
	Supply and Install Draperies and rods Tucker's Furniture Co. Ltd.	$ 10,995
	Renovations and Additions to RCMP Detachment Bennett's Supply & Contracting	$ 279,000
St. Lawrence	Upgrade Elect. Wiring & New Fire Detection System Legge's Enterprises Ltd.	$ 11,730
Petit Forte	Shed Repairs Straight Shore Const. Ltd.	$ 18,240
Burgeo	Wharf Repairs White's Enterprises	$ 22,299
Marystown	Fender Repairs Bennett's Supply & Contracting	$ 18,412
	Hwy. Widening & Improvements for RCMP Detachment Penney Const. Ltd.	$ 47,082
	RCMP Detachment Saunders Howell Co. Ltd.	$ 885,000
Ramea	Wharf Repairs Best Const. Ltd.	$ 10,920
Swift Curent	Crib Demolition Eco Zone Eng. Ltd.	$ 11,380
Fortune	Wharf Repairs Eco Zone Eng. Ltd.	$ 20,810
	Breakwater Repairs Bennett's Supply & Contracting	$ 24,625
Port aux Basques	Window Replacement Window World Ltd.	$ 47,900
	Fishermen's Services Centre N&L Const. Ltd.	$ 892,000
	RCMP Married Officers Quarters N&L Const. Ltd.	$ 154,750
	Industrial Park Pennecon Ltd.	$ 1,965,870
	Site Services Bay Developers Ltd.	$ 188,535
St. Alban's	Wharf & Shed Repairs Boot Const. Ltd.	$ 23,600
English Harbour West	Wharf & Shed Repairs Bennett's Supply & Contracting	$ 17,406
Belleoram	Wharf & Shed Repairs Boot Const. Ltd.	$ 37,400

François	Wharf & Shed Repairs J. Petite & Sons Ltd.	$ 108,456
Grey River	Wharf Repairs Alyward's Const. Ltd.	$ 104,000
Harbour Breton	RCMP Married Quarters J. Petite & Sons Ltd.	$ 97,890

GANDER-TWILLINGATE

Greenspond West	Wharf Repairs Bennett's Supply & Contracting	$ 16,079
Wesleyville	Int. Repairs Arch Collins & Sons	$ 16,900
Botwood	Asbestos - Phase II William P. Mercer Enterprises	$ 19,000
	Shed Repairs John Jacobs & Sons Ltd.	$ 13,000
	RCMP Married Quarters John Jacobs & Sons Ltd.	$ 149,000
Carmanville	Site Drain & Landscaping - RCMP East-West Enterprises	$ 13,000
	Deck Repairs Sheppard's Const. Ltd.	$ 14,229
	Deck Repairs Canning Construction	$ 19,600
	RCMP Detachment N&L Const. Ltd.	$ 478,000
Gander	Roof Repairs, CPC Island Roofing Co. Ltd.	$ 42,400
	RCMP Supply Division Building Olympic Const. Ltd.	$ 2,506,000
	Contract No. 2, Site Service Road Work - Industrial Park McNamara Const. Ltd.	$ 3,279,910
Terra Nova National Park	Pedestrian Underpass N.W. River Island Coastal Services Limited	$ 47,600
	Pavement & Repairs Trans-Canada Hwy. B&M Paving (1983) Ltd.	$ 164,686
Lumsden	South Breakwater Ext. McNamara Const. Ltd.	$ 678,495
	Wharf Repairs Goodyear Trucking Service Ltd.	$ 74,420
Frederickton	Wharf Repairs Wat-Lan Const. Ltd.	$ 55,490
Cape Freels	Wharf Repairs Straight Shore Const. Limited	$ 124,410

GRAND FALLS-WHITE BAY-LABRADOR

Grand Falls	RCMP Detachment N.D. Dobbin Ltd.	$ 1,319,880
Goose Bay	Recommissioning and Switchgear-Building, No. 371 Westinghouse Canada Inc.	$ 92,750
	Site Improvements - Containers Labrador Const. Ltd.	$ 22,500
	Major Renovations - CPC Legge's Enterprises Ltd.	$ 39,895
Nain	Proposed Fit-up for CPC R. Powell Construction	$ 15,000
Nipper's Harbour	Wharf Repairs White's Enterprises	$ 15,000
Port Hope Simpson	Approach Improvements Short's Const. Ltd.	$ 13,400
St. Mary's Harbour	Shed Extension-Phase II White's Enterprises	$ 18,500
Annieopsquotch Mountains	RCMP Radio Repeat Shelters The Box Store Ltd.	$ 18,800
Hampden	Exterior Improvements - CPC Brett's Const. Co.	$ 14,700
La Scie	Exterior Improvements - CPC B.N. Enterprises Ltd.	$ 14,300
	Deck Repairs White's Enterprises	$ 65,238
Coachman's Cove	Wharf Demolition Gid Sacrey Ltd.	$ 15,400
Fox Harbour (St. Lewis)	Wharf Repairs White's Enterprises	$ 18,499

Hopedale	Wharf Repairs Ailin Const. Ltd.	$ 36,152
Happy Valley	Installation of Unballast Roof Vinyl Roofing Ltd.	$ 39,990
Cartwright	Shed Repairs Gid Sacrey Ltd.	$ 55,000
	Wharf Extension Gid Sacrey Ltd.	$ 276,766
Baie Verte	Repair Concrete Beams and Caps, Wharf Repairs Hann Enterprises Ltd.	$ 48,396
Harbour Deep	Wharf Repairs Gid Sacrey Ltd.	$ 48,800
Makkovik	Harbour Development CCM Const. (NFLD) Ltd.	$ 744,425
	Fender Repairs CCM Const. (NFLD) Ltd.	$ 143,731
Smokey	Harbour Development Dorset Const. Ltd.	$ 1,169,425
Rigolet	Wharf Repairs Northern Adventures Ltd.	$ 22,778
La Poile	Wharf Repairs Bennett's Supply & Contracting	$ 50,940

HUMBER-PORT AU PORT-ST. BARBE

Stephenville	Fender Repairs Eco Zone Eng. Ltd.	$ 38,250
	RCMP Married Quarters Bluebird Invest. Ltd.	$ 42,800
	RCMP Detachment N.D. Dobbin Ltd.	$ 938,360
	Roof & Wall Repairs CPC Building Island Roofing Co. Ltd.	$ 73,100
Plum Point	Wharf Repairs Genge's Heavy Equip. Const.	$ 19,260
Englee	Exterior Improvements - CPC Carol Painting Ltd.	$ 20,416
Flower's Cove	Exterior Improvements - CPC Percy Ryan	$ 22,640
	Sanitary Sewer & Dwelling Renovations - RCMP Howlett Sons Ltd.	$ 148,300
Cow Head	Dredging Gid Sacrey Ltd.	$ 22,500
Corner Brook	Interior Renovations - CPC Paragon Eng. & Construction	$ 54,000
	Modifications to Transit Shed Dorset Const. Ltd.	$ 192,000
	Ext. Refinishing - CPC N&L Const. Ltd.	$ 59,500
	Cabinetry & Related Fittings Forward Pike Manufacturing Ltd.	$ 38,500
	Energy Retrofit Impr. & Comcentre Renovations - RCMP E.H. Grullage Ltd.	$ 203,000
Piccadilly	Site Draining & Sanitary Sewer - RCMP Young's Const. Ltd.	$ 63,456
	RCMP Married Officers Quarter White's Const. Ltd.	$ 230,000
Gros Morne National Park	Hydroseeding & Mulching East Coast Hydroseeding Limited	$ 99,940
	Grading, Drainage and Placement of Base McNamara Const. Ltd.	$ 3,073,380
	Paving Hwy. 430 Western Const. Co. Ltd.	$ 960,750
	Paving Hwy. 430 Pennecon Ltd.	$ 1,487,343
	Paving Hwy. 430 The Lundrigan Group	$ 598,350
Port aux Choix	Construction - Part of Service Centre Phase II Solid Holdings Ltd.	$ 1,812,000
Trout River	Wharf Improvements Floyd's Const. Ltd.	$ 458,280
St. Barbe	Wharf Repairs Howard T. White & Bros. Ltd.	$ 67,105
Pasadena	Industrial Mall Solid Holdings Ltd.	$ 2,907,800

Port Saunders	Wharf Repairs Floyd's Const. Ltd.	$ 69,852
ST. JOHN'S WEST		
Argentia	Slope Protection Ed Collins Contracting Ltd.	$ 145,000
	Wharf Repairs Northern Adventures Ltd.	$ 22,798
	Wharf Reconstruction Hynes Const. Co. Ltd.	$ 461,513
St. John's	Construct 150 Flag Poles Bases Atlantic Concrete Ltd.	$ 11,000
	Parking Lot Renovations Mail Processing Plant City Paving Ltd.	$ 21,112
	Masonry Wall Repairs Phase I - Mapp Bldg. Julian Const. Ltd.	$ 24,183
	Insulation & Air Ser. Data Centre Guilford Ltd.	$ 26,667
Dunville	Elect. Conversion, New Washrooms, New Roof & Drainage Sturgeons Ltd.	$ 24,400
Branch	West Breakwater Repairs Boot Const. Ltd.	$ 33,000
St. Bride's	Wharf Repairs Hynes Const. Co. Ltd.	$ 123,475
	Dredging CCM Const. (NFLD) Ltd.	$ 386,000
ST. JOHN'S EAST		
St. John's	Supply and Install Carpet Sir Humphrey Gilbert Bldg. Seaman Cross (NFLD) Ltd.	$ 10,659
	New Concrete Paving Atlantic Process Centre Complete Paving Ltd.	$ 23,750
	PWC Factor Connection and Stairwell Lighting North West Atlantic Fisheries Centre Emberley Electric Ltd.	$ 37,257
	Renovations 2nd Floor 354 Water Street Main Post Office Jerry Duff	$ 42,989
	Boiler Replacement 354 Water Street Main Post Office Boom Const. Co. Ltd.	$ 112,500
	Landscaping - Phase IV Arctic Vessel Marine Inst. Cadillac Const. Co. Ltd.	$ 418,000
	Heating Controls 354 Water Street Main Post Office Johnson Controls Ltd.	$ 75,000
	Architectural Retrofit Atlantic North Bennett's Supply & Contracting	$ 86,000
	Ext. Refinishing 354 Water Street Main Post Office Eastern Caulking & Maint. Ltd.	$ 23,936
	Modifications to Cavitation Tunnel Arctic Vessel Marine Inst. Marco Ltd.	$ 61,200
	Energy Monitoring & Control System North East Atlantic Fisheries Centre Honeywell Ltd.	$ 218,775
Pleasantville	Concrete Demolition Site Restoration - Bldg. 255 K&J Demolition & Landscaping	$ 12,210
	Inst. Acoustic Ceiling Window Valances, Replacement of Lighting, Fixtures, Door & Door Boxes - Building 806 Cyril Pye	$ 14,865
	New Boiler Installation Building 223 H&R Mechanical	$ 11,910
	Remove Existing Carpet & Install New, Bldg. 102 H. & M. Locke Ltd.	$ 12,789

	Remove Existing Carpet & Install New, Bldg. 223 H. & M. Locke Ltd.	$ 15,990
	Fire Alarm Emergency Lighting Bldg. 313 Powerlite Elect. Ltd.	$ 14,548
	New Fire Doors & Renov. Bldg. 313 City Builders Ltd.	$ 17,450
	Upgrade Electrical Syst. PMQ Block 400 Emberley Elect. Ltd.	$ 191,944
	Electrical Upgrading Block 500 Eastern Contracting Ltd.	$ 187,300
	Additions Bldg. 308 City Builders ltd.	$ 38,900
Belle Island	Roof & Canopy Repairs MCA Invest. Ltd.	$ 51,410
Long Pond	Dredging Pitts Atlantic Const. Ltd.	$ 418,412
Contract involving work in various locations		
Lourdes-Port au Port Aguathuna	Exterior Improvements Efco Enterprises	$ 32,980

Annex "B"

CONSTRUCTION CONTRACTS AWARDED DURING 1985/86 valued at $10,000 and more

NEWFOUNDLAND

BONAVISTA-TRINITY-CONCEPTION

Brownsdale	Slipway Repairs Land & Sea Welding & Exc. Ltd.	$ 14,040
Port de Grave	Wharf Repairs Short's Const. Ltd.	$ 17,900
Gooseberry Cove	Breakwater & Wharf Straight Shore Construction	$ 359,855

BURIN-ST GEORGE'S

Ramea	One Cell Patrol Cabin Alyward's Construction Ltd.	$ 110,850
Marystown	Exterior Retrofit - GOCB Alyward's Construction Ltd.	$ 13,950
Terrenceville	Stoppage Area Paving Romaine Construction Ltd.	$ 72,960
St. George's	Wharf Demolition Welco Enterprises Ltd.	$ 55,390
Harbour Breton	Fender Repairs Bennett's Supply & Contracting	$ 13,715
Margaree	Wharf Reconstruction CCM Construction Ltd.	$ 318,581
Hermitage	Bait Depot Expansion CCM Construction Ltd.	$ 927,800
Grand Bank	RCMP Married Quarters Franklyn Enterprises Ltd.	$ 234,200
	2nd Floor Fire Escape - GOCB Whiterock Developments Limited	$ 19,300
St. Lawrence	Approach Repairs Giovannini's Const.	$ 20,550
Burgeo	Deck Repairs Haggett & Co. Ltd.	$ 20,329
McCallum	Wharf Repairs J. Petite & Sons Ltd.	$ 11,417
Port aux Basques	Rock Removal Polar Divers Co.	$ 24,859
	Harbour Development Dredging (a division of Atlantic Touring Ltd.)	$ 2,605,600
Anderson's Cove	Wharf Demolition Thomas P. Hynes & Son.	$ 18,031

GANDER-TWILLINGATE

Gander	Construct RCMP Bldg. Avalon Const. & Eng. Ltd.	$ 61,457
Lewisporte	Renovations and Additions RCMP Detachment Bluebird Investments ltd.	$ 312,600

	Replace Floor Cover - CPC Building Gosses Carpet Centre and General Contractors	$ 10,528
Fogo	Wharf Approach Upgrading The Lundrigan Group Ltd.	$ 65,675
	Construction of a New RCMP Detachment Bluebird Investments Ltd.	$ 713,000
	Wharf Approach Upgrading The Lundrigan Group Ltd.	$ 126,740
Carmanville	Site Drainage & Landscape East West Enterprises	$ 13,000
Seldom Come-By	Wharf Approach Straight Shore Const.	$ 24,910
Greenspond	Wharf Reconstruction Straight Shore Const.	$ 299,660

GRAND FALLS-WHITE BAY-LABRADOR

Davis Inlet	Approach Repairs Glen Corporation Ltd.	$ 126,558
Hopedale Labrador	Wharf Repairs Glen Corporation Ltd.	$ 10,220
Goose Bay Labrador	Wharf and Approach Repairs Labrador Const. Ltd.	$ 72,931
Harbour Deep	Wharf Repairs Gid Sacrey Ltd.	$ 48,800
	Door Replacement Bldgs. 565 & 566 and Bldgs. 475, 476 & 477 Northern Const. & Insulation Ltd.	$ 31,500
	Renovations to Hangar N&L Construction Ltd.	$ 625,400
	Renovations Bldg. 250 N&L Construction Ltd.	$ 625,400
	Renovations to Bldg. 272 Efco Enterprises Ltd.	$ 536,660
Labrador City	Crown Housing Nordic Painting Co. Ltd.	$ 52,510
Punchbowl	Fisherman's Service Ctr. L.D. Fahey Construction Company Ltd.	$ 1,829,990
Windsor	Industrial Park Pennecon Ltd.	$ 1,641,365
Black Tickle	Wharf Repairs Titan's Holdings	$ 29,289
	Wharf Repairs Titan's Holdings	$ 24,999
Charlottetown	Wharf Repairs White's Enterprises	$ 42,294
St. Mary's Harbour	Fender Repairs White's Enterprises	$ 15,798
	4th Floor Renovations RCMP Bldg. City Builders Ltd.	$ 143,000
St. Anthony	Wharf & Shed Repairs William Curran Jr.	$ 29,500
Flower's Cove	RCMP Married Quarters Alyward's Construction Limited	$ 120,000
Nain	Approach Reconstruction/ Wharf Repairs Avalon Const. & Eng. Ltd.	$ 261,457
Red Bay	Wharf & Shed Repairs Floyd's Const. Ltd.	$ 12,300
Roddickton	Wharf & Approach Repairs Floyd's Construction Ltd.	$ 17,000
L'Anse au Clair	Wharf Reconstruction Floyd's Construction Ltd.	$ 241,365
St. Lewis	Wharf Repairs White's Enterprises Ltd.	$ 10,498
Nipper's Harbour	South Breakwater Construction Gid Sacrey Ltd.	$ 291,798
L'Anse au Loup	Harbour Development Gid Sacrey Ltd.	$ 422,680

HUMBER-PORT AU PORT-ST. BARBE

St. Barbe	Parking Lot Construction Construction Rentals Ltd.	$ 30,690

Stephenville	Retrofit, Bldg. 531 RCMP Demcon Const. Ltd.	$ 42,200
	Harbour Entrance Improvement Pitts Atlantic Construction Limited	$ 2,485,660
Corner Brook	Wharf Repairs Floyd's Construction Ltd.	$ 79,054
Cow Head	Dredging Gid Sacrey Ltd.	$ 45,000
Anchor Point	Wharf Reconstruction Avalon Construction Ltd.	$ 133,014
Norris Point	Wharf Demolition Floyd's Construction Ltd.	$ 14,800
Gros Morne	Improvement Highway 430 The Lundrigan Group Limited	$ 4,948,537
	Paving Highway 430 The Lundrigan Group Limited	$ 1,034,810

ST. JOHN'S EAST

Pleasantville	Install Fire Doors Bldg. 308 Arctic Construction Ltd.	$ 17,900
	Installation of Fire Alarm Bldg. 223 Arctic Construction Ltd.	$ 15,000
	Roof Repairs Bldgs. 204 & 205 Avalon Roofing Ltd.	$ 45,594
	Recarpeting & Floor Covering, Bldg. 205 B & K Carpet Warehouse	$ 21,775
	Painting, Bldg. 202 Brush Up Limited	$ 10,166
	Install Fire Alarm and Emergency Exit Lights Bldg. 312 Clarke's Electrical Ltd.	$ 17,688
	Concrete Ramp and Entrance Doors Colby Construction Ltd.	$ 109,880
	Electrical & Lighting Improvements, Bldg. 304 Dawe's Electric Ltd.	$ 20,824
	Interior Renovations and Repairs, Bldg. 308 Demcon Construction Ltd.	$ 94,700
	Fire Alarm System Bldg. 306 Forsey Electric	$ 14,300
	Interior Painting & Repairs, Bldgs. 401, 402, 403 and 406 J.M. Power	$ 13,600
	Emergency Generator Installation, Bldg. 306 Jenco Ltd.	$ 31,800
	Installation of Fire Doors Bldg. 308 Lakeside Construction Ltd.	$ 31,170
	Install Fire Alarm System and Emergency Exit Lights Bldg. 310 Clarke's Electrical Ltd.	$ 13,974
	Interior Painting & Repairs J.M. Power	$ 13,600
	Install Fire Doors Bldg. 314 Lakeside Construction Ltd.	$ 22,900
	Painting, Bldg. 302 MT Pearl Glass Ltd.	$ 10,743
	New Washrooms and Minor Renovations Bldg. 312 Pye's Decorating Services	$ 21,000
	Remove Electrical Panels and Supply New Ones Bldgs. 401, 402,403 & 406 United Trades Limited	$ 12,334
	Emergency Systems Bldg. 302 United Trades Limited	$ 13,500

Long Pond Manuel's	Wharf Repairs Avalon Const. and Engineering Ltd.	$ 14,565
	Shoal Removal Avalon Construction and Engineering ltd.	$ 42,500
	West Breakwater Repairs Short's Construction Ltd.	$ 19,600
St. John's	Roof Repairs Sir Humphrey Gilbert Bldg. Bluebird Investments Ltd.	$ 108,650
	CSIS Fit-Up 4th Floor Postal Station "C" City Builders Ltd.	$ 143,000
	Exterior Refinishing 354 Water Street Eastern Caulking & Maintenance	$ 23,936
	Construction- Northwest Atlantic Fisheries Centre Honeywell Ltd.	$ 218,775
	G.T.A. Refitting Sir Humphrey Gilbert Bldg. Demcon Construction	$ 11,468
	Renovations to 4th Floor 354 Water Street City Builders Ltd.	$ 143,000
	Renovations to Armed Forces Recruiting Ctr. 354 Water Street City Builders Ltd.	$ 36,110
Foxtrap	Wharf Repairs Eco-Zone Engineering	$ 46,825
ST. JOHN'S WEST		
Branch	Breakwater Repairs Boot Construction Limited	$ 33,000
	Dredging Hynes Construction Co. Ltd.	$ 31,655
O'Donnell's	Wharf Approach Repairs Edward Collins Contracting Ltd.	$ 17,220
Argentia	Fender Repairs Edward Collins Contracting Ltd.	$ 16,820
	Dredging Edward collins Contracting Ltd.	$ 68,051
	Fender Repairs Hann Enterprises Ltd.	$ 68,051
Petty Harbour	Rock Excavation Professional Diving Contractors Ltd.	$ 17,400

VETERANS AFFAIRS

PENSIONERS TRAINING REGULATIONS

Question No. 37 on the Order Paper—**By Hon. Jack Marshall:**

1st December 1987—Concerning the Pensioners Training Regulations (i) how many veterans are receiving benefits under these Regulations; (ii) are any applications pending; (iii) if yes, how long have they been on file; and (iv) what is the number of staff on strength who are responsible for Pensioners Training?

Reply by the Minister of Veterans Affairs:

(i) 20 former Regular Force members

(ii) No

(iii) N/A

(iv) 10% of one person year

AUDITOR GENERAL

ROLE UNDER ACT

Question No. 39 on the Order Paper—**By Hon. Senator Leblanc (Saurel):**

8th December 1987—With respect to the *Auditor General Act,* S.C. 1976-77, c. 34, why does the Act refer to the Auditor General's role in relation to the House of Commons only rather than to Parliament in general or specifically to both the Senate and the House of Commons?

Reply by the President of the Treasury Board:

The role of the Auditor General is described in sections 5 and 6 of the Auditor General Act. He is required to examine and report on the financial statements to be included in the Public Accounts.

Since under section 55 of the Financial Administration Act these Public Accounts are required to be laid before the House of Commons, it follows that the Auditor General's report on the Accounts would be similarly addressed.

Once tabled, both the Public Accounts and the related Report of the Auditor General are public documents which may be utilized by the House of Commons and the Senate in exercising their responsibilities.

Section 3.(1) of the Auditor General Act does recognize the responsibility of the Senate with regard to the removal of the Auditor General. It reads as follows:

3.(1) "The Governor in Council shall, by commission under the Great Seal, appoint a qualified auditor to be the

officer called the Auditor General of Canada to hold office during good behaviour for a term of ten years, but the Auditor General may be removed by the Governor in Council on address of the Senate and House of Commons".

MISCELLANEOUS STATUTE LAW AMENDMENT BILL, 1987

SECOND READING

On the Order:

Resuming the debate on the motion of the Honourable Senator Nurgitz, seconded by the Honourable Senator Tremblay, for the second reading of the Bill C-104, An Act to correct certain anomalies, inconsistencies, archaisms and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada.—(*Honourable Senator Frith*).

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, Senator Nurgitz has pinpointed for me the report I asked for yesterday. It appears at page 1701 of the *Minutes of the Proceedings of the Senate* of December 10, 1987. As he assured us yesterday, it is, indeed, a favourable report on the study of this bill. Therefore, I would just ask him a couple of questions that he may answer in closing the debate.

First, I am not clear as to how the committee received this reference. I have the idea that there is something automatic about it; in other words, as Senator Nurgitz mentioned yesterday, there is some sort of regular program in this regard. I notice that he is nodding his head, so apparently I am right. Perhaps he can tell us exactly how that happened.

The fourteenth report states that the committee "examined the said document." I note that it is called a document here rather than a bill, and I can understand why—the bill was not before us at that time. The report goes on to state:

—and now reports it with the following amendments:

Delete proposed clause 37.

As to proposed clauses 12 and 39, the report states:

Proposed clauses 12 and 39 should be deleted in accordance with the undertaking given by the Senior Legislative Counsel of the Department of Justice . . .

As to proposed schedule I, item 8, the report states:

Proposed schedule I, item 8 should be amended in accordance with the undertaking given by the Senior Legislative Counsel of the Department of Justice . . .

Finally, as to proposed schedule I, the report states:

Add new items 43 and 44 and renumber, in accordance with the undertaking given by the Senior Legislative Counsel of the Department of Justice . . .

Can Senator Nurgitz assure us that those recommendations were all accepted and that they are incorporated in the bill that is now before us? Senator Neiman moved the adoption of that report and it was adopted by the Senate. Therefore, it seems clear to me that there is no need for its reference to committee. In addition, it seems to me that there is no need for further debate, provided that Senator Nurgitz can give us all of those assurances.

Hon. Nathan Nurgitz: Honourable senators—

The Hon. the Speaker *pro tempore:* Honourable senators, I wish to inform the Senate that if Senator Nurgitz speaks now his speech will have the effect of closing debate on second reading of this bill.

Senator Nurgitz: Honourable senators, as to how this matter was referred to the committee, as Senator Frith hinted, there is in place an ongoing program or an ongoing file of matters which will be written up into draft bills as soon as we have reached the point where it is possible to do that.

Senator Frith: That draft bill is the "document" that is referred to in the report?

Senator Nurgitz: Yes. That draft bill is then referred, under the program, to the standing committees of the two chambers. That is how the bill is referred to committee. My recollection is that this brings current the statutes to the end of December. I notice that Mr. Lewis, the person responsible in the House of Commons for sponsorship of this matter, indicated that it was all bills that had to this date received Royal Assent. My authority for saying that is the House of Commons *Hansard*.

Those matters with respect to which either the House of Commons committee or the Senate committee recommended deletion or amendment have been so amended or deleted. We have been assured of this by counsel from the Department of Justice.

Senator Frith: All recommendations have been incorporated, then?

Senator Nurgitz: The recommendations have been incorporated in Bill C-104; I can give that assurance.

With that, honourable senators, I urge that we proceed with this bill.

Motion agreed to and bill read second time.

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

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

CURRENCY ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Jack Marshall moved the second reading of Bill C-99, to amend the Currency Act.

He said: Honourable senators, Bill C-99 is outside the scope of my knowledge, but in view of the fact that they had to reach to the bottom of the barrel, I must take on this responsibility.

Senator Frith: We never let that operate as an inhibition around here!

● (1430)

Senator Marshall: It is a bill to amend the Currency Act and is of a technical nature. It pertains to the accounting practices of the Exchange Fund Account and is designed to ensure that they are consistent with the procedures followed in the Public Accounts of Canada. As honourable senators know, the Exchange Fund is a special account of the Minister of Finance. It is the principal repository of Canada's official international reserves and, as such, aids in the control and protection of the external value of our currency.

Since 1986 the Exchange Fund has been consolidated with the Consolidated Revenue Fund in the Public Accounts of Canada, and this revision to government accounting practices was based on recommendations by the Auditor General of Canada and was implemented with the February 1986 budget. The Exchange Fund nevertheless continues to exist as a distinct accounting entity and is governed by separate legislation, the Currency Act, which is the subject of the proposed amendment.

In determining the net income of the Exchange Fund, the Currency Act draws a distinction between regular investment income and valuation gains or losses. The latter, which are due to exchange rate changes and gold sales, are averaged over three years under the Currency Act, while they are recognized immediately in the Public Accounts consolidation.

The proposed amendment would eliminate this difference in accounting treatment which was created by the consolidation introduced in 1986. In particular, it calls for the repeal of the three-year averaging provision in the Currency Act and would require that the accounting conventions of the Exchange Fund be consistent with those of the Public Accounts.

I would like to note that the payment of income by the Exchange Fund to the Consolidated Revenue Fund is a bookkeeping entry only; no cash is involved. That's why they gave it to me! The proposed amendment has no financial implications and will affect neither the operations of the Exchange Fund nor the government's fiscal position in any way. It is concerned solely with the presentation of the Exchange Fund's financial statements, serving to make them consistent with the presentation already contained in the Public Accounts and which follows recommendations made by the Auditor General.

Honourable senators, this bill passed in the other place within an hour and a half. Speeches were short, and opposition critics were in favour of the amendments. I therefore recommend the bill to honourable senators.

On motion of Senator Bosa, debate adjourned.

FRUIT AND VEGETABLE CUSTOMS ORDERS VALIDATION BILL

SECOND READING—DEBATE ADJOURNED

Hon. Efstathios William Barootes moved the second reading of Bill C-96, to validate certain customs duty orders relating to fresh fruits and vegetables.

[Senator Frith.]

He said: Honourable senators, I rise to introduce the Fruit and Vegetable Customs Orders Validation Bill. I hesitate to do so after all of the important matters that have been discussed today during Question Period; nevertheless, this is a necessity of housekeeping.

One of the principles of the Senate of Canada is, of course, that representatives should report carefully on the nature of important legislative business before the chamber. I will not claim that the Fruit and Vegetable Customs Orders Validation Bill deals with a truly weighty public matter. I would merely say that even appointment to high public office in this chamber does not mean that we can escape from dreary housekeeping duties.

In brief, the purpose of the bill is to regularize some transactions in the nation's grocery accounts. But before dealing with the legislation, perhaps I may supply some background. During the Canadian growing season the Department of National Revenue, Customs and Excise, levies duties on imported fruit and vegetables. That is to say, we impose duties to protect the domestic growers during the harvest period. For the rest of the year imported fresh fruit and vegetables may enter Canada duty free. During the harvest season, however, Customs duty orders are made pursuant to paragraph 15(1)(*a*) of the Customs Tariff, which currently permits either the Minister or Deputy Minister of National Revenue to levy those duties.

During the period January 1, 1972, to January 10, 1985, Customs duty orders were signed by officers of the Department of National Revenue, Customs and Excise, on the basis of a legal opinion which held that these orders were not statutory instruments and could be signed by the deputy minister or his designated officials. However, in June 1984 the department was advised that Customs duty orders are indeed statutory instruments, that they have to be signed by the Customs minister of the day, examined in accordance with the Statutory Instruments Act, registered with the Privy Council, and published in the *Canada Gazette*. Between June 28, 1984, and January 10, 1985, the minister signed most of the orders. However, in some cases signatures or registrations were delayed beyond the effective dates. Furthermore, in some instances officials signed orders cancelling duties that were authorized by them prior to the June notification of the possible mistake or irregularity in the original legal opinion. It follows, therefore, that all orders that were not signed by Ministers of National Revenue, Customs and Excise, since the beginning of 1972 to January 10, 1985, were not issued with undiluted statutory authority.

The secretary to the Standing Joint Committee of the Senate and the House of Commons on Regulations and other Statutory Instruments suggested that the department draft remedial legislation to validate the duty collection and remittance orders specified in the bill. In the committee's Fourth Report to Parliament, tabled on March 20, 1987—and our own Senator Nurgitz is joint chairman of this committee—they stated that the passing of validating legislation will cause the letter of the law to properly coincide with its spirit. The

report also went on to recommend that Parliament adopt remedial legislation once it was introduced. It said that the legislation would be "proper and in keeping with the best traditions of parliamentary government."

Perhaps some honourable senators are mildly surprised that what I described as housekeeping could be characterized with such seriousness and gravity. Yet, it is merely recognition that form as well as substance sometimes demands our care. So, the bill is necessary if Customs administration is to work appropriately and consistently. My request for senatorial approval is based on the original intent of the Customs Tariff. Clearly the purpose of the tariff is to protect the public interest by ensuring stability in the supply of domestically grown produce. At the same time we encourage the importation of affordable fresh produce during the off-season.

To sum up then, the Fruit and Vegetable Customs Orders Validation Bill will validate retroactively the collection of seasonal Customs duties done without complete authority between January 1, 1972, and January 10, 1985. It will also deem the Customs duties on imported produce between June 28, 1984, and January 10, 1985, to have been remitted in full. Passing the bill will confirm our belief that Customs duties were collected in good faith and in compliance with what was considered to be valid subordinate legislation.

• (1440)

In conclusion, honourable senators, I would like to repeat for my colleagues a comment by Thomas Carlyle, that great 19th century English philosopher and writer. He said, "It is meritorious to insist on forms," because anything of substance clothes itself in that way. "Everywhere the formed world is the only habitable one," he continued. By using the word "habitable" he reminds us to take care of our housekeeping.

On motion of Senator Frith, for Senator Barrow, debate adjourned.

CORPORATIONS AND LABOUR UNIONS RETURNS ACT

BILL TO AMEND—SECOND READING

Hon. James Balfour moved the second reading of Bill C-91, to amend the Corporations and Labour Unions Returns Act.

He said: Honourable senators, Bill C-91, an act to amend the Corporations and Labour Unions Returns Act, called CALURA, is now before the Senate. This legislation, which was passed in 1962, involves the reporting of ownership and financial information relating to corporations and labour unions operating in this country.

The information collected under CALURA has been reported to Parliament annually and has proven to be a unique and highly valuable reference on the extent and effects of foreign ownership and control of corporations in Canada, and on the affiliation of Canadian with international labour unions.

Its prime objective was, and remains, to provide the government and the general public with objective information on corporate concentration and the extent to which parts of the Canadian economy are owned and controlled from abroad.

During more than two decades of existence CALURA has provided the most consistent, complete and detailed information on the financial structure and degree of foreign ownership of the Canadian economy. This is information that has served royal commissions, government departments and the academic and business communities. Its ownership series have been the basis for virtually all Canadian reports and articles, both public and private, on corporate concentration and foreign ownership of the Canadian economy.

The CALURA reports show clearly how the leading 500 non-financial enterprises accounted for more than half of all sales, two-thirds of all assets, and almost three-fourths of profits. Of the 500 leading enterprises just about half are foreign controlled.

United States controlled corporations account for 75 per cent of the sales and 85 per cent of the profits of foreign-controlled non-financial corporations. These facts are essential to any discussion of the corporate sector in Canada, including competition policy and trade negotiations. They can only be established from CALURA annual reports.

In addition, CALURA ownership information is available to the public through the Department of Consumer and Corporate Affairs. Due to widespread demand, Statistics Canada has regularly produced a highly popular directory entitled "Inter-Corporate Ownership", which shows who owns and controls business in Canada. This publication has served many executives, market managers, investors, journalists and economists—and, indeed, parliamentarians—studying and writing on the corporate structure of the Canadian economy. Ownership data are also distributed electronically by private enterprise to banks, financial institutions and other corporations across Canada.

It is obvious that CALURA, during its two decades of existence, has proved absolutely essential in the analysis of economic affairs in Canada. I am sure all Canadians recognize the value of CALURA information and are pleased that this government's initiative to improve economic efficiency by reducing paper burden will not affect in any way the important data on the structure of Canadian industrial society provided by this legislation.

Those measures which this bill addresses relate purely to the administration of the legislation and the burden it has imposed on the business community. Equally important, there are justifiable concerns that very confidential information must remain solely under the purview of Statistics Canada.

In making all CALURA financial and technology transfer data confidential to Statistics Canada, business may feel reassured in responding under CALURA. At the same time, Statistics Canada will continue to supply policy departments non-confidential aggregates in support of the economic analysis of key policy issues.

In summary, this bill fulfills this government's commitment to alleviate the response burden by reinstating the corporate

fiscal year for reporting, thus relieving many corporations from making time-consuming and costly adjustments to their financial returns.

It also gives business the assurance that it can file sensitive information under CALURA with absolute assurance of confidentiality. It does this while still supporting the government process of policy analysis on key industrial questions and leaving unaffected the public access to vital information on the ownership and control of Canadian corporate society.

No doubt some honourable senators will have questions concerning the working of this bill as amended, which I suggest might appropriately be addressed at the committee stage following second reading.

Hon. Lorna Marsden: Honourable senators, the sponsor of the bill in the Senate has quite correctly drawn a conclusion that there will be some questions raised from this side of the house concerning this bill in committee. Nonetheless, we agree with the government on the usefulness of the information provided by CALURA, and we are also in general agreement with the nature of the amendments provided.

However, it might be useful if I signalled some of the questions to which we would be interested in hearing responses in committee. But before doing that, I note that when this bill was referred to committee in the other place on December 15 last no witnesses were called, leaving questions that had been raised in the other place unanswered.

There may be questions raised by many senators in committee, but there are three that come to mind at once. The first deals with the information that is supplied by this bill on technology transfer and corporate concentration of ownership. Everyone is in agreement that this has been extremely useful data. We need to assure ourselves, however, that the data will continue to be available in a form that is useful in order to explore the kinds of questions that arise within the context of the trade talks in which this government is currently engaged.

The second area of questions will relate to the access to privileged information for policy purposes. Once again, the questions are in the same area. It has been suggested elsewhere that there is a study now under way related to the trade talks that arise from the CALURA data. The questions that come to mind are: Will that be possible? Will it be enhanced? Will it be diminished? These are questions that need to be put to a technical witness in this area.

The third area of questions concerns simplification, in which the government is taking a great deal of pride. For example, the questionnaire distributed to those people who respond to CALURA has been reduced from 16 pages to something much shorter. The same is true of the questionnaire on technology transfer. That seems to be a highly desirable move and, certainly on this side, we are in favour of reducing the paper burden for business, large and small, and for the unions.

However, there are questions on which we need reassurance. For example, one of the key uses of this data is the research which goes on in many places, but certainly within the academic community, on Canadian economy and Canadian business, on which historical continuity is of great importance. It may very well be that historical continuity is provided on these matters in the revised form of the reporting requirements for this bill, and indeed is provided elsewhere—for example, from National Revenue—but I think that is a question on which we need to reassure ourselves.

So, honourable senators, I suggest that when the bill is in committee we hear from witnesses who are capable of answering these kinds of questions and any others that may be referred to the sponsor of the bill in the meantime.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

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

THE CONSTITUTION

FIRST MINISTERS' ACCORD AND AGREED TEXTS—CONSIDERATION IN COMMITTEE OF THE WHOLE CONTINUED

On the Order:

> The Senate again in Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to.

The Senate was accordingly adjourned during pleasure and put into a Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to, the Honourable Gildas L. Molgat in the Chair.

The Chairman: Honourable senators, this afternoon we will be listening to three groups of witnesses. We await the arrival of the first.

Pursuant to order adopted on June 18, 1987, Mr. George Corn and Mr. Emilio Binavince were escorted to seats in the Senate chamber.

The Chairman: I would like to welcome to the Senate the witnesses from the Canadian Ethnocultural Council: Mr. George Corn, President, and Mr. Emilio Binavince, a member. They have supplied us with copies of their brief in both official languages, and these have been distributed to all members of the committee.

I would ask the witnesses to indicate to us who will be speaking or if they will both be speaking. I would like to remind the witnesses that we have set aside a maximum of one hour, and we will have to stay within that time limit, because we have other witnesses following.

Mr. George Corn, President, Canadian Ethnocultural Council: Mr. Chairman, I am a retired partner of Dunwood & Company, Chartered Accountants. For 15 years I was the president of the Czechoslovakian Association of Canada.

I would like to introduce Emilio Binavince. He is a lawyer with Gowling & Henderson here in Ottawa and a former professor of constitutional law at the University of Ottawa. He

is a member of the United Council of Filipino Associations in Canada.

Mr. Chairman, honourable senators, we are pleased and honoured to be invited by the Senate committee to deliver personally our presentation at this hearing and to discuss with you our views on the 1987 Constitutional Accord. The Canadian Ethnocultural Council is a coalition of 36 ethnic national organizations which, in turn, represent over 1,000 provincial and local groups, branches and clubs, and tens of thousands of volunteers from coast to coast. We address the needs and concerns of approximately eight million Canadians from all ethnic groups in Canada. We are a non-profit and non-partisan coalition, dedicated to working together for the purpose of furthering the multicultural reality of Canada, recognizing bilingual and multicultural Canadian society, aiming for equal opportunity, rights and dignity, thus ensuring equity for all Canadians in one united Canada.

One of our main objectives is to entrench multiculturalism firmly in the Canadian legal system. Canada developed into a bilingual and multicultural country, and that fact has to be respected by all Canadians, incorporated into Canadian laws, and recognized in the Canadian Constitution.

We are here today to endorse the need for the accord, especially as it relates to Quebec. We believe that the people of Quebec were protected by the terms of the 1982 Constitutional Act. The lack of their voluntary signature was a most unfortunate absence in that otherwise positive historical development in our country.

The Canadian Ethnocultural Council welcomes the 1987 Constitutional Accord that will allow Quebec to be a full partner in Canadian Confederation. We have expressed our sincere congratulations to the Prime Minister and all provincial ministers for their effort and vision in arriving at the accord. The spirit of such unanimity was rare in the development of Canada and deserves praise. We were pleased that the accord, signed on June 3, 1987, ensured the sanctity of the multiculturalism clause of the Charter. We have studied the accord extensively and have expressed our view that so reflects Canadian reality—linguistic duality and multiculturalism should be recognized in the same clause of the Constitution or the Charter of Rights in order to receive equal interpretation in the future. When we met with the Prime Minister he was sensitive to our concerns and gave us hope that there would be room for improvements in respect of multiculturalism, and pointed out that there would be parliamentary hearings to consider changes.

We felt that after all hearings the First Ministers and Prime Minister should meet again to consider the results of these hearings and to discuss and implement improvements suggested by provincial and federal parliaments and interested groups such as ours.

We were encouraged when we read in the Throne Speech that:

> It is imperative that Canada's multicultural and multiracial reality be integral to all facets of our national life to reflect the vital and distinctive nature of Canadian society.

● (1500)

It is our opinion that joining Quebec's signature to the accord should not override the interests of ethnic and linguistic minorities, rights of women and rights of native people.

I should now like to deal with some of the sections of the accord. I want to mention specifically our first recommendation. We believe that this country is fundamentally bilingual and multicultural. I believe all members of the committee agree with that. We therefore believe that both fundamental characteristics should be given equal protection in section 1 of the accord. Section 16 is not a satisfactory guarantee, although it was meant to be. What section 16 does is clarify that only the Charter will recognize multiculturalism and our cultural diversity, whereas the Constitution recognizes bilingualism. Our linguistic duality is, at this rate, above the multicultural aspects.

We support and endorse the concept of a distinct society in principle, and we recognize the necessity and importance of the inclusion of Quebec within the agreement. We also recognize the distinctiveness of Quebec primarily in its use of the Civil Code and in its being the main centre of French language and culture in Canada. We submit, however, that the distinctiveness of Quebec should not preclude the distinctiveness of other societies in Canada.

Second, we submit that it should not exclude Quebec from its obligation to maintain its own policy of multiculturalism. Whereas we recognize that it is not the intention of the accord as it is written, we recommend, to offset the possibility of these problems occurring, that the accord define the term "distinct society" and clarify that the Government of Quebec has the responsibility to preserve and promote the multicultural heritage of the province.

Sections 6 and 7 deal with the matter of immigration, and our two recommendations are intertwined. Our concern is that the federal immigration powers are being diluted in this accord. As a result, chequer-boarding of immigration policies may result across Canada. As well, the method upon which agreements can be reached between federal and provincial ministers directly from one ministry to another circumvents Parliament and the general public. We feel that any agreement must be scrutinized by Parliament and the general public.

Mr. Chairman, with your permission, I turn to Mr. Emilio Binavince for further explanation.

The Chairman: Thank you, Mr. Corn. Mr. Binavince, please proceed.

Mr. Emilio Binavince, Member, Canadian Ethnocultural Council: Thank you, Mr. Chairman and honourable senators. Because of the extensive nature of the recommendations made by the council I wish to make specific comments that would invite honourable senators to consider specifically our recommendations relating to section 2.

First of all, I should like to make a general comment to put this submission in perspective. As a constitutional professor I cannot resist the temptation of enlightening honourable senators a little on what a constitution is all about. A constitution provides the ground rules in the exercise of the collective power of the people that is delegated to governments.

In relation to the Meech Lake Accord, there are three important realities that people have to understand: the first is that the majority of the people, being represented in government, do not need the protection of the Constitution, generally. The majority has a sociological protection, and very often it does not need a constitutional protection.

Second, the Constitution, at its best, works when the morals and the wisdom of the people break down. It is intended to help channel the emotions of hysteria and panic. That is the reason constitutions work better when there is bad government, arbitrary government or other authoritarianism. The wise restraints that make men free are almost always better than written words.

The third point that is important to realize is that the Constitution is very simply an empty declaration unless we have courageous, wise and objective judges. An eminent Justice of the United States Supreme Court, Oliver Wendell Holmes, once said that the Constitution is what the judges say.

Out of these three points arise the concerns of the Canadian Ethnocultural Council. There is no constitutional protection today of the ethnic culture in Canada. Section 27 of the Canadian Charter of Rights and Freedoms is very simply a direction as to how the courts should interpret the Constitution; it is not a substantive grant of any right to the ethnic minorities in Canada.

Section 2 of the Meech Lake Accord recognizes the French culture and the English culture, the two mainstream cultures in Canada today. Being the majority culture they do not need the constitutional protection that is actually being put in the Charter. They have the strength of numbers, and that is the reason constitutions, in the ultimate analysis, are not needed. The sociological protection is enough. What a constitution must require is the protection of the ethnic cultural minorities, and that is exactly what is missing in the Meech Lake Accord.

Aside from that, section 2 of the Meech Lake Accord has given a window that can serve as a justification to bigoted courts or bigoted governments to limit the Canadian Charter of Rights and Freedoms.

By being specific in relation to the English and the French cultures, one—especially the courts—can imply that the Constitution does not recognize any other cultures, because otherwise what is the purpose of being specific? That is a kind of distorted logic that, even in the hands of the courts or the government, could become a weapon to limit the multicultural character of the country—or probably even the liberties that are included in the Canadian Charter of Rights and Freedoms.

If, indeed, multiculturalism is protected by the Charter, why be very specific in the protection and preservation of the English and the French cultures? It is more dangerous to leave the ethnic or minority cultures naked of constitutional protection.

Section 2 can be taken as a fresh and original grant of a power that did not previously exist in the Constitution Act of 1867. In the hands of the wrong government that can be taken, as I said, to justify the limitations of liberty in the country, in the name, very often mistakenly, of the survival of one culture or for the purity of another culture.

The multicultural character of the country is not inconsistent with the recognition of the English and French culture in Canada. For that reason there is no reason to fear that an amendment to section 2, stating that one of the fundamental characters of Canada is multiculturalism, would be a dangerous proposition.

The next point relates to the vagueness of the concepts that are included in the Meech Lake Accord. Vague terms are dangerous to liberty, because they enlarge the ability of those who make decisions to justify certain kinds of interpretation that could limit the liberty of the people. The definitions of what are a distinctive characteristic of Canada and a distinct society in Quebec require an invitation for clarity, and if they are not clarified they can be distorted beyond the intent of the Fathers of the Constitution during the Meech Lake Accord, because in the ultimate analysis the judge's ability to make an oppressive decision plausible, to make it sound plausible under the words of the Constitution, is the true limit of constitutional interpretation. That is the reason why there should be certain clarity in the definitions of those two terms.

• (1510)

Finally—and this touches directly on the objectivity, wisdom and need for judges who have the courage to protect minority cultures—judges, as I have said before, are the ultimate interpreters of the Constitution. We believe, as is proven by sociological studies, that there is a cultural bias to wisdom, education and philosophy that is demonstrated in the interpretation of the United States Constitution. For that reason, in our view, judges across the country should have ethnic representations so that they will fully understand the psychological thinking and the emotion of the ethnocultural minorities in this country.

Moreover, the granting of the powers to the provinces to nominate Supreme Court Judges dilutes their accountability and destroys the unified responsibility for multiculturalism throughout the country.

For these reasons, honourable senators and Mr. Chairman, we support, and suggest to you that you should seriously consider, amending particularly section 2 of the Meech Lake Accord.

The Chairman: Thank you Mr. Binavince. Mr. Corn?

Mr. Corn: I should like to mention a few things from the report of the Special Joint Committee of the Senate and House of Commons.

Section 93 of that report states:

> A number of representatives of Canadian ethnocultural organizations dedicated to the preservation and promotion

of this multicultural heritage expressed their concern to the Committee that the "linguistic duality distinct society" rules of interpretation might have negative implications for the status of multiculturalism in Canada.

Section 97 states:

> Few if any of the representatives of ethnocultural communities objected to describing linguistic duality as a fundamental characteristic of Canada nor did any deny the importance of recognizing the distinctness of Quebec society within Canada. Their objection was to a definition of Canada that includes linguistic duality but does not speak of multiculturalism; that identifies Quebec's distinctness but is silent about other distinct elements in the Canadian mosaic—

To correct this omission they proposed to amend section 2 as it was described in the report.

The report goes on to state:

> The Joint Committee fully agrees with the vital importance of our multicultural heritage but we do not share the concerns expressed with regard to the omission from section 2 of any mention of multiculturalism. Section 2(1)(a) does not purport to offer a comprehensive definition of Canada. It is, as we have indicated, an articulation of one of the fundamental characteristics of Canada. Had first the ministers attempted to formulate a comprehensive definition that captured all of the fundamental characteristics of Canada they would have gone far beyond their agenda of dealing with amendments necessary to enable the Government of Quebec to give its willing assent to the Constitution.
>
> The committee also agrees that . . . the determination of ethnocultural groups to ensure that recognition of Canada's linguistic duality and of Quebec's distinct society does not override recognition of our multicultural heritage. That, we believe, is the intent of section 16 of the Accord.
>
> We see no reason to doubt that the First Ministers, all of whom expressed strong support for multiculturalism, will address this topic in their further constitutional disucssions and we have no hesitation in recommending that the topics be added to their agenda at one of their forthcoming conferences.

I would also like to mention that the other political parties issued minority reports. The NDP minority report also recognized the importance of our concerns, but said that they should be addressed at a future round.

The Liberal minority report most accurately reflected our concerns. They recommended an addition to section 1 that would recognize the multicultural nature of the Canadian society, and they recommended that section 16 be amended to protect the entire Canadian Charter of Rights and Freedoms.

Mr. Chairman, the Canadian Ethnocultural Council feels that it is still possible to amend section 2, the recognition of multicultural Canada, and that it should be addressed by the First Ministers.

If this is not possible, we feel that at least the agenda for the future First Ministers' Conference should be amended and multiculturalism should be included in section 13 of the accord.

Mr. Chairman, I should like to assure you that one of the most important goals of CEC, the organization mentioned here as representing thousands of regional and local groups, and so on, is to have multiculturalism embodied in the Canadian Constitution, the reality which reflects the fabric of Canada and the unity and diversity of Canadian society.

The Chairman: Thank you very much, Mr. Corn and Mr. Binavince. We will now go to questions from members of the committee. I have Senator Marsden first, to be followed by Senator Stewart.

Senator Marsden: I wish to thank the witnesses for appearing today and for their useful testimony—both in what they have said for the record this afternoon and in their written brief.

Mr. Chairman, may I assume that the written brief will be appended to the documentation for this afternoon's session?

The Chairman: I do not believe it has been the practice, Senator Marsden, to have the briefs appended as part of the documents. It is a matter of the number of briefs that we would have to print. But, as you know, the briefs have been distributed to all members of the committee.

Senator Marsden: Let me put it into the record, then, that I think the written brief was useful and is worth re-reading.

I have two short questions for clarification.

In your written brief and in what you have said this afternoon you mentioned the guarantees of womens' rights in addition to the particular concerns that you are raising here this afternoon. In your executive summary you state: ". . . to ensure better guarantees of women's and aboriginal rights." Many people in this country are of the view that the Canadian Charter of Rights and Freedoms does provide strong guarantees of women's equality. Are you suggesting that that should be improved or that the paramountcy of the Charter should prevail in the Meech Lake agreement?

Mr. Binavince: We are concerned that the Meech Lake Accord has the ability to override the Canadian Charter of Rights and Freedoms. We agree that sections 15 and 28 of the Canadian Charter of Rights and Freedoms grants protection to women, but, unfortunately, the Meech Lake Accord, in view of section 2, would allow governments to override and desist.

I am aware that Professor Lederman and Mr. Fortier, in testifying before the committee of the House of Commons, stated that that fear was paranoid and that we should not be afraid of the accord. The concern is very simply this: If it is only paranoia, there is one way of appeasing the people: Women and aboriginals, as well as the Ethnocultural Council, feel that it should be spelled out to ensure that the fear does not need to exist.

• (1520)

Senator Marsden: On your recommendation that the distinct society concept be defined in the accord, may I ask if you

have a definition to propose or if there is a definition that you absolutely dislike? For example, La Fédération des Femmes du Quebec, in testifying before the joint committee, took a definition from the so-called beige paper. Is that one that you like or do not like?

Mr. Binavince: I, personally, feel that it is not a problem of definition but is a problem of vagueness. I think that we could all live with some kind of definition, if it were given now and we could improve it in the future. However, it is undemocratic to leave it as vague as it is now and to delegate the courts or the governments of the future to provide an interpretation, which would be subject to tremendous political pressure or even court litigation.

What is essential in constitutional law-making is to debate the issues and to decide. Ethnic minorities in Canada are willing to accept any kind of definition provided that the uncertainty is removed.

Senator Marsden: Thank you, Mr. Chairman.

Mr. Corn: You were talking about a definition of "distinct society." We feel we should leave it to Quebec to state what is meant by that and that we should consider it. We feel that it is better that they, rather than we as outsiders, try to specify what it means.

The Chairman: Thank you, Senator Marsden. The next questioner will be Senator Stewart, followed by Senator Frith.

Senator Stewart: I have two questions; the first one has been anticipated somewhat by Senator Marsden. It relates to the expression "distinct society." I am hoping that Mr. Binavince will be helpful with regard to this expression because of his experience as a constitutionalist.

It is complained that this expression, "distinct society," is very vague and that it has no generally accepted meaning, at least in common law. Is that accurate? Is it not true that the expression "society" has a long and honourable meaning in the history of what is sometimes called "natural law jurisprudence," and that normally the expression "society" in that context means a group of associates who normally would proceed to become what was called a "civil society?" In other words, if you were a genuine society, you would be entitled to your own distinct, separate and independent government. Is that not an accurate history of at least 500 years of natural law jurisprudence? Wouldn't you, if you were a judge of the Supreme Court of Canada, have to take into account that long and honourable tradition of interpretation?

Mr. Binavince: The amount of material that one has to study in order to give meaning to the word "distinct," not simply the word "society," is probably impossible to enumerate today.

The point concerns not so much the ability of defining something. I am absolutely certain that we can define anything and that the courts will ultimately give us the definition that they feel like giving. The problem concerns the considerations that will go into the definition, and constitutionalizing it, by way of the decision or the authority of the court, is ultimately a decision of the people. This is an opportunity for the Canadian people to define the term and to define themselves. We should not be afraid of doing that. If there is any difficulty in doing that, then at least we should make an attempt to provide some guidelines in that search for a definition.

For instance, in section 1 of the Charter there is at least a standard of reasonableness—the question of how it will be justified in certain other societies, and so on and so forth. I can think of language and religion, for instance, as being two elements of a distinct society. The question relates to the exclusion of other elements which will go to the distinctiveness. It is not a question of whether we are afraid of a future definition. You can only be afraid of a fact. There is an opportunity to do this now, and an enlightened debate can contribute to that, because, after all, constitution—making is the people's job, but we are not doing that today.

Senator Stewart: We are told that we are being paranoid when we ask for definition, and that really this is a very innocuous expression and that everyone who drives through the province of Quebec knows that it is a distinct society and that that is what it means. I am suggesting to you that that kind of assurance is really unfounded, and that the term could be interpreted as having great importance, and so interpreted, not by some wilful, irrational judge but, rather, by a judge taking cognizance of a wide body of jurisprudential literature.

Mr. Binavince: As we said, it is not the man on the street, driving through Quebec, who will give the definition. When I walk down the streets of Montreal I can see things which make me say, "That is Quebec. It is beautiful." I can assure you that another person with a different kind of philosophy and a different racial and cultural background might read more into it than I would.

The question very simply is: Whose view will become the language of the Constitution?

Senator Stewart: I now come to my second question, which concerns the quotation from Oliver Wendell Holmes that a constitution is what the judges say it is.

Perhaps I ought to preface this question by saying that senators are sometimes a little bit uneasy in this day and age when they are reminded that they are merely appointed. Are you satisfied to have the judges, who are going to say what the constitutional law of this country is, merely appointed, and, moreover, are now to be nominated under the Meech Lake arrangement by provincial premiers, their nominations being confirmed by the authorities in Ottawa? Does it seem suitable to you that this kind of constitutional law-making power—for that is what it is according to Holmes, who was an experienced man in this field—should be lodged in the hands of persons not only appointed but appointed by this particular process?

Mr. Binavince: I will probably be giving you a personal view rather than the council's view in answer to that question, because I do not think that the council has debated that very difficult question.

My personal view on that is that judges will have to be appointed. I do not think that the American way of electing

judges will work. The only question in my mind is: Who should appoint them, and what kind of checks should be in place so that the objective, the wise and the qualified will be enthroned to tell us what the Constitution is? I think that a group of senators having the responsibility to examine the qualifications of nominees would be a good idea. Whether the Senate should be appointed or elected is another sort of question.

• (1530)

My fear is that the Quebec input under the accord—which is a substantial input given to the premiers of Quebec—will balkanize the appointments to the Supreme Court of Canada and will encourage regionalism rather than the making of a Canadian society. There is room, of course, for that, but it is not a question of whose power it should be. We are afraid that there will be a dilution of responsibility. Unfortunately, we often look at the appointing power as the authority to whom we are accountable. If the triggering power resides in one province, it is unavoidable that the thinking of the appointed person will have a term of reference simply directed towards that province.

The culture of Canada is a national one; the distinct society of Canada is a national one; the fundamental characteristic of Canada is a national one. It is our submission that, in the ultimate analysis, we should test those perspectives of appointees.

Senator Stewart: My last question does not relate specifically to multiculturalism but is parallel to it. Under the Meech Lake Accord at least three judges will be nominated by the Province of Quebec. As a Nova Scotian I anticipate that the Province of Ontario will demand at least equal treatment. That does not leave very many for the rest of us, if you take either the four eastern provinces alone or the four western provinces alone. Does not the appointment process that is now being adopted tend not only to balkanize the court but to have the effect of concentrating this constitutional law-making body into two provinces?

Mr. Binavince: Senator, I, personally, share that view. I think if one looked at what is happening to the Supreme Court of Canada today one would see that that court is becoming more and more a constitutional public law court because of its power to select the cases that it will hear. That court considers issues of national importance and allows only such cases to be appealed. On the other hand, the direction of the appointment of judges is going towards the provincial powers. I am not so sure that that is a wise move. It is a step backwards.

Ultimately, the increasing tendency of our judicial development will be that the provincial courts will become supreme courts in their own right in certain provincial aspects of the law, and it is likely that many of these cases will not ever reach the Supreme Court of Canada. Only cases of national importance that should be decided by nationally conscious judges should go to the Supreme Court. That is my view.

Mr. Corn: Mr. Chairman, I should like to mention that the Canadian Ethnocultural Council advocates both the appointment of the Senate and the appointment of the Supreme Court of Canada. We, however, are not politicians; we are not partisan; we would like to leave it to the politicians whether the Senate be elected or appointed. That is their problem, not ours. We want only one thing, please: Appoint more people from ethnocultural backgrounds both to the Senate and to the Supreme Court of Canada. That is all we want.

The Chairman: Thank you, Mr. Corn, but I think that Mr. Binavince indicated that he was answering on a personal basis as a constitutional expert and was not necessarily binding the Ethnocultural Council to his answers. However, we note your comment.

Senator Frith: Gentlemen, my question arises out of Senator Stewart's earlier line of questioning. I am not quite clear on your position with respect to the matter of "distinct society." You are familiar with the reference books that deal with words that are judicially defined. One can find out from such reference books what words and phrases have actually been defined by judges. The word "society," apparently, has never been in any context the subject for judicial definition in Canada. As I pointed out on another occasion, when I tried to find judicial definition of the word "society" I could find nothing between the words "soap" and "sodomy." I thought I heard you say that the building of a constitution and the definition of words of this kind was a matter for the people; yet, in your Executive Summary I note that the Canadian Ethnocultural Council wishes "to have the term 'distinct society' defined in the Accord." Is there a difference between the two of you on this subject?

Mr. Corn: We were speaking ostensibly about "distinct society." I would put it briefly. We do not believe that we ethnocultural people or English people should describe what is the distinct society of the French Canadians. I believe that they should do it.

Senator Frith: You believe what?

Mr. Corn: I believe that the French Canadian people, the Quebeckers, should do it. We know certain aspects of their society; we know that their laws are based upon the Napoleonic Code while ours are based on case law; we know that they have a different language, and so on. But rather than try to describe what we feel is their distinct society, we would say that they should do so.

In the Throne Speech and elsewhere reference is made to our national life reflecting the vital and distinctive nature of Canadian society. Everybody is using distinctiveness. We, as an ethnocultural group, believe that we are distinctive. I am Czech by origin—I am something special! But who can say what is my distinctiveness? We believe that the Quebeckers should try to establish what is distinctive in their case.

Senator Frith: You will remember that the proposed Constitution amendment states that:

> The Constitution of Canada shall be interpreted in a manner consistent with
>
> (a) —

and I will come back to that, and

(b) the recognition that Quebec constitutes within Canada a distinct society.

You seem to be saying that Quebec does constitute a distinct society, but so do other groups. Are you saying that, because there are other distinct societies within Canada, Quebec should not be singled out? Or are you saying that, because there are other distinct societies within Canada, they should all be included in the Constitution amendment? I am not clear on your position. You understand that we have to take into consideration the representations made by you and others. It would be neither expected nor helpful of us simply to say, to quote you, "We recommend that the term 'distinct society' be defined in the Accord." We would have to say how. Therefore, what I am trying to find out from you is: Do you think that we should take out the statement that Quebec is a distinct society, because there are other distinct societies, or do you suggest that we should add those other distinct societies and say that the Constitution should be interpreted on the basis of Quebec being a distinct society, of so and so being a distinct society, and so on? Should we take it out, leave it in, define Quebec more clearly, or add the others? What is your recommendation?

• (1540)

Mr. Corn: We feel that it should stay as it is. Quebec should elaborate what it is and what it means, and multiculturalism should be added in section 2. Quebec is a distinct society, but there are many other distinct societies. It would mean that there are other distinct societies which are recognized on the same level.

Senator Frith: Then your answer is that we should recommend the section to read:

> The Constitution of Canada shall be interpreted in a manner consistent with . . .
>
> (b) the recognition that Quebec constitutes within Canada a distinct society, that so and so constitutes within Canada a distinct society, that such and such within Canada constitutes a distinct society, . . .

and so on. Is that how you think we should do it?

Mr. Corn: No. I do not believe that those kinds of changes should be made. Let us accept Quebec as being a distinct society, and let them establish some kind of formula on what it is, or specify it. By adding multiculturalism, then multiculturalism, by a kind of back door, automatically comes into other distinct societies. But I would not like to see in the act many distinct societies. That cannot be done.

Mr. Binavince: As I understand the council, there is no fundamental objection to the question of Quebec's being a distinct society. The only question concerns the definition. It is the feeling of the council that Quebec can best define what kind of society it is. That is why our recommendation does not touch on section 2(1)(b). All that it proposes is a paragraph that will address the question of fundamental characteristics. The council accepts that Quebec is a distinct society, and when the time comes when we have to decide how that should be defined, in our submission, the people of Quebec are best qualified to tell us what kind of society it is; and they should come forward, if they want to put it in, in order to make it more explicit in section 2. We have no way of offering to you a definition. The suggestion the council is making as a practical amendment is addressed to section 2(1)(a), namely, that one of the fundamental characteristics of Canada is multiculturalism. It is not only what is contained under (1)(a).

Senator Frith: I will come back to (1)(a) in a moment. So far as (b) is concerned, you say that—

The Chairman: Senator Frith, I do not want to cut off your questions, but I should point out that I have three other senators who wish to speak, and our time is short. Perhaps you could make your question concise. Please finish your questioning.

Senator Frith: I am trying to make it concise. A precise question is shorter, but so is a precise answer.

The Chairman: But I have a time problem.

Senator Frith: I understand that. Let me ask a question concerning (a). It will be a fairly precise question, but I cannot guarantee the precision of the answer, of course. Section 2(1)(a) says:

> (a) the recognition—

This is another way in which the Constitution has to be interpreted:

> —that the existence of French-speaking Canadians, centred in Quebec—

and so on

> —constitutes the fundamental characteristic of Canada;

I understand that you do not feel that that is a proper or sufficiently full definition of what is the characteristic of Canada. The Honourable Charles Caccia agrees with you, and he appeared before us with a definition that he felt would be a better description of contemporary Canada than is contained in section 2(1)(a). My precise question is: Do you know about that definition and do you agree with it?

Mr. Corn: Quite frankly, senator, I read what Mr. Caccia said, but I cannot recall everything exactly. But I know that when I read it I agreed with him basically.

The Chairman: Thank you, Senator Frith. Honourable senators, I have three names on my list: Senators Bosa, Argue and Haidasz. We should be coming to the next group of witnesses in about five minutes. Therefore, I ask my colleagues to limit their questions. I now call on Senator Bosa.

Senator Bosa: Mr. Chairman, I will try to be as brief as possible. I am not sure whether it was Mr. Corn or Mr. Binavince who made reference to section 27 of the Constitution Act, 1982, stating that there was no substance in that section regarding multiculturalism. I was one of two people who fought very hard for that section. I refer to Mr. Laurence Decore, the present Mayor of Edmonton. I was surprised to hear that reference made. Could you elaborate a little on that?

Mr. Corn: I would say only that at the time the act was introduced during the term of Prime Minister Trudeau there was nothing in it about multiculturalism. One of the first actions of CEC was to include multiculturalism. When the first report came out, and there was nothing in it about multiculturalism, we wrote immediately to the Prime Minister and all premiers, and a catch-up clause was developed, and so on.

Mr. Binavince: I would like to read section 27, which emphasizes my point. It says:

> This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

That is a directive to the courts. What the Constitution is really saying is that when you read section 2, section 7, or any other section, you should interpret it in such a way that multiculturalism will be preserved.

Senator Bosa: In other words, you would feel better if there were an act of Parliament that included the particulars and characteristics of multiculturalism, to which the judges could make reference.

Mr. Corn: Multiculturalism should be included in section 2: bilingual and multicultural Canada.

Senator Bosa: Recommendation 3 in your brief recommends that the wording in section 16 be substituted with the following:

> Nothing in this Accord affects the Canadian Charter of Rights and Freedoms.

There is no mention of multiculturalism here.

Mr. Corn: It is in another recommendation. There are three recommendations; this is the last one, the catch-up clause.

Senator Bosa: Then this is just an abbreviated form of what is contained in another section of your brief.

Mr. Corn: That is right.

Senator Bosa: Section 16 of the Meech Lake Accord refers specifically to sections 25 and 27, which I thought would reinforce that particular aspect of the Constitution Act, 1982.

Mr. Binavince: The purpose of recommendation number three simply tracks the position of the women's group, because there is the fear, which we share, that because of section 2 there is the possibility of the Charter becoming subordinated to the Meech Lake Accord. It should be made clear that the Charter is really the apex of constitutionalism. The Meech Lake Accord is just a finishing touch in the whole attempt. Because of the danger of interpretation we subordinate the Meech Lake Accord to the Charter.

● (1550)

The Chairman: Senator Argue and then Senator Haidasz. I would remind the honourable senators of my request.

Senator Argue: Honourable senators, we have had presented to us this afternoon on behalf of the Canadian Ethnocultural Council a comprehensive and very important document. I would like to ask either Mr. George Corn or Mr. Emilio Binavince this question: In light of the many and substantial recommendations you have made for changes to the Constitution, how do you feel about your chances of getting many of them through, considering the unanimity clause that is currently in effect? Does that clause not make the adoption of these recommendations almost impossible for the foreseeable future?

Mr. Corn: Mr. Chairman, I would like to answer this question. We devoted our time and study to trying to improve the accord. It is up to you to make the decisions as to what you will accept and what you will not accept. We believe that it can be done, but you must make the judgment as to whether or not it can be done. If it can be done, then we would ask you to support our recommendations. If it cannot be done, then we are still welcoming Quebec into our Constitution as it exists.

Senator Argue: I think we can support in general the important propositions you have put before us. Given all the difficulties that exist under the Meech Lake Accord, and given the unanimity clause—and you say that it is our responsibility and not yours to push the recommendations through, and I appreciate your point—would you not, really, breath a sigh of relief if, after the three-year period, the accord were not ratified and you could go back to where you were before and take your chances with the seven-out-of-ten formula rather than the current formula? Would it not be easier to get seven provinces in to line as opposed to ten?

Mr. Binavince: I am not very knowledgeable in the science of the practicality of getting matters such as this through. If I were orchestrating the effort to push the accord through with this long list of recommendations it would likely invite a rejection of the whole thing because of the impracticality of considering all of them. Given the number of recommendations, one might take the position that the entire Meech Lake Accord is wrong. It would have been nice for practical reasons to zero in on one or two recommendations. However, the purpose of the council is simply to educate those who have the ability to make decisions. We hope that along the way, while you are considering all the practical questions, you will be able to select what is important. What we did today was simply highlight what we think are the two important items—that is, section 2 and the appointing power with respect to judges. That does not preclude anyone who would like to sponsor particular aspects of our recommendations from doing so and attempting to get them through the negotiations. We believe that it will become more difficult in the future to change the Constitution.

Senator Argue: You have pointed out that you would like your share, the multicultural share, of Senate appointments. You say that such appointments constitute 15 per cent of the appointments now made and that you would like to see it go to 33 per cent, which is a difference of 18 per cent.

My question is in two parts. First, are there some groups in the multicultural community who you think should be represented in the Senate—perhaps Ukrainian people, other East Europeans, Asians, people from the Middle East or Africa, or

other particular groups in the Caribbean, Central and South American countries?

The second question is: If there were 18 appointments in the Senate, the Prime Minister or the premiers in making their decision would go to the people you represent. Would you be favourable to the minorities amongst the minorities—your minorities—getting some extra recognition? In other words, instead of the possibility of a large ethnic minority getting two or three appointments, the appointments would be divided up so as to have as much representation of ethnic people in the Senate as possible. Would you agree with me when I say that, if that were done, it would greatly add to the unity and efficacy of Parliament and the unity of the country?

Mr. Corn: I agree with you.

Senator Haidasz: Thank you, Mr. Chairman.

To be precise and concise, can you, Mr. Corn, state on behalf of the Canadian Ethnocultural Council today whether the recently tabled multiculturalism bill meets, in part or in whole, with the recommendations you have put forward this afternoon regarding the Meech Lake Accord?

Mr. Corn: I would say that the bill as it was tabled satisfies or incorporates many of the submissions we made to the House of Commons Standing Committee on Multiculturalism. However, it does not go far enough. There are two basic faults with the bill. We want a separate department and we want a commissioner. We believe that a commissioner or coordinator, who is independent and who reports directly to Parliament, should be appointed.

Senator Haidasz: Someone like the Commissioner of Official Languages?

Mr. Corn: Yes. We are not worried about the title, but it should be an official appointed by order in council reporting directly to Parliament.

Senator Haidasz: Did your council ever discuss whether your goal of achieving greater representation in the Senate for ethnic minorities would be better achieved by an elected Senate or by an appointed Senate, as it is now?

Mr. Corn: Mr. Chairman, we discussed the matter. However, we did not spend much time on it, because we accepted the fact that we are non-partisan. We are not political. We would like to leave this matter in the hands of the political parties, because whatever we say will be wrong. We do not want to be so wrong.

Senator Haidasz: Since Confederation the Senate has not achieved the desired ethnic representation. Do you think an elected Senate would guarantee more representation?

Mr. Corn: We believe that it would.

Senator Haidasz: An elected Senate?

Mr. Corn: Yes. However, we have not spent enough time studying the matter; so we cannot say one way or the other.

Senator Haidasz: How many elected Slovaks or Filipinos do you have in the House of Commons?

[Senator Argue.]

Mr. Corn: If we go to the recent election in Ontario, ethnic representation has increased. Twenty-eight people of ethnic origin were elected to the Legislature of Ontario. That is a big sweep, but we do not want to speculate.

Senator Argue: Liberal democracy!

Senator Haidasz: In the appendix to your presentation is a letter from Mr. Malicki, former or present president of the Canadian Polish Congress. Are his views the official views of the Canadian Polish Congress or his personal views?

Mr. Corn: These are his personal views and not his views as president of the Canadian Polish Congress.

Senator Haidasz: Thank you very much. I hope you will also present your brief to the provincial legislatures that are studying the Meech Lake Accord, because they will also have a say in this matter.

The Chairman: Senator Haidasz, I am afraid your time is up.

Senator Haidasz: I have no more questions, Mr. Chairman.

Mr. Corn: Mr. Chairman—

The Chairman: Mr. Corn, I wonder if you could turn the microphone towards you. We are having some difficulty with the sound system.

Mr. Corn: Yes, Mr. Chairman. I think that is better now.

Mr. Chairman and honourable senators, I would like to stress that our immediate and most important goal is to firmly entrench multiculturalism in the Canadian Constitution. The unity in diversity of the Canadian society is the reality of Canada today.

Allow me, Mr. Chairman, to state that the Constitution cannot be imposed on the people. The Constitution must express the concerns of all Canadians—be they anglophones, francophones, ethnics or aboriginal peoples. We all want to live together in harmony, peace, freedom and democracy. We want to respect each other; we want to tolerate each other.

We continue to view Canada as a land of opportunity, prosperity and happiness. We want to contribute our share towards building the Canadian way of life for our children and all future citizens of Canada.

We therefore ask your support for at least some of the recommendations that have been presented to you today.

The Chairman: I thank you very much, Mr. Corn and Mr. Binavince, for appearing before us today. As you saw, there were many questions, and we could continue for much longer, but time is short. Thank you for coming.

Pursuant to Order adopted on June 18, 1987, Mr. Joseph J. Wilder, Q.C., and Mr. Manuel Prutschi were escorted to seats in the Senate chamber.

The Chairman: Our next witnesses are from the Canadian Jewish Congress. To begin with, I believe we will be hearing from Mr. Joseph Wilder, the national chairman of the Joint Community Relations Committee of the Canadian Jewish Congress, together with Mr. Manuel Prutschi. I trust that the

members of the committee will permit me to express a particular word of welcome to Mr. Wilder, since he is another Manitoban. Therefore, from one Manitoban to another, I may say how pleased we are to see you here today.

I understand that there will be other witnesses appearing as well on behalf of the Canadian Jewish Congress, and we will ask you to explain exactly how you wish to proceed, Mr. Wilder. We do not have a brief from you, but I presume that you will have an introductory speech. You understand that thereafter we will be conducting a question period. We have allocated an hour for the whole process.

Mr. Joseph J. Wilder, Q.C., National Chairman, Joint Community Relations Committee, Canadian Jewish Congress: Thank you very much, Mr. Chairman. You are very kind.

Mr. Chairman and honourable senators, my name is Joe Wilder, and I appear here as a vice-president of the Canadian Jewish Congress—

The Chairman: I am sorry, Mr. Wilder, but there seems to be a technical problem with the sound system. We hear you clearly at times and at other times not at all.

Mr. Wilder: Mr. Chairman, would you like me to speak from one of the empty desks in the meantime?

The Chairman: Very well, we will proceed in that fashion.

Mr. Wilder: Thank you, Mr. Chairman. I thought I would take advantage of the opportunity, since I am sure it is the closest I will get!

Senator Perrault: It isn't worth it, Joe!

The Chairman: One never knows, Mr. Wilder; there are now provincial appointments.

Mr. Wilder: I understand.

Mr. Chairman, I was saying that I appear here as a vice-president of the Canadian Jewish Congress from Manitoba and as chairman of the Joint Community Relations Committee of the Canadian Jewish Congress. With me at the table is Mr. Manuel Prutschi, national director of the Community Relations Committee. In a moment I propose to introduce two of the members of our Constitutional Subcommittee who will make the actual presentation to you.

For those of you who may not be aware, the Canadian Jewish Congress was founded in 1919 and is the democratically elected representative organization of Canada's 350,000-strong Jewish community. It is organized into a federated structure of eight regions: Atlantic, Quebec, Ontario, Manitoba, Saskatchewan, Alberta, Pacific and National Capital Region.

The aims and objectives of the Canadian Jewish Congress include the following: to develop the highest standards of citizenship in the Jews of Canada by encouraging, carrying on and participating in activities of a national, patriotic, cultural and humanitarian nature in furtherance of the best interests of the country and of the Jewish people; secondly, to act in matters affecting the status, rights and welfare of Canadian Jewry.

In pursuit of its aims and objectives Congress has made numerous representations to government and intervened in legal proceedings on such matters as anti-discrimination laws, racial restrictive covenants, religious education in the public schools, anti-hate laws, civil liberties and civil rights, education, religious rights, minority rights, treatment of the elderly, the needs of the handicapped, the status of women, refugees, the Canadian Constitution, the Charter of Rights and Freedoms, and domestic peace and security.

Canadian Jewish Congress last made a submission on the Constitution in 1980. The contribution of the Select Committee of Congress on the Canadian Constitution, chaired by Professor Maxwell Cohen, has been recognized as substantive and significant.

The accord signed by the First Ministers in June of last year addressed the very basic character of the Canadian system. Canadian Jewish Congress remains as interested as ever in expressing its views on Canada's evolving Constitution. It is our hope that through this present brief we once more can make a useful contribution to a discussion which should be of benefit to all Canadians.

Our Constitutional Subcommittee is chaired by John I. Laskin, and among its members are a number of constitutional experts in Canada. The subcommittee members are: Mark S. Anshan; Ann Bayefsky; Neil Finkelstein; John B. Laskin; Eric Maldoff; Daniel Morris; Manuel Prutschi; Les Scheininger; Donald Schwartz; Stephen Allan Scott.

Mr. Chairman, I would like to introduce Professor Ann Bayefsky and Neil Finkelstein, two prominent Canadian constitutional authorities, to deliver the oral brief on behalf of the Canadian Jewish Congress. Professor Bayefsky is an associate professor at the University of Ottawa where she teaches constitutional law. She is the co-editor of the work *Equality Rights and the Canadian Charter of Rights and Freedoms* and is the author of the up-coming *Canada's Constitution Act of 1982 and Amendments—A Documentary History*.

Neil Finkelstein is a partner at Blake, Cassels, Graydon, specializing in constitutional and competition law. He was formerly a law clerk to the late Chief Justice Bora Laskin and served as senior policy advisor to the Honourable Ian Scott, Attorney General of Ontario. A teacher of constitutional law at Osgoode Hall and the University of Toronto, Mr. Finkelstein's extensive publications include authoring the Fifth Edition of Laskin's *Canadian Constitutional Law*.

Mr. Chairman and honourable senators, our written submission in both official languages will be delivered to this body shortly. At this time I would like to introduce Professor Bayefsky and Mr. Finkelstein.

Pursuant to Order adopted on June 18, 1987, Mr. Neil Finkelstein and Professor Ann Bayefsky were escorted to seats in the Senate chamber.

The Chairman: I would like to welcome the witnesses. Let us try the sound system and find out if it is now working. Will you both be speaking this afternoon?

Mr. Neil Finkelstein, Member, Constitutional Subcommittee on Meech Lake, Canadian Jewish Congress: I will be giving the initial presentation and then we will both be answering such questions as honourable senators might have.

The Chairman: You were observing the previous witnesses and you saw that there can be lengthy questioning. I trust that you will leave time within the time allocated for those questions.

Mr. Finkelstein: Honourable senators, the Canadian Jewish Congress will be restricting its submissions to three areas. Those areas are: the duality distinctiveness clause; the provisions with respect to the Supreme Court of Canada; and the provisions with respect to immigration.

With respect to the duality distinctiveness clause, a free and democratic society is predicated upon majority rule. The majority elects our lawmakers, the government is formed from that elected body, and the government remains in office as long as it maintains the confidence of the House. That principle of democracy is one of the cornerstones of our society.

At the same time our free and democratic society also recognizes that a government which is accountable to the majority for its continuation must at the same time be governed by safeguards to protect minorities in society. That is a very important Canadian Jewish Congress and, in fact, Canadian concern. It is here that the great balance lies, that is, the balance between majority rule and the protection of minorities.

Parliament and the provincial legislatures responded to this in 1982 by enacting the Canadian Charter of Rights and Freedoms to strike a balance. In doing so Parliament and the legislatures each retained their legislative jurisdication pursuant to sections 91 and 92 of the Constitution Act. However, at the same time the Charter acted as a withdrawal power from both levels of government in certain areas, those being political rights and fundamental freedoms, legal rights and equality rights. In those areas the courts—and not the legislatures or Parliament—are the arbiters. Even in striking that balance there were two great limits placed on the Charter of Rights and Freedoms and on the jurisdiction of the courts. Those limits were section 1, which, as honourable senators know, provides that infringements on Charter rights are nevertheless valid, provided they are reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society, and, as well, even if a limit would not be reasonable or demonstrably justified in a free and democratic society, nevertheless, Parliament or a legislature could avoid the Charter by enacting a declaration pursuant to section 33 of the Charter. So, the Charter was, itself, subject to internal limitations.

I might footnote at this stage that it is the Canadian Jewish Congress' position that section 33 should at some point be repealed. We would suggest that an amendment to the Meech Lake Accord might be a very good place to do that.

In any event, the Charter is itself a compromise between majority and minority rule, with two great limitations put on it. It is our submission that, against that background, section 2 of the Meech Lake Accord contains two very basic flaws.

The first flaw is that section 2 does not speak in terms of equality. It speaks in terms of inequality. It speaks in terms of linguistic majorities. Rather than in terms of bilingualism, it speaks in terms of majorities and minorities.

The second fatal flaw, in our submission, is that it states that it is the role of the Quebec government to preserve and promote—and I underline the words "and promote"—Quebec's distinctiveness. In our submission, there is a clear direction to the courts that it is the responsiblity of the Legislature of Quebec, and not that of the courts, to preserve distinctiveness, and that can be preserved by unequal legislation. The most obvious candidate, I suppose, for validation, pursuant to section 2 of the Meech Lake Accord, would be the French-only signs in Quebec on the basis that that promotes distinctiveness.

In connection with section 2, I would note that no mention is made of the Charter of Rights and Freedoms. I have heard it said that, therefore, section 2 does not override the Charter of Rights. After all, it says nothing at all about the Charter of Rights. The difficulty with that argument is that the drafters of the Charter have made it quite plain that when they want to recognize the Charter of Rights, and when they want to recognize the relationship of the Charter of Rights to the Meech Lake Accord, they know how to do it. In section 3 of the Meech Lake Accord dealing with immigration the Charter clearly states that the Charter of Rights applies in respect of any agreement. In section 16, again, there is clear recognition of the role of the Charter of Rights with respect to multiculturalism and aboriginal rights. The fact that the drafters thought it necessary to deal with the Charter in those provisions is significant with respect to the absence of the Charter in section 2. For those reasons we would make the following three recommendations. The first recommendation is that section 2 be amended to indicate that, as with section 3 of the Meech Lake Accord, which provides a new section 95B of the the Constitution Act, 1867, the role of the courts in interpreting and applying the Charter has not been altered or affected. An amendment to section 2 to make that point should be made.

● (1620)

Our second recommendation is that section 16 of the Meech Lake Accord be repealed altogether and in substitution for section 16 there should be an amendment to section 2(1)(a) to add a non-exhaustive list of "fundamental characteristics," and I use that phrase in quotations, because that phrase is already in section 2 with respect to linguistic duality. There should be an additional list declared to be non-exhaustive of fundamental characteristics promulgated, which includes multiculturalism, aboriginal rights, equality of all Canadians, and specifically equality between men and women, and fundamental freedoms. Those also, in our submission, are fundamental characteristics and should be included in section 2 if what we are doing is listing fundamental characteristics of Canadian society, and that is what section 2 purports to do. It purports

to list one of them. If that is what we are going to do, we should be listing additional ones.

Senator Frith: Otherwise list none.

Mr. Finkelstein: It is our submission that either section 2 be amended in the way that we suggest or it should be repealed.

Our third submission with respect to duality distinctiveness is that section 2(2) should be amended to provide that all governments have the obligation to preserve and promote this longer list of fundamental characteristics. Those are our submissions with respect to duality and distinctiveness.

With respect to the Supreme Court of Canada, in section 6 of the accord the Supreme Court of Canada is the ultimate arbiter of social disputes settled through legal proceedings, and it is the ultimate arbiter of the relationship between Parliament and the legislatures, and the relationship between Parliament and the legislatures, on the one hand, and individuals, on the other.

Canadian Jewish Congress has no quarrel with the principle of involvement of provincial governments in the appointment process to the Supreme Court of Canada. However, Congress has grave concerns about the rigidity of the formula. That rigidity, in our submission, can lead to three problems: the first is an excessive risk of confrontation; the second is an excessive risk of accommodation having nothing to do with the appointments themselves; and the third is the possibility of deadlock, which certainly over an extended period of time could lead to the bringing of the court into disrepute.

Under the accord Parliament can choose for the six non-Quebec seats from a list prepared by each of the provinces. So there is a good deal of flexibility there. If the Government of Canada does not like a name submitted by one province, it can go to a name submitted by another. There is a great deal of flexibility there. With respect to the three Quebec appointments, there is not the same flexibility. The provision speaks of Quebec submitting names. That can be a name; it does not have to be a list.

In our submission, what should be done with respect to that, as well as with respect to the other appointments, is that all appointments should be permitted to be made from lists provided by all of the provinces. In other words, with respect to the Quebec appointments, it is true that an appointment would have to be made from the members of the Bar of Quebec, but that appointment could be made from a list provided by one of the other provinces if the federal government did not believe that one of the nominees proposed by the Government of Quebec was suitable.

If the concern which underlies section 6 is to have provincial input, it is our submission that this submission deals with that concern. It also prevents any one province from distorting the appointment process.

Our second recommendation is that a mechanism be put into place for breaking deadlocks. It is our submission that there will not be any deadlocks if our first recommendation is accepted, but in the unlikely event that there is a deadlock it is our submission that a formula be put into the Meech Lake Accord, and the Victoria Charter, or some variant on the Victoria Charter, in our submission, would be quite suitable.

Our third series of submissions deals with the immigration provisions in section 3, and there are essentially two provisions: there are the amendments to section 95 in the accord itself; then there is what has been called the "political accord" in the preamble-type agreement.

Canadian Jewish Congress recognizes that these two instruments largely confirm and extend the practices which have already been put into place; however, Congress has several concerns. The first is that with the possibility of 11 departments of immigration there may be delays in immigration and admission of refugees. Our recommendation in that regard is that there be language inserted that would create specific federal ability to expedite the entry of immigrants in accordance with federal criteria.

Our second recommendation deals with the political accord, it is true—not the constitutional but the political accord. There is a guarantee that Quebec "will"—and I use that word in quotes—receive a share equal to its proportional total, and that may, in practical terms, affect the overall total. We recommend, therefore, that the Government of Canada have explicit powers with respect to setting national levels should there be a conflict, and that is a specific power not simply to set a national level but to ensure that in practice the national level can be fulfilled.

There is also in the political accord withdrawal from the federal government of the authority to provide reception and immigration services in Quebec. In our submission, that can lead to a generation of provincial rather than Canadian identity and, as well, to uneven services among provinces in these regards. So, our recommendation is that the federal government retain its past role in providing reception and immigration services.

• (1630)

Mr. Chairman, those are our submissions.

The Chairman: Thank you very much, Mr. Finkelstein. Does Professor Bayefsky wish to add anything now, or shall we simply go on to questions?

Professor Ann Bayefsky, Member, Constitutional Subcommittee on Meech Lake, Canadian Jewish Congress: I think I will wait for the questions, thank you.

The Chairman: Then we shall go directly to questions. Thank you very much for your presentation.

First on my list is Senator Marsden, followed by Senator Lucier.

Senator Marsden: Thank you, Mr. Chairman.

Thank you for your submission. You raised some issues that we have not discussed in this committee so far, especially concerning immigration, and I think they are extremely interesting and worthwhile. However, I want to come back to an issue that you touched on, but did not develop, namely, the question of equality rights.

Professor Bayefsky, you have authored some of the leading documents on the question of the Charter and equality rights, and therefore you are familiar with the debate about the extent to which this accord, if it were to be enacted, would jeopardize women's equality under the Charter. Would you comment on that debate and give us your view, or the Congress' view, if it has one, on the jeopardy in which equality rights might be placed if the Meech Lake Accord were to go through unamended?

Professor Bayefsky: Senator Marsden, I think the answer turns on the focus of section 2 of the Meech Lake Accord. Section 2 emphasizes the role of Parliament, of the legislatures—the roles of government, in other words. In the Constitution Act, 1982—before the Hays-Joyal committee—the people of Canada were faced with the issue of strengthening section 1 of the Constitution Act. They were very strong—and Congress represented this same view—that section 1 should be strengthened to avoid the reference to a parliamentary system of government and to ensure the end of parliamentary sovereignty. However, the political compromise that was reached, without going through the same process of a joint committee, public consultations, and so on, was to add section 33. So the emphasis shifted again from individual rights to the abilities of government to override or control those rights where they saw fit. Of course, section 33 does not prescribe any reasonable limits for overriding rights.

The Meech Lake Accord does a similar kind of thing. The emphasis is again put on government, and the ability of government does not seem to be restricted by individual rights. The role of Parliament and the role of the legislature is affirmed. To ensure that there is no derogation of powers as between Parliament and legislature there is a provision in subsection 4 of section 2 which says that nothing derogates from the powers, rights and privileges of the Parliament or the legislature. The obvious inference is that there might be a derogation of power, but it is not from Parliament and it is not from the legislatures. The only persons left are the people of Canada. The emphasis is on government as opposed to individuals. Section 2(4) suggests that the individual rights are in jeopardy. I might add that in the special joint committee report the suggestion is made, "Well, look, section 2 is simply affiriming sociological facts." Professor Hogg's recent book suggests that, in fact, this will have minimal direct legal effect. But the problem is that constitutional law is more subtle than a question of, "Does it grant a power or does it not grant a power?" That is not the issue. The issue is whether the interpretation clause provided by section 2 can work in such a way as to assist the courts in defining what constitutes a power or not. That is important. So it is more subtle.

It is true that one might admit that sections 2(2) and 2(3) do not provide powers, but their ability to influence what constitutes a power via the interpretation of what is a "distinct society," and so on, is a threat to the definition of powers both in sections 91 and 92.

[Senator Marsden.]

I come back to Professor Hogg's recent book, because it was the object of a recent editorial in the *Globe and Mail*, which supported it. He says:

> There are some provisions in the Constitution of Canada that do, in effect, constitute exceptions to the Charter of Rights. For instance, a law relating to Indians could not be attacked as discrimination on the basis of race.

Setting aside the problem that section 91(24) is exempted by section 16 of the Meech Lake Accord, that is exactly the problem with Lavell, isn't it? It was not obvious what was discrimination on the basis of race. In fact, women's groups argued that it was discrimination on the basis of sex. But the court found that defining what was discrimination on the basis of race, and therefore expressly permitted in the words of the special joint committee's report under 91(24), was allowed under 91(24) and therefore was not affected by the Canadian Bill of Rights. That is what Congress, and women in particular, are worried about in the definition of what constitutes a power.

Section 2 of the Meech Lake Accord could similarly suggest that what is in reference to a "distinct society" or a fundamental characteristic of Canada being duality could go to the definition of what constitutes discrimination on the basis of race, sex, and so on.

Finally, in answer to your question I would point out that the European Court of Human Rights has interpreted the European Convention on Human Rights by use of a concept called a margin of appreciation. It emphasizes a deference again to government—the view that government finds the legislation is okay; the state has acted reasonably, in good faith. The Meech Lake Accord pushes courts to come to the same kinds of conclusions—to defer to government views as to what is necessary to promote a "distinct society." The preservation of all rights, including the rights of men and women—and women in particular—will require courts to be strong, firm and objective in their requirement of forcing governments to account for the reasonableness of their actions. The Meech Lake Accord pushes the court in quite an opposite direction.

Senator Marsden: I have what is almost a "yes" or "no" type of question to pose. The argument is widely made—including in a recent article by the Leader of the Government in the Senate in the *Montreal Gazette*—that the women of Quebec think that there is no jeopardy for women in the Meech Lake Accord. If I understand correctly, the Congress has a national membership with many Quebec members, many of whom are women. In fact, I think one of your members was the past president of the Fédération des femmes du Québec, Sheila Finestone. Are there dissenting voices among the women of Quebec who are also members of your Congress, or are you united in the position which you have stated is the position of the Congress?

Professor Bayefsky: The Constitutional Committee, which was delegated the authority to articulate the views of Congress, is unanimous in their view that the threat is real.

Senator Marsden: Thank you.

The Chairman: Next is Senator Lucier, followed by Senator Argue.

Senator Lucier: Mr. Finkelstein, during your presentation—and I think you will have an opportunity to read this later—you mentioned on several occasions changes that should be made to the Supreme Court, how provinces should present lists for appointments to the Supreme Court, and how the people from the provinces should be permitted to enter the Supreme Court. You never once mentioned the Territories. Are you aware of the fact that Canadians living in the two northern Territories have been relegated to second-class status by this Meech Lake Accord, and that Canadians from the two northern Territories cannot be appointed to the Supreme Court of Canada? Was this exclusion in your presentation an error on your part, or do you really believe that should be so?

Mr. Finkelstein: The Congress has not taken a position with respect to the Territories in this regard.

Senator Lucier: Since you are appearing before this body making a presentation, and you are discussing how appointments to the Supreme Court should be made, do you not think that you owe it to us and to the people of Canada to make your presentation on all of the facts and to take a position on whether or not the Territories should be entitled to have appointments to the Supreme Court of Canada in exactly the same way as any other Canadians?

Mr. Finkelstein: Our recommendation is that the Meech Lake Accord, with respect to appointments to the Supreme Court of Canada, be amended in this way: that instead of each province being able to prepare a list of names from its own membership, that is, the membership in its own provincial bar, it be entitled to do so from the membership of any provincial bar, and that that should apply to Quebec as well. That is the recommendation that the Canadian Jewish Congress is making.

Senator Lucier: You are then in agreement with what the Meech Lake Accord proposes, that is, treating Northerners differently from all other Canadians?

Mr. Finkelstein: Our recommendation does not exclude people from the Territories. I might add that insofar as I am aware a number of lawyers from the Territories—perhaps most of them—are also members of a provincial bar. They would not be excluded from the process should they be nominated by a provincial government.

Senator Lucier: I would suggest to you that it is a remote possibility that their names would ever be put forward. I would point out that many of them are not members of the provincial bars of the province that they originally came from. Most of them have allowed their membership in those bars to lapse. Many of them never became a member of a bar before they went to the Yukon.

I am just pointing out that your presentation seems to follow the Meech Lake Accord, which treats the people of the Yukon and the Northwest Territories as second-class citizens. If this has been done inadvertently I would accept it, but if it was done purposely I would suggest that you rethink your position.

Senator Argue: I think the Canadian Jewish Congress has made an excellent presentation, and I acknowledge with gratitude the tremendous contribution that the Congress and Jewish people in Canada have made to Canada over all these years.

I wonder if either witness would care to remark on the general reduction of federal powers within the whole Meech Lake Accord. Do you feel that that general reduction of powers is part of the problem that you have and that it may create other problems for the country in terms of economic initiatives, and so on?

Mr. Finkelstein: The thrust of Congress' recommendations, as it understands them, lies in the relationship between governments and the people and not in the relative relationship between Parliament and the legislatures. It is for that reason that Congress has limited its submissions to only the "duality distinctiveness" provision, appointments to the Supreme Court of Canada, and the immigration provision, and that it has not made any recommendations at this time with respect to appointments to the Senate and the federal spending power.

Senator Argue: As I understand your three main recommendations, they all have a particular application to Quebec, or Quebec has a particular application to your representation. If the unanimity clause is maintained, what chance do you think you have of getting Quebec on side in terms of these major amendments that you have suggested? I would suggest to you that the chance of getting the amendments through under the present agreement is about zero. I would appreciate your comment on that.

Mr. Finkelstein: That may be, senator. It is Congress' position that the Meech Lake Accord in its present form is not acceptable, and that it would be better not to have an accord than to have this particular accord.

Senator Argue: I think you have already answered my last question, but I will still put it. If the period of three years should go by and this accord is not ratified, that would be welcomed by the Canadian Jewish Congress, is that correct? Perhaps I should rephrase that. If the three-year period when this is to be ratified should go by without all the provinces ratifying it, and the accord should fall to the ground because of the failure of all of the provinces to ratify it, then I take it that unless you are able to get these amendments through you would welcome the fact that after a three-year period, as I have stated the question, the Meech Lake Accord would not be in effect?

Mr. Finkelstein: That is correct. Having no accord is better than having this accord.

The Chairman: Thank you very much, Senator Argue. The next questioner will be Senator Stewart, and that will complete my list of questioners.

• (1650)

Senator Stewart: My first question relates to the "distinct society" interpretation rule. We know that there is a provision

that this rule is not to derogate from the powers of the two levels of legislatures. I do not know what that means. I am asking these distinguished constitutional lawyers to help me. Let me put my question this way: Do you think that the new interpretation rule may mean that in the future sections 91 and 92 will be interpreted in a way or ways different from the way or ways in which they would have been interpreted if that new interpretation rule had not been introduced?

I would like you to answer that question generally, but I would like you then to comment specifically upon the interpretation of the relationship of the "peace, order and good government" clause, on the one hand, and the "property and civil rights in the province" clause, on the other hand, as those two provisions might appear to clash in a situation of alleged emergency, as in the case of the anti-inflation bill.

Professor Bayefsky: It is possible that the definitions of what constitutes powers under section 91 and section 92 of the Constitution Act, 1867 will be different after the Meech Lake Accord. I think the reason for that is that constitutional law is subtle and depends upon an interpretation or definition by the courts of the purpose of the legislation, among other things. Section 2 of the Meech Lake Accord states that certain purposes are acceptable, significant and important, that they are so important as to be part of the fundamental characteristic of Canada, and therefore legislation which is aimed at the promotion or preservation of those purposes is more likely to be found by the courts to be *intra vires*. Therefore, it seems to me that, if the "peace, order and good government" power is one in which the federal government is left over with powers that are not defined by property and civil rights, an increase in the definition of what constitutes property and civil rights will mean a diminution of what is to be interpreted to be peace, order and good government. That is precisely what I think section 2 permits.

Senator Stewart: Thank you.

Let me go on to my second question, which concerns your comments about appointments to the Supreme Court of Canada. Let me express an uneasiness which I feel, and which you seem not to feel. It appears to me that the proposed new arrangement will make judicial appointments to this court, if not a matter of patronage, a matter of quasi-patronage. After all, the provincial governments will now have a constitutionally recognized role in the selection of judges. A province—Ontario, for example—might say, "Quebec is going to be able to nominate at least three judges. We have lawyers who would, we think, make great judges and we want our people in there. Here are the names." Similarly, Nova Scotia, my home province, at some point might say, "Well, we have been passed over three times now. Surely we have a right to have our candidate selected. We have a distinguished law school; we have a distinguished bar; surely this is our turn." Is there not going to be a whole politics of judicial appointment, or at least a highly complicated politics of appointment such as we have not had in the past?

Leave aside Senator Lucier's question altogether for the moment and just focus on the provinces. They are going to be insisting on getting their own people in there, especially now that the work of the court is becoming increasingly important. Is that not correct? If so, why do you not object?

Mr. Finkelstein: Senator, the possibilities for patronage are there no matter which level of government makes the appointment, but the ability to bestow patronage—and I suppose this is at the root of the Congress submission—varies with the ability to fulfil that patronage. The more rigid the formula, the more easily a province could make a patronage nomination. Similarly, the more flexible the formula, the less able it would be to do so. Therefore, if a judicial appointment came up and only one province could submit a name, the possibilities for patronage would be very high. On the other hand, if a judicial appointment came up and any one of ten provinces could submit a name, any one province, knowing that nine others could make nominations, would be far less likely to make a patronage nomination.

Senator Stewart: But you just pass over—you neglect entirely—the point I make, that provinces will be saying, "We now have a right to nominate, which implies that we have a right to expect that from time to time our nominations will be accepted. You have passed us over three or four times. We cannot argue that we have a constitutional right to have our candidate appointed, but surely natural justice requires that this appointment come to Nova Scotia," or Newfoundland, or what-have-you. This, it seems to me, enhances the possibility of what I have called quasi-patronage.

Professor Bayefsky: Again, I think the submission is that, while it is true that a given provincial government will object to being passed over time and again and will eventually be due its appointment, the ability of all provinces to be able to submit names will, as my colleague has mentioned, encourage the superior quality of the individuals that are put forward and eventually appointed from that province. We will have a larger pool of individuals from which to select.

Senator Stewart: You are saying that your proposal would be somewhat better than the Meech Lake proposal, but you are not arguing that it is ideal.

Professor Bayefsky: We are not arguing that the provision be entirely apolitical. We are saying that we recognize the propriety of leaving certain kinds of appointments in a political arena, but we think it should be toned down, or at least improved upon by a competition, shall we say, for the best individual to rise to the top.

The Chairman: Thank you, Senator Stewart.

Before I thank our two witnesses, I would like to ask a question, if I may, which is a follow-up to Senator Argue's question. It has been said repeatedly that if there were any changes, any amendments, made to the Meech Lake Accord it would fall apart. Do I understand correctly from your response to Senator Argue that in the view of the Congress the accord is sufficiently flawed that you would support amendments to it even though it might mean that the accord would not proceed?

• (1700)

Mr. Finkelstein: Yes, Mr. Chairman.

Professor Bayefsky: The only thing I would add is that the answer is emphatically yes, because of our fundamental concern first and foremost with the rights of Canadians as individuals and minorities, and the flaws and threats to their liberties, as set out in our Charter of Rights and Freedoms, are sufficient to warrant the result of which you speak should no amendment be forthcoming.

The Chairman: Thank you. It now remains for me to thank the witnesses for their appearance. We thank the Congress and your president, who was here earlier, for the work put into preparing this brief. We very much appreciate it.

Hon. Senators: Hear, hear!

The Chairman: Our next witness will be Mr. E.L.R. Williamson, a consulting economist from Ottawa.

Pursuant to Order adopted on June 18, 1987, Mr. E.L.R. Williamson was escorted to a seat in the Senate chamber.

The Chairman: Mr. Williamson, we welcome you to our committee.

Honourable senators, Mr. Williamson's brief has been distributed to the offices of all senators—by Senator Bell, I believe.

Mr. Williamson, I notice that it is a fairly lengthy brief. We have 45 minutes. Unfortunately, I cannot extend the time beyond that, because our rules state that at 6 o'clock the chairman must leave the Chair. So I presume that you will summarize your brief and leave us some time for questions.

Mr. E.L.R. Williamson, Consulting Economist and Master in Political Science and Economics: Thank you, Mr. Chairman.

The Chairman: Please proceed.

Mr. Williamson: Mr. Chairman, I should like, through you, to express my thanks to this honourable house for the opportunity to appear and discuss this very important matter. I should also like to express my thanks to Senator Bell for her kindness in making the suggestion that I should study the Meech Lake Accord and prepare some comments, out of which my brief has grown.

With respect to that, I might say that the more I have studied the Meech Lake Accord the greater has been my concern as to the importance of this document and the gravity of the consequences that may arise if it is implemented.

I would first note that the proposals have been made by the Prime Minister and the premiers without any mandate from either the Parliament of Canada or from any provincial legislature. Indeed, it may be argued that the Prime Minister has acted contrary to the original ideas he expressed before the last general election—and the role of general elections is extremely important in respect of the Meech Lake Accord.

The changes are so profound, so sweeping, that if implemented they will alter the whole structure of government in Canada. It will profoundly alter the relationship of the parts of the central government, one to another; of the provinces to the central government; and of the citizens to the governments. It will certainly make much more clear the transfer of sovereignty in Canada from Parliament to the Supreme Court. That process was started by the Charter of Rights and Freedoms. There can be no question, I think, of the effect of the Meech Lake Accord to make that sovereignty absolute in the hands of the Supreme Court.

In my brief I have included quotations, particularly from the late Mr. Norman Rogers, as to the effect of judicial interpretation taking the place of legislation. I commend those quotations to your thoughtful consideration.

Even more—perhaps I should not say "even more," but certainly of equal import—is the consequence of the Meech Lake provisions in respect of the power of Parliament to control the economy.

I need not say anything before this august house, the members of which are thoroughly familiar with what has taken place over the past few months, not to say the last few years, about the uncertainty and difficulty in the economy. That uncertainty and difficulty will not be diminished in the future, but will in all probability be extended and exacerbated.

I commend to you the quotation from the Rowell-Sirois Commission of 1940 in which it expressed unequivocally the feeling that the economy of the country was difficult enough to manage in any circumstances and certainly impossible to manage in circumstances in which the central government could not formulate a national economic policy.

We have said that there is no vestige of a mandate for these changes. I take the position in my brief that there is ample evidence in past practice in Canada and Great Britain—with references also to somewhat parallel situations in the United States and France—that the approval of the electorate is a vital necessity.

• (1710)

Therefore, there is the queston of securing a mandate from the electorate. Of course, this assumes that the public will be aware of the tremendous import of what they will be asked to decide. The definition of democracy is that it is "a system of government in which the vast majority of the people take a continuous and active interest in the affairs of government, are able to improve their condition by means of free and equal discussion, and are able to give effect to their will through the means of their elected representatives." The various parts of that definition are extremely important. Since we abolished, to all intents and purposes, the teaching of history in Canadian secondary schools, it is doubtful whether there is a sufficient body of informed opinion in the public, and this is a matter for grave concern. As an aside, does this situation mean that there is clear evidence that the provinces have not done their job under their responsibilities for education? Is it conceivable that what we ought to be looking at is a system whereby a national educational standard is laid down? Of course, this is an entirely separate issue, but I am pointing out that it has a profound bearing on whether the electorate of Canada is in a position to make such a decision, because they do not understand the heritage of this nation. They have been cut off from

that long process of development which is referred to by Lord Brougham, one of my early quotations, as the means by which constitutions can grow. If the people of Canada are not in a position to give that essential attention to the affairs of the government, continuously and actively, are they able to decide their own long-term best interests? We can only hope so.

I think we also need to consider whether the people are willing to take the time and the trouble. John Stuart Mill, more than a century ago, said, "A people may prefer a free government, but if through indolence, cowardice, or lack of interest they are incapable of exercising those exertions, they are not likely long to enjoy it." There is no guarantee of our continued existence. We have certainly not been given a blanket assurance that, no matter what we do, we shall go from better to better. We can suffer the fate which other nations have suffered, nations with very long histories and great attainments, which, in the end, were unequal to the exertions necessary, and therefore they failed. The late Arnold Toynbee said there have been twenty civilizations in the whole of human history, that we are the twenty-first, and that, indeed, we may be the last. So let us face the fact that we are up against a position in which, it might well be said, Canada has its back to the wall.

I have referred to the fact that occasionally some people in prominent circumstances, shall we say, have referred to the fact that the Senate of Canada is not elected. It was not intended to be elected. The Fathers of Confederation, in my view very wisely, saw that the Senate should be independent of partisan politics, not scrambling to outbid each other in order to be elected but a body that could, profoundly and carefully, out of its accumulated wisdom, reach conclusions which a more febrile House of Commons might not reach or, at least, reach too late. I have suggested in the brief that any body that is ensuring that the people of Canada have a full opportunity to consider and to assume responsibility for what is going to happen to them is, in fact, representative of the people, whether they have been elected or not, and I would commend to honourable senators the thought that in these circumstances you may well be much more truly representative of the people and the electorate of Canada than the ladies and gentlemen in the other place.

Senator Argue: I'll buy that one!

Mr. Williamson: Mr. Chairman, I do not want to weary honourable senators by going over parts of the brief they have or can have before them. I am quite prepared at this juncture, with your permission, to submit myself to any questions they might like to raise.

The Chairman: Thank you, Mr. Williamson. The first questioner is Senator Stewart.

Senator Stewart: I am from Nova Scotia. One of the constant complaints of Nova Scotians is that they were—to use the the word they used in those days—"Shanghaied" into Confederation. There was no election in Nova Scotia on the issue, and I believe it is fair to say that there was no confederation election in one of the other two provinces which became the four original provinces in 1867. So, it is really not accurate to say that the Canadian tradition is that these constitutional innovations should be founded on a recent expression of the will of the people.

Mr. Williamson: Senator Stewart, I should like to observe that the situation in 1867 was somewhat different from what it is today. Most markedly, I would point out to you that none of the four colonies, including the colony of Quebec or Lower Canada or Canada East, had ever possessed sovereignty. In the cirucmstances we are now talking about it is something which is quite different. Canada as a whole has complete sovereignty. The provinces have sovereignty within certain defined areas, a sovereignty which they did not possess before 1867.

In 1867 a simple Act of the Imperial Parliament, which possessed all the sovereignty, was all that was necessary to effect Confederation, the Imperial Parliament having made their decision on the basis of opinions expressed to them by many political leaders, and also in terms of the interests of the British Empire as a whole.

I would point out to you that only a very short time before that the Imperial government had found it necessary to send the Brigade of Guards from Great Britain to Canada to protect it from the distinct possibility of an American invasion. There were important questions of the protection of these colonies and their future existence, and the colonies themselves might have been unable to understand all the issues at that time.

We now have a position where the question of sovereignty is directly and responsibly placed on the Parliament of Canada and on the provinces. Therefore, with respect, sir, I suggest that the situation is quite different.

Senator Stewart: My second question is a quite different kind of question. I believe the witness is an economist, so he will be peculiarly qualified to deal with this question.

Reference was made to the argument in the Rowell-Sirois report that it was very difficult to establish a national economic policy in a federal country such as Canada. Of course, in the years since 1939 or 1940 we have struggled with the problem of developing economic policies in this federal state.

However, is it not true that in a sense we are now making a new departure? Trade arrangements have been worked out with the United States under which, in the future, we will not be relying nearly so much on Canadian national economic policy as we will be relying on the operation of a North American market, and it will be on that non-political body, the North American market, that our economic progress will depend. For example, the trade arrangement will put severe restrictions on the capacity of the national government—or, indeed, a provincial government—to shape such an important matter as energy policy. It will also place severe restrictions on the capacity of governments—federal and provincial alike—with regard to regional economic development. So, really, is it relevant in this new environment to talk about the Rowell-Sirois report? We are moving into a situation in which government is going to be less and less important, a situation in

which market forces are going to be what we will rely upon for our economic prosperity.

I just wonder if you have taken into account the new economic environment which will flow from what I call the Washington Accord.

Mr. Williamson: Senator Stewart, your question is very well taken. You place me in the position of saying that if I were to give an adequate reply to that question I would take all of the rest of the time which this honourable house has seen fit to allot to me. I am afraid that I will have to say to you, by way of a very brief, inadequate answer, that I regard the so-called Free Trade Agreement—or Washington agreement as you have termed it—as being of a similar dimension and similarly having potentially very great dangers for Canada. Indeed, if we were to pass the Meech Lake Accord and the Free Trade Agreement, I am afraid, if I were a betting man—which I am not—that I would be prepared to bet absolutely any sum of money that Canada would not survive for even a generation.

Senator Stewart: Thank you, Mr. Chairman.

The Chairman: Thank you, Senator Stewart. Next is Senator Lucier.

Senator Lucier: Thank you, Mr. Chairman.

Mr. Williamson, first of all I want to thank you for the time you have spent on your brief. I have gone through it and I find it very interesting. I take it from your opening remarks that, like many others in Canada, you had not spent much time on the Meech Lake Accord before Senator Bell asked you to take a look at it.

As a Northerner, I am very offended by Meech Lake. However, as a Canadian, I feel that the long term effects of Meech Lake could be very damaging to us and have some very negative impacts on our future.

My concern is, sir, how do we bring these fears to the people of the provinces, who are the ones who must go after their premiers and tell them to take another look at this document? It seems to me that every time I go to British Columbia and speak to anyone about Meech Lake, as soon as I start talking about it they understand what I am saying. The normal response is: "How did this matter ever get this far?"

My question to you is: Is there any way you could suggest that we could make the rest of Canada aware of what is in this document and what the long term ramifications of it might be?

Mr. Williamson: Senator Lucier, I think I would have to say that my own conception of what should be done is on the last page of my brief—namely, that this house, if it takes the step of rejecting the Meech Lake Accord, will certainly stir up the proverbial hornet's nest. However, in stirring up that hornet's nest I am convinced that you will also stir up the concerns and the attention of the people of Canada. If you did reject it, quite clearly the government would have no alternative to asking for the dissolution of Parliament and a general election, in which the Meech Lake Accord would be the point at issue. If that were done, I think a sufficient number of people in this country who share your concerns would speak as your friends in British Columbia have spoken to you. I think it is possible to make the people of Canada realize what is at stake, but it will have to be a clear rejection that forces this general election. It will not do to say: "Let us try to tinker with the Meech Lake Accord." If we try to patch it up a little bit here or there, all that is going to happen is that the people who know what they are talking about will be dissatisfied, and the people in the country as a whole will still not understand.

There needs to be a clear-cut, dramatic issue placed before the nation as a whole, and then I think they will respond. I may be wrong; I have said before that nations can, and do, commit political, social, economic and cultural suicide, and there is no way to prevent a nation from doing that if it is bound to. However, I do not think that the people of Canada are prepared to commit suicide; I think that they would respond.

I hope that I have made that rather tenuous suggestion a reasonable answer to you, sir.

Senator Lucier: In your brief you discuss the power of Parliament to control the economy. I wonder if the Meech Lake Accord does not, in effect, remove the control of the economy from Parliament and put it in the hands of the First Ministers. I wonder if they are not in fact creating a fourth level of government where the First Ministers' conferences are now being enshrined, and, as with Meech Lake, ten premiers and a prime minister go into a room and decide the future of Canada, including the future of the economy in Canada, and come out with a document such as this that they take to their legislatures for approval. Have you looked at that, and would that concern you, sir?

Mr. Williamson: Absolutely, sir. I certainly envisage that this business of enshrining the First Ministers' conferences constitutionally is a very grave step that the nation as a whole does not appreciate in any way. But that is exactly what that is going to do. We will, in effect, have a committee of 11 that will make, without any debate other than amongst themselves, definitive solutions which they will be able to impose upon the Parliament of Canada and the provincial legislative assemblies. In other words, it will dramatically and seriously reduce any chance of effective democratic government in this country.

Senator Molson: I would like to ask the witness this question: If the Senate chose to follow his advice about dealing with the Meech Lake Accord, what does he think the effect would be on the province of Quebec? At the moment I am not talking about the merits of the Meech Lake Accord; I am just thinking purely of the effect, and I am wondering if the medicine in that case would not be much worse than the disease. I am afraid that you would be putting Quebec back quite a few years, where the whole thought of separation from Canada would have some logic and a great deal of appeal.

Mr. Williamson: Senator Molson, your question is exceedingly good. Quite obviously, taking it from the broadest aspect, if we have to destroy Canada in order to keep Quebec within

Canada, then the whole thing is pretty much a gesture of futility.

From the standpoint of Quebec, let us simply face the fact. I think that the mass of the people in Quebec—and I am not speaking now of political leaders who have particular points of view that are often simply designed to secure their own power—will realize that Quebec has only one of two alternatives: either being in Canada as a regular, participating, effective part of Canada or, there being no other alternative outside of possibly a short interregnum, being forced into the hands of America. If they are forced into the hands of America, Quebec must face the fact that there will be no nonsense about bilingualism or biculturalism or a special status or a privileged community. As an American wardheeler in New York would say, "You will be American or else." That is what Quebec has to face. They either have to take the position that the great leaders of Quebec—Sir George-Étienne Cartier, Sir Wilfrid Laurier, among others—took in the past, which was that Quebec is a loyal part of Canada, or they will face extinction.

It may require a shock to convince them. What I have just said might very well be the kind of shock that would really make Quebec understand that they are at a crossroads and that they must choose one way or the other and accept the consequences.

Senator Argue: Mr. Williamson, you pictured a scenario in which the Senate would reject the Meech Lake Accord, I take it, and this would stir up a hornet's nest. This would lead to a federal election, and the people of Canada would then, I gather, take care of the Meech Lake Accord.

As I understand the authority of the Senate, it does not really extend to the point where we can block the accord. We can have an opinion, we can have a statement, we can have a position, and it may influence some people in the country or many people in the country, but I do not think it necessarily means death to the Meech Lake Accord.

The position of the Premier of New Brunswick is not totally clear at the present time, but from everything I read he might tend to oppose the Meech Lake Accord. In Manitoba we have an evolving situation, as I would read it, where the forces opposed to the Meech Lake Accord are gaining ground, and I do not think they are confined to one political party. I think there is a possibility that Manitoba will reject the Meech Lake Accord or just fail to ratify it. There is the situation in Ontario where inquiries are still going on, and I gather that public opinion is quite evenly divided, or certainly divided. It is not at all clear that Ontario will ratify the Meech Lake Accord.

My question is this: Do you think that the Meech Lake Accord is doomed even without a federal election—and there will be a federal election, but without the federal election being held on that issue—by the likelihood of one or more provinces failing to ratify the accord within the prescribed period of time?

Mr. Williamson: Senator Argue, I would point out that the question of the ratification of the Meech Lake Accord comes under the provisions for amendment to the Constitution, which are in the Constitutional Act of 1982. Therefore, it would be entirely possible for both Ontario and Manitoba either to reject or simply to take no action, and the rest of the provinces with Quebec, which has already taken action, could still put this through. In other words, the unanimity requirement, which will obtain after the Meech Lake Accord is in operation, if it comes into operation, would not apply in the present circumstances. Therefore, leaving it to someone else would be a very dangerous expedient.

Senator Argue: I do not argue with you, and I am not qualified to argue with you on what you have stated as your constitutional grounds for the statement you have made. However, from everything that I have read it was agreed by the premiers—and this is part of the accord—that there has to be unanimity before the accord goes through. I do not dispute that they may revert back to the formula under the Constitution as it is without the Meech Lake Accord, but do you not agree that it has been stated that there must be unanimity, and, if there is no unanimity, the failure of one province to say okay means that the Meech Lake Accord is non-existent?

● (1740)

Mr. Williamson: Senator Argue, if I may respectfully refer you to the section of my brief which refers to the politicians' *obiter dicta*, there have been many statements made by the Prime Minister, the provincial premiers and a great many other people as to what Meech Lake means, what Meech Lake will do, and what may or may not be required. If it comes to a showdown, then the Prime Minister and those who are anxious to put Meech Lake through can fall back on the strict legal position and say, "Oh, yes, we would have liked to have unanimous consent, but since unanimous consent has not been given, well then, we will go ahead on the strictly legal provisions of the Constitution Act of 1982. It is in force; it is done."

The Chairman: Thank you, Senator Argue.

Mr. Williamson, your last comments make me wonder, because I am under the impression that unless there is unanimity there is no possibility of Meech Lake going through, but your point is that it can go through under the old formula.

Senator Frith: Politically it would be difficult, but legally it is quite possible.

Mr. Williamson: Yes, Mr. Chairman. May I add that Sir Winston Churchill once wrote that "Admiral Jellicoe was the only man who could lose World War I in an afternoon." I suggest that this honourable house is the only power in Canada that can save Canada or allow it to be destroyed in an afternoon.

The Chairman: Thank you, Mr. Williamson, for appearing before the Committee of the Whole today.

Hon. Senators: Hear, hear!

The Chairman: Honourable senators, before I call for the Committee of the Whole to rise, may I say that I have received a letter from Mr. Louis "Smokey" Bruyère of the Native Council of Canada, asking that two corrections be made to

Hansard of December 2 last. At page 2267 "Premier McKenna" should read "Premier Buchanan".

The footnote to one of the appendices, as given to *Hansard*, is also incorrect. The corrected version will be sent to all honourable senators. Those corrections will also appear in the bound volume to be produced at the end of the session.

Is there a motion that the committee rise and report progress?

Senator Frith: Mr. Chairman, I move that the committee adjourn, report progress, and ask for leave to sit again.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker *pro tempore:* Honourable senators, the sitting of the Senate is resumed.

REPORT OF COMMITTEE OF THE WHOLE

Hon. Gildas L. Molgat: Honourable senators, the Committee of the Whole, to which the Meech Lake Accord and texts subsequently agreed to were referred, reports progress and asks for leave to sit again.

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

Hon. Senators: Agreed.

The Hon. the Speaker *pro tempore:* Honourable senators, when shall this committee have leave to sit again?

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I move that the Committee of the Whole be given authority to sit again on Wednesday, February 3, 1988.

Motion agreed to.

BUSINESS OF THE SENATE

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I move that all remaining orders stand.

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

Hon. Senators: Agreed.

The Senate adjourned until tomorrow at 2 p.m.

APPENDIX

(*See p. 2547*)

POVERTY IN CANADA
SENATE REPORT ON POVERTY
POVERTY LINE UPDATE—1986

Poverty Line Revisions: Based on Calculations Which Include Adjustments for Disposable Personal Income, Family Size and Changes in the Numbers of Family Units of Various Sizes in Canada Each Year.

COMPARISON BETWEEN SENATE COMMITTEE POVERTY LINES AND STATISTICS CANADA LOW-INCOME LINES BY FAMILY SIZE FOR 1986

Family Size	Senate Committee Povery Lines 1986 (nearest $10)	Senate Committee Estimated 1987	Statistics Canada Revised Low-Income Cut-Offs 1986*
1	$ 9,930	$10,530	$ 7,877 to $10,651
2	16,560	17,570	$10,295 to $14,053
3	19,870	21,080	$13,785 to $18,799
4	23,180	24,590	$15,936 to $21,663
5	26,490	28,100	$18,531 to $25,243
6	26,800	31,610	$20,231 to $27,571
7	33,110	35,120	$22,290 to $30,347

* Based year 1978 — amounts vary with degree of urbanization

The Senate Committee poverty lines are based on a formula which is updated annually on the basis of a measure of **disposable** personal income in Canada and changes in the distribution of families of various sizes.

THE SENATE POVERTY LEVEL is approximately 50% of average Canadian family income adjusted to family size, making provision for inflation and gross national product. For families of sizes 2, 3 and 4, the Poverty Lines are almost exactly half of the average income for families of those sizes.

STATISTICS CANADA: Poverty Level Lines are based on changing consumption patterns which now indicate that families who spend 62% or more of their income on food, clothing and shelter (as opposed to the 70% criterion used at an earlier date) are in straitened circumstances. These limits are also differentiated by size of area of residence.

THE SENATE COMMITTEE POVERTY LINES & STATISTICS CANADA REVISED LOW-INCOME LINES FOR 1986

1986 Family Size	Percent and Number Below Senate Committee Poverty Lines 1986	Percent and Number Below Statistics Canada Low-Income Cut-Offs for 1986*
Unattached Individuals	35.4% *** (1,012,000 persons)	34.3% (982,000 persons)
Family Units of two or more persons	20.9% ** (1,444,000 families)	12.3% (852,000 families)
Total Number and Percentage of Persons Below Poverty Line	22.4% ** (5,713,000 persons)	14.9% (3,689,000 persons)

* 1978 base for revision

** Senate poverty lines include more families

*** Senate and Statistics Canada almost similar

1985		
Unattached Individuals	35.9% (985,000 persons)	36.6% (1,003,000 persons)
Family Units of two or more persons	21.1% (1,444,000 families)	13.1% (901,000 families)
Total Number and Percentage of Persons Below Poverty Line	22.8% (5,783,000 persons)	15.9% (3,900,000 persons)

Statistics Canada figures for 1986 show that the lowest 20% of families and unattached individuals (lowest income quintile) received only 4.7% of total income. In contrast, the highest 20% of families and unattached individuals received 43.0% of total income. These figures indicate that the gap or disparity between the lowest and highest income groups has stayed relatively constant in recent years. That is, the income of the highest group is about ten times that of the lowest group.

CANADIAN STATISTICAL REVIEW, JUNE 1984 — The Senate Committee Poverty Lines (Senate). **The Special Senate Committee on Poverty, chaired by Senator David A. Croll, developed poverty lines based on income levels which reflected "items of basic need".** These lines are differentiated by family size and adjusted each year by an escalator based on living standards as reflected by the amount of disposable personal income available in Canada in any given year. The annual escalator is designed to adjust for real as well as nominal changes in income and for change in average family size over time. The resulting poverty levels are close to half of the average income for families of sizes 2, 3 and 4 in 1981. Senator Croll releases periodically an update of the Senate Committee poverty lines and those released for 1981 were used in this note.

PRODUCED BY SENATOR DAVID A. CROLL

POVERTY IN CANADA

UPDATED POVERTY LINES

DECEMBER 1987

SENATE REPORT ON POVERTY

UPDATED

1978 — 1987

POVERTY LINE REVISIONS: BASED ON CALCULATIONS WHICH INCLUDE ADJUSTMENTS FOR DISPOSABLE PERSONAL INCOME, FAMILY SIZE, AND CHANGES IN THE NUMBERS OF FAMILY UNITS OF VARIOUS SIZES IN CANADA EACH YEAR.

Family Size	Senate Committee Poverty Line **1978**	Senate Committee Poverty Line **1979**	Senate Committee Poverty Line **1980**	Senate Committee Poverty Line **1981**	Senate Committee Poverty Line **1982**	Senate Committee Poverty Line **1983**	Senate Committee Poverty Line **1984**	Senate Committee Poverty Line **1985**	Senate Committee Poverty Line **1986***	Senate Committee Poverty Line **1987**
1	$ 5,300	$ 5,860	$ 6,610	$ 7,370	$ 7,940	$ 8,540	$ 8,850	$ 9,330	$ 9,930	$10,530
2	8,840	9,760	11,030	12,300	13,240	14,240	14,750	15,550	16,560	17,570
3	10,610	11,710	13,230	14,760	15,890	17,090	17,700	18,660	19,870	21,080
4	12,390	13,660	15,440	17,210	18,530	19,940	20,650	21,770	23,180	24,590
5	14,140	15,610	17,640	19,670	21,180	22,790	23,600	24,880	26,490	28,100
6	15,910	17,560	19,860	22,130	23,830	25,640	26,550	27,990	29,800	31,610
7	17,690	19,510	22,060	24,590	26,470	28,490	29,500	31,100	33,110	35,120

SENATE REPORT 1986* *POVERTY LEVEL* for families of sizes 2, 3 and 4, is almost half of the average income for families of those sizes.

NUMBER & PERCENTAGE OF UNATTACHED INDIVIDUALS & FAMILY UNITS BELOW THE SENATE COMMITTEE POVERTY LINES AND STATISTICS CANADA REVISED LOW-INCOME LINES FOR 1986

1986 Family Unit	Percent and Number Below Senate Committee Poverty Lines 1986	Percent and Number Below Statistics Canada Low-Income Cut-Offs for 1986*
Unattached Individuals	35.4% *** (1,012,000 persons)	34.3% (982,000 persons)
Family Units of two or more persons	20.9% ** (1,444,000 families)	12.3% (851,000 families)
Total Number and Percentage of Persons Below Poverty Line	22.4% ** (5,713,000 persons)	14.9% (3,689,000 persons)

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Total Number and Percentage of Persons Below Poverty Line	22.8% (5,783,000 persons)	15.9% (3,900,000 persons)

SENATE REPORT: *POVERTY LEVEL* is approximately 50% of average Canadian family income adjusted to family size, making provision for inflation and gross national product. For families of sizes 2, 3 and 4, the Poverty Lines are almost exactly half of the average income for families of those sizes.

STATISTICS CANADA: Poverty Level Lines are based on changing consumption patterns, which now indicate that families who spend 62% or more of their income on food, clothing and shelter (as opposed to the 70% criterion used at an earlier date) are in straitened circumstances. These limits are also differentiated by size of area of residence.

Statistics Canada figures for 1986 show that the lowest 20% of families and unattached individuals (lowest income quintile) received only 4.7% of total income. In contrast, the highest 20% of families and unattached individuals received 43.0% of total income. These figures indicate that the gap or disparity between the lowest and highest income groups has stayed relatively constant in recent years. That is, the income of the highest group is about ten times that of the lowest group.

PRODUCED BY POVERTY IN CANADA

SENATOR DAVID A. CROLL UPDATED POVERTY LINE

DECEMBER 1987

THE SENATE

Thursday, January 28, 1988

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

Prayers.

FRANCINE LEMIRE

TRIBUTE TO GOLD MEDAL WINNER AT WORLD WINTER GAMES FOR DISABLED

Hon. Ethel Cochrane: Honourable senators, I rise to give recognition to the tremendous achievements of Francine Lemire, a disabled cross-country skier from Corner Brook, Newfoundland. Francine Lemire, a 35-year old who has one leg amputated above the knee and skis on a prosthesis, won two gold medals for Canada at the World Winter Games for the Disabled in Innsbruck, Austria, beating out skiers from West Germany and Switzerland. She won the five-kilometre cross-country ski race in 17 minutes, 34.4 seconds last Tuesday and two days later won the ten-kilometre race in 36 minutes and 33.1 seconds.

Francine also won the ten-kilometre gold medal in 1986 at the World Winter Championships in Salen, Sweden. She returns to Newfoundland this weekend to resume her work as a doctor at the West Coast Clinic in Corner Brook.

With the Winter Olympic Games coming up next month in Calgary, we should note the example that this distinguished disabled skier from Newfoundland has set for our Canadian winter athletes.

ADJOURNMENT

Hon. C. William Doody (Deputy Leader of the Government), with leave of the Senate and notwithstanding rule 45(1)(*g*), moved:

> That when the Senate adjourns today, it do stand adjourned until Tuesday next, February 2, 1988, at two o'clock in the afternoon.

Motion agreed to.

QUESTION PERIOD

[*English*]

THE PUBLIC SERVICE

INDEXING OF PENSIONS—STATUS OF LEGISLATION IN COMMONS

Hon. Hazen Argue: Honourable senators, might I ask the Leader of the Government in the Senate a question concerning the business of this house? Bill C-33 is before the House of Commons and concerns, amongst other things, the de-indexing of pensions of public servants. There is a great deal of support within the Public Service for pension indexing as it now exists, and in consequence there is a great deal of opposition to this bill from the Public Service Alliance and many others.

Can the Leader of the Government in the Senate tell us at what stage that bill is now in the House of Commons, or if it has been withdrawn or if it will come to the Senate at a later date?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I suppose I should not comment on the dispatch or otherwise with which legislation is dealt with in the other place. I believe that at this time the bill has not yet reached the second reading stage, so I would expect that it would be some considerable time before it makes its way to this place.

Senator Argue: That is probably an honest answer!

MISCELLANEOUS STATUTE LAW AMENDMENT BILL, 1987

THIRD READING

Hon. Nathan Nurgitz moved the third reading of Bill C-104, to correct certain anomalies, inconsistencies, archaisms and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada.

Motion agreed to and bill read third time and passed.

CURRENCY ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming the debate on the motion of the Honourable Senator Marshall, seconded by the Honourable Senator Muir, for the second reading of the Bill C-99, An Act to amend the Currency Act.—(*Honourable Senator Bosa*).

Hon. Peter Bosa: Honourable senators, Bill-99, an act to amend the Currency Act, is a non-controversial bill. It is designed, as Senator Marshall very eloquently indicated yesterday, to bring consistency to the procedures followed in the Public Accounts of Canada. The bill changes certain methods of reporting and accounting in line with recommendations made by the Auditor General, Kenneth Dye. Those recommendations referred to the consolidation of the Exchange Fund

with the Consolidated Revenue Fund for purposes of determining the fiscal position of the government.

The Exchange Fund is a special account of the Minster of Finance, which serves as the principal repository of Canada's official international reserves. Although the Exchange Fund has been consolidated with the Consolidated Revenue Fund in the public accounts, it exists as a distinct accounting entity and is governed by separate legislation, namely, the Currency Act, which Bill C-99 proposes to amend.

In calculating the net income of the Exchange Fund, the Currency Act draws a distinction between regular investment income and valuation gains or losses. The latter, which are due to exchange rate changes and gold sales, are averaged over three years in the Currency Act while they are recognized immediately in the Public Accounts Consolidation. This amendment will eliminate this difference in accounting treatment which was created by the consolidation introduced in 1986.

Honourable senators, I said at the beginning of my remarks that this is a non-controversial bill. It was given speedy passage in the other place, and we, on this side of the house, are prepared to do the same thing.

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, in the absence of Senator Marshall, the proposer of this bill, might I ask if it is the wish of the Senate that this bill be referred to committee?

Hon. Allan J. MacEachen (Leader of the Opposition): Yes.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I spoke to the chairman of the Standing Senate Committee on National Finance.

Senator Doody: As did I.

Senator Frith: The Deputy Leader of the Government says he did also. I think the committee should take a look at it, however brief a look that might be, but we should receive a report from the committee before we give this bill third reading.

Senator Doody: We have no problem with that. As you say, I also discussed the matter with Senator Leblanc, the chairman of the committee. He is prepared to deal with it as soon as we get it to him. I assume that Senator Marshall, as proposer of the bill, will move that it be referred to the committee at the appropriate time.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Marshall, bill referred to the Standing Senate Committee on National Finance.

• (1410)

FRUIT AND VEGETABLE CUSTOMS ORDERS VALIDATION BILL

SECOND READING

On the Order:

Resuming the debate on the motion of the Honourable Senator Barootes, seconded by the Honourable Senator Bazin, for the second reading of the Bill C-96, An Act to validate certain customs duty orders relating to fresh fruits and vegetables.—(*Honourable Senator Barrow*).

Hon. A. Irvine Barrow: Honourable senators, Bill C-96, an act to validate certain customs duty orders relating to fresh fruits and vegetables, was presented yesterday. I was not here at the time, but I know that Senator Barootes made a capable and full presentation.

It is a short bill concerning primarily what one might call housekeeping matters, although I understand with respect to the matter of validating certain election procedures the amount in question ran to several millions of dollars.

In view of this, perhaps the bill should be sent to a committee, at least for an explanation concerning the delay in rectifying this matter, which covers a period of some 13 years. If the mover were to agree to have this bill referred to the appropriate committee, which I believe is the Standing Senate Committee on Banking, Trade and Commerce, we, on this side, would be prepared to agree that it should receive second reading.

Hon. Efstathios William Barootes: Honourable senators—

The Hon. the Speaker *pro tempore:* Honourable senators, I wish to inform the Senate that if Senator Barootes speaks now his speech will have the effect of closing the debate on the motion for second reading of this bill.

Senator Barootes: Honourable senators, I would be pleased to have Bill C-96 referred to the Standing Senate Committee on Banking, Trade and Commerce.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Barootes, bill referred to the Standing Senate Committee on Banking, Trade and Commerce.

CONSTITUTION ACT, 1867

BILL TO AMEND (QUALIFICATIONS OF SENATORS)—SECOND READING—ORDER STANDS

On the Order:

Resuming the debate on the motion of the Honourable Senator Marchand, P.C., seconded by the Honourable Senator Robichaud, P.C., for the second reading of the

Bill S-12, An Act to amend the Constitution Act, 1867 (Qualifications of Senators).—(*Honourable Senator Doody*).

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, once again I want to say that I am not trying to hold up this motion in any way. If anyone wishes to speak on this order, I will gladly yield.

Order stands.

THE SENATE

REFERRAL OF SUBJECT MATTER OF GOVERNMENT BILLS TO COMMITTEES—INQUIRY WITHDRAWN

Hon. Finlay MacDonald rose, pursuant to notice of Monday, July 6, 1987:

That he will call the attention of the Senate to the practice of referring the subject-matter of government bills to the appropriate Senate Committees.

He said: Honourable senators, I notice that this inquiry, standing in my name, has been on the order paper since July 6. I have concluded that there may be other ways of speaking to this matter, which may give me an opportunity for some mischief sometime in the next month or so. Therefore, unless some other senator would like to take a crack at this, I suggest that this inquiry be withdrawn from the order paper.

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

Hon. Senators: Agreed.

Inquiry withdrawn.

The Senate adjourned until Tuesday, February 2, 1988, at 2 p.m.

THE SENATE

Tuesday, February 2, 1988

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

Prayers.

APPROPRIATION BILL NO. 5, 1987-88

FIRST READING

The Hon. the Speaker *pro tempore* informed the Senate that a message had been received from the House of Commons with Bill C-108, for granting to Her Majesty certain sums of money for the Government of Canada for the financial year ending the 31st March 1988.

Bill read first time.

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

On motion of Senator Doody, with leave of the Senate and notwithstanding rule 44(1)(*f*), bill placed on the Orders of the Day for second reading at the next sitting of the Senate.

[*Translation*]

THE ESTIMATES, 1987-88

REPORT OF NATIONAL FINANCE COMMITTEE ON SUPPLEMENTARY ESTIMATES (D) PRESENTED AND PRINTED AS APPENDIX

Hon. Fernand-E. Leblanc: Honourable senators, the Standing Senate Committee on National Finance has the honour to present its Sixteenth Report respecting its examination of the expenditures proposed by supplementary estimates (D) laid before Parliament for the fiscal year ending March 31, 1988. I ask that the report be printed as an appendix to the *Debates of the Senate* and to the *Minutes of the Proceedings of the Senate* of this day and form part of the permanent records of this house.

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

Hon. Senators: Agreed.

(*For text of report, see appendix, p. 2598*).

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

On motion of Senator Leblanc (*Saurel*), report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[*English*]

SENATE TASK FORCE ON MEECH LAKE CONSTITUTIONAL ACCORD AND YUKON AND NORTHWEST TERRITORIES

EXTENSION OF DEADLINE FOR PRESENTATION OF FINAL REPORT

Hon. Gildas L. Molgat, with leave of the Senate and notwithstanding rule 45(l)(*e*), moved:

> That, notwithstanding the Order of the Senate adopted on Tuesday, 8th December, 1987, the Senate Task Force on the Meech Lake Constitutional Accord and on the Yukon and the Northwest Territories be empowered to present its final report to the Committee of the Whole no later than Monday, 22nd February, 1988.

He said: Honourable senators, this is a unanimous request from the task force itself, since we were unable to hold certain meetings because the Senate was not sitting and, as well, because certain senators were unavoidably absent. In view of the fact that those senators have participated fully in the whole discussion, it was felt that no final decisions should be taken without the presence of those senators. Therefore, we have asked for the extension of two weeks.

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

Hon. Senators: Agreed.

Motion agreed to.

QUESTION PERIOD

[*English*]

ANSWER TO ORDER PAPER QUESTION

PAPERWORK REDUCTION ADVISORY COMMITTEE

SMALL BUSINESSES AND TOURISM

Question No. 30 on the Order Paper—**By Hon. Jack Marshall.**

> 2nd September, 1987—1. With reference to the May 8, 1987, announcement made by the Minister of State (Small Businesses and Tourism) concerning the implementation of a Paperwork Reduction Action Plan, (i) what is the breakdown by Province of members of the private sector advisory committee of key national small business associations who provide advice to government

on how to reduce paper burden; (ii) how often does the Committee meet; and (iii) what is the amount of the per diem allowance, including transportation to and from meetings?

2. Under the overall program removing obstacles to entrepreneurship, what are the names and job description of those responsible to administer the program?

3. How many inquiries have been received to date under the program since its inception from (a) Statistics Canada; (b) Supply and Services; (c) Revenue Canada; and (d) Employment and Immigration?

Reply by the Minister of State—Small Businesses and Tourism:

1. (i) The Paperwork Reduction Advisory Committee is comprised of the President and the following ten members, representing national or provincial associations:

Doreen Braverman

Keith Alexander, President

Ian Eastcott

Gale Botting

Willy Cooper

Margaret Lewis

Eric Owen

Marc Mineau

Pierre Fournier

Laura Bennet

Claris Budkowski

(ii) It is expected that the Committee will meet approximately four times per year.

The first meeting was held on July 3, 1987, the second on September 10, 1987 and a third meeting is scheduled for December 10, 1987.

(iii) Members are reimbursed for accommodation, meals and transportation according to Treasury Board guidelines.

2. Paperwork Reduction Action Plan, which resulted from the Removing Obstacles to Entrepreneurship report, has not created any new positions to handle the work. Responsibilities of some senior officials have been redefined to include work emanating from the Action Plan.

3. During the period May 8 to October 30, 1987, the following estimated number of inquiries have been received:

(a) Statistics Canada - 69

(b) Supply and Service - Nil

(c) Revenue Canada - 24

(d) Employment and Immigration - 1

[Senator Marshall.]

TAX REFORM 1987

REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE ADOPTED

On the Order:

Resuming the debate on the motion of the Honourable Senator Sinclair, seconded by the Honourable Senator Stewart (Antigonish-Guysborough), for the adoption of the Twentieth Report of the Standing Senate Committee on Banking, Trade and Commerce (Tax Reform in Canada), tabled in the Senate on 1st December, 1987.—(*Honourable Senator Frith*).

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, this order follows from the debate on the motion for the adoption of the twentieth report of the Standing Senate Committee on Banking, Trade and Commerce on tax reform. I had that order adjourned in my name to give anyone who might wish to speak to it an opportunity to do so. It has been on the order paper now for some weeks. I have spoken to the chairman of the committee who feels that we have given ample opportunity for anyone who might wish to speak to it to do so. Therefore, if no other honourable senator wishes to speak, I suggest that Senator Sinclair's motion be adopted.

● (1410)

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

Hon. Senators: Agreed.

Motion agreed to and report adopted.

THE CONSTITUTION

PROPOSED CONSTITUTION AMENDMENT, 1987—MOTION STANDS

On Motion No. 1:

By the Honourable Senator Murray, P.C.:

THAT,

WHEREAS the *Constitution Act, 1982* came into force on April 17, 1982, following an agreement between Canada and all the provinces except Quebec;

AND WHEREAS the Government of Quebec has established a set of five proposals for constitutional change and has stated that amendments to give effect to those proposals would enable Quebec to resume a full role in the constitutional councils of Canada;

AND WHEREAS the amendment proposed in the schedule hereto sets out the basis on which Quebec's five constitutional proposals may be met;

AND WHEREAS the amendment proposed in the schedule hereto also recognizes the principle of the equality of all the provinces, provides new arrangements to foster greater harmony and cooperation between the Government of Canada and the governments of the provinces and requires that conferences be convened to consider important constitutional, economic and other issues;

AND WHEREAS certain portions of the amendment proposed in the schedule hereto relate to matters referred to in section 41 of the *Constitution Act, 1982*;

AND WHEREAS section 41 of the *Constitution Act, 1982* provides that an amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by resolutions of the Senate and the House of Commons and of the legislative assembly of each province;

NOW THEREFORE the Senate resolves that an amendment to the Constitution of Canada be authorized to be made by proclamation issued by Her Excellency the Governor General under the Great Seal of Canada in accordance with the schedule hereto.

SCHEDULE
CONSTITUTION AMENDMENT, 1987
Constitution Act, 1867

1. The *Constitution Act, 1867* is amended by adding thereto, immediately after section 1 thereof, the following section:

"2.(1) The Constitution of Canada shall be interpreted in a manner consistent with

(*a*) the recognition that the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec, constitutes a fundamental characteristic of Canada; and

(*b*) the recognition that Quebec constitutes within Canada a distinct society.

(2) The role of the Parliament of Canada and the provincial legislatures to preserve the fundamental characteristic of Canada referred to in paragraph (1)(*a*) is affirmed.

(3) The role of the legislature and Government of Quebec to preserve and promote the distinct identity of Quebec referred to in paragraph (1)(*b*) is affirmed.

(4) Nothing in this section derogates from the powers, rights or privileges of Parliament or the Government of Canada, or of the legislatures or governments of the provinces, including any powers, rights or privileges relating to language."

2. The said Act is further amended by adding thereto, immediately after section 24 thereof, the following section:

"25.(1) Where a vacancy occurs in the Senate, the government of the province to which the vacancy relates may, in relation to that vacancy, submit to the Queen's Privy Council for Canada the names of persons who may be summoned to the Senate.

(2) Until an amendment to the Constitution of Canada is made in relation to the Senate pursuant to section 41 of the *Constitution Act, 1982,* the person summoned to fill a vacancy in the Senate shall be chosen from among persons whose names have been submitted under subsection (1) by the government of the province to which the vacancy relates and must be acceptable to the Queen's Privy Council for Canada."

3. The said Act is further amended by adding thereto, immediately after section 95 thereof, the following heading and sections:

"Agreements on Immigration and Aliens

95A. The Government of Canada shall, at the request of the government of any province, negotiate with the government of that province for the purpose of concluding an agreement relating to immigration or the temporary admission of aliens into that province that is appropriate to the needs and circumstances of that province.

95B.(1) Any agreement concluded between Canada and a province in relation to immigration or the temporary admission of aliens into that province has the force of law from the time it is declared to do so in accordance with subsection 95C(1) and shall from that time have effect notwithstanding class 25 of section 91 or section 95.

(2) An agreement that has the force of law under subsection (1) shall have effect only so long and so far as it is not repugnant to any provision of an Act of the Parliament of Canada that sets national standards and objectives relating to immigration or aliens, including any provision that establishes general classes of immigrants or relates to levels of immigration for Canada or that prescribes classes of individuals who are inadmissible into Canada.

(3) The *Canadian Charter of Rights and Freedoms* applies in respect of any agreement that has the force of law under subsection (1) and in respect of anything done by the Parliament or Government of Canada, or the legislature or government of a province, pursuant to any such agreement.

95C.(1) A declaration that an agreement referred to in subsection 95B(1) has the force of law may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement.

(2) An amendment to an agreement referred to in subsection 95B(1) may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized

(*a*) by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement; or

(*b*) in such other manner as is set out in the agreement.

95D. Sections 46 to 48 of the *Constitution Act, 1982* apply, with such modifications as the circumstances require, in respect of any declaration made pursuant to subsection 95C(1), any amendment to an agreement made pursuant to subsection 95C(2) or any amendment made pursuant to section 95E.

95E. An amendment to sections 95A to 95D or this section may be made in accordance with the procedure set out in subsection 38(1) of the *Constitution Act, 1982,* but only if the amendment is authorized by resolutions of the legislative assemblies of all the provinces that are, at the time of the amendment, parties to an agreement that has the force of law under subsection 95B(1)."

4. The said Act is further amended by adding thereto, immediately preceding section 96 thereof, the following heading:

"General

5. The said Act is further amended by adding thereto, immediately preceding section 101 thereof, the following heading:

"Courts Established by the Parliament of Canada"

6. The said Act is further amended by adding thereto, immediately after section 101 thereof, the following heading and sections:

"Supreme Court of Canada

101A.(1) The court existing under the name of the Supreme Court of Canada is hereby continued as the general court of appeal for Canada, and as an additional court for the better administration of the laws of Canada, and shall continue to be a superior court of record.

(2) The Supreme Court of Canada shall consist of a chief justice to be called the Chief Justice of Canada and eight other judges, who shall be appointed by the Governor General in Council by letters patent under the Great Seal.

101B.(1) Any person may be appointed a judge of the Supreme Court of Canada who, after having been admitted to the bar of any province or territory, has, for a total of at least ten years, been a judge of any court in Canada or a member of the bar of any province or territory.

(2) At least three judges of the Supreme Court of Canada shall be appointed from among persons who, after having been admitted to the bar of Quebec, have, for a total of at least ten years, been judges of any court of Quebec or of any court established by the Parliament of Canada, or members of the bar of Quebec.

101C.(1) Where a vacancy occurs in the Supreme Court of Canada, the government of each province may, in relation to that vacancy, submit to the Minister of Justice of Canada the names of any of the persons who have been admitted to the bar of that province and are qualified under section 101B for appointment to that court.

(2) Where an appointment is made to the Supreme Court of Canada, the Governor General in Council shall, except where the Chief Justice is appointed from among members of the Court, appoint a person whose name has been submitted under subsection (1) and who is acceptable to the Queen's Privy Council for Canada.

(3) Where an appointment is made in accordance with subsection (2) of any of the three judges necessary to meet the requirement set out in subsection 101B(2), the Governor General in Council shall appoint a person whose name has been submitted by the Government of Quebec.

(4) Where an appointment is made in accordance with subsection (2) otherwise than as required under subsection (3), the Governor General in Council shall appoint a person whose name has been submitted by the government of a province other than Quebec.

101D. Sections 99 and 100 apply in respect of the judges of the Supreme Court of Canada.

101E.(1) Sections 101A to 101D shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws under section 101 except to the extent that such laws are inconsistent with those sections.

(2) For greater certainty, section 101A shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws relating to the reference of questions of law or fact, or any other matters, to the Supreme Court of Canada."

7. The said Act is further amended by adding thereto, immediately after section 106 thereof, the following section:

"106A.(1) The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the Government of Canada after the coming into force of this section in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that is compatible with the national objectives.

(2) Nothing in this section extends the legislative powers of the Parliament of Canada or of the legislatures of the provinces."

8. The said Act is further amended by adding thereto the following heading and sections:

"XII—CONFERENCES ON THE ECONOMY AND OTHER MATTERS

148. A conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once each year to discuss the state of the Canadian economy and such other matters as may be appropriate.

XIII—REFERENCES

149. A reference to this Act shall be deemed to include a reference to any amendments thereto."

Constitution Act, 1982

9. Sections 40 to 42 of the *Constitution Act, 1982* are repealed and the following substituted therefor:

"40. Where an amendment is made under subsection 38(1) that transfers legislative powers from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply.

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

(*a*) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(*b*) the powers of the Senate and the method of selecting Senators;

(*c*) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;

(*d*) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province was entitled; to be represented on April 17, 1982;

(*e*) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;

(*f*) subject to section 43, the use of the English or the French language;

(*g*) the Supreme Court of Canada;

(*h*) the extension of existing provinces into the territories;

(*i*) notwithstanding any other law or practice, the establishment of new provinces; and

(*j*) an amendment to this Part."

10. Section 44 of the said Act is repealed and the following substituted therefor:

"44. Subject to section 42, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons."

11. Subsection 46(1) of the said Act is repealed and the following substituted therefor:

"46.(1) The procedures for amendment under sections 38, 41 and 43 may be initiated either by the Senate or the House of Commons or by the legislative assembly of a province."

12. Subsection 47(1) of the said Act is repealed and the following substituted therefor:

"47.(1) An amendment to the Constitution of Canada made by proclamation under section 38, 41, or 43 may be made without a resolution of the Senate authorizing the issue of the proclamation if, within one hundred and eighty days after the adoption by the House of Commons of a resolution authorizing its issue, the Senate has not adopted such a resolution and if, at any time after the expiration of that period, the House of Commons again adopts the resolution."

13. Part VI of the said Act is repealed and the following substituted therefor:

"PART VI
CONSTITUTIONAL CONFERENCES

50.(1) A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once each year, commencing in 1988.

(2) The conferences convened under subsection (1) shall have included on their agenda the following matters:

(*a*) Senate reform, including the role and functions of the Senate, its powers, the method of selecting Senators and representation in the Senate;

(*b*) roles and responsibilities in relation to fisheries; and

(*c*) such other matters as are agreed upon."

14. Subsection 52(2) of the said Act is amended by striking out the word "and" at the end of paragraph (b) thereof, by adding the word "and" at the end of paragraph (c) thereof and by adding thereto the following paragraph:

"(*d*) any other amendment to the Constitution of Canada."

15. Section 61 of the said Act is repealed and the following substituted therefor:

"61. A reference to the *Constitution Act 1982*, or a reference to the *Constitution Acts 1867 to 1982*, shall be deemed to include a reference to any amendments thereto."

General

16. Nothing in section 2 of the *Constitution Act, 1867* affects section 25 or 27 of the *Canadian Charter of Rights and Freedoms*, section 35 of the *Constitution Act, 1982* or class 24 of section 91 of the *Constitution Act, 1867*.

CITATION

17. This amendment may be cited as the *Constitution Amendment, 1987*.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, as we all know, this motion standing in Senator Murray's name deals with the Meech Lake Constitutional Accord and the proposed amendments to the Constitution.

I expect that the subject matter of the motion is presently before the Committee of the Whole which is studying the Meech Lake Constitutional Accord. But is it Senator Murray's intention to actually formally move that motion, since, as I understand, it is the same motion as has been passed by the House of Commons?

Hon. C. William Doody (Deputy Leader of the Government): My understanding is that Senator Murray does, indeed, intend moving that motion. I believe that he spoke briefly to Senator MacEachen about it a few days ago and indicated to him that he will send him a letter to outline a procedure that he thinks might be in order. As the deadline approaches for the clock running out, he feels that we should deal with it. I am sure he will be open to any discusion that Senator MacEachen may want to have with him.

Senator Frith: Thank you.

Motion stands.

THE CONSTITUTION

FIRST MINISTERS' ACCORD AND AGREED TEXTS—
CONSIDERATION IN COMMITTEE OF THE WHOLE CONTINUED

Leave having been given to bring forward the following order for Wednesday, February 3, 1988:

The Senate again in Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to.

The Senate was accordingly adjourned during pleasure and put into a Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to, the Honourable Gildas L. Molgat in the chair.

The Chairman: Honourable senators, the steering committee met last Thursday and, on looking over the list of submissions that we had received—and I would remind you that there were advertisements put in the newspapers in December inviting submissions—it was recognized that we had received a substantial number. Prior to that we had already had a list of witnesses whom we had asked to appear.

In view of the timing, the steering committee felt it would be impossible to hear all of the witnesses unless we establish a different procedure. It was felt that the solution to the problem was to set up a submissions group of this committee to proceed with that matter. Therefore, a motion to that effect has been distributed to all of you.

Is it your wish, honourable senators, that we read the motion?

Hon. Senators: Agreed.

Senator Frith: Honourable senators, perhaps someone other than the chairman should move the motion.

The Chairman: Yes.

Senator Frith: I am honoured to do so. I move, seconded by Senator MacEachen:

That a group of eight Senators of the Committee of the Whole on the Meech Lake Constitutional Accord, to be known as the Submissions Group on the Meech Lake Constitutional Accord, be appointed to assist the Committee of the Whole to hear such representations thereon as are referred to it by the Committee of the Whole;

That the Submissions Group be composed of three Senators nominated by the Leader of the Government in the Senate, and five Senators nominated by the Leader of the Opposition in the Senate;

That the quorum of the Submissions Group be three members;

That the Submissions Group be authorized to send for persons, papers and records and to print such papers and evidence from day to day as may be ordered by it;

That the Submissions Group be authorized to engage the services of such clerical, technical and other personnel as it deems necessary;

That the rules and procedures applicable in committees apply to the Submissions Group;

That changes in the membership of the Submissions Group shall be made pursuant to Rule 66(4) of the *Rules of the Senate*; and

That the Submissions Group be instructed to present its findings to the Committee of the Whole no later than March 30, 1988.

I would be glad to speak to this motion after you have put it, Mr. Chairman.

Senator Argue: On a point of order, I believe Senator Frith said that the motion was seconded by the Honourable Senator MacEachen. I wonder whether it is possible for a senator to second a motion when he is not in his seat.

The Chairman: The point of order is well taken. Would Senator Frith name another seconder?

Senator Frith: Senator Argue.

The Chairman: The motion is seconded by Senator Argue.

Senator Argue: I just did a "Frith" on you—everything has to be just so.

Senator Frith: Senator Argue is clearly in his seat and is eminently qualified.

Senator Doody: Honourable senators, I have very little to add. This matter was discussed in the steering committee of the Committee of the Whole. I was a member of the group at that time. We discussed the advantages of setting up such an assistance committee, as it were, so that the load might be taken off the chamber in Committee of the Whole and some of the work might be looked after by another group. We on this side of the house have no objection to this motion.

Senator Frith: Just to draw attention to a few of the provisions of the motion, honourable senators will notice that there is no request for the power to travel. The purpose of this group is to assist the Committee of the Whole through the hearing of the evidence of persons who have asked to make submissions on the Meech Lake Accord. This is a smaller and parallel group to the Committee of the Whole. The intention is that the hearings will all take place here in Ottawa.

Another minor point is the application of the rules and procedures applicable in committees. Honourable senators will remember that rule 66(4) provides a means by which the whips can change membership without reference back to anyone except the clerk and the committee concerned. Then there is the deadline on the reporting date.

I can add to what Senator Doody has said by saying that we on this side of the chamber also have no objection to this motion.

The Chairman: Is it the pleasure of honourable senators to adopt the motion? Senator Marsden?

Senator Marsden: If I may, I have two questions for clarification. The motion reads, "That the Submissions Group be instructed to present its findings . . .". That does not imply that those will necessarily be the findings of the Committee of the Whole, does it? In other words, would the findings of the Submissions Group be related solely to the evidence heard by that group?

Senator Frith: I would imagine, honourable senators, that the Submissions Group would report on its work and give a summary of the submissions that were made to it. It is my understanding that this group will report to the Committee of the Whole. In its form it is like a subcommittee, but there is no provision for a subcommittee of the Committee of the Whole.

Senator Marsden: If I may, I will ask one other question. I am sure this has been reviewed before, but, just to help us now, what is the precise timetable for the work of the Committee of the Whole? What is the absolute deadline beyond which this committee cannot go?

● (1420)

Senator Frith: Section 47 of the Constitution Act, 1982 provides that an amendment to the Constitution may be made without a resolution of the Senate if 180 days have passed after a resolution is passed in the House of Commons. In this case the 180 days will elapse on April 23, 1988.

That does not mean that the activities of the Senate on the constitutional proposal must take place within that period of time, because there is no provision to that effect; but, if the Senate does not act, the House of Commons can repass a motion, and further activity by the Senate is not necessary for resolutions authorizing a proclamation to take effect.

Senator Marsden: I thank the honourable senator. This past weekend Toronto newspapers reported that the Senate had to make a report by February 8. That was simply wrong?

Senator Doody: That is wrong.

Senator Frith: I am sure that what they were talking about was the report of the task force that went up north. I believe that its deadline for reporting was February 8.

Senator Doody: Mr. Chairman, while we are on questions relating to the activities and timing of the Committee of the Whole, can you give us any information concerning the plans of the Committee of the Whole regarding the inquiry on the Canada-France fisheries question?

The Chairman: I am sorry, senator, but I am not in a position to answer your question in that regard. Perhaps other honourable senators can help you.

Senator Stewart (Antigonish-Guysborough): Mr. Chairman, on a point of order, this is not the same Committee of the Whole. The Senate resolved itself into a Committee of the Whole with regard to the Canada-France fisheries question, and it resolved itself into a distinct and separate Committee of the Whole on the Meech Lake Accord.

Senator Argue: We are being informal.

Senator Stewart (Antigonish-Guysborough): So there is no way that a report could be made by this committee relative to the work of another and quite distinct Committee of the Whole.

Senator Doody: I am not suggesting that we dissolve this Committee of the Whole and that the Senate resolve itself into another Committee of the Whole to answer a simple question as to whether or not we intend to have more inquiries on the Canada-France fisheries question. Perhaps Senator Stewart could indicate an easier way to obtain the answer to a simple question.

Senator Stewart (Antigonish-Guysborough): Mr. Chairman, the question could be asked in the Senate, which is the parent body of the Committee of the Whole, on the Canada-France fisheries question.

Senator Doody: I am to gather, then, that questions relating to activities of the Committee of the Whole are better asked in the chamber itself rather than in Committee of the Whole.

Senator Stewart (Antigonish-Guysborough): No, Mr. Chairman. Senator Doody makes the mistake of referring to "the" Committee of the Whole. The fact of the matter is that there is a distinct Committee of the Whole on each bill, or on each separate matter referred to a committee of the whole house. They are several, separate committees.

Senator Doody: I certainly take the advice of Senator Stewart, and I thank him for adding to my store of knowledge. Perhaps we could refer to Committee of the Whole "A" and Committee of the Whole "B", and perhaps run through all sorts of little gyrations as we go through, so that when we look at the order paper we will know to which committee we refer. There does not appear to me to be any great distinction on the order paper.

The Chairman: I regret that this Committee of the Whole cannot answer the honourable senator's question about the other Committee of the Whole.

Senator Doody: Mr. Chairman, I may ask you the question at the next sitting of the chamber. Perhaps you will be better advised or in better condition at that time—or perhaps "position" is a better word.

Senator Frith: Neither committee is "holier" than the other.

Senator Doody: But one appears to have a termination date.

The Chairman: Honourable senators, we have before us the motion by the Honourable Senator Frith, seconded by the Honourable Senator Argue, regarding the submissions group. Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to.

Senator Frith: Mr. Chairman, I move that the committee adjourn, report progress, and ask for leave to sit again.

Senator Doody: Are you sure you have the right committee?

Senator Frith: Yes, the committee on Meech Lake; your committee, Mr. Chairman.

[Senator Stewart (Antigonish-Guysborough).]

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

[*Translation*]

The Hon. the Speaker *pro tempore:* Honourable senators, the sitting of the Senate is resumed.

REPORT OF COMMITTEE OF THE WHOLE

Hon. Gildas L. Molgat: Honourable senators, the Committee of the Whole, to which the Meech Lake Accord and texts subsequently agreed to were referred, asks me to present a report, reports progress and asks for leave to sit again.

The Hon. the Speaker *pro tempore:* Honourable senators, when shall this committee have leave to sit again?

Senator Molgat: Honourables senators, I move that the Committee of the Whole be given authority to sit again on Wednesday, February 3, 1988.

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

Hon. Senators: Agreed.

Motion agreed to.

[*English*]

REPORT OF COMMITTEE OF THE WHOLE (SUBMISSIONS GROUP) ADOPTED

Hon. Gildas L. Molgat presented the following report:

February 2, 1988

Your Committee has the honour to present the following Report.

Your Committee recommends

THAT a group of eight Senators of the Committee of the Whole on the Meech Lake Constitutional Accord, to be known as the Submissions Group on the Meech Lake Constitutional Accord, be appointed to assist the Committee of the Whole to hear such representations thereon as are referred to it by the Committee of the Whole;

That the Submissions Group be composed of three Senators nominated by the Leader of the Government in the Senate, and five Senators nominated by the Leader of the Opposition in the Senate;

That the quorum of the Submissions Group be three members;

That the Submissions Group be authorized to send for persons, papers and records and to print such papers and evidence from day to day as may be ordered by it;

That the Submissions Group be authorized to engage the services of such clerical, technical and other personnel as it deems necessary;

That the rules and procedures applicable in committees apply to the Submissions Group;

That changes in the membership of the Submissions Group shall be made pursuant to Rule 66(4) of the Rules of the Senate; and

That the Submissions Group be instructed to present its findings to the Committee of the Whole no later than March 30, 1988.

Respectfully submitted,

GILDAS MOLGAT
Chairman

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

On motion of Senator Molgat, with leave of the Senate and notwithstanding rule 45(1)(*f*), report adopted.

The Senate adjourned until tomorrow at 2 p.m.

APPENDIX

(*See p. 2589*)

THE ESTIMATES, 1987-88

REPORT OF NATIONAL FINANCE COMMITTEE ON SUPPLEMENTARY ESTIMATES (D)

TUESDAY, February 2, 1988

The Standing Senate Committee on National Finance has the honour to present its

SIXTEENTH REPORT

Your Committee, to which Supplementary Estimates (D) laid before Parliament for the fiscal year ending March 31, 1988, were referred, in obedience to the Order of Reference of Tuesday, January 26, 1988 submits its report as follows:

The Committee heard evidence from the following witnesses:

From Agriculture Canada:
Mr. Frank Claydon, Assistant Deputy Minister, Policy Branch;
Mr. Terry Pender, Administrator, Special Canadian Grains Program.

These Supplementary Estimates (D) 1987-88 request spending authority for $ 803.9 million for the Department of Agriculture for an extension of its Special Canadian Grains Program begun last year. Of the total amount, $ 800 million is to be paid to producers; the remaining $ 3.9 million is to be used for administrative purposes.

This program was created to help cushion grain and oilseed producers from low returns for their 1986 crops. International subsidy practices, fueled by the trade war between the European Community and the United States, had depressed prices to their lowest level in 50 years in real dollar terms.

Because this prolonged period of low prices continued into 1987, the program was extended to provide assistance on the 1987 crop. Assistance under the 1987 extension will be distributed in two installments the first installment of $ 800 million will go to producers by March 31. That is the installment covered by these estimates. The second $ 300-million installment will be paid by June 30 and will come from the 1988-89 estimates.

As was the case last year, payments will be made on acreage seeded to wheat, barley, oats, rye, mixed grains, corn, soybeans, canola, flax and sunflower seeds. Farm-fed grain is again eligible. Special crops have been added to the 1987 program. These include mustard, lentils, dry peas, canaryseed, safflower, buckwheat, fababeans, triticale, popcorn and dry beans. Benefits will be paid for alfalfa grown for processing. Finally, honey has also been included.

Individual payments will be made on the basis of price declines for eligible crops, regional yields, and seeded acreage. In Western Canada, provisions have been made to pay on summerfallow acreage since summerfallow is a common management practice among western grain producers, especially in drier regions. Also higher payments will be made this year to irrigation producers in recognition of their higher rates of yield.

The calculation of the assistance rate has also been changed for this year's program. Last year the rate on each crop was calculated as a combination of:

- loan rates determined by the U.S. farm bill
- estimated price decline between 1986-87 and 1985-86

This year, the assistance rate is calculated exclusively from the estimated price decline on eligible crops between 1987-88 and 1985-86. Officials indicate that by doing this, it is possible to subsidize farmers for such crops as mustard seed which are not directly affected by the U.S. farm bill. The Committee was pleased with this because it appears to be in response to the comment by the National Finance Committee in its report on Supplementary Estimates (A) 1987-88:

> ...the formula used to determine payments to producers takes into consideration only the estimated effects on individual commodity prices brought on by changes in the U.S. Farm Bill. No consideration is given to the specific actions of the European Economic Community. For example, if excess supplies in Europe of specialty crops such as mustard seed, safflower or lentils lead to dumping in the international market and result in falling incomes to Canadian farmers, no action under this program will be taken unless the United States takes prior remedial actions. This led Senators to believe the intent of the

program risked being thwarted by the specific mechanisms intended to provide relief to Canadian farmers. *(Proceedings of the Standing Senate Committee on National Finance p. 3:7)*

In responding to the impact of the program in 1987 on the different regions of Canada, officials indicated that 85 percent of the benefit went to western producers. This year, this percentage is expected to rise to 87 percent as summerfallow will now be eligible. Table I in the annex of this report illustrates that Saskatchewan is the largest receiving province in the west and Ontario in the East. The actual number of farmers expecting to receive the benefits is shown in Table II. The actual assistance rates for individual crops are shown in Table III.

Under the original terms of the program and under this extension, individuals are eligible for a maximum payment of $ 25,000. Individual partners of a farm operation run as a certifiable partnership will be eligible under the program. But no individual will receive more than a maximum of $ 25,000 nor can they receive benefits for the same acreage.

In addition, each individual on a family farm working the land on a full-time basis is eligible for payment up to $ 25,000. This also applies to cooperative enterprises farms. Officials indicated that last year, of the 2,300 farms with seeded acreage making them eligible for more than $ 25,000, owners of 1,550 of these received payments in excess of the maximum because of these multiple ownership of cooperation provision.

Respectfully submitted,

FERNAND-E. LEBLANC
Chairman

APPENDIX

TABLE I

Distribution of Payments Under the SCGP & the SCGP - 1987 Extension

	SCGP (Actual) %	SCGP-1987 Extension (Forecast) %
British Columbia	0.5	0.6
Alberta	26.8	27.1*
Saskatchewan	41.7	43.4*
Manitoba	15.8	15.7*
West	84.9	86.9
Ontario	11.4	9.6
Quebec	3.3	3.1
New Brunswick	0.1	0.1
Nova Scotia	0.1	0.1
Prince Edward Island	0.3	0.3
East	15.1	13.1

* Reflects redistribution amongst prairie provinces due to payment on summerfallow.

TABLE II

Number of Producers Receiving Benefits Under the Special Canadian Grains Program Payment 1987 Extention.*

	Number		
British Columbia	2,000	-	2,200
Alberta	47,600	-	50,000
Saskatchewan	70,500	-	75,000
Manitoba	25,300	-	27,000
Ontario	38,500	-	40,000
Quebec	16,700	-	18,000
New Brunswick	800	-	1,000
Nova Scotia	600	-	800
Prince Edward Island	1,800	-	2,000
Newfoundland	0	-	0
	203,800	-	216,000

* These estimates presume that the majority of specialty crop producers and eligible alfalfa producers also grow other eligible crops.

TABLE III

Preliminary Assistance Rates

	EASTERN CANADA		WESTERN CANADA	
	$/tonne	$/bu	$/tonne	$/bu
Wheat	16.16	0.44	14.65	0.40
Barley	16.52	0.36	14.97	0.33
Oats	8.14	0.13	7.38	0.12
Rye	4.60	0.12	4.17	0.11
Flaxseed	28.71	0.73	26.02	0.66
Canola-Rapeseed	18.65	0.42	16.90	0.38
Sunflower seed	5.62	0.08	5.09	0.07
Corn*	11.44	0.29	10.37	0.26
Soybeans	0.46	0.01	0.42	0.01
Mixed Grains	12.83	0.24	11.63	0.22
Mustard seed**				
Dry Peas				
Lentils				
Fababeans				
Dry Beans				
Buckwheat				
Canaryseed				
Safflower				
Triticale				
Alfalfa Processing				

* includes popcorn

** The preliminary rates for special crops will be announced in one month when the necessary marketing information is available.

THE SENATE

Wednesday, February 3, 1988

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

Prayers.

THE HONOURABLE FRED A. McGRAND

TRIBUTES ON RETIREMENT FROM THE SENATE

Hon. Charles McElman: Honourable senators, it is public information today that, effective January 22, 1988, the Honourable Fred McGrand has submitted his resignation from the Senate.

It is with considerable regret that one must acknowledge the retirement of the Honourable Fred McGrand, M.D. It is especially sad to me, as a fellow New Brunswicker who has known and respected him for some 40 years, to witness the close of a very active career in public service that has spanned more than 60 years.

Senator McGrand was appointed to the Senate on July 28, 1955, by the then Prime Minister, the Right Honourable Louis S. St. Laurent. He was one of a considerable number of distinguished Canadians appointed at that time. With his retirement only two of that group now remain—our colleagues, Senator David Croll and Senator Hartland Molson.

Senator McGrand's formal career in public service began some 28 years before his appointment to the Senate, when he was elected in 1927 to the Municipal Council of Queen's County in New Brunswick. He continued to serve there until 1937, for two of those years as warden of the municipality. In 1935 he was elected to the provincial legislature and re-elected at general elections in 1939, 1944 and 1948. He served as Speaker of the New Brunswick Legislature from 1939 to 1944. In 1944 Fred McGrand was appointed Minister of Health and Social Services in the McNair government, and continued in that capacity until the electoral defeat of that administration in the fall of 1952 by a former colleague here on the Hill, the Honourable Hugh John Flemming.

Senator McGrand has served in the Senate with honour and integrity for more than 32 years.

That is a statistical summary of Senator McGrand's career in public service. However, a mere reference to the statistics is quite insufficient. Let me speak of the person behind those impressive statistics. Fred McGrand was born and raised in rural New Brunswick in humble circumstances, which helped to shape and give direction to his activities, both professionally and politically. He was first and foremost a medical doctor, and he chose to establish his practice in rural New Brunswick in the small railway community of Fredericton Junction. Dr. McGrand was an advocate and practitioner of preventive medicine, both professionally and as Minister of Health and Social Services.

He treated the whole person, medically, surgically when required—and his operating theatre was often the kitchen table—and psychologically as a social worker, family adviser and father confessor. He was indeed the *compleat* physician. He made his patient's family an integral part of the treatment and recovery process. Something that is now recognized as being very necessary he recognized many, many years ago.

Without government assistance he personally financed and built a hospital in his community so that patients would know the comfort of remaining near the family home during treatment and convalescence.

In like sense, again both professionally and in government, he actively supported and promoted the Victorian Order of Nurses, an organization which also practises preventive care and treatment within the milieu of the home and in close cooperation with attending physicians.

It is no surprise, in light of his early life on the farm and humanitarian motivation, that Dr. McGrand has been an ardent and outstanding supporter, financially and otherwise, of the Society for the Prevention of Cruelty to Animals.

Very few people are aware that years ago Senator McGrand established a trust, that has been totally financed and administered by himself, in memory of a deceased daughter. A good number of young New Brunswickers who needed assistance in furthering their education, particularly in the nursing profession, have enjoyed the benefits of bursaries and scholarships from that trust. To this day, some 30 years following his active practice of medicine in New Brunswick, thousands of the people there speak his name with deep, personal respect, and that is the ultimate accolade.

In the Senate, Fred McGrand was a most active and persuasive member, along with such respected senators as David Croll and our former colleagues, Muriel Fergusson and the late Elsie Inman, of standing and special committees, whose landmark investigations and reports have led successive governments to develop enlightened policies, policies such as ARDA that has evolved into helpful programs for small agriculture and woodlot improvements and management, policies for improved pensions, health and social services for the aging, child welfare and family allowances, and so forth—in short, policies for people.

It was only the determination of Senator McGrand that caused the Senate, on May 5, 1980, to make a special reference to its Standing Committee on Health, Welfare and Science, as follows:

That the Standing Senate Committee on Health, Welfare and Science be authorized to inquire into and report upon such experiences in prenatal life and early childhood as may cause personality disorders or criminal behaviour in later life and to consider and recommend such remedial and preventative measures relating thereto as may be reasonably expected to lead to a reduction in the incidence of crime and violence in society;

Honourable senators, the report of that committee, entitled "Child at Risk", has become an internationally-recognized text book for those working in the field of social development and preventive criminology. It is one of the many accomplishments that has brought satisfaction and a true sense of worth to Senator McGrand. Enlightened action based upon that report and its recommendations will come and will be a tribute to the life and dedication of our colleague, a true reformer.

As honourable senators are aware, Senator McGrand was a model of reliability in his attendance in this chamber and in his dedication to committee work until this past year, when he suffered injury to his spine in an unfortunate accident. I can tell honourable senators that the decision to tender his resignation has been one of the most difficult he has ever taken. He misses very deeply his work and associations here in the Senate.

• (1410)

Honourable senators, it is an honour to be able to pay tribute in this place to a person who has been of such great value to the people of my province and the nation. I extend my best wishes for happiness and contentment in his retirement to Senator McGrand and to Mrs. McGrand.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I thank our colleague, Senator McElman, for having placed on the record something of the distinguished public career of Senator McGrand. I want to thank him most particularly for having shared with us his personal appreciation—based on a friendship now 40 years old—of Dr. McGrand's considerable contributions to the professional and public life of New Brunswick and Canada. It is indeed a remarkable record: election to municipal office somewhat more than 60 years ago; election to the provincial Legislature of New Brunswick in 1935—more than 50 years ago; and appointment to this place more than 32 years ago.

Senator McElman mentioned the report entitled "Child At Risk" that was issued a few years back by a subcommittee of the Standing Senate Committee on Social Affairs, Science and Technology, under Senator McGrand's chairmanship. That report was one of the first Senate committee reports that I read from cover to cover after coming to this place, and I read it with tremendous fascination and respect. It is obviously a tremendous contribution—one of the greatest contributions that this or any other parliamentary body has made—to our knowledge and appreciation of an exceedingly complex subject. It has occurred to me more than once in the last couple of days that we will be revisiting that report in the not too distant future in the discussions that are bound to take place as a result of the Supreme Court decision of last week.

[Senator McElman.]

I simply want to join with my honourable friend in speaking on behalf of the government and all our colleagues in the Conservative Party to express our gratitude for the 32 years of service that Senator McGrand has given to Canada and New Brunswick in this chamber, and to record our profound admiration and respect for him as he leaves us.

Hon. Roméo LeBlanc: Honourable senators, may I be allowed, as one who had the real pleasure of being Senator McGrand's seatmate, to say a few words? I claim that honour, but there is a more important reason for saying a word about Senator McGrand.

I grew up in a household where there was a small number of pictures: one was of the Sacred Heart; one was of H.R. Emmerson, who had been Minister of Railways at times which were better for the CNR in my province; and one was a picture of Allison Dysart, who had been the Premier of New Brunswick from 1935 onwards, and in whose party and government Senator McGrand served as a rookie member of the legislature. Because I was so delighted to be his seatmate, I engaged him in conversation during the quieter moments in this place. I questioned him about the days of the Dysart government, which was very progressive for its day, that is, 1935. That government, in fact, was responsible for New Brunswick being among the first—if not the first—of the provinces of this country to give its residents old age pensions, even if the amount was very modest.

Senator McGrand was a Liberal then, and he stayed liberal in the real sense of the word. I suspect that he is still more liberal than some of us. He is, perhaps, old in years, but he is certainly young in ideas, in interests and in anything that is new that could "alimenter" discussion on issues that are so important.

[*Translation*]

Honourable senators, at this point I feel I must take this opportunity to say a few words in French, especially since Senator McGrand told me a story I find very reassuring. He told me that in 1935, in the Dysart government's caucus, they debated whether a letter written in French by a resident of New Brunswick should be answered in French. After some discussion, it was decided that when a letter to the government in Fredericton was written in French, it should be answered in the language of the sender.

If we consider the progress achieved in our province since that time, I believe it is thanks to the attitude of those pioneers described by Senator McGrand. It is thanks to them that in the course of its history, our province has managed to establish a greater measure of justice.

[*English*]

I am sorry to have lost my seatmate, but I am hopeful we will have occasion to meet him again.

Hon. Senators: Hear, hear!

STANDING RULES AND ORDERS

THIRD REPORT OF COMMITTEE PRESENTED

Hon. Gildas L. Molgat, Chairman of the Standing Committee on Standing Rules and Orders, presented the following report:

Tuesday, February 2, 1988

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

THIRD REPORT

On Tuesday, January 26, 1988, a Message from the House of Commons requesting a change in the name of the Standing Joint Committee on Regulations and other Statutory Instruments to the Standing Joint Committee on Regulatory Scrutiny was referred to your Committee for consideration.

Your Committee considered the Order of Reference on Thursday, January 28, 1988, and recommends that Rule 67(1) of the *Rules of the Senate* be amended by striking out paragraph (d) and substituting the following:

"(d) the Joint Committee on Regulatory Scrutiny to which shall be appointed eight senators".

Your Committee further recommends that a Message be sent to the House of Commons to acquaint that House of the above action.

Respectfully submitted,

GILDAS MOLGAT
Chairman

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

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

FOURTH REPORT OF COMMITTEE PRESENTED

Hon. Gildas L. Molgat, Chairman of the Standing Committee on Standing Rules and Orders, presented the following report:

Wednesday, February 3, 1988

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

FOURTH REPORT

Your Committee has considered a recommendation of the Subcommittee on Budgets of the Standing Committee on Internal Economy, Budgets and Administration requesting a re-examination of Rule 112 of the *Rules of the Senate* with respect to the date by which the statement of the Clerk's receipts and disbursements are tabled.

Your Committee examined the matter on Thursday, January 28, 1988, and recommends that Rule 112 of the *Rules of the Senate* be amended by striking out the word "May" and substituting the word "October".

Respectfully submitted,

GILDAS MOLGAT
Chairman

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

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

● (1420)

CHILD CARE

NOTICE OF MOTION TO AUTHORIZE SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE TO CONTINUE STUDY OF FINAL REPORT OF SPECIAL HOUSE OF COMMONS COMMITTEE ON CHILD CARE ENTITLED: "SHARING THE RESPONSIBILITY" AND FEDERAL RESPONSE

Hon. Mira Spivak: Honourable senators, I give notice that on Tuesday next, February 9, 1988, I will move:

That, notwithstanding its order of reference of 5th May, 1987, the Standing Senate Committee on Social Affairs, Science and Technology be authorized to continue the examination of the Final Report of the Special Committee of the House of Commons on Child Care, entitled: "Sharing the Responsibility";

That the Committee be further authorized to examine the Federal Response to the said Final Report in which is outlined the National Strategy on Child Care; and

That the Committee present its Report no later than June 30, 1988.

QUESTION PERIOD

[*English*]

NATIONAL DEFENCE

CANADIAN ARMED FORCES—APPOINTMENT OF SENIOR OFFICERS—FEMALE REPRESENTATION

Hon. Lorna Marsden: Honourable senators, the Leader of the Government in the Senate will no doubt have noticed that on January 11 last the Minister of National Defence released three press releases in which he noted the appointment of a total of 40 senior officers of the Canadian Armed Forces. In two of the press releases we are given the names of the people who were promoted, including their first names, but in one press release we are given only initials, which makes it impossible for me to discover whether among the 40 there were any women. Does the Leader of the Government know what the breakdown is? If not, could he obtain that information?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I do not know the answer to that question, but I shall obtain a reply from my colleague.

HUMAN RIGHTS

JAPANESE CANADIANS—GOVERNMENT APOLOGY AND COMPENSATION

Hon. Jerahmiel S. Grafstein: Honourable senators, I have a question for the Leader of the Government in the Senate. It is now the year 1988. Since 1984 I have repeatedly asked the government, including the Leader of the Government in the Senate, whether it is prepared to fulfil the promise made by Mr. Mulroney at the time of the last election to apologize to and partially compensate Canadians of Japanese descent for acts done by the Government of Canada during and following the Second World War. Can the minister give us any further enlightenment as to the progress of this long and difficult question?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I shall ask my colleague, Mr. Crombie, to bring us up to date on that matter.

THE ESTIMATES, 1987-88

REPORT OF NATIONAL FINANCE COMMITTEE ON SUPPLEMENTARY ESTIMATES (D) ADOPTED

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, with leave of the Senate, I ask that Order No. 6, consideration of the sixteenth report of the Standing Senate Committee on National Finance, be moved up so that we can deal with it before we come to the first order of the day. Order No. 6 concerns Supplementary Estimates (D), which provide for payments to be made to the grain farmers under the grains assistance program. Therefore, in anticipation of debate on the second reading of Bill C-108, which provides for the actual granting of that supply, I ask leave to deal with Order No. 6.

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

Hon. Senators: Agreed.

The Senate proceeded to consideration of the sixteenth report of the Standing Senate Committee on National Finance (Supplementary Estimates (D) 1987-88), presented in the Senate on 2nd February, 1988.

[*Translation*]

Hon. Fernand-E. Leblanc: Honourable senators, I move that the report be adopted.

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

[Senator Marsden.]

Hon. Senators: Agreed.

Motion agreed to and report adopted.

[*English*]

APPROPRIATION BILL NO. 5, 1987-88

SECOND READING—DEBATE ADJOURNED

Hon. C. William Doody (Deputy Leader of the Government) moved the second reading of Bill C-108, for granting to Her Majesty certain sums of money for the Government of Canada for the financial year ending the 31st March, 1988.

He said: Honourable senators, the bill before us is Appropriation Bill No. 5, 1987-88, which provides supply for all of Supplementary Estimates (D) for 1987-88. These Estimates total $804 million. They were tabled in the Senate on January 26 and were referred to the Standing Senate Committee on National Finance on January 26. These special Estimates were discussed with officials from the Department of Agriculture and Treasury Board on January 28, 1988, and were reported on February 3.

These Supplementary Estimates seek funding for the Special Canadian Grains Program previously announced by the government. When approved by Parliament, the funding will enable the Department of Agriculture to make payments in the 1987-88 fiscal year to Canadian grain producers for their 1987 crop. The total estimates for this program amount to $1.1 billion, and $300 million will be provided in 1988-89. Honourable senators will recall that a similar program was undertaken relative to the 1986 crop. Payments under that program were made in the 1986-87 and 1987-88 fiscal years.

Honourable senators, this bill is in the usual form, and I am assured that it contains only the authority for the grain payment described. If honourable senators wish any further information, I will do my best to provide it.

I have here the statement of supply to date for 1987-88 and the statement of estimates tabled to date for 1987-88. I ask that they be appended to today's proceedings.

(*See appendix, p. 2631.*)

Hon. H.A. Olson: Honourable senators, I would like to say a few words in connection with Bill C-108. I am not a member of the Standing Senate Committee on National Finance, which studied the bill, but I see that the report of the committee is here. Although I was advised of the meeting by the chairman of the committee—and I want to thank him for that—when the matter was before the committee I had to attend to other commitments which had been made, and so I could not attend the meeting. Therefore, I would like to adjourn the debate and deal with it tomorrow.

Senator Doody: Honourable senators, the government has no problem with that. Royal Assent has been arranged for tomorrow. If the bill passes the second and third stages, we will be most pleased. Although there is no immediate squeeze, there is always a problem with cheque timing, and so on, and dealing with the bill tomorrow will not cause any great inconvenience.

Senator John B. Stewart: Honourable senators, I wonder if the Leader of the Government could tell us when the Main Estimates will be forthcoming. Part of the money to be spent for the 1987 crop year will be covered in the 1988-89 Main Estimates, so it would be helpful to know when those Main Estimates will be before Parliament.

Senator Doody: Honourable senators, I do not have that information with me, but I will certainly seek to obtain it for tomorrow.

On motion of Senator Olson, debate adjourned.

THE CONSTITUTION

FIRST MINISTERS' ACCORD AND AGREED TEXTS—CONSIDERATION IN COMMITTEE OF THE WHOLE—ORDER STANDS

On the Order:

> The Senate again in Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I know that there are witnesses waiting to appear before the Committee of the Whole on the Meech Lake Accord. The order is to be called no later than 3 p.m., but Senator Molgat, the committee chairman, is not in the chamber. He may well be advising the witnesses about their appearance. Perhaps it would be appropriate for us to proceed with the rest of the Orders of the Day and to revert to Order No. 5 later.

• (1430)

Senator Molgat has just entered the chamber. We have reached Order No. 5. If the witnesses are ready, there is no reason why we cannot proceed. If they are not ready, we can deal with the other orders and revert to this order. I suggest that we ask Senator Molgat to recommend the course we should take.

Hon. Gildas L. Molgat: Honourable senators, the first witness is due to appear at 3 o'clock. He is indeed somewhere in the building, but we do not have him at hand at the moment. So perhaps the best thing would be to proceed through the order paper. We will try to reach him as quickly as we can, and as soon as he is available I shall so inform the Senate.

Order stands.

THE SENATE

MR. LARRY GENDRON—FELICITATIONS ON RETIREMENT FROM SENATE

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, while we have some time in hand, and though it is not our custom to acknowledge in the Senate the retirement of all our employees, there is one employee of the Senate who, this week, is retiring after 30 years of service. His name is Mr. Larry Gendron. Most honourable senators will know him as a member of the Committees Branch, who has been a very helpful and loyal employee, certainly in all of my time here. Larry began his employment with the Senate on January 8, 1958, with the Gentleman Usher of the Black Rod, Major Lamoureux, as a Senate messenger for a two- month term. Then from March 1958 to 1963 he worked as a confidential messenger to the Honourable Ross Macdonald, then Leader of the Opposition in the Senate, and his assistant, Alastair Fraser, who as you know, eventually became the Clerk of the House of Commons. From 1963 to 1965 Mr. Gendron worked as a confidential messenger to the Honourable Alfred Brooks and his assistant, the Honourable James McGrath. From 1965 to 1972 he was a constable, and then, from 1972 to date, a records clerk in the Committees Branch.

As I say, Mr. Gendron will be retiring at the end of this week. He is retiring in good health, so we can confidently wish him a happy and prosperous retirement.

Senator Argue: He will be greatly missed.

Hon. Senators: Hear, hear!

THE CONSTITUTION

FIRST MINISTERS' ACCORD AND AGREED TEXTS—CONSIDERATION IN COMMITTEE OF THE WHOLE CONTINUED

On the Order:

> The Senate again in Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to.

The Senate was accordingly adjourned during pleasure and put into a Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to, the Honourable Gildas L. Molgat in the Chair.

The Chairman: Honourable senators, if the committee is ready to proceed, we will come to order.

Pursuant to Order adopted on June 18, 1987, Mr. Vincent J. MacLean was escorted to a seat in the Senate chamber.

The Chairman: It is my pleasure this afternoon to welcome as our first witness Mr. Vince MacLean, Leader of the Opposition from the province of Nova Scotia. Mr. MacLean has submitted a copy of his presentation and it will be sent to all honourable senators.

Mr. MacLean, normally we proceed with a presentation from the witness and then leave time at the end of that presentation for questions by members of the Senate. We are working within the time frame of one hour, so if you are ready to proceed we will be happy to hear from you.

Mr. Vincent J. MacLean, Leader of the Opposition, Province of Nova Scotia: Mr. Chairman, I thank you very much. I will keep my submission as brief as possible in order to allow for questions. As well, I have submitted to the Clerk a background paper which provides clarification for a number of questions and answers to some of the statements that I will make today.

Honourable senators, I welcome the opportunity to appear before this committee today. Before the Meech Lake Accord Canada was constitutionally incomplete, because the Province of Quebec stood outside of that constitutional agreement. I support the accomplishment that occurred at Meech Lake, but I contend that the Meech Lake Accord is not a perfect document and that there is considerable room for improvement in the 1987 Constitutional Accord.

I reject the proposition put forward by some that the Meech Lake Accord is unalterable. The political will displayed by the First Ministers who drafted the accord must now be equalled by those who, with the legislative authority, will make recommendations to improve and, let us hope, change that accord.

This committee has heard many recommendations from concerned citizens across the country, many of whom wish to see the accord improved. I am one of those individuals. I suppose you must start your consideration of the accord with a reference to your vision of Canada.

Canada is a country that has many strengths. One of those strengths is not only the equality of her people but the equality of her regions. Coming as I do from Atlantic Canada, in my opinion it is very important for Atlantic Canadians to see a strong central government maintained. The ten provinces often represent widely diverging interests in this country, and I feel that a strong central government is necessary in order to see that there is equality across the country. I fear that the central government's ability to offer Canadians new and exciting social programs is jeopardized by the accord, and I refer specifically to subsection 7(1) of the accord. I believe that that subsection impairs the federal government's ability to initiate any new national shared-cost programs. By allowing the provinces to opt out of new national programs and receive reasonable compensation the stage is set for a national patchwork of social programs.

Medicare is an excellent example. Had this accord been in place in the 1960s I am quite sure that implementation of Medicare would not have been possible. However, a strong central government insisted on going forward with it and urged Quebec and Ontario to join in, which they inevitably did, making for one of the best medical care systems that exist in the world.

Another example is child care. With that particular situation we have ten provinces attempting to establish ten different child-care programs across Canada, each "compatible" with the national objective, but far different in scope and method from one another. The result can hardly be called a national program.

There are no judicial definitions of "reasonable compensation" or "compatibility", nor is there any clear understanding of what is meant by "national objectives." Some individuals indicate that we should wait for a judicial decision to interpret what those words actually mean. I would prefer to see those definitions in the accord rather than left to the interpretation of the courts. I would rather see the language of this clause clarified than discover that, according to the courts, last year the First Ministers signed away the potential for any new national shared-cost programs.

Another concern that I have deals with sections 2 and 16 of the accord. In tandem, they raise the question as to whether gender equality rights guaranteed in the Charter of Rights and Freedoms could be overridden by the linguistic duality/distinct society clause. The issue of gender equality rights is too important to await a decision from the courts. I believe that the accord should include a clause that states that gender equality rights override linguistic duality/distinct society provisions.

The final point that I would like to bring to your attention relates to an area that has received the most attention in my province of Nova Scotia. It deals with one seemingly harmless clause, namely, paragraph 13(2)(b) relating to the fisheries. Here we discover that "roles and responsibilities in relation to the fisheries" have been placed on the agenda of all future First Ministers' annual constitutional conferences. That seems innocent enough, but consider that its very inclusion in the Meech Lake Accord suggests that constitutional changes are required in the "roles and responsibilities" in relation to the fisheries. I think we can all agree that improvements are possible, but shifting the traditional responsibility for such vital decisions—such as who gets licences and how quotas are shared—from Ottawa to the provinces would not be an improvement. Actually, I think it would cause chaos in the industry.

Industry spokesmen have indicated quite clearly that it would cause uncertainty and anxiety if it is left in the accord. This uncertainty cannot now be completely corrected. The fact is that the clause referring to fisheries has been included in the accord, and to remove it would be next to impossible. However, it is possible to amend that particular section to protect the traditional and historic rights of Nova Scotia fishermen as well as safeguard the industry from total chaos. I believe that is essential.

Nova Scotians have been sailing to and fishing off the waters of Newfoundland for the past 200 years. The right of Nova Scotians to fish in these waters has been established both through history and tradition. Some of that history and tradition was also utilized when we established our claim to a section of Georges Bank. This right is now jeopardized by Newfoundland's desire to gain greater constitutional authority over fishery matters.

I want to point out that I have no quarrel with Brian Peckford. He is doing what he thinks is best for the province of Newfoundland. However, those gains to Newfoundland would be made at the expense of Nova Scotians. Taking jobs and opportunities from Nova Scotians and moving them to another province is certainly not my idea of how Canada works. Should Newfoundland's legitimate aspirations for greater prosperity be furthered by removing economic activity from Nova Scotia? To that I answer categorically no.

The question that arises is, what is Newfoundland's constitutional objective? Brian Peckford has confirmed that the

fisheries clause was included in the Meech Lake Accord at his insistence. For the past ten years Brian Peckford has been quite clear in his aspirations with reference to the fisheries. As a matter of fact, the Government of Newfoundland submitted a document to the federal cabinet Committee on Fisheries Restructuring in March of 1983. In that document the Government of Newfoundland stated:

> Newfoundland takes the position that all stocks of fish in its adjacent waters must be available to the Newfoundland fleet until existing (Newfoundland) plants are fully utilized.

In other words, Brian Peckford is saying that in those waters which are defined as Newfoundland waters the fish should be caught by Newfoundland fishermen, in Newfoundland boats, and processed in Newfoundland plants, and, if there is any left over after that occurs, then other provinces can share in those fisheries.

Mr. Peckford was also very careful to mention that he does not want complete jurisdiction. He only wants shared jurisdiction or concurrent jurisdiction. He does not want control over international relations, the setting of the total allowable catch, policing, and fisheries research. He is prepared to leave those expensive items under the control of the federal government. Newfoundland's objective, therefore, is to shift the responsibility of licensing and the division of quotas to the provinces. This would allow the provinces to determine who fishes off their coast and where that catch is landed.

Can Brian Peckford achieve this particular objective under the accord as it now exists? The answer is yes, because seven out of ten provinces with 50 per cent of the population would have to agree to any change. Even if Nova Scotia, Prince Edward Island and New Brunswick were to disagree with the transfer of jurisdiction, it could still be passed, because the seven-out-of-ten rule would apply. The province with the most to lose in this particular situation is my province, and Nova Scotia would be powerless to stop the process.

What kind of economic impact would it have on Nova Scotia? First, the fishery would be balkanized. Imaginary lines would be drawn between the various Atlantic provinces. Who would control the Bay of Fundy or the Northumberland Strait or the Gulf of St. Lawrence, or where would the dividing line be between Newfoundland and Nova Scotia? At stake here is approximately 5,000 to 6,000 Nova Scotia jobs. The loss of that fishery would send economic shock waves throughout Nova Scotia. Proud towns like Liverpool, Lunenburg, Canso, Louisburg, Lockeport and Petit-de-Grat and Alder Point would lose their largest employer. Unable to fish off Newfoundland, where would these trawlers go? They would go to the Scotian Shelf, where there would be greater competition for the already limited resources and place additional burdens on the in-shore fleet in that area.

● (1450)

In short, this seemingly innocent clause in the Meech Lake Accord has the potential of reducing Nova Scotia's relatively prosperous fishing industry by almost half. To be specific, in 1986, out of so-called Nova Scotia waters, Nova Scotians landed 136 million pounds of fish; out of so-called Newfoundland waters, Nova Scotians landed 130 million pounds of fish, approximately 50/50. For those of you unfamiliar with fishing, a million pounds of groundfish will create 13 jobs. With a multiplier of 2.9, that means, on the low side, 5,000 jobs, and, on the high side, 6,000 jobs within the province of Nova Scotia.

The Fisheries Council of Canada told a special parliamentary committee that the fisheries clause in the Constitutional Accord has initiated a process that, if left unchecked, would:

(1) Cause conflict between the provincial and federal governments;

(2) Cause ongoing uncertainty in the fishing industry, thus crippling investment and initiatives; and

(3) End with the balkanization of the fisheries leading to escalating government costs and fisheries management chaos.

Fishing in the province of Nova Scotia is more than just an economic pursuit, it is a way of life in our coastal communities, and one that should be protected.

The obvious question that now arises is: What is the remedy? As honourable senators well know, the Meech Lake Accord cannot become law until it is passed by the 11 Parliaments of this country. If there is to be a fundamental change in the responsibilities of government in relation to the fisheries, surely the provinces most affected by the fisheries must be in agreement. Other matters are on the agenda, such as Senate reform, and that would require the unanimous approval of all ten provinces, as listed under section 9 of the accord, section 41 of the Constitution Act, 1982.

I am proposing that the roles and responsibilities in relation to the fisheries be included in a list of items that require unanimous consent. This simple amendment would, in effect, give the provinces with a direct interest a veto over the changes in reponsibility. In other words, every province that has an interest in the fisheries would have the right to veto any changes in the roles and responsibilities or jurisdiction before those changes were made.

This amendment does not close the door to future changes in jurisdiction, but it does ensure that all parties affected agree with those changes. Senate reform requires unanimous consent. Based on symmetry alone, or parallel construction in legislative drafting, it is not unreasonable that fisheries changes should also require unanimous consent. As a member of the Official Opposition in the province of Nova Scotia, I will be putting forward such an amendment when the Constitutional Accord comes before the House of Assembly in the province of Nova Scotia, hopefully when the session opens on February 25.

Honourable senators, the Meech Lake Accord has been called a flawed document. I concur with that assessment, but I also consider the Constitution Act of 1982 flawed simply because Quebec was not then a willing participant in the constitutional process, but to correct one flaw with several

more is not the way to proceed. I understand Quebec's constitutional aspirations. I believe that those aspirations could still be met in a Meech Lake accord that took into consideration the concerns that I have raised. I have asked for: (1) Wording to be clarified; (2) Rights to be made clear; (3) The fisheries clause to be amended.

There is absolutely no connection between Atlantic Canada's fish and Quebec's aspirations. Nova Scotia should not be asked to pay such a price for Quebec's signature. I want to see Quebec sign the Constitutional Accord, but I do not want to see 5,000 Nova Scotians lose their jobs as a consequence.

I thank honourable senators for their kind attention and I am prepared to attempt to answer questions honourable senators wish to address to me.

The Chairman: Thank you, Mr. MacLean. I have a number of names on my list already. We will start with Senator Hicks, to be followed by Senator Ottenheimer.

Senator Hicks: Thank you, Mr. Chairman. Thank you, Mr. MacLean, for your cogent observations on the Meech Lake Accord and for the legitimate expression of the concerns of some Nova Scotians with particular respect to the likelihood of changes which would affect our fishing industry. I am sure we all agree with you on that, but I would like you to clarify your position just a little further.

The accord says that the the question of fisheries will be on the agenda of succeeding First Ministers' conferences. It does not, as I understand it, say anything more than that. In other words, there is no predetermination that changes will result from the consideration at the First Ministers' conferences.

Is it not true that, while you could have a constitutional amendment which would affect fisheries now if, as you said, it were approved by seven provinces having 50 per cent of the population of Canada, when the Meech Lake Accord comes into effect that would require unanimous consent, and every province would, in effect, have a veto in relation thereto? Would you comment on that?

Mr. MacLean: Thank you, senator. I believe that the very fact that it has been included on every agenda until it is resolved indicates that constitutional changes are necessary. That has been indicated by Brian Peckford in his statements in Newfoundland to the effect that he has felt for the first time a real achievement has been made, because that will be dealt with in a constitutional manner.

Fisheries was on the agenda of only one of the last seven First Ministers' conferences. If it is now going to be on every agenda, regardless of who the premier of Newfoundland is, whether that individual be a Liberal or a Conservative, whether it be Brian Peckford or someone else, that individual will be forced, because this item is on the agenda, to make strong arguments on behalf of his fishermen. In making those arguments—and they will be made, to some extent, publicly—to demand changes for his province, you are forcing that individual to continually take that position by having it continuously on the agenda. Sooner or later the other provinces—western provinces which have no axe to grind on this particular issue—will say: "What do we have to do to get this item off the agenda?"

Under the accord, as I read it, respecting fisheries only seven out of ten provinces would be necessary to transfer that jurisdiction. It is quite likely, then, that some deal could be made to gain the support of the Premier of Newfoundland on a particular item in return for the transfer. Even if the other three maritime provinces objected, the whole process could go forward. That is why I have asked for a veto for the provinces concerned so that they must all be in agreement before such a transfer could occur.

Senator Hicks: I will not argue with the witness, Mr. Chairman, but I will leave that point with the suggestion that, if that were to occur, that would require a constitutional amendment—that is, to transfer jurisdiction in relation to fisheries from the federal government to the provinces, or to some province with respect to some part of the fishery. If that is going to be done on the basis of seven provinces with 50 per cent of the population agreeing, it has to be done before the Meech Lake Accord becomes effective, because, once the Meech Lake Accord becomes effective, all the provinces have to agree to a constitutional change.

Mr. MacLean: Senator, I hope that you are right in that particular aspect, but I have consulted a considerable number of people who are knowledgeable and they informed me that even after the accord is passed seven out of ten would be able to transfer the fisheries. That is why I am expressing that particular point of view.

• (1500)

Senator Hicks: If that is so, you are certainly correct, and I agree with you. I will have to look more carefully into the situation.

Do you think that under any circumstances the jurisdiction over fisheries should be transferred to a province or a group of provinces, or do you think it should stay with the federal government, as it is now?

Mr. MacLean: I believe that the jurisdiction should stay with the federal government in order to ensure that the resource is protected and that we eliminate conflicts between provinces. If you transfer jurisdictions to provinces, we will have continual arguments over whether or not the fleet should be on one side of the Bay of Fundy or the other, or on one side of the Northumberland Strait or the other, and it will make a conflict between fishermen in Atlantic Canada almost impossible to avoid.

I have drawn a map which indicates the possible respective boundaries that would come into effect—one that was used with reference to the offshore agreements—and I have submitted that in the package which you will be receiving a little later. If you can see the lines that would be drawn when fishermen traditionally fished in many other areas, then you would see the great possibility for that conflict. I believe that the jurisdiction should remain with Ottawa.

Senator Hicks: Thank you, Mr. MacLean.

The Chairman: Next is Senator Ottenheimer, followed by Senator Frith.

Senator Ottenheimer: I am sure the witness is aware that the position put forward by Newfoundland, which was agreed upon, is an examination or discussion of roles and responsibilities in relation to fisheries. There is not, nor has there ever been to my knowledge, a request or expectation that there will be a transfer of jurisdiction; that fisheries will cease being within federal jurisdiction and will become a matter of provincial jurisdiction. That is not the position which was taken by Premier Peckford or by his government but, rather, that that whole area should be re-examined to see if there may be shared jurisdiction with respect to certain aspects of the fishery. Nor has the suggestion been that this would only be for Newfoundland; it would be for all coastal provinces who so wished.

I would ask the witness if he thinks there might be some merit in this. First, I emphasize that it is not the position of Newfoundland that the fishery would come under provincial jurisdiction, not federal. That is not it. It is to examine and discuss together with all the provinces and the federal government the possibility of sharing jurisdiction, and also that this be accessible to all coastal provinces, because obviously we are speaking about ocean fisheries and the concept of a joint management. For example, the Atlantic Accord deals with an entirely different resource. It deals with hydrocarbon resources on the continental shelf off Newfoundland. After that was negotiated, a quite similar agreement was entered into between Nova Scotia and the federal government. I realize the resources are different, but I believe that these accords are something quite new and imaginative in terms of joint federal-provincial resource management. Maybe a mechanism like that might not be of interest to other coastal provinces—not only Newfoundland. Nova Scotia may not wish to exercise some shared jurisdiction in terms of fishery management in the waters as well.

To sum up, as a Newfoundlander, I never look forward to getting into arguments with Nova Scotians. We have many things in common, particularly a lifestyle which in many ways is the same. But the real threats to the fishery on the east coast of Canada today are basically foreign. There has been the Canada-France situation, the overfishing on the nose and tail of the Grand Banks by the Spaniards and Portuguese just outside the 200-mile limit, but still on the continental shelf; and then the overfishing by Common Market countries. In a more internal manner in Newfoundland—it may be less so in Nova Scotia, but it might be a problem there too—we have had some bad failures of the inshore fishery. It is difficult to identify why, but some people think it is because the offshore effort is too great—and that could be the Canadian effort as well as the foreign effort. There are all of these problems.

I think it is in our best interests as Atlantic provinces—and the others as well—with fishermen who are dependent on the fishery for the economy, to endeavour to work together.

I believe that the witness is extremely suspicious of Premier Peckford and his government, and of Newfoundland's motivation. I would point out that this is a shared jurisdiction, not a total transfer, and it is suggested that it be available to all the coastal provinces. That is not much of a question, but I wish to put it that way and end with this question: Does the witness think that there is some merit in that?

Senator Frith: You say "extremely suspicious." Are you suggesting "unjustifiably" so?

Senator Ottenheimer: In my opinion it is, but I did not wish to use such a term. However, I thank the honourable senator for using it for me.

Mr. MacLean: Perhaps the reason that I am a bit suspicious of Premier Peckford and his statements is that he has remained an extremely committed Newfoundland premier, with a vision of how he wants to see resources—which he considers to be within the rightful ownership of Newfoundland—controlled.

As a matter of fact, on July 8, 1978—and I can go year by year—Premier Peckford stated:

> The proposition that the fish off this province of (Newfoundland) 'are the property of all Canadians' is not only legal nonsense but is morally untenable and not in accordance with the nature of our federation.

In 1979, in the discussion paper by the Government of Newfoundland and Labrador on the bilateral issues of the fishery, he stated:

> Management of the Province's fisheries resource must proceed from the basic principle that the people of Newfoundland have an historic and moral right to the economic benefits which can be derived from those resources in its surrounding area. This right is no less compelling than Alberta's right to its resources on land. Newfoundland believes that it must have a predominant role, and, in certain cases, the paramount voice in the management of the fisheries resource in those areas of the Canadian 200-mile zone which are contiguous to the Province. We also believe that this can only be assured for the longer-term by a Constitutional amendment.

All of those statements, and many more dating back ten years, continually show that Brian Peckford wants to obtain a constitutional amendment which would give Newfoundland greater authority over what he terms as Newfoundland waters. If we permit that to occur, and the division of the quotas as well as licensing and where fish are to be landed are transferred to the provinces, that would be positive for Newfoundland. However, it would be extremely negative towards the province of Nova Scotia.

The Chairman: Does that conclude your questioning, Senator Ottenheimer?

Senator Ottenheimer: If I may be permitted another one, then that will conclude my questioning.

The Chairman: Yes.

Senator Ottenheimer: I realize what the witness is saying there, but I think it is late to dwell on whether Premier Peckford used the term "a kind of historic right or custom" or

not. If one were to maintain that there were historic rights for Newfoundlanders in certain waters adjacent to Newfoundland, obviously one would also agree that in certain waters adjacent to Nova Scotia, the Gaspé or British Columbia there were areas where historically, not only over decades but in some cases centuries, residents of a specific area had fished and this was the foundation of their socio-economic life. In a sense, that has been recognized internationally. It was recognized in the Anglo-Norwegian fisheries case back in the 1950s.

• (1510)

What I am suggesting and asking our witness to consider is, if there is implied there an assertion of historic right for a certain population in certain contiguous, adjacent waters, then, obviously, that would be true in areas of his province and in areas of other coastal provinces.

It would appear to me that if we were to discuss the subject of fisheries in the constitutional framework that might be the appropriate milieu to vent whatever differences there may be between Nova Scotia and Newfoundland. They could perhaps both benefit from having more say in the definition of the resource and they could thrash out their differences for the benefit of both.

Mr. MacLean: I accept the position of the honourable senator. Perhaps he could assist me in citing the clause in the accord which would indicate that we would not have a transfer of jurisdiction to any one particular province unless, in this particular case, the four Atlantic provinces agreed. If the four Atlantic provinces agreed, then I could accept the position put forward by the honourable senator. Problems have to be worked out, and that could be a good forum. All I am asking for is a safeguard to ensure that the best interests of Nova Scotia are protected when such negotiations take place.

Senator Ottenheimer: I thank the witness. I may have appeared to have been debating with him, but my questions were put with the intention of exchanging information.

Senator Frith: My question, obviously, can only be from the point of view of an ill-informed but guileless Upper Canadian—

Senator Doody: A rare commodity!

Senator Frith: —who only vaguely understands these issues. I am only going to ask for information; I am certainly not going to get into this fight, misunderstanding or discussion between Nova Scotia and Newfoundland.

I want to touch on the traditional and historic side of the question, which was raised by Senator Ottenheimer, but I will not do that unless there is time at the end of our hearing.

I will combine my other two questions by referring to the hypothetical offshore boundaries chart. It says on the chart, "All boundaries are unofficial, based on the equidistant principle." This hypothetical offshore boundaries exhibit illustrates simply a mathematical set of boundaries. Is that correct?

Mr. MacLean: Correct.

[Senator Ottenheimer.]

Senator Frith: They are not hypothetical in the sense of boundaries that have been discussed as a basis for agreement. These boundaries are simply based on the mathematical equidistant principle and might—I take it the witness is saying—be a starting point for discussion if the matter ever got to that point. Is that correct?

Mr. MacLean: Yes, they are purely hypothetical from a mathematical point of view. However, I would ask you to take a look at the map and try to imagine, for example, how you would divide that piece of territory called the Bay of Fundy between Nova Scotia and New Brunswick for fishing purposes. It would create an extremely difficult situation if you were to start drawing provincial lines in Canadian waters.

Senator Frith: I see that a line has been drawn through the Bay of Fundy in this chart.

Mr. MacLean: Yes.

Senator Frith: Is that equidistant?

Mr. MacLean: Yes.

Senator Frith: I take it that there is not enough fish for everybody within those boundaries, and, to be very specific, if we had those boundaries you feel that 5,000 or 6,000 jobs in Nova Scotia would still be threatened. Is that correct?

Mr. MacLean: If we had those boundaries, Nova Scotia would gain a little in that the Newfoundland fisherman who would normally fish off the Scotian shelf—there are a few—would be, supposedly, excluded from that area, and, if you took the argument to a logical conclusion, Nova Scotians would be excluded from the other. You would have a net loss of approximately that number of jobs, which would be devastating. Of course, for every job lost in Nova Scotia a corresponding job would be created in the Newfoundland fishery.

The major corporations such as National Sea could easily transfer their processing capacity to Newfoundland, but what we would lose would be the jobs on the trawlers that would have been manned by Nova Scotians and the jobs of the fish plant workers which could not be transferred to Newfoundland by Nova Scotians moving to Newfoundland. What it means in a specific sense is that Newfoundland would be able to export its unemployment to Nova Scotia.

I have great sympathy for the very high unemployment rate in Newfoundland as I have for the high unemployment rate in my own province, but I do not think that playing one province against another is a way to generate economic activity in an area that needs a lot of assistance.

Senator Frith: Mr. Chairman, that answers those questions.

I was intrigued by the statement that the tradition of Nova Scotia fishermen fishing those particular waters dates back to the 1700s.

Mr. MacLean: They have been fishing in those waters for over 200 years. Nova Scotia fishermen and Nova Scotia boats have been fishing in those waters, taking back northern cod, having it processed in Nova Scotia plants and then exporting it for sale since then.

Senator Frith: Mr. Chairman, if there is time, I would like to return to that question. Again, I would not be taking sides, I would be merely asking for further intriguing historical information.

Senator Doody: I have a question of clarification on that matter. Who drew this hypothetical map with the equidistant boundaries? Am I correct in assuming that this is not a product of the provinces of Newfoundland or New Brunswick?

Mr. MacLean: I simply took that out of a book to use it as an example. You could move those boundaries mathematically one way or the other. You will also notice that the jurisdiction for France is not included.

The problem you will encounter is how fishermen are going to distinguish those boundaries if you set them up between provinces.

Senator Doody: Perhaps it is even more important to know how the fish are going to distinguish them.

Mr. MacLean: They cannot.

Senator Doody: The point I want to make is that this does not have the official sanction of any particular provincial government or group of governments.

Mr. MacLean: I used it purely as an example.

Senator Frith: If you started negotiations on an equidistant basis, this chart is where you would start. Is that correct?

Mr. MacLean: Yes.

The Chairman: The next questioner will be Senator Stewart, followed by Senator Marsden.

Senator Stewart (Antigonish-Guysborough): I have two different kinds of questions. I will ask my first questions, which relate to the fisheries, now, and if there is time later I would like to be recognized to ask a question concerning the spending power.

I am not sure that I understand your objection to the inclusion of roles and responsibilities in relation to fisheries in the perpetual agenda. Are you saying that the inclusion of this matter on the perpetual agenda raises, until it is satisfied, the possibility of a demand for the transfer of all or part of the jurisdiction with regard to fisheries to Newfoundland, and that this constitutional amendment could be affected by seven of the ten provinces with 50 per cent of the population?

Mr. MacLean: Correct.

Senator Stewart (Antigonish-Guysborough): Are you also saying, in addition to that, that Newfoundland would have almost irresistable leverage to get seven of the provincial governments to agree because of the extension of the list of matters for which unanimity is required? Newfoundland could say, "Look, unless seven of you agree to give us a share of the fisheries jurisdiction, notwithstanding what the Nova Scotians say, we will veto any proposed amendment with regard to the powers of the Senate. Take us seriously; we will exercise that veto unless our demand is met."

In short, Newfoundland, it would seem, has omnipotence to produce a stalemate on all constitutional amendments of certain kinds or to extract the amendment which you say would be harmful to Nova Scotia. Is that a fair statement of your position? If not, in what way is it defective?

Mr. MacLean: That is exactly the position I attempted to take here today, senator. Let me add one other scenario to that. Let us assume that the majority of Canadian provinces agree to transfer or change the powers of the Senate. Let us assume that they want to have an elected Senate and that all of the provinces are ready to agree. Assume further that Newfoundland simply said, "No, we will not go along with that amendment unless jurisdiction for the fisheries is transferred." What happens then is that seven out of ten provinces could vote to transfer the jurisdiction, but the Premier of Nova Scotia may then be forced to say, "If you attempt to transfer jurisdiction of the fisheries to Newfoundland in this case, I will then be forced to veto an elected Senate."

In effect, what this is really doing is building in a veto for Newfoundland. It is forcing other provinces who may disagree with the transfer also to exercise a veto, which they may not want to use but which they may be forced to use because their backs are against the wall. It is not a very healthy situation.

Senator Stewart (Antigonish-Guysborough): Your proposal is to solve this by extending the list of matters on which unanimity is required by adding one more heading, namely, "roles and responsibilities in relation to fisheries."

Mr. MacLean: There are three possible solutions, senator. First, we could do as the House of Commons has recommended. The committee report recommended that we have fisheries on the agenda only once. Second, we could adopt the amendment that I put forward requiring unanimity, which is not the best solution but is, nevertheless, one solution. Third, we could simply drop fisheries from the agenda. Brian Peckford fought very hard to have that item included on the agenda, and there is no possibility that Newfoundland would agree to its being dropped. Probably there is no possibility that Newfoundland would agree to its being discussed only once.

If, however, the intentions of the Premier of Newfoundland are honourable, then there should be no reason not to include it under the unanimity clause, because it could be brought up. I am sure that if the jurisdiction of the fisheries came up, and the four Atlantic provinces agreed that transfer of some responsibilities was necessary, the remaining provinces would go along with their recommendation, because they would be the ones involved.

Senator Stewart (Antigonish-Guysborough): You said that a number of jobs might be lost in Nova Scotia, and you mentioned some locations. As to the number of jobs, was it 5,000 or 6,000?

Mr. MacLean: In all of the statements I have been making I have used the figure of 5,000. The seafood producers of Nova Scotia telephoned me to inform me that the number is closer to 6,000. I was therefore being conservative in estimating 5,000. The number is somewhere between the two figures.

Senator Stewart (Antigonish-Guysborough): You realize that I am a former member of the House of Commons, so I know a certain part of Nova Scotia far better than other parts. You mentioned Canso?

Mr. MacLean: Canso, Louisbourg, Petit-de-Grat, Alder Point, Lunenburg and Liverpool.

Senator Stewart (Antigonish-Guysborough): What about Port Bickerton? I ask that question because just a week ago I was invited to have some northern cod for dinner. That northern cod, apparently, had just been landed at Port Bickerton. Was I misled?

Mr. MacLean: There are other ports at which the northern cod is landed, but these are the ones that draw a fairly significant portion of the catch from Newfoundland. These would be the ones most drastically affected.

It may be, if this were to happen, that National Sea would decide to close one, two or three plants and concentrate on a couple of plants within the province of Nova Scotia. Louisbourg, for example, may well be the one they decide to keep open. They could transfer the capacity of the others to that port. I do not know the plan of National Sea as to which plants it would close and which it would keep open, but this would have the effect of rippling through the Nova Scotian economy.

I conducted a briefing of municipal leaders in Halifax on Monday. To date 17 municipal councils around the province of Nova Scotia have indicated their support of including the fisheries under the unanimity rule. At the briefing the mayors of Halifax and Dartmouth both indicated that they supported the position that would ensure the safeguarding of Nova Scotia's interests. This was so because, although they were not affected directly by the fisheries, the economic impact upon the province would be so great that it would reverberate into the urban areas.

Senator Marsden: Mr. MacLean, I think that your appearance before us this afternoon is significant not only from the point of view of the substance of your submission but because you are the first member of a provincial legislature to appear as a witness here.

Mr. MacLean: Senator, I did not have the opportunity to appear before the House of Commons committee because my application was rejected.

Senator Marsden: I just checked the record and I see that you made a submission, but did not appear.

Senator Frith: What was that again? Let us make sure that that stands on the record.

Mr. MacLean: I had requested permission to appear before the House of Commons committee, but my request was not granted.

Senator Doody: Was that the joint committee?

Mr. MacLean: Yes, the joint committee.

Senator Marsden: The clarity with which you put forward your concern about gender equality rights in relation to override was very helpful to us all. Did you say that you would be introducing an amendment to that effect in your legislature when it begins its debate on this issue?

Mr. MacLean: I will be introducing a series of amendments when the legislature meets and this comes up for discussion. I read through the five points that Premier Bourassa requested when negotiations opened. I was very careful to word my document today in such a way as not to come into conflict with the constitutional aspirations of Quebec. I think that is another argument which perhaps we could get into another time, but I tried to deal with three points that could be obtained without causing major difficulties with reference to the wording for Quebec or any other province. That is why I limited myself to those three areas.

Senator Marsden: I appreciate that. Am I to understand, then, that the concern with gender equality will be one of the amendments you are proposing?

Mr. MacLean: Yes, I will be proposing that amendment as well as an attempt to gain some clarification on shared-cost programs.

Senator Marsden: I must say that I agreed entirely with your comments on the proposed child-care system. I would like to ask you a second question concerning the province of Nova Scotia.

When the Premier of Nova Scotia attended the Meech Lake conference and the subsequent conference in the Langevin Block, do you know what it was he was asking for on behalf of your province? Further, do you know if he got what he was asking for? After all, Premier Bourassa was very clear about what he wanted, and we know what he got. What about Nova Scotia?

Mr. MacLean: Unfortunately, I do not know if the Premier of Nova Scotia had an agenda or knew clearly what was happening at that particular conference. I know that in order to have this item put on the agenda he came under a great deal of pressure and has attempted to clarify his position. That has not as yet been done satisfactorily. I am not sure what his agenda items were. I do not know if he achieved them. Certainly, from my limited knowledge of what went on during those discussions, he did not seem to have an agenda.

Senator Marsden: I have one final question, if I may. Is there anxiety among your colleagues in the provincial legislature about their role in the Constitution of this country because of executive federalism?

• (1530)

Mr. MacLean: Perhaps you could explain what you mean by "executive federalism."

Senator Marsden: In this case I mean the fact that the premiers and the Prime Minister of the country propose to go on forever more having conferences and making changes of the kind they have made in this case, and promising that their majorities will see to it that these things get through.

Mr. MacLean: I think that it is a very dangerous way to proceed and totally alters a particular vision of the country. I

think it is dangerous to have a constitutional conference every year. What other country has a constitutional conference every year to discuss changes in the Constitution? I think that we should have constitutional conferences when they are necessary.

Second, my colleagues in the opposition—at least, the Liberal opposition—are concerned with the idea that the premiers would bind their respective houses in order to ensure support. As a result, I put forward some motions in our Rules Committee which was reforming our rules. As you are aware, most of the legislatures in this country do not have particular clauses dealing with the approval of constitutional amendments. So they are dealt with by simple motion, which in our house could be put at 10 o'clock on a Thursday evening and debated until Saturday night at midnight, under extended rules, and virtually exhaust the opposition; and it would go through with a simple vote.

I have asked that it be treated in similar fashion to a bill, whereby you would vote on the resolution, you would send it to committee—it does not go to committee now—and, after the committee reports, it would come back for final debate and passage.

That was going along just fine until several ministers joined the committee, after they heard that the discussions were ongoing, and voted down the resolution. So, as a result, we will deal with it by a simple motion, which may occupy a few hours of debate, depending on how long the opposition is able to speak. I think that is an unfortunate way to deal with constitutional amendments. It is one that does not affect this chamber but it affects our own. It points out the fact that we do have some concerns in the way that the Constitution is being changed, and we are in an almost hopeless situation in determining how to deal with it.

The Chairman: Honourable senators, I have three further names on my list, and I propose that we not add any further names to the list.

Senator Cottreau: My question to the witness concerns that part of the Meech Lake Accord which relates to the fundamental characteristic of Canada, namely, the recognition of the existence of French-speaking people concentrated in Quebec and also living outside of Quebec, and English-speaking Canadians concentrated outside of Quebec but some of whom also live in Quebec.

In my province of Nova Scotia we have a population which is predominantly English-speaking. I doubt very much if there is any fear on the part of the English-speaking people in Nova Scotia as to the preservation and protection of their linguistic rights. But among our population we have a fair number of French-speaking Acadians, who have been struggling to maintain and protect their culture ever since they first landed, which was over 380 years ago.

I should like to ask the witness if, in his view, the text of the Meech Lake Accord offers, in any way, any measure that would enhance and guarantee the protection and preservation of the French culture in Nova Scotia.

Mr. MacLean: Senator, from my interpretation of the accord it would seem that Acadians in Prince Edward Island, New Brunswick and Nova Scotia would be treated basically as second-class citizens with reference to that particular clause. I say that in view of the fact that the federal government has agreed only that it will preserve the language whereas in the Quebec clause it says "preserve and promote."

I believe there is a responsibility within the federal jurisdiction, in cooperation with the provincial, not only to preserve but also to promote the French language outside of Quebec, in particular in the Atlantic provinces where there is a large Acadian population.

Senator Cottreau: So, Mr. Chairman, if I understand the witness correctly, there is no actual change in the status quo so far as the relationship between the provincial government and the protection of the French language in Nova Scotia is concerned.

Mr. MacLean: That is correct, according to my understanding.

Senator Denis: I was away for a few minutes during your address, Mr. MacLean, for which I apologize. I was glad to hear you say that it was a very good thing to have Quebec sign the Constitution. But in order to accomplish that you referred to a series of omissions from the Constitution.

Would you agree that the conference was called exclusively to discuss the problem of bringing Quebec within the Constitution? I read in a French newspaper, as well as in an English newspaper, that the agenda was dictated by every premier—together with Mr. Mulroney—and that at the conference they would discuss exclusively the entry of Quebec within the Constitution, and that other matters would be dealt with at other conferences. I believe it was stated in the amendment that there would be a conference each year at which the fisheries question and other matters would be discussed. It was suggested that if they discussed the fisheries problem at the Meech Lake conference there would be insufficient time to discuss the Quebec question.

I would like to refer you to the following article which appeared in *The Gazette* of April 1987. It says:

> Prime Minister Mulroney is right. The current round of constitutional talks should concentrate exclusively on the Quebec question.

Further on it says:

> It is also to recognize that the more items are loaded on to any given meeting's agenda, the less likely that meeting is to produce positive and coherent results.

There are other problems that could have been discussed at the conference, such as Senate reform and problems concerning Inuit and women. The number of problems could be multiplied. But at the time of the Meech Lake conference it was decided that they would discuss exclusively the question of bringing Quebec within the Constitution.

You agreed that it was a very good thing, yet, in the rest of your address you have said that you were worried about the

accord. If questions concerning Senate reform and fisheries were not discussed, would you still be in favour of the amendment in order to bring Quebec within the Constitution? The First Ministers and the Prime Minister said unanimously that there would be no change. They decided that unanimously—not the senators or the leaders of the opposition in the other provinces but the First Ministers and the Prime Minister. They decided that there would be no change.

Mr. MacLean: But, senator, Quebec went into that conference requesting five items, and it received those five items. Why then did other provinces come forward and say, "Yes, we want Quebec in Confederation. We are doing this to entice Quebec into Confederation, to resolve the difficulty of the 1982 act," and then make their own demands on what they wanted in compensation for signing the accord? It is not the bringing of Quebec into the Constitution that I am arguing about. I support that. I disagree with the requests made by other provinces which have been included in the accord.

• (1540)

Senator Denis: Would you agree that if the First Ministers had discussed and addressed all the problems mentioned—

Mr. MacLean: No, they should not have discussed every problem.

Senator Denis: If they had, there would be no time to discuss the adherence of Quebec to the Constitution. Do you agree?

Mr. MacLean: I agree totally.

Senator Denis: Do you agree that there is agreement to hold First Ministers' conferences to make amendments?

Mr. MacLean: Yes.

Senator Denis: At those conferences all the problems mentioned not only by you but other witnesses who have complained about the accord will be discussed. Do you agree that next year the First Ministers could decide to talk about the fisheries problem? The Premier of Alberta wanted to discuss Senate reform. The First Ministers have agreed to postpone these discussions to other conferences.

Mr. MacLean: I agree with the bringing of Quebec into the Constitution, but in doing so there was no need to create other problems not related to bringing Quebec into the Constitution. That is the point I am trying to make here today.

Senator Denis: Perhaps the First Ministers wanted some time to discuss some of these problems and saw this as an opportunity to get agreement on dealing with those discussions. Would you be against the agreement if these inclusions were not in it?

Mr. MacLean: I want Quebec to come into the Constitution, and I will do everything I can to spur that along. However, as an elected official and Leader of the Opposition of my province, I have a responsibility to see to its economy and to see that someone stands up for the best interests of the province. That is why I am here today.

[Senator Denis.]

Senator Denis: I know why you give such answers. It is very hard to answer "yes" or "no".

Senator Frith: It depends on how the question is phrased.

Senator Doody: My question is pretty well the same as the question asked by Senator Denis. I note with pleasure that Mr. MacLean and others are on record in support of Quebec's return to the constitutional fold, as it were, and I congratulate him on supporting that effort. I wonder, though, if the concerns he has raised here today and his announcement of proposing amendments to the accord might not mean that we could lose the accord. People who have appeared before this committee have been quoted elsewhere as saying that there is a possibility that if the accord is re-opened it will never be reclosed, as it were. Various reputable witnesses have expressed that opinion.

Would it not be better, perhaps, to pass the accord as it is now and deal with the other problems at the next round? It seems to me that the major objective in this particular round is to include the province of Quebec in the Canadian scene. Having accomplished that result, it would seem to me that the logical way to go is to take the next step at the next round. Would you not agree with that?

Mr. MacLean: I have difficulty with that proposal, because, as I have stated on a number of occasions, including twice here today, it ignores the simple question of "What does fish have to do with getting Quebec into the Constitution?" Fish really has nothing to do with the matter at all, except that Brian Peckford demanded that it be placed on the permanent agenda before he would agree to the Meech Lake Accord. Unfortunately, that places the economy of Nova Scotia in a very delicate position. If we were to, for example, on fish alone, pass that very simple amendment, then the ball is very squarely in Brian Peckford's court. If he says, "Well, fine, we are prepared to have the unanimity rule apply to the area of fisheries, and we can discuss it," there would be no problem, because the provinces do not have difficulty with the matter. It is basically a matter between Nova Scotia and Newfoundland. If, on the other hand, Mr. Peckford were to say, "No, I refuse to include the unanimity rule," then, unfortunately, the worst fears of Nova Scotia would be confirmed. I could not support the accord under those circumstances.

Senator Frith: And neither position has anything to do with Quebec.

Mr. MacLean: That is correct.

Senator Doody: Mr. Chairman, I had promised myself that I would not talk about fish at all. I have deliberately tried to avoid the subject. However, I have spent every year since I have been in public life, prior to my arrival in this place, going to various federal-provincial conferences. Without exception, we, the delegation from Newfoundland, attempted seriously to get fish on the agenda and seriously requested that it be considered as a national issue, not necessarily as a Newfoundland, Nova Scotia or provincial issue but as a national issue. In terms of the economy, and even in terms of the very reason of

its being, fish is synonymous with the island province of Newfoundland.

I noted here today with some interest that our witness told us that only in three of the last ten federal-provincial conferences was the premier of the province successful in getting the matter discussed. I say to him, congratulations, because he is really getting the matter discussed now. The final outcome remains to be seen, and I hope that the Canadian nation will deal with the matter as a whole. However, thanks be to God that Brian Peckford has managed to raise the fishery to a national issue, and I hope it will continue to be discussed as a national issue. I thank you, sir, for emphasizing that fact here today.

Senator Frith: And you should thank the Senate for setting up this Committee of the Whole so that you could make your point.

Senator Doody: I hope the record will show that Senator Frith said that.

The Chairman: Senator Frith and Senator Stewart have asked for a second round of questioning, but unfortunately time does not permit it.

Mr. MacLean: Mr. Chairman, I want to thank you and honourable senators for allowing me to appear here today and for your very kind attention.

The Chairman: Mr. MacLean, we thank you for the work you put into your presentation and for coming to be with us today.

Pursuant to Order adopted on June 18, 1987, Dr. John A. Simms and Mr. Collin Irving were escorted to seats in the Senate chamber.

The Chairman: Our next witnesses are from the Quebec Association of Protestant School Boards. The association has provided us with a brief in advance, and it has been distributed to members of the committee. The two witnesses from the Quebec Association of Protestant School Boards are Dr. John A. Simms, President, and Mr. Colin Irving, legal counsel.

Mr. Simms, will both of you be speaking?

Dr. John A. Simms, President, Quebec Association of Protestant School Boards (Montreal): Mr. Chairman, both of us will be speaking.

The Chairman: Our practice is to hear a presentation from the witnesses and to leave enough time for questioning by senators. We have at our disposal one hour. There are other witnesses after you, so I shall have to try and keep within that time limit. You may proceed.

Dr. Simms: Mr. Chairman and honourable senators, I should first introduce myself. I am the Reverend Dr. John Simms, President of the Quebec Association of Protestant School Boards. Seated to my left is Colin Irving, who is legal counsel for the association and who has represented us on numerous occasions over the past ten years in constitutional actions before the courts in Quebec and Ontario and the Supreme Court of Canada here in Ottawa.

The Quebec Association of Protestant School Boards represents 28 school boards in Quebec which serve some 80,000 children, the majority of whom are English. The system of English language instruction is endangered by the provisions which are contained in the Meech Lake Accord, and with the interpretation given to these clauses by the Government of Quebec we fear for the future of our system. These are not idle words but, rather, ones which we have considered carefully. The English community in Quebec has been, and is being, ignored by the Prime Minister and the provincial premiers who signed the accord, and this is a shame.

• (1550)

As we have said in our brief, Quebec has had since the 1840s—and has to this day—a system of Protestant schools throughout the province. These schools, with the exception of those in Montreal and Quebec City, were under the control and management of locally-elected school commissioners and trustees. These elected persons established the schools, levied the taxes for their construction and operation, hired the staff to operate them, and saw to the education of the children who attended the schools. There were schools established and operated by the English Protestant community wherever those persons were found throughout the province. One point must be made very clear here today: Our schools were not established because of a system of provincial government grants or largesse but, rather, because our parents and grandparents wanted them and were willing to pay for them. Our position is different from the linguistic minorities in other provinces, which are now demanding that their provincial governments establish schools for them. We have always had our educational institutions, and they belong to us. We built them and paid for them, and that fact should not be forgotten.

Our system did not flourish in past years because of the generosity of provincial governments. While it must be noted that succeeding governments in Quebec in the century following Confederation behaved with great tolerance and never sought to discriminate against the English minority in educational matters, the record clearly shows that until the 1960s the Protestant community funded its own schools almost entirely. Government grants in those years represented less than 10 per cent of the total expenses.

As I have said, the Protestant School Board in Quebec was basically an English-language system until the 1970s. In 1970 there were only four French Protestant schools operating in the Montreal area. Today, province-wide, there are 43 elementary French language schools and 15 secondary schools in the Protestant system, having a total enrolment of some 14,000 students.

The impact of events of the last decade or so, of which you are all aware, is illustrated even more dramatically by the plummeting enrolment in the English-language Protestant sector. There were approximately 120,000 English students within Quebec in the Quebec Association of Protestant School Boards in 1976. By 1985 there were only 66,000, a loss of almost 50 per cent in only ten years.

It is not necessary for me to review with you why this took place; merely to state the obvious and refer you to the provisions of Bill 101 containing the restrictions on the right to English education in Quebec. Access was basically limited to children legally in the system at the time of the passage of the legislation, or to children of parents who had themselves received their elementary education in English in Quebec. Other English Canadians were excluded.

With the proclamation of the Charter of Rights and Freedoms in 1982 our association took the initiative to determine whether the provisions of section 23(1)(*b*) and section 23(2) of the Charter took precedence over the provisions of chapter VIII of Bill 101. The Supreme Court of Canada found in favour of section 23(1)(*b*) and section 23(2) of the Charter. It should be noted that this action was entirely funded by our association, without one cent of financial assistance from either the federal or the provincial governments. This defence of the rights of Canadians was paid for by the Protestant School Boards from the donations and the taxes of their adherents.

Was this, then, the end of the restrictions? The answer is no. Since 1984 new qualifications and restrictions have been imposed upon those seeking English-language instruction, even though they qualify under sections 23(1)(*b*) and section 23(2) of the Charter. In addition, statements have been made—and these are contained in our brief—by both the Premier of Quebec and his education minister, Mr. Claude Ryan, that these restrictions will be further strengthened. None of these is valid if you read the wording of sections 23(1)(*b*) or 23(2), but until the courts decide on these matters they apply, and their application restricts access to our English schools, with the result that these schools continue to close as our population base erodes and disappears.

We have challenged the validity of the new restrictions before the courts—again on our own. We believe that if there were genuine concern in Ottawa for the rights of the English minority in Quebec then someone would have known about the conditions under which we are operating, and an attempt would have been made to ensure the viability of our English school system by requiring that the full provision of section 23 be made available to all Canadians by deleting the provisions of section 59 from the Charter.

At this time I should also like to say something about the phrase "the distinct society" and its ramifications for the future. As Mr. Irving has pointed out in his article, which was published in its entirety in the December 29, 1987, edition of the *Globe and Mail*—a portion of which is quoted in our brief:

> There is confusion as to what it means.

Mr. Bourassa, the Premier of Quebec, has stated that it means that Quebec is protected against any laws, and that its powers over language are supreme. On the other hand, Jacques-Yvan Morin, a former cabinet minister with the Parti Quebecois and a professor of constitutional law at the present time, says that it will afford protection for the minority group in Quebec; that is, the English-speaking group.

[Dr. Simms.]

So, who is correct? If Mr. Bourassa is correct, and the positon of Quebec is strengthened regarding the protection of the French language, can we expect stronger measures which will infringe upon our linguisitic position? If Mr. Morin is correct, then the French population may well feel betrayed and more alienated from the constitutional process. Surely the politicians owe us a clear explanation of the meaning of the accord.

Speaking of the politicians, we must say something about the constitutional process that gave us the accord, and about the future of constitutional change in Canada. Eleven individuals met and agreed to change the Constitution. Constitutions are not something that should be treated as normal legislation. Where is the constitutional process? Where is the consultation? By what mandate do those 11 decide our future? Who speaks for the English of Quebec during these meetings? Not the Government of Quebec; not the federal government, and certainly not the other nine premiers. We are ignored. We represent possibly five or six seats in the National Assembly, and the same in Ottawa; we are obviously unimportant. But remember that the non-francophone minority in Quebec is larger in number than the population of six of the ten provinces of Canada.

In an article published in the Montreal *Gazette* on January 18, 1988, Senator Murray said, and I quote:

> In 1987, the National Assembly embraced the legitimacy of the Canada clause education rights as well as the rest of the charter. It also approved the recognition that the presence of English-speaking Canadians in Quebec constitutes a fundamental characteristic of Canada.
>
> This affirmation of the pluralistic nature of Quebec society is an advance for those who have followed the evolution of the language debate in Quebec over the past 20 years, and it should be welcomed.
>
> Under the Meech Lake Accord, the recognition of Quebec's distinct society is carefully balanced with a recognition of linguistic duality within Quebec and throughout Canada. Moreover, as Quebec is the only province in which they are a minority, English-speaking Canadians clearly are part of what makes Quebec a distinct society.

A reading of what Mr. Bourassa has said in the National Assembly and some familiarity with recent events in Quebec indicates that the embrace is rather limited. Mr. Bourassa did say that Quebec accepts section 133 of the Constitution Act, 1867, but it must be borne in mind that it was necessary to bring a court case all the way to the Supreme Court of Canada to achieve this result.

Speaking on education rights, Senator Murray is careful to say that Quebec has accepted Canada clause education rights. This is true, but there are three parts to section 23 of the Charter of which the Canada clause is only one. Paragraph 23(1)(a), which deals with mother tongue, is not in force in Quebec. Mr. Bourassa has made it clear that it will not be brought into force. There will thus be perpetuated a situation in which a person whose mother tongue is French will have

rights in all the Canadian provinces which are denied to citizens in Quebec whose mother tongue is English.

Section 23 also provides that citizens who have a child who has received education in English anywhere in Canada are entitled to have all their children receive education in English in Quebec. This position is not accepted by the present government. Anyone who thinks that linguistic duality within Quebec was enhanced by the Meech Lake Accord, as the Government of Quebec sees it, has parted company with reality. It is sufficient to read Mr. Bourassa's statement to see how he understands the position.

Those of us who have chosen to live in Quebec and serve the children entrusted to us have done so with a sense of history and with the belief that we are part of that society. We are prepared to continue to live and work in Quebec. We only wish that some of those who signed the accord had been aware of what we were and who we are—members of the linguistic minority and the distinct society, which is Quebec.

Before I complete my remarks I would like to congratulate members of the Senate on these hearings. We look to the Senate of Canada as an intelligent and informed body, and we are delighted to come before you today.

The Chairman: Thank you, Dr. Simms. I believe that Mr. Irving has some matters to add.

Mr. Colin Irving, Legal Counsel, Quebec Association of Protestant School Boards (Montreal): No. Dr. Simms has given the statement for the association. I will assist in answering questions.

The Chairman: Thank you. I am now open to questioners. Senator Marsden, followed by Senator Grafstein.

Senator Marsden: Your brief raises, in a very forceful way, a matter of concern which has been expressed—although perhaps not quite as clearly as you have expressed it—by other witnesses who have appeared before this committee.

My question has to do with the process that you are undertaking more than with the content. As you may know, there is a select committee of the Ontario Legislature which plans to travel to Quebec as part of its work. As you say on page 11 of your written brief, you are convinced that the provincial premiers and the great majority of the members of Parliament who have adopted the accord are under the impression that the linguistic minority is secure and that nothing remains to be done to ensure its survival. Do you have plans to appear before the Ontario select committee and straighten out the record?

Dr. Simms: We have no plans to appear before them at this point, but certainly if there is an opportunity we will be prepared to take advantage of it.

Senator Marsden: You talk about the vagueness of the distinct society clause and your part of the distinctiveness. Am I to understand that you are recommending that that clause be defined?

Mr. Irving: I suppose you could say it is partly a question of definition. Our view is that when you read the accord—particularly the whole of section 2—it is entirely unclear as to what the agreement really is. In fact, it seems to us that there is no agreement at all. There is agreement on a form of words, which are the ones you see there, but the people who wrote those words do not agree at all on what they mean.

Mr. Bourassa, Mr. Hatfield, Senator Murray and numerous others are taking absolutely diametrically opposing views on the meaning. To my mind that is not an agreement. An agreement is when people agree on something. There is no agreement here. It would appear as a political matter that there is not going be a change in those words.

We would very much hope that somebody—such as this chamber—would call on those who wrote those words to say openly what they mean. If that does not happen, we have arrived at a process where the Constitution has been amended in a way that nobody is sure of. The only agreement is that whatever the Supreme Court of Canada can make of these words is going to be the new Constitution.

This is not a place for legal arguments. However, very strong legal arguments could be made on either side of the issue as to whether or not the distinct society clause overrides the Canadian Charter.

In answer to your question, we are really asking someone in authority to call for clarification before there is no longer any opportunity.

Dr. Simms: One of the great arguments put forward in support of the Meech Lake Accord in Quebec, and support for the factum that is now before the Supreme Court regarding signs in French only, with no English or other languages, is a phrase called "social peace." We always seem to go back to this aspect of social peace. The point that I was making in my opening remarks is that Mr. Bourassa, Lise Bacon and others believe one thing. Jacques-Yvan Morin and a number of others outside of Quebec believe another thing. If it is interpreted, for example, in favour of the English-speaking people in Quebec, as Jacques-Yvan Morin has said, that we believe in a bilingual Quebec, then there will be no social peace. It will wreak havoc with our social life. There will be less social peace as a result of the Meech Lake Accord. Mr. Jacques-Yvan Morin is a constitutional authority, teaching at the University of Montreal. He says that Quebec has been a bilingual society since the 1700s. If the distinct society that is Quebec means that and is interpreted in the courts as that, then we say there will be little social peace.

The Chairman: The next person on my list is Senator Grafstein, followed by Senator Stewart (Antigonish-Guysborough).

Senator Grafstein: What percentage of the population of Quebec do the English-speaking minority represent? Do you know the answer to that question?

• (1610)

Mr. Irving: Do you mean in the school system or the overall population?

Senator Grafstein: Both.

Dr. Simms: Depending on who gathers the statistics, there are from 800,000 to a million Anglophones in Quebec.

Senator Grafstein: What percentage would that be in the school system, and what percentage would that be of the overall population? Could you give us a rough idea?

Dr. Simms: The figure is approximately 6.5 million for the total population, and for the school system we have used the figure of 13.7 per cent. I think that that is still true.

Senator Grafstein: So that if you compared the Manitoba language question and the education question that followed that and the minority percentage in Quebec as it bears to the total, in Quebec it would be larger than it was, and is, in Manitoba. So you represent a much larger minority in the same situation.

Dr. Simms: We are very much alike.

Senator Grafstein: Have you, then, examined your ability to defend your rights under the Charter, when one compares the rights that francophone Manitobans have in the province of Manitoba as compared to the rights that the anglophone minority have in the province of Quebec respecting the equality provisions? Have you examined that to see whether or not that gives you some ability to defend yourself in a way that you are suggesting is not properly made defensible by Meech Lake?

We have been told by the premiers of the provinces that they would be concerned if the Charter were diminished. They are satisfied—but many disagree with this position—that the Charter is paramount and, therefore, you have some protection in the Charter to defend your particular interests.

Mr. Irving: First of all, the position of the Government of Quebec is that the Charter is not paramount. That is what Premier Bourassa has said. Second, the protection as far as schooling is concerned lies in section 23 of the Charter and section 93 of the Constitution Act of 1867, because the Protestant school system is a denominational school system in the province of Quebec.

The numbers in the system are certainly sufficient at the moment to support a school system and to mount a defence of our rights, and that is just as well, because we have been continuously in court for some years now.

On that question of percentages, when the Charter was enacted, the Government of Quebec sent around a circular saying that, notwithstanding the Canadian Charter, no one will be accepted in an English school who does not qualify under Bill 101. That provoked the court case in which Quebec took the position that section 1 of the Charter allowed Quebec to limit the rights of section 23. The figures used were very interesting. I am now referring to figures put forward by the Quebec government.

The forecast at that time was that, although the English school system represented 13.7 per cent of the total enrolment in schools in Quebec, by 1995 or thereabouts—I will not swear to the exact date—that would be reduced, without the impact of the Canadian Charter, to approximately 6.1 per cent. The Quebec government's own statistics were that if the Canadian Charter were brought in the reduction would be to only 6.7 per cent. It was still argued that that extra .5 per cent was intolerable and justified the exclusion of the Canada clause.

It is with that sort of background, and the restrictions you see mentioned in the brief, that the Quebec association has to approach any constitutional document which seems to suggest, as this one does, that rights under the Charter are going to be eroded. Rights under the Charter, as we see them, are fairly minimal already, considering that the first part of section 23 does not apply in Quebec. Clearly Quebec now intends—it said so—to get rid of the last part of section 23, which is the sibling clause, which Mr. Ryan, as you can see from the brief, describes as an échappatoire.

We see it as the basic right of a family living in any other province and moving to Quebec to continue educating their children in English.

I am not sure that that answers your question, senator, but we see section 23 as the main defence for English language rights. I am rather doubtful that the equality sections would assist.

As far as denominational school rights are concerned, section 93 is the protection, and the Government of Quebec has already indicated that it wants to get rid of section 93.

Senator Grafstein: So you are saying that the specific provisions would take priority over the general provisions in terms of interrupting the rights that you are seeking to maintain?

Mr. Irving: Yes. Where there are specific provisions in the Charter, it could certainly be strenuously argued that that excludes anything more general.

Senator Grafstein: Following on Senator Marsden's point, I take it that you have not considered making a similar presentation to the Province of Manitoba on this particular point, or to the Province of New Brunswick. It strikes me that in both of those provinces there is a similar situation, and that they might be interested in this. Obviously this is important information and not generally made available outside of the province of Quebec in a manner as clear as you have presented it today. It might be useful for the legislatures of those two provinces to examine, in theory, the equality provisions, if not in practice, if that is your suggestion.

Finally, assuming we decided that we wanted to examine specific amendments that would be within "the spirit" of Meech Lake—which is to bring Quebec in—because we are not satisfied that the spirit is met by the specifics, which appears to be the concern of many groups that have appeared before this committee and other bodies—would you have a list of specific amendments that would alleviate the inequality that you are suggesting?

Mr. Irving: We do not have any in written form, senator. We would certainly like to see section 16 deleted or amended so as to provide that the provisions of section 2 do not affect rights under the Canadian Charter. There is a strong inference from the language of section 16 that other parts of the

Charter, or, indeed, the Constitution Act of 1867, which are not mentioned are affected. There is even an inference to be drawn that the federal legislative power is affected, because it is thought necessary to mention section 91.24 specifically.

Senator Frith: In fact, one is just as strong as the other.

Mr. Irving: Yes.

Senator Frith: If one reads it that way, it affects legislative jurisdiction just as strongly as it affects the Charter.

Mr. Irving: Except for section 2, subparagraph 4, which seems to say clearly that nothing in section 2 derogates from any rights of the Parliament of Canada.

Senator Frith: True.

Mr. Irving: One could still say, "Well, if that's so, why on earth is it necessary to refer specifically to section 91.24?"

Our feeling is that it is necessary to start over again with this. As my Scottish grandmother used to say, you cannot make a silk purse out of a sow's ear. It is difficult to change the language to get greater clarity. We want clear recognition that the Canadian Charter is not affected and clear recognition that the legislative authority is not affected either. But that comes back, unfortunately, to the position we took in the first place—the parties do not agree on that. On the one side, there are many authors of this document saying, "We did not intend to disturb the Charter and we did not." And then there are people, who supposedly have agreed with them, saying, "We did intend to disturb the Charter and we have." In our submission, that is simply an intolerable situation.

Getting rid of section 16 would certainly improve this, but I would have thought it would be necessary to go back to the parties who came to the agreement and have them put their heads back together to see if they really agree at all.

Dr. Simms: Those who support passing it as is make a great deal of the fact that it is important to have Quebec embrace Canada and the Constitution. The Constitution Act of 1982 has not been embraced. It is our feeling that this is the appropriate time to do that, if that is what is intended.

• (1620)

We feel, in fact, that in the referendum of 1980 Quebec embraced Canada. There was a full vote by the whole province, and some 60 per cent of the province said, "We are embracing Canada; we are embracing federalism." That embrace took place at that time. Now the politicians are telling us, "Well, we will embrace you somewhat." But when it comes to the Charter of 1982, first, we have section 23(a), which they will not embrace or accept, which means that French people in other parts of Canada have rights that the English mother tongue people in Quebec do not have and will not have. Second, section 33 is a notwithstanding clause, and Quebec invokes the notwithstanding clause. Finally, section 59 states that it will not come into force until the National Assembly says so, and they are not about to do that. In fact, if we listed and read in our statements some of the things that Mr. Bourassa and Mr. Claude Ryan, the Minister of Education, have said, they are dubious about accepting section 93, section 23(1)(b) or 23(2)in the future. At the next constitutional meeting they would, perhaps, like to have done with these. The process is wrong. If this is what continues, we are not represented at that process. We feel that the so-called embrace of Quebec to Canada is just not happening.

The Chairman: Does that conclude your questioning, Senator Grafstein?

Senator Grafstein: Yes.

The Chairman: Thank you, Senator Grafstein. Next is Senator Stewart, followed by Senator LeBlanc.

Senator Stewart (Antigonish-Guysborough): Thank you, Mr. Chairman.

You say that you would like someone—probably the Senate—to call for those who drew up this document to say what the expression "distinct society" means. There have been many requests here in the Senate for help in interpreting these words. However, Senator Murray, the Leader of the Government in the Senate—a person who understands this document about as well as anyone—tells us that that is a question that will be answered by the courts.

We recently had an example, in the abortion decision case, of what happens when uncertain legal situations are left in the hands of the court. We were reminded here last week of a saying by Oliver Wendell Holmes that the Constitution is what the Supreme Court says it is. That brings us to the question of the composition of the Supreme Court. It is about that matter that I want to ask you.

The accord provides that at least three of the judges of the Supreme Court of Canada are to be persons who have been admitted to the bar of Quebec. Of that number—"three or more"—three are to be nominated by the Government of the province of Quebec. The remainder of the nine judges are to be selected from persons nominated by the governments in the other provinces.

I happen to be a senator from Nova Scotia, and I am assuming that Quebec will have three—perhaps more, but let us say three—and that Ontario will feel that it should have at least equal treatment with Quebec now that the Supreme Court of Canada is becoming the body that will decide what the Constitution is. I wonder, then, what about the rest of us? I assume that the Government of the province of Nova Scotia will say, from time to time, "It is our turn. We are being slighted in our representation in a body which now is making not simply legal decisions but political decisions of the highest nature." Is this a matter which concerns you? I realize that you have a particular viewpoint and that you see this proposed accord from that viewpoint. Is this matter of provincializing the Supreme Court of Canada a matter which concerns you?

Mr. Irving: Yes, it certainly concerns me very much. Let me go back to where you started from, senator.

If Senator Murray really said that the words do not matter, because the court will determine what they mean, then surely we have arrived at something of an impasse. It is not supposed to be the court that decides what the Constitution is; it is

supposed to be the legislatures or the people. That comes back to what I was saying originally: You can agree on anything if it is vague enough, and say, "All right, we have agreed, and we will let the judges struggle with it as they may." That process politicizes the court even further, and the more political the court gets the easier it is to have its position undermined. This will be a step in that direction, because, if the Supreme Court of Canada were to say, for example, that, contrary to Mr. Bourassa's expectations, Quebec legislation will have to respect the Charter, there will be considerable criticism of the court from Quebec, and it is the court rather than the responsible people which will end up with the opprobrium.

The other part of it, the naming of the judges, is, as I see it, a further step in that direction. The tendency will inevitably be—in Quebec at least—to name judges whose position on issues which are dear to the heart of the province are already known. It is important that the Supreme Court of Canada should get judges—because it has to represent the entire country—who are best suited to the work of that court, which is not always making decisions on constitutional issues. There is room for a complete impasse in the new provisions, because Ottawa must pick, but Quebec must provide the lists.

Might I say that the practice in recent years has been—because of one or two bad experiences—that only sitting judges are named to the Supreme Court of Canada. They tried practising lawyers and found that sometimes they did not like being judges and resigned quickly. Now they will only name a sitting judge. The curious result is that, as far as Quebec is concerned, the federal government will only want judges who are now sitting on the Quebec Court of Appeal—all of whom are named by the federal government, without the participation of the province—but the province has to name the judges of the Supreme Court of Canada. You can imagine how likely they are to name a series of judges who originally were named by the federal government. It invites impasse and chaos. However, there has always been a political argument among the provinces as to when they are due to have a seat on the court, because Quebec and Ontario have always had three. There are usually two from the West and one from the eastern provinces.

Senator Stewart (Antigonish-Guysborough): But that argument will now be embittered by reason of the important new power of the court.

Mr. Irving: Yes.

Senator Stewart (Antigonish-Guysborough): Have you done an analysis of the voting behaviour of judges in the cases which have concerned you, as decided by the Supreme Court, to ascertain whether there has been any representation of a provincial viewpoint? Have the judges been quite neutral?

Mr. Irving: I would say the judges have been quite neutral. You can certainly do analyses—and some have been done—of areas like criminal law. Twenty-five years ago when Mr. Justice Fauteux and Mr. Justice Cartwright sat on the court, one of them almost never voted in favour of anyone charged with an offence and the other voted in the opposite way. Differences certainly arise as a result of judges' personal feelings. However, at the moment I do not believe there is any bias of that kind in favour of or against federal-provincial jurisdiction, but it might develop.

[Senator Irving.]

● (1630)

Senator Stewart (Antigonish-Guysborough): You are saying that up to this point in time judges have been quite neutral, but that you anticipate, with the new method of selection, that the judges will be nominated by reason of their prejudices, in the old sense of the word, that is, that they will hold prejudgments, and that this will then be reflected in their decisions.

Mr. Irving: It might be. I would not want to question the goodwill of the people who have that responsibility in the future. However, this invites it, and I do not see why it is necessary.

Senator Stewart (Antigonish-Guysborough): Mr. Chairman, I do not know whether I have time for another question. If so, I would like to ask one.

The Chairman: Yes, I think we have time. I have one more questioner. That is Senator LeBlanc.

Senator Stewart (Antigonish-Guysborough): My question concerns subsection (4) of the proposed new section 2, which states:

> Nothing in this section derogates from the powers, rights or privileges of Parliament or the Government of Canada, or of the legislatures or governments of the provinces, . . .

That seems to mean that there will be no change in the constitutional significance of sections 91 and 92. However, last week Professor Ann Bayefsky, who testified here—and I would refer to her testimony which appears on page 2576 of the *Debates of the Senate*—dealt with the implications of that proposed subsection. She said that although the wording of those sections would not be changed, there is real reason to believe that there will be a new style of interpretation. In other words, insofar as sections 91 and 92 are concerned, the judges will once again be saying what the Constitution is, and that they are now being put on a new tack, one that is different from the tack which has prevailed in the past. Do you agree with Professor Bayefsky, or is she raising the possibility of innovation there in a way that it ought not to be raised?

Mr. Irving: On reading the proposed subsection (4) I would think that it does not mean anything more than it says, and that its only effect is simply to preserve untouched the legislative and executive jurisdictions of both levels of government.

However, might I say that it is that particular subclause (4) that the Quebec government thinks is so very significant. I lose their argument, as I read it, but let me just read you a translation of what Mr. Bourassa said when he was speaking to the National Assembly. He said:

> I will say to the Leader of the Opposition . . . that the fourth paragraph of this clause, dealing specifically with language, is a derogatory clause or a specific safety

clause, which according to unanimous legal opinions, is watertight.

Thus, contrary to what could have been said, it will no longer be possible to interpret the constitutional provision—

That is, the earlier one.

—between the duality and promotion of a distinct society and it will no longer be possible to interpret it contrary to the powers of the Government of Québec as regards the protection of the French language.

The inclusion of the word "language"—

which you will see at the end of subclause 4

—which was deliberate and intentional—affirms the watertight nature of this clause. I will also say that because the use of the term "derogate" rather than "change" was discussed for at least one hour, we called in legal experts to find out the exact meaning of all these terms . . . It is precisely because we did not use the term "alter" or "change" but rather "derogate" that Québec is protected against any loss; it can only gain.

I must confess that I am puzzled by that. I do not see where that comes from in terms of subclause (4). However, it again underlines what we see as the main difficulty with this, and that is that there are widely divergent opinions on the meaning.

Clearly the Quebec government thinks that that is the most important subsection in the proposed section 2 and that it protects their position absolutely. I, myself, have trouble seeing that it will have any effect other than the one I mentioned in the beginning. Therefore, I think I would not agree with the earlier submission you referred to, but, again, somebody does. Various people think this is most important.

The Chairman: Does that conclude your questioning, Senator Stewart?

Senator Stewart (Antigonish-Guysborough): I would be prepared to go a little further, but I think you have been very generous with the time, Mr. Chairman.

The Chairman: Thank you very much. I now call on Senator LeBlanc.

Senator LeBlanc (Beauséjour): Mr. Chairman, I listened with considerable interest to the presentation. There are many points I would like to make, but I know we are running out of time. However, because I am a New Brunswicker, I read very carefully the statements made by Mr. Bourassa and Mr. Remillard in their own assembly and, unless I do not read French in the same way as they speak it, I think either the Charter or the understanding of the assembly from what they said is going to be in trouble. As Senator Forsey said, "Somebody is going to get an awful surprise."

Senator Frith: And be very angry.

Senator LeBlanc (Beauséjour): Certainly, if what Mr. Bourassa and Mr. Remillard said is the interpretation of the Province of Quebec, it has implications for minorities outside of Quebec. They made it very clear that there was only one "distinct society," and that there would not be two, three or four.

Some of us Acadians, who arrived in Canada in 1603, before the foundation of Quebec, might have other claims, but that is another issue which I will not go into.

I listened with interest to a comment, which you attributed to Senator Murray, to the effect that it would be left to the courts to interpret.

Dr. Simms: I believe Senator Stewart said that.

Senator LeBlanc (Beauséjour): It seems to me that if we want the courts to interpret what we have frozen ourselves into the logic would be for us to agitate to have the court do what it did in 1981-82, which was to give an interpretation before the Constitution was finalized in 1981-82.

I was also somewhat concerned by the use of the words "social peace," because one thing that I, as a member of a minority group, discovered a long time ago is that minorities never get ahead very much if peace is their overriding approach to problems.

As a pretty substantive minority, which surely must have some friends in other places in Canada, why would you not ask that we know, in fact, what "distinct society" will mean in relation to the Charter before we get frozen into the Meech Lake Accord?

Dr. Simms: One of the things the Senate could do would be to ask some of the people who put the Meech Lake Accord together to come and explain it themselves.

To the senator from Antigonish-Guysborough I would mention that I originally came from Glasgow, and have played the bagpipes at the Highland Games on occasion. People often smile at the name "Antigonish," but if you ask those who originally coined the name you will find that it simply means berry eating from a berry bush. Those who coined the name knew what it meant. It would be well for Canada to have some official statement somewhere from those who put the Meech Lake Accord together as to what they think it means.

• (1640)

Mr. Irving: That is what we are trying to do, senator, in any way we can. We are trying to call upon those who wrote this accord to say what they meant by it. This is surely an extraordinary situation—11 people, working to a very rigid deadline, for some reason, have produced a document and cannot tell us what they mean by what they say. That is not acceptable. They do not agree. They cannot, or will not, tell us.

Looking at it from the perspective of the minority of Quebec—and I would think it would be the same perspective as that of the French minorities of other provinces—one would seriously have to ask whether anyone was looking out for minority interests when this agreement was drafted.

Senator LeBlanc (Beauséjour): Perhaps I could rephrase my question. It is precisely because I do not believe that the politicians who committed themselves to Meech Lake will swallow themselves to the point where they will reverse their

positions that I raise this point. Some people have come up with this mystical view that Meech Lake is an uninterrupted flow, and there was an expression used, a "seamless—"

Senator Frith: Web.

Senator LeBlanc (Beauséjour): Well, the seamless stuff that I know is saran wrap and aluminum foil. I don't think this is a particularly good material to construct anything out of. I think this "seamless web" we are talking about had better be understood and explained. That is why, since I do not have any confidence that the political process will provide the explanation other than in vague terms and generalities, I think it would be useful, before we are frozen into an immovable position, to know how the court will interpret this agreement. Surely we should be agitating for a reference to the court.

I repeat that I am not a lawyer, and I am sure there are a hundred technical objections to what I am suggesting. But I am an ordinary citizen who likes to know, before he is immobilized forever in a constitution, at least what was the straitjacket that was put on him.

Mr. Irving: The difficulty is that a reference to the Supreme Court of Canada can only be done by the government, and I do not think the government intends to do that. Might I suggest a perfectly simple question which anyone would be hard pressed to object to answering? It is a question posed to those who wrote the accord: Do they intend, by the words they used, to empower Quebec to pass legislation to promote the French language in Quebec which will override the Canadian Charter of Rights or any part of it? That is a perfectly simple question. It is not a question of what the language means; it is a question of what they intended. They know what they intended, and surely they should be able to answer that question.

I would suggest that it is no answer to say that the court will decide that. That is not what the court is there for. As we see it, the answer to that question is just as important to the majority in Quebec, which has serious concerns about the survival of its language—and they are real concerns—as it is for the minority in Quebec.

Senator Frith: I would like to go one step further along the path explored by Senators Stewart and LeBlanc. You have been studying this issue from the perspective of the province of Quebec. It seems to me that the position of the Quebec government is that the accord will provide a great advance for Quebec, because section 16 means that powers under section 2 will override the Charter. The other provinces are being told, on gender rights, for example, that that is not so. The impression one gets from the centre, so to speak, is that Quebec has one interpretation—namely, the one that the other provinces seem to fear—and that the others are being told that there is nothing to fear.

If that is right, if that is what Mr. Bourassa and Mr. Rémillard seem to have said—and I would like your assurance that they have said that—doesn't somebody have to end up angry when the interpretation is finally given for one side or the other? Either the people of Quebec are going to feel that they have been "had," because they think they were given something important, or the others are going to be angry, because they were reassured that Quebec did not obtain anything that meant that certain legislation would override the Charter. Is our impression correct, as you understand the Quebec position?

Mr. Irving: You have expressed our concern exactly, senator, that the two groups, both dealing with the same documents, are saying entirely different things. There cannot be any happy outcome under those circumstances. As you put it, either Quebec is going to feel that it has been "had," that it came away from this agreement thinking it had powers in respect of the distinct identity of Quebec which it finds it does not have, or the Charter of Rights in Quebec will be eroded, and very likely the position of the French-speaking minorities in other provinces will be less well protected. It can only be one of the two results, as you say.

Senator Frith: That, therefore, cannot result in peace.

Mr. Irving: No, it cannot.

The Chairman: That, then, concludes my list of questioners. On behalf of honourable senators, I want to thank Dr. Simms and Mr. Irving for their valuable contribution to our work.

Dr. Simms: We thank you, Mr. Chairman and honourable senators, for hearing us today.

The Chairman: Honourable senators, our next witnesses represent Canadian Parents for French. We are pleased to welcome this afternoon Dr. Susan Purdy, the National President, and Mrs. Kathryn Manzer, the former Vice-President of this organization.

Pursuant to Order adopted on June 18, 1987, Dr. Susan Purdy and Mrs. Kathryn Manzer were escorted to seats in the Senate chamber.

The Chairman: Our normal procedure, ladies, is to have you proceed with your brief, after which senators may put questions. We have at our disposal one hour, and I will have to be strict on that hour, because according to our rules we must rise no later than 6 o'clock. Please proceed, Dr. Purdy.

Dr. Susan Purdy, National President, Canadian Parents for French: Mr. Chairman, honourable senators, I would first like to thank you very much for this opportunity to appear before you and to place on the record of this house the concerns of another minority within this country.

Canadian Parents for French is a national voluntary organization representing more than 17,000 individuals active in 190 communities in all of the provinces and in both territories. In addition, it speaks for another 4,000 individuals through its 56 associate member organizations.

● (1650)

Our goals are set out before you. I will not bother reading them. In keeping with our mandate, we wish to limit our comments to those sections of the Constitutional Accord which deal with the official languages of Canada. In telegrams to the Prime Minister and the premiers, prior to the signing of the

so-called Langevin text, CPF asked that the Government of Canada and the governments of all of the provinces undertake to actively promote the two official languages of Canada. Unfortunately, they did not see fit to follow that course.

While the Government of Quebec undertook to preserve and promote the distinct identity of Quebec—defined as a distinct society, where French-speaking Canadians are centred, although not exclusively, and where anglophone Canadians are present, although concentrated outside of the province—the Government of Canada and the other provincial governments undertook only to protect the fundamental linguistic nature of Canada. This limitation was merely an undertaking to preserve the status quo or less outside of Quebec. Anyone sincerely committed to seeking the improvement of opportunities in French, either as a first or second language, will attest that the status quo is not acceptable. Assimilation of the minority will continue unabated if this position is not modified. Statistical information on the assimilation of minority official language speakers, and the growth of bilingual populations in Canada, is appended for your information at the end of this report.

In the majority of the anglophone provinces there are insufficient schools in which young Francophones can receive education in their own language. In some communities this results in a necessity to share a school with Anglophones—a situation which is generally unacceptable, for pedagogical reasons, to either Francophones or Anglophones. The struggle by French-speaking Canadians outside of Quebec to obtain their own schools is wasting the energies of Franco-Manitobans, for example. Although the minority language education right is guaranteed them in the Charter of Rights and Freedoms, they are being forced to the courts in order to have that right acknowledged.

If there is to be real equality between the two official languages of Canada, as is envisaged in the Charter of Rights and Freedoms, the federal and all of the provincial governments must fully support the learning of French as a second language by the majority of Canadians outside of Quebec. The result of limiting provinces' and the federal government's obligations merely to maintaining the status quo in this area could well mean no progress on second language learning from this point onward—no new French immersion programs, no improved core or basic French programs, and no end to parental struggles for better French second language opportunities for our children. This might well hinder the further development of harmonious relations between Canadians because of an inability on the part of many citizens to participate fully in national life due to the lack of second language skills. Canada is noted worldwide for having achieved a high degree of linguistic peace and harmony between two founding cultures and languages, and anything that puts that in jeopardy is to be deplored.

The position outlined in the Langevin text seems to be in conflict with the new Official Languages Bill tabled on June 25, 1987, in which the federal government undertook to continue to work with the provinces on the official languages in education through a renewal of the bilateral agreements, to support all Canadians in their efforts to learn both official languages, and to work with labour, business and the voluntary sector to promote the official languages of Canada. Those are certainly excellent objectives.

There is, however, a strange inconsistency here. All parties to the Constitutional Accord undertook to preserve the linguistic character of Canada. In the new Official Languages Bill the national government undertook to actively promote the official languages for all Canadians. Unfortunately, the majority of anglophone provinces have yet to make any matching undertakings to promote the official languages in their jurisdictions, and their uneven record of commitment to the official languages to date is cause for great concern.

If provincial and national governments do not unite in their efforts to actively promote second language learning, then their undertakings in support of minority language Canadians will be non-effective. It is sad, but true, that minority language young people often prefer to speak the majority language on social occasions, assuring the onward march of assimilation. It is CPF's hope that through good French second language programs we will make the everyday use of French or English acceptable and possible in all parts of our country and therefore perhaps slow the assimilation rate.

All Canadians should have access to the two official languages. To achieve that objective all provincial governments must promote their official minority language, especially in education. Within that specifically provincial domain—education—the learning of a second official language offers exciting challenges and great opportunities for our young people. We acknowledge the progress which the provinces have already made in official languages. However, much more needs to be accomplished.

The limitation of the constitutional obligations on the anglophone provinces to do no more than preserve the linguistic character of Canada, while recognizing Quebec as a distinct society, could eventually result in a linguistic curtain being drawn around Quebec, creating not a distinct society but a "ghetto" ripe for the fostering of events that might again lead toward separatism. Lack of emphasis on French for all Canadians outside of Quebec, including large francophone communities in New Brunswick, Manitoba and Ontario, could throw Quebecers even more upon their own resources, and those of other francophone countries, for cultural diversity and renewal, thereby increasing their isolation and the possibilities for separatism. Emphasis on the promotion of French outside of Quebec, on the other hand, would likely result in a greater outreach to Quebec by other Canadians, francophone and non-francophone, asking her to share with them her rich cultural heritage. This would prevent the development of isolationism.

We are also concerned about the amendment relating to those cost-sharing programs exclusively within provincial jurisdiction. It is not clear to us whether or not a province could opt out of the federal-provincial bilateral agreement for the funding of official languages in education. The present agreements end in 1988.

Senator Frith: Mr. Chairman, I am sorry to interrupt. I was engaged in another aspect of this matter. Could the witness please tell me which page of her brief she is now dealing with?

Dr. Purdy: I am on page 6, about halfway down. To continue, could an "opting-out" province be compensated if it wished to offer a second, or even a first, language education program which was, in the opinion of that province, "compatible with national objectives"? Who is to determine what standards would be acceptable?

In fact, the present Official Languages in Education Program has been, and is, a great incentive to provinces to offer French education. The program, begun in 1970-71, has recently been ably and positively evaluated by Dr. Stacy Churchill. He recommends a continuation of the federal-provincial agreements, with more funding to be supplied by the federal government, both to make up for a cut in funding in 1979 and to enable first and official second language programs to continue and expand. Recent information has indicated to us that, rather than increasing funding, the government anticipates a $6.3 million cut in this area in the next fiscal year.

To make a further point: CPF believes that majority language speakers who have learned French have contributed considerably to the turn-around in public opinion in support of minority language rights. We take this opportunity to draw your attention to the results of a Canadian facts survey commissioned by the Commissioner of Official Languages in 1985. Eighty-six per cent of respondents thought it would be a good thing if all Canadians could speak both French and English; 73 per cent thought that the teaching of both languages in school should be compulsory, out of that number 76 per cent of those under 25 years of age supported the proposition.

In response to questions about service in the minority language, 85 per cent of respondents under 25 supported such services being offered by the federal government, while 74 per cent of the total sample were in support; 69 per cent of respondents under 25 supported such services being offered by provincial governments, while 57 per cent of the total sample were in support. We are proud to see young people leading the way to changing attitudes on the official languages in education and in government services. Clearly they accept the notion of two equal languages. Can you, as leaders of Canada, be less generous?

Finally, we are concerned that minority language rights were not singled out in the Constitutional Accord along with multicultural and aboriginal rights. Multicultural and aboriginal rights are of great importance, but we wonder whether this amendment was inserted into the text without sufficient thought to the legal implications of not specifically referring to other Charter rights. Was this omission of minority language rights simply the result of haste, or has the present government plans to change official bilingualism in Canada?

● (1700)

We conclude our brief on an optimistic note. CPF's dream is that all Canadian young people shall have the opportunity to become bilingual in French and English if they wish to do so, or acquire as much fluency in the other official language as they wish. We work to see that this dream becomes a right. We look forward to the day when Canada's two "official" languages will be within the grasp of all young Canadians, not an opportunity granted to some but not to others at the whim of school boards and dependent upon endless arguments about costs. To give young people a good knowledge of both official languages is a sound investment in their future and in the future of Canada. We trust that short-term economic and political considerations will not outweigh the value of such a long-term economic and personal benefit to us all.

[Dr. Purdy.]

Canada's strength is that it is a united country, in spite of almost insurmountable odds. This strength is demonstrated, we believe, by the enormous pride Canadians feel when they travel abroad. We suspect that many Canadians will never forgive a government which rushes them off in a direction in which they may not wish to go. What need is there to hurry? We urge patient negotiation to achieve a constitutional amendment which truly represents the Canadian ethic, as opposed to the Ontario ethic, the Quebec ethic or even the Alberta ethic. Language rights must not depend on the province of residence or on the will of provincial governments; language rights must be equal for all Canadians. At the beginning of this paper is a summary of the points.

The Chairman: Thank you, Dr. Purdy. The first questioner on my list is Senator Marsden, followed by Senator Stewart.

Senator Marsden: Mr. Chairman, I thank the witnesses for an excellent brief. It is extremely helpful. I must say that the statistical material at the end of the brief will be very helpful as well.

I would like to deal specifically with your view that the effect of this agreement will be to freeze the status quo in terms of what provinces, other than Quebec, will do with regard to English language training. You may not have used the words "freeze the status quo," but let me complete my question. By the way, did you hear the presentation of the witnesses who preceded you?

Dr. Purdy: Partially.

Senator Marsden: One of the issues they raised was the contention inside Quebec that "social peace" on language issues was a priority and that social peace could be achieved through the kind of legislation contained in the Meech Lake Accord. The statistics you present show, for example, that in my province of Ontario there is a fairly rapid rate of assimilation. If I am interpreting your figures correctly, the assimilation of people with French as their mother tongue is 28.4 per cent, much higher than the assimilation of Anglophones into French. So we see that the situation is that of a real minority. However, is there not another problem which has to do with access, and which I think you are trying to get at here, namely, that it is much easier for young people to learn the other language if you have a lot of money to send your children to a private school, or that you, somehow or other, can make this training a feature of what we might call economic privilege

rather than a right for all citizens? Would you care to comment on that aspect of what might happen if the accord goes through?

Dr. Purdy: In dealing with this accord you must rely on assumption to some extent, because the document is not exactly clear as to what is meant. This point that the document requires a lot of interpretation has probably been raised before. I would say that if the status quo is maintained we are probably not in an urgent position as far as the possibility of the program becoming an elitist one is concerned. We have worked very hard over the past ten years to ensure that language learning is not an elitist situation. Learning a language has been shown not to depend on IQ or on anything else. You could argue that it depends on money, because if you can afford to purchase the opportunity to go to a French-speaking area it is easier to acquire the skill and knowledge.

I think we are dealing with an attitudinal problem. Probably everyone would agree that not everyone in Canada accepts the idea of official languages with the degree of openness we might wish. So you run into the problem in more remote areas, where they do not see the absolute urgency of learning French, in a particular town at a particular time, and the children are denied privileges or opportunities to learn a second language. If the authority is given into the hands of provincial governments, and there is no pressure put on them to promote minority languages, the obligation will be lost. It is like removing the guy behind the curtain who is prompting in a show. There would be nobody there to keep feeding the idea that it is necessary to have two languages. Two languages is an ideal, and perhaps we should not stop at two. Let us have three or four languages. I think it makes sense for Canadians to learn French and English, but it does not mean that you should stop at learning French and English. If you have an opportunity to learn German, Italian or Japanese, then, by all means, you should take advantage of it.

We see in this accord the closing in of attitudes which do not allow a broader interpretation, that people will come to the point where, since they are under no obligation to provide these opportunities, and since it costs so much money, they will suggest that they do without it. Your question is a difficult one to answer, because I do not know the opinion of this government as far as these bilateral agreements on education are concerned. They are negotiating now, but they are very closed-mouth about what is going on. So I have no idea of whether, in fact, they have subtracted the $6.3 million. Our information is that, yes, they have, that the base line started at $6.3 million less than what the provinces enjoyed in the last fiscal year.

Senator Marsden: In the beginning of your presentation you describe your association. How many of your members are in Quebec and francophone?

Dr. Purdy: It is impossible for me to tell you how many members are francophone. Our membership in Quebec is not great. I would imagine that we have between 200 and 300 members in Quebec. Most of them are English-speaking. Our francophone membership is impossible to identify, because the children of members within provinces that do not have first language French schools, which in many cases are communities, are put in immersion programs. So they lose their francophone identity, as far as we are concerned.

We really do not want to know the numbers, because that is not what we are about. We do not wish to create Francophones and Anglophones. We wish to work at increasing the group in the middle that understands the good parts of both cultures and both languages and makes use of them. We wish to see the cultures grow in the country, to make it a special country with the ability to go two ways. I do not know whether I have answered your question.

Senator Stewart (Antigonish-Guysborough): Mr. Chairman, my question relates to what you say, on page 6, about shared-cost programs. I am looking for clarification. On page 6 of your brief, you say:

● (1710)

> It is not clear to us whether or not a province could opt out of the federal/provincial bilateral agreement for the funding of officials languages in education. The present agreements end in 1988. Could an "opting out" province be compensated if it wished to offer a second (or even first) language education program which was, in the opinion of that province, "compatible with national objectives"? Who is to determine what standards would be acceptable?

Would you amplify for us what you are saying there, and then I may have another question?

Dr. Purdy: It is not as clear as it should be. When I read that over I wondered why I had not re-written it. However, I have not done so, so I will try to explain.

I think the way in which the present bilateral agreements work is that the federal government transfers to the provinces certain moneys, as agreed upon either on a per capita basis or by agreement on a negotiated basis, and these moneys are for the promotion of the first and second languages within that province. Our concern is: Who is to set the standard for that? Will any division be established between what money goes to first-language groups and what money goes to second-language groups? At the moment, I think, it is clear that the second-language groups do get a portion of this money.

However, if you cut the pie smaller and smaller, will you, in fact, ease out the second-language funding, because, if you do that, then all of the children in Canada who are learning through a French immersion program or through a core French program will be cut out of funding. In provinces such as my home province of New Brunswick, for example, it would be disastrous to have that amount of money pulled out of the educational system, because, whether the province admits it or not, they have built their educational system—which is a dual system for both French and English—on the fact that that money is coming from Ottawa and that it is tagged for language education.

I believe that according to our Constitution the federal government has no business in the realm of education. However, the present system was a method devised by the previous

government to encourage the provinces to increase the amount of second-language instruction in order to, in fact, spread the idea of bilingualism. Since education is not a realm over which the federal government has control, the transfer of this money is not, strictly speaking, legitimate, but it is specifically earmarked for the teaching of language. Therefore, if these agreements continue to be cut back, then, of course, the support for more language training in schools will evaporate.

I think we saw the beginning of the movement away from language training when the universities dropped French as an entrance requirement. This happened quite some time ago. There is now a movement, and I hope it is beginning to gain some momentum, that, in fact, if French is not an entrance requirement, it should be an exit requirement for Canadian universities.

The point is that if the federal government withdraws the funding which it has, until now, contributed towards this program, whether you call it a transfer of funds for education or for official language training, the whole system will fall apart as far as second-language training is concerned. The system is very fragile, because it is very new. It is not much more than ten years old, and is just like a ten-year old child. If you remove all of the support systems that are available to them, they will flounder, and that will certainly be the case as far as second-language training in Canada is concerned.

Senator Stewart (Antigonish-Guysborough): The proposed new section 106(*a*) of the Constitution provides for compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the Government of Canada after the coming into force of this section. You say that the present agreements with regard to education in the official languages will end in 1988. Is it your view that a new agreement made in 1988 in this matter would be a national shared-cost program established after the coming into force of this section? In other words, would this section apply at all to a program for official languages?

Dr. Purdy: Senator, I am not a constitutional lawyer. I really cannot answer that question. In fact, I am asking you the question as to whether it is open to interpretation, that these agreements that are now in place between the provinces and the federal government will be in jeopardy by virtue of this clause. In other words, is this one of the things that are under scrutiny? Is it something that the federal government can now say that it intends to withdraw, or can a province say, "We do not see French as a priority in province X, but we are going to institute a core program across the province and it will cost X-number of dollars." In our view, this is a fine program, but that is not the intent behind the original transfer of those federal funds.

Therefore, senator, it is impossible for me to answer your question, because I really do not have the interpretation. I think what is lacking is the fact that it does not say clearly whether or not this type of agreement will be affected.

[Dr. Purdy.]

Senator Stewart (Antigonish-Guysborough): I have one other question. It is a rather complicated question, and if you want to say that it comes to you out of the blue, and you want to think it over and not answer it now, we will all understand.

Some time ago, I believe it was in 1984, the present Attorney General of Nova Scotia, the Honourable Terrence Donahoe, told a committee of the Senate that insofar as education is concerned there are national objectives, but that these national objectives are defined by the governments to which, under the Constitution, education is assigned as a legislative matter. In other words, we must go to the ten provincial governments and accumulate their views, and the result of that accumulation is what is meant by "the national objectives" in the field of education.

That view, which is an authoritative view, coming as it does from a distinguished lawyer, the present Attorney General of Nova Scotia, could be fitted in with the last words of the proposed new section 106A:

> . . . compatible with the national objectives.

And, as Mr. Donahoe would say, as defined by the appropriate governments, the provincial governments.

My problem is that that interpretation of the concluding words of the proposed new section does not seem to run easily with the expression used earlier, where the section says that there is to be compensation where a province chooses not to participate "in a national shared-cost program that is established by the Government of Canada." That seems to imply that the objectives of that program are determined by the Government of Canada. Therefore, in one place, we seem to be talking about a program in which the Government of Canada—I assume it means the Parliament of Canada—defines what is "national" whereas, later on, there is room for an interpretation which puts the definition of "objectives" entirely with the provincial legislatures and provincial governments.

Dr. Purdy, are you aware of this problem? If not, and if it comes to you as a new matter, I will not press you for an answer.

Dr. Purdy: I think we are aware of it, because we work with it all the time. However, when it comes to being able to answer you, I really feel that perhaps it is beyond our ability to give you a learned answer.

Senator Stewart (Antigonish-Guysborough): In other words, you are saying that this is a matter that would have to be decided by the judges?

Dr. Purdy: I would hate to think that we would, in fact, turn this over to the courts. I think the people should decide what they want. I have difficulty with the thought of having ten ministers of education at any given time sitting down and determining the national standards that we should work towards.

When you look at the backgrounds, from time to time, of some of the ministers of education, you wonder what qualities they have that qualified them for that job. That is perhaps a very hard-line position, but for those people alone to set the national standards for the whole of the country would be a

mistake. There has to be some better leadership than that. There should be some aspirations to a higher level than what ten men can come up with in a room on a given day.

Although I realize that education is strictly a provincial responsibility, it is also one of the biggest headaches we have in this country. Every province has a different idea of the direction it wants to take, and when children move from one province to another—which they do with ever-increasing frequency—they find that they are not in grade three any more, they are in grade four, or vice versa. So, the portability of the whole system is almost to the point of being unworkable.

It would be nice if that group of people could come to an agreement, but I could see all kinds of agendas that would be hidden under the table and trade-offs that would be made. Certainly in the area of language, which is what our organization concentrates on, this would not inspire any confidence whatsoever.

Senator LeBlanc (Beauséjour): I have listened with great interest to your brief. Some parts of it are very perceptive, which is not being paternalistic. I think that is a measure of the progress we have achieved in this country, in spite of some temporary moments of depression.

For example, at the bottom of page 2 and the top of page 3, you say:

> In the majority of the anglophone provinces there are insufficient schools in which young francophones can receive education in their own language. In some communities this results in a necessity to share a school with anglophones—a situation generally unacceptable, for pedagogical reasons, to either francophones or anglophones.

Fifteen years ago that point of view was quite fundamental to the differences between former Mayor Jones in Moncton and myself. Mayor Jones advocated that his children and my children should be educated in the same school and play in the same schoolyard. That sort of situation is good in what I would call a Rotary Club Fraternity, but in education—and I have some pretensions here, because I am a former teacher—that is a sure way to ensure the assimilation by la force des choses because of the overwhelming pressure of a society in which minority language groups live.

This view should be publicized, because it is still somewhat misunderstood in many regions of Canada. If you want your children taught in their own language, some people think you are trying to ostracize other members of society, which of course is not a fact at all. When we look at the social contacts between young people, we know that they overcome the problems of separate schoolyards in their own ways.

If I understand your brief, you are saying that the federal government should not disengage itself but, on the contrary, it should continue to promote and encourage the use of two languages by as many Canadians as possible.

I have two questions that I would like to ask you. The funds which the provinces contribute as their share of an agreement with the federal government tend to get used for other purposes. If you look at the statistics of the federal contribution for universities, even in very wealthy provinces, those contributions are over 50 per cent. Have the funds allocated to the two-language system—that is, teaching French to English-speaking students, or the contrary in Quebec—been used for that purpose?

My other question is this: Is your fear that the Meech Lake Accord will create a situation where Quebec is given a special status, that is, being a distinct society and preserving French culture? That is one interpretation that I have heard. If that is the case, then other jurisdictions will tend to say that if it involves French it is none of New Brunswick's, Nova Scotia's or Saskatchewan's business, it is Quebec's business, and therefore that will create what you call in your brief a linguistic curtain around Quebec. I would like to hear your views on those two points.

Mrs. Kathryn Manzer, Former National Vice-President, Canadian Parents for French: Your first question, if I understood it, is: Do we believe that money that is intended for teaching French to English-speaking children and English to French-speaking children is actually being directed to the cause for which it is intended?

Senator LeBlanc (Beauséjour): Yes.

Mrs. Manzer: The short answer is no. The longer answer is that our organization would believe that that situation has improved considerably. In a large part, because of the support we feel we have had from the federal government, bilingualism has been a front and centre issue, and this makes it much easier for us to deal with our provincial governments and, even more particularly, with our school boards. We can point to the fact that this is a matter of federal importance, and it helps us to ensure that the federal money that comes to the provinces and the provincial money that goes to the individual boards is, in fact, spent in the way in which it is intended to be spent.

Dr. Purdy: I would like to answer your second question regarding the linguistic curtain. I hesitate to take upon myself any responsibility for speaking on behalf of Francophones—and I am not trying to do that—but I think that Francophones outside Quebec view themselves differently than do Quebecers. Coming from the province of New Brunswick, and not being a native of New Brunswick, perhaps has given me a certain perspective that I can look at both sides more objectively; maybe not.

To say that Quebec is a distinct society does, in fact, convey to it a certain leadership role, which perhaps it should have. However, it also eliminates any leadership which the other francophone communities in this country have. The Acadians are a very large group. This agreement dismisses them as being a non-entity and that they are not to be considered. As you move across the country, and as our CPF group works with their counterparts in the francophone communities, we find that the personalities of the Francophones across this country vary as much as do the personalities of the Anglophones. There is as much divergence in their opinions as there is in our opinions.

I heard Senator LeBlanc speaking earlier about the French arriving in our part of the world in 1603. If you want to erase all that, and say that nothing happened in Canada until 1608 in Quebec, that is fine, but that is ignoring the facts. The fact is that there are French communities right across this country, and that the French were part of the founding of this country. I think we have officially accorded them some rights in this country; we have made them equal partners, but that has not been translated all the way through the system. I think there is still a great resistance to the fact that they are equal. I think that by teaching children two languages and two cultures at the same time one does a great deal to eliminate the prejudice that has been built up over the years in various parts of this country.

• (1730)

My children started in immersion classes in grade one, and they object to anyone who makes any disparaging remarks about Francophones, because they feel that those disparaging remarks are aimed at them, because they also speak French. Being fully bilingual has changed their outlook entirely. They live in a very anglophone community, but I would challenge any of my friends who would come into our home and make any disparaging remarks about Francophones. I will not be the one who jumps on them, it will be my two children, with arguments that are non-refutable. They understand both sides.

Granted, they are not Francophones; they are Anglophones, but they can see the other side of the question. I think the same is true of Francophones who have learned to speak English and who have lived in an English society. They are basically what they were born into, but they can still understand what the other group is doing. That is what we are advocating as a group.

We are still a minority in this country, but we are a fast-growing minority. Over the past ten years our membership has shot up to levels no one could have predicted. No one could have predicted the popularity of French programs in this country, or even have forced educators to look at the old core French programs, where everyone read the newspaper, but could not utter a word of French. If they had had to order their breakfast in French, they would all have starved. Those educators have now decided that that program needs to be revamped. Many of us could have told them that a long time ago, when we were trying to learn, by rote, or whatever, and did not have any role models to stand in front of us who could speak the language.

The ability to change is absolutely remarkable. We have a dream, and we are just hanging on to it. Anything we do to lessen that grip will, in fact, destroy that dream and it will slip away, because it is a very tenuous one.

I think this also goes back to the fact that not one community can be given the sole responsibility for the maintenance of that dream. That responsibility must be spread over the entire Canadian population, and Quebec has no right to be the only designated group to in fact promote the French language and the French culture.

[Dr. Purdy.]

Perhaps some of those views are my own; I should not attribute all of what I have said to the CPF, but generally we are in agreement.

The Chairman: Thank you, Senator LeBlanc. I now call upon Senator Bielish.

Senator Bielish: Mr. Chairman, I listened to the presentation with great interest. It brought me back to 1962, when the first Canadian Conference on Education was held. At that time I became thoroughly aware of both languages, since the 1962 Canadian Conference on Education was totally bilingual.

May I just defend my own province? In 1936 Alberta, a province that now has a bad name—just for the moment; I am sure it will recover—had several schools that were bilingual. If a child started out in French, that child was taught English, and if a child started out in English, that child was taught French. Those were their language courses. Those children then graduated to high school and went through high school in the same way. There was an ample number of French immersion programs.

You say in your brief that in all the provinces there are 17,000 active individuals in your organization. Are those individuals parents?

Dr. Purdy: The majority would be, but we do not say that if someone is not a parent he cannot join. Some of those people would be educators, but the vast majority of our membership is made up of parents.

Senator Bielish: When you say "in all provinces and both territories," what are the percentages?

Dr. Purdy: I do not have the figures in front of me, but I can tell you from the greatest to the least. The largest membership is in British Columbia, followed by Ontario, then Alberta, then Nova Scotia, New Brunswick, Prince Edward Island, Saskatchewan—perhaps Manitoba is a little ahead of some of the others.

Senator Bielish: What is the province or territory with the largest percentage?

Dr. Purdy: British Columbia.

Senator Bielish: What is the percentage?

Dr. Purdy: It changes all the time, but it is approximately 20 per cent.

Senator Bielish: Is that 20 per cent of the national figure?

Dr. Purdy: It changes all the time.

Senator Bielish: And what province or territory has the lowest percentage?

Dr. Purdy: The territories, of course, would have the lowest in numbers, but behind the territories definitely the province of Quebec.

Senator Bielish: Could you tell us why the lowest is in Quebec?

Dr. Purdy: Because Quebec is a different situation. That is a system that is difficult to understand. I am not sure I can

outline that to you quickly, but many Anglophones in Quebec, we have found by doing a study of the situation, have, in fact, decided that French is so important to their child's education that they have opted not to put them in English schools with second-language programs but have put them in French first-language schools to ensure they have a good French education so that they can compete economically and socially in Quebec.

These parents tend to leave their children in the French schools to the end of the elementary grades, then they pull them out and put them in English high schools. That is the general pattern.

I suppose they do not see the activities of CPF to be too relevant, because we advocate second-language programs. They do not need second-language programs, because they have immersed their children in the first language.

Mrs. Manzer: There have been opportunities available for their children that have not been available to parents in other parts of Canada, and they have not had that same impetus to become involved so that their children can learn.

Dr. Purdy: I think they are beginning to see now that their English-language schools are being threatened simply from numbers, because they have taken all of the children out of the early grades and do not have viable early grades. So, their whole school system is threatened in some cases. I think they have been looking more favourably over the past few years at introducing good second-language programs within the English system so that, in fact, parents do not feel the necessity of putting their children in French first-language programs.

I think Quebec is a province that needs immersion as much as any of the other provinces. There is a real need for that, and it keeps the children within their own linguistic group.

There is no sense in joining a group that is advocating something you already have.

Senator Bielish: If that is true for Quebec, then why are we complaining about some areas where there is no apparent need for the French language?

• (1740)

Dr. Purdy: What you are saying is not quite true, because there is a need, but it is being answered by the first-language community. The first-language community is, in fact, viable. The second-language community is dumping their children in the first-language schools, so that is answering their need, but that is not true in the other provinces. In fact, no matter what you say, it is not a good situation to dump language groups together, because you will assimilate one or the other. In this country it is always the Francophones who are being assimilated. As soon as you introduce English, the language in the school halls, et cetera, deteriorates to English, because that is where the impetus is coming from south of the border. All the songs they hear, all the movies they watch—everything they hear is in English. It is only recently that there have been French offerings that will compete with this type of blasting from south of the border.

I do not know whether that answers your question, though.

Senator Bielish: I do not know that it does either, but that is probably beside the point.

I simply want to congratulate your organization, Canadian Parents for French, on your objectives. Back in 1962 those objectives existed also. In the Canadian Conference on Education each committee had either a French chairman and an anglophone co-chairman or vise versa. I kept records from that. To me, that was an education. We went across the nation at that time to prepare for that national conference.

Dr. Purdy: I agree with what you are saying, but we are saying that it should not be limited to an elite group that can afford to make themselves bilingual; it should be something that is available to all children.

What is happening is that there is an elite in this country developing that have two languages, which is fine if that is the way you want to go, but we feel that all children should have the opportunity to acquire the second language when they start school, if they so desire.

Senator Bielish: I agree that two languages would be wonderful, and three would be even better. In some of our prairie provinces other languages are taught. For instance, the demand for German is there, and it is taught—probably at private schools. The provincial governments are in charge of education up until Grade XII in our schools. So they are responsible for the cost of education, the handling of the education. Wherever there is a large enough group that wants a certain language, and a qualified teacher is available, it is given to them for as long as that group finds the need for that language.

The group of witnesses who were in the seat before you said that they have to pay for their first language—they have to carry the costs of being schooled in their first language. I have some concerns, because things are so different across the country.

I do not know if I can say anything that will enlighten me about what you are trying to do, except—to go back to my first question—I would like to know how extensive this is and how much success you are having in it. How has the growth come?

Mrs. Manzer: How successful have we been in our objectives?

Senator Bielish: Yes.

Mrs. Manzer: I think that we have been successful indeed. Dr. Purdy has talked about most of the examples, such as the tremendous growth in immersion, which is fairly obvious. There are now approximately 200,000 children in Canada in immersion programs. In Ontario I cannot give you the national statistic, but there are over 800,000 children in core French programs. This is an enormous change as well. This is no longer the sort of Mickey Mouse French that most of us learned. The children who are coming out of core French programs are also able to communicate in French.

More important than those statistics is the change in atmosphere that we can all see in the last ten years. All across

Canada there are so many more opportunities to use French and a great deal more mutual respect for the two languages, which Dr. Purdy touched on earlier. I for one do not feel as if I have wasted the last ten years of my life, and I do not think that many of us do.

Another encouraging thing for all of us in Canadian Parents for French is the support, cooperation and friendship that we have with the francophone organizations—our sort of corresponding organizations across the country—both nationally, provincially and locally as well; sponsoring things together, working together and supporting each other's objectives.

Senator Bielish: When I look back to 1936 and the harmony that existed in the school systems there, there was no problem.

Mrs. Manzer: That is right.

Senator Bielish: You started with sign language, and pretty soon you were speaking the language.

Mrs. Manzer: I think that you were a microcosm, and perhaps we are more than that. What you had was good, but when it is multiplied by 10,000 it is even better.

Senator Bielish: I have no doubt. I wish that I could be thoroughly conversant.

The Chairman: Thank you, Senator Bielish. I have two quick questions of my own.

As a Franco-Manitoban, I have a particular interest in the brief that you presented to us today. Will you be presenting briefs to those provinces that have hearings of their own? Ontario has started hearings now, and I believe that my own province of Manitoba will be holding hearings.

Dr. Purdy: We are divided into provincial chapters. You are hearing from the national body today, but each provincial chapter will, in fact, address the hearings when they are open to them. I think that you will hear from our counterparts at the provincial level.

The Chairman: Towards the end of page 8, you say, "What need is there to hurry?" Do I gather from you, then, that you feel that the accord is sufficiently flawed that we should not proceed with it, even though it is repeatedly said that any change in the accord or any delay will stop it?

Dr. Purdy: It is not the intention of the Canadian Parents for French to derail this agreement, but I wonder at signing an agreement simply because it is an agreement. To me, the joint committee of the Senate and the House of Commons held hearings this summer, and a great many Canadians gave up things they were doing during the summer—our best time of the year—to come to Ottawa to present their concerns and to outline the things that, to them, were not acceptable in this agreement. To be told at the end of the hearings that all of this activity was in vain does not augur well for the future.

Senator Frith: You were told at the beginning of the hearings that it was all in vain, because nothing could be changed.

Dr. Purdy: Well, I go to the end, because I always think there is possibly a chance of arguing and convincing someone that they could, in fact, change their position slightly without jeopardizing something.

I think amendments to this agreement could be made to remove a great deal of the concerns that a lot of Canadians have.

Personally, I worry at the process in which 11 people can be locked up in a room and come up with an answer for the whole country. I would have hoped that Canadians were more open. Granted, we like to discuss things until they are discussed to death, but we usually find a compromise solution that is agreeable to everyone. I do not have this feeling about this accord.

The Chairman: Thank you very much, Dr. Purdy.

I must end the committee hearings, because we are approaching six o'clock.

Dr. Purdy and Mrs. Manzer, thank you very much for coming to share your views with us today and for the work that you put into the preparation of this brief. We greatly appreciate it.

Dr. Purdy: Thank you very much.

Mrs. Manzer: Thank you.

• (1750)

The Chairman: Is there a motion that the committee rise and report progress?

Senator Frith: Mr. Chairman, I move that the committee rise, that the chairman report progress and ask for leave to sit again.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker *pro tempore:* Honourable senators, the sitting of the Senate is resumed.

REPORT OF COMMITTEE OF THE WHOLE

Hon. Gildas L. Molgat: Honourable senators, the Committee of the Whole, to which the Meech Lake Accord and texts subsequently agreed to were referred, reports progress and asks for leave to sit again.

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

Hon. Senators: Agreed.

The Hon. the Speaker *pro tempore:* Honourable senators, when shall this committee have leave to sit again?

Senator Molgat: Honourable senators, I move that the Committee of the Whole be given authority to sit again on Wednesday, February 10, 1988.

Motion agreed to.

The Senate adjourned until tomorrow at 2 p.m.

APPENDIX

(*See p. 2604*)

SUPPLY TO DATE FOR 1987-88

Three Appropriation Acts have been approved in respect of Estimates for 1987-88:

Supply Approved to Date:

Appropriation Act No. 1, 1987-88 which granted Interim Supply for *April, May and June* including 31 additional proportions, based on the *Main Estimates* for 1987-88	$10,458,957,258.08
Appropriation Act No. 2, 1987-88	
The whole of *Supplementary Estimates (A)*, 1987-88	$ 700,000,000.00
Appropriation Act No. 3, 1987-88	
Supply for the balance of *Main Estimates* for 1987-88	$27,427,132,310.92
Appropriation Act No. 4, 1987-88	
Supply for the whole of *Supplementary Estimates (B)* for 1987-88	$ 693,110,000.00
Supply for the whole of *Supplementary Estimates (C)* for 1987-88	$ 1,880,696,428.00
	$41,159,895,997.00

Awaiting Approval

Supply for the whole of *Supplementary Estimates (D)* for 1987-88	$ 803,903,000.00
TOTAL	$41,963,798,997.00

ESTIMATES TABLED TO DATE FOR 1987-88

	TO BE VOTED	STATUTORY	TOTAL
	(in thousands of dollars)		
Main Estimates			
Budgetary	$37,826,901	$72,314,176	$110,141,077
Non-Budgetary	59,184	(128,545)	(69,361)
	$37,886,085	$72,185,631	$110,071,716
Supplementary Estimates (A)			
Budgetary	$ 700,000	—	$ 700,000
Non-Budgetary	—	—	—
	$ 700,000	—	$ 700,000
Supply to date	$38,586,085*	$72,185,631	$110,771,716
Supplementary Estimates (B)			
Budgetary	$ 583,110	—	$ 583,110
Non-Budgetary	110,000	—	110,000
	$ 693,110	—	$ 693,110
Supplementary Estimates (C)			
Budgetary	$ 1,871,808	$ 999,557	$ 2,871,365
Non-Budgetary	8,889	14,500	23,389
	$ 1,880,697	$ 1,014,057	$ 2,894,754
Supplementary Estimates (D)			
Budgetary	$ 803,903	—	$ 803,903
Non-Budgetary	—	—	—
	$ 803,903	—	$ 803,903
TOTAL ESTIMATES TABLED			
Budgetary	$41,785,722	$73,313,733	$115,099,455
Non-Budgetary	178,073	(114,045)	64,028
	$41,963,795	$73,199,688	$115,163,483

*Does not agree with "Supply to Date for 1987-88" statement due to rounding.

THE SENATE

Thursday, February 4, 1988

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

Prayers.

HON. DAVID J. WALKER, P.C.
HON. RHÉAL BÉLISLE
HON. ORVILLE H. PHILLIPS

FELICITATIONS ON TWENTY-FIFTH ANNIVERSARY OF SUMMONS TO THE SENATE

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I want to take this moment of your time to draw your attention to very happy anniversaries that are taking place this week. It is 25 years this week since three of our colleagues were summoned to the Senate on the advice of Prime Minister Diefenbaker.

Prior to his summons, the Honourable David Walker had had a distinguished legal career in the province of Ontario, he was a member of the House of Commons from 1957 to 1962 and was a minister of the Crown. He was summoned to the Senate 25 years ago today, February 4, 1963.

[*Translation*]

The Hon. Rhéal Bélisle was an M.P.P. in Ontario from 1955 until he was called to the Senate on February 4, 1963.

Senator Bélisle was decorated three times by the Association internationale des parlementaires de langue française, by the Order of Saint Gregory the Great and by the Order of Saint John of Jerusalem. When he is in the Chair in the Senate and in Committee of the Whole, he always presides with great distinction. I wish to congratulate him on this happy occasion.

[*English*]

The Honourable Orville Phillips—who is currently our Chief Government Whip and chairman of the government caucus—was also a member of the House of Commons from 1957 to 1963. He is a veteran of the Royal Canadian Air Force in World War II, and a member of the dental profession in his province of Prince Edward Island. While he is absent on parliamentary business today, I take this occasion to extend to him, to Senator Bélisle and, of course, to Senator Walker our gratitude for the years of service they have contributed to Canada through this place, and our best wishes for continued health and happiness and satisfaction in their work.

Hon. Senators: Hear, hear!

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, I gladly second the words of congratulation extended to our colleagues by the Leader of the Government in the Senate.

Some men and women are lucky, and these particular appointments were particularly fortuitous, because, had the appointments been delayed a month or two or three, it is unlikely that they would ever have had 25 years of service in the Senate of Canada, because, as the Leader of the Government pointed out, the appointments were made just before the demise of the Diefenbaker government and, of course, the formation of a new Liberal government, under the leadership of the late Mr. Pearson, which was sworn in on April 22, 1963.

Senator Frith: And, Senator Murray, you have no right of reply!

Senator MacEachen: I must say that I had the good fortune of serving in the House of Commons with Senators Walker and Phillips prior to their summons to the Senate. I remember quite vividly their activities in the House of Commons.

I must say that while both of them are still quite feisty they have mellowed considerably since those more turbulent days in the House of Commons. I regret that I have not any previous experience with Senator Bélisle in another legislative body, but I must say that he has been an excellent colleague. It is always a pleasure not to have to assist him in his solitary walk when he takes the Chair in the Senate.

I want to say that I associate myself and my colleagues with these words of congratulations. Some of us will never see a twenty-fifth anniversary in the Senate—and that is certainly all right with me!

Hon. Rhéal Bélisle: Honourable senators, on my twenty-fifth anniversay may I be permitted to make the "longest" speech in my life? To the Leader of the Government in the Senate and to the Leader of the Opposition may I say that their kindness and friendship will assist me to stay here at least another 25 years.

Hon. Senators: Hear, hear!

Senator Argue: Right on!

COPYRIGHT ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-60, to amend the Copyright Act and to amend other Acts in consequence thereof.

Bill read first time.

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

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I am not quite clear when this bill should be read a second time. I know that Senator Doyle has had discussions—not negotiations, just discussions—with a view to having second reading this afternoon. I know that he is prepared and ready to go, but if there are reasons that that should not be, then there will be no great upset on this side of the house.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, Senator Doyle has spoken to me about it and has a good reason to want to speak to it today. He would normally speak to it on Tuesday next, if we gave the normal adjournment, but on Tuesday next he is hoping to be at the meeting in Edmonton of the Standing Senate Committee on Legal and Constitutional Affairs on Bill C-55. If we take the same break as the House of Commons is taking, or commence a break at the same time, he would not have an opportunity to speak to it for two or three weeks. I have asked him to try to contact Senator Grafstein, our spokesman on the bill, to see if Senator Grafstein has any objection to Senator Doyle's proceeding today. Senator Grafstein could then use *Senate Debates* as a basis for his response to the government spokesman.

I think we should stand this order until later this day, and then call it when Senator Doyle has had a chance to speak to Senator Grafstein.

Senator Doody: Could we stand this item for a decision later this day?

The Hon. the Speaker: Honourable senators, is it agreed?

Hon. Senators: Agreed.

• (1410)

MEECH LAKE CONSTITUTIONAL ACCORD

APPOINTMENT OF SENATORS TO SERVE ON SUBMISSIONS GROUP

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*h*), I move:

> That the following Senators be appointed to serve on the Submissions Group on the Meech Lake Constitutional Accord, namely, the Honourable Senators Cools, Le Moyne, Lucier, Marchand and Molgat.

I believe there must be a companion motion about representatives of supporters of the government.

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

Hon. Senators: Agreed.

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, there are three volunteers on this side whom I would like now to initiate into the new committee. They are Senator Macquarrie, who is not here at present, Senator Bielish and Senator Tremblay.

[The Hon. the Speaker.]

Senator Frith: With leave, I move that those names be added to the motion.

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

Hon. Senators: Agreed.

The Hon. the Speaker: It is moved by the Honourable Senator Frith, seconded by the Honourable Senator Doody, with leave of the Senate and notwithstanding rule 45(1)(*i*):

> That the following Senators be appointed to serve on the Submissions Group on the Meech Lake Constitutional Accord, namely, the Honourable Senators Bielish, Cools, Le Moyne, Lucier, Macquarrie, Marchand, Molgat, and Tremblay.

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

Hon. Senators: Agreed.

Motion agreed to.

BUSINESS OF THE SENATE

ADJOURNMENT

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have the usual motion for adjournment. I should mention that we have Royal Assent planned for later this afternoon, at about 4.45 p.m.; and we would be pleased to have as many of our colleagues as possible attend.

Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*g*), I move:

> That when the Senate adjourns today, it do stand adjourned until Tuesday next, 9th February, 1988, at two o'clock in the afternoon.

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

Hon. Senators: Agreed.

Motion agreed to.

QUESTION PERIOD

[*English*]

ABORTION

JUDGMENT OF SUPREME COURT OF CANADA—GOVERNMENT ACTION

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, can the Leader of the Government tell us whether the government is proposing any action following the Supreme Court judgment of last week? I know that the Minister of Justice mentioned in the House of Commons that the government would take its responsibilities. I wonder, in the interim, whether the government has had a chance to consider

the matter and whether it plans any reaction, including legislative proposals?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, there is no plan to legislate at the moment. We are consulting very closely with the provinces on this matter. The Minister of Justice has written to his provincial counterparts and a federal-provincial meeting will be held shortly at the official level. The Minister of National Health and Welfare has also been in touch with his provincial counterparts, as has the Minister of State for the Status of Women.

The honourable senator will be aware, of course, that as a result of the Supreme Court decision of last week there is created what might be called a legal vacuum on this matter. It is our position that this is a matter that must be addressed jointly by the federal and provincial governments. How that vacuum should be filled and by what order of government is a matter for consultation between the federal government and the provinces.

APPROPRIATION BILL NO. 5, 1987-88

SECOND READING

On the Order:

Resuming the debate on the motion of the Honourable Senator Doody, seconded by the Honourable Senator Roblin, P.C., for the second reading of the Bill C-108, An Act for granting to Her Majesty certain sums of money for the Government of Canada for the financial year ending the 31st March, 1988.—(*Honourable Senator Olson, P.C.*).

Hon. H.A. Olson: Honourable senators, I am not going to take a lot of time to explain what is missing in this bill, but I am sure that all honourable senators, particularly two or three senators opposite, would be disappointed—in fact, I think they would think I had failed—if I did not make some comment about the subject matter of Bill C-108, if only because I have been raising questions on some aspects of it for almost two years now. I am sure that the Leader of the Government would want me to acknowledge some improvements in Bill C-108, as the Special Canadian Grains Program applies to the 1987-88 crop year. I might even want to argue that some of the questions I put and representations I made over the past 18 months may have influenced the government in making those modifications to the program for this year. I see several senators opposite nodding agreement to that. If that is true, then I am happy I did that.

I know that Senator Barootes spent a lot of time seeking information from various departments, or at least two departments, of the government. I want him to know that I appreciate his efforts. Indeed, I appreciate the interpetation he placed, on a couple of occasions, on what was meant when the Prime Minister and the Minister of Agriculture said that something was "also important." The most important interpretation—and this was the first time I heard it from any supporter of the government—was that the reasons for the Special Grains Program have given rise to an ongoing program of the government until those reasons have expired; that is, until the depressed international market for cereal grains, attributed to the subsidy war going on between the United States and the European Economic Community, is no longer depressed.

That interpretation gives some comfort to farmers in grain-growing areas in western Canada, because prospects of that subsidy war terminating soon are not very great. There are some minor hopeful signs that appear from time to time, but the reference that was sent to GATT to try to find an acceptable solution, as far as I can tell, has not borne a great deal of fruit to date. We can still hope that it will happen, but I would like to have an acknowledgement of the interpretation that Senator Barootes put on the Prime Minister's remarks at the time of his announcment of this program at the Agricultural Outlook Conference on December 17. Senator Barootes' interpretation was to the effect that it is a program that will remain in effect until the international price again rises to some reasonable level.

● (1420)

I think I should also say at the outset that, as honourable senators well know, there is more than one reason for making a speech on the floor of the Senate. One, of course, is to try to persuade your colleagues to adopt your point of view; another reason is that there are people who will read your speech afterwards in the *Debates of the Senate*. Also, with the advent of these new word-processing devices it is rather easy to assemble a mailing list and have your speech mailed. I see Senator Doody is acknowledging that he understands that purpose for making a speech. It all comes back to you the next day in both official languages, and it is one of the most efficient ways that I know of having a message developed and sending it out to those who are on your mailing list. There are several dozen—and sometimes several hundred—people in southern Alberta who like me to advise them of things that are going on that might be of interest to them.

However, honourable senators, there is yet another reason for making a speech on the floor of the Senate. When I was in government we made sure that there were some people in the department who read the *House of Commons Debates* and *Debates of the Senate* every day and very carefully took into account what the members of this house and of the other House had to say. Therefore, if you want people at the second, third and fourth level of government to know something—and they are very influential people—you make a speech on the floor, knowing that they will be reading it. In fact, it is probably more certain that they will read what is in the printed debates of both houses and probably be influenced as much or more by that than would the Leader of the Government in the Senate, although on several occasions I have received a favourable response from him too.

The reason I am bringing up this subject today is because the Leader of the Government in the Senate knows, Senator Barootes knows and I know, that I have raised this matter over

and over again since early in 1987, when it was obvious that the price of wheat would be very low. I have persistently asked the Leader of the Government in the Senate if the government intended to continue this program for the 1987 crop year, and he was non-committal. In fact, the Prime Minister made the announcement in December. I understand that kind of strategy; I believe they call that a "photo-opportunity" when pictures are taken. However, I think it would have been better if the Prime Minister had clarified his announcement so that it was clear that, as per Senator Barootes' interpretation, what he was really announcing was an extension of the program and the funding that would go with it. I say that because there were a number of people in the grain-growing sector in my province who were in very difficult financial circumstances and who did not have that assurance until December, which was several months after they had already harvested their crop.

I suppose another reason is that there have been some changes. In many cases they are changes which I asked for not only for the 1987-88 crop but for the 1986-87 crop as well, particularly with regard to the formula for determining the payments to be applied to that crop. I want to thank the people who brought these matters to my attention. I know they read *Hansard*, and I want to send a message to them that I acknowledge the things they had to say and thank them for recommending to the government the modifications that show up in this year's program.

One of the most important changes is the addition of specialty crops and acreage under summer fallow. There is justification for including a significant portion of acreage that is under summer fallow, because it fits the usual land management practices followed, on the Prairies at least. Therefore, whether or not a farmer seeded a lot of acres in 1987 with grains that are eligible is really not so important. Otherwise, a farmer would lose out on a very large part of what he would otherwise be entitled to simply because he followed his usual rotation with regard to summer fallow, specialty crops, cereal grains, and so on. Therefore, it is important that specialty crops and summer fallow are included.

Furthermore, summer fallow and certain amounts of forage crops have been included in the quota books, because they are part of the rotation. Were they ineligible for quotas or for the Special Grains Program it would be a real injustice. It would have the effect of interfering with the good husbandry practices followed by these farmers. The farmer would be forced into seeding for the purpose of collecting the subsidy, and that is not what the program was intended to do. I am glad to see this change.

There is one thing that puzzles me in the report of the National Finance Committee on Supplementary Estimates (A) 1987-88, and it can be found on page 1913 of the *Minutes of the Proceedings of the Senate*. It reads:

> —the formula used to determine payments to producers takes into consideration only the estimated effects on individual commodity prices brought on by changes in the U.S. Farm Bill. No consideration is given to the specific actions of the European Economic Community. For example, if excess supplies in Europe of specialty crops such as mustard seed, safflower or lentils lead to dumping in the international market and result in falling incomes to Canadian farmers, no action under this program will be taken unless the United States takes prior remedial actions.

[Senator Olson.]

I understand that point insofar as setting the amounts that will be paid for these various specialty crops that have been included is concerned, but I think they missed the point completely in the past when they left out these crops, because the acreage was not even included in the formula for determining the amount to be paid to the farmer who has these crops in his rotation from time to time. As far as I am concerned, this is important and it is only just that it be added. I have complained in this chamber on behalf of people who grew mustard seed in 1986. Every acre they seeded in mustard seed instead of one of the cereal grains simply was not counted in calculating the payments made to them. That, in my opinion, was not fair. I am glad the government has made adjustments for the 1987 crop year so that mustard, lentils, dry peas, canary seeds, safflower, buckwheat, triticale and a number of other crops are included. It is not only the production in Europe or in the United States, or the actions taken in those markets to depress the prices, that is important, but also the fact that they can get that acreage calculated.

● (1430)

I also acknowledge that the government includes one-third of the summer fallow of 1987 to be used in calculating the payments, because that is the usual practice in some places. It is sometimes two-thirds crop and one-third summer fallow. But in southern Saskatchewan and southern Alberta the usual ratio between summer fallow and seeded acreage is fifty-fifty.

If, in 1986, a farmer happened to have two-thirds of his land in summer fallow, he suffered a severe penalty compared to those farmers who had two-thirds of their land seeded.

Senator Barootes: Or continuous cropping.

Senator Olson: There would not be the same injustice in that case, because with continuous cropping a farmer would have had 100 per cent of the land seeded every year, and I understand that the government paid for that in both years.

Honourable senators, the situation has been improved to some extent. I am pleased to acknowledge that. I think the $1.1 billion allocated to this program—$800 million of which is contained in Bill C-108—represents significant funding. It is not enough to completely compensate for the loss. The increase from $1 billion last year to $1.1 billion this year, a 10 per cent increase, does not fully compensate for the reduction in the initial prices. Wheat is down 18 per cent in 1987 compared with 1986, and the initial price for barley, which is the floor price, is down by 27 per cent. So this amount does not fully make up the difference, but I acknowledge that, as a subsidy program, it represents a significant amount and is very helpful.

The announcement that was made by the Prime Minister and the Minister of Agriculture, at the Outlook Conference

held last December, respecting farmers who are heavily in debt and who pay large amounts to service that debt sounded quite good. But after I attended a Senate Agriculture Committee meeting and was given a detailed explanation of how those funds were going to be used, by two officials from the Department of Agriculture, I have to say I am a little disappointed. I was led to believe that the farm debt review boards were going to be given some authority to at least make recommendations. We were told that. There was no ambiguity—they tried to avoid making recommendations. However, they did make recommendations which were more in the form of a concilation suggestion to bring the creditor and debtor together. These debt review boards were not given authority to make decisions and impose those decisions for farmers' benefit.

I was under the impression that some funding was to be provided to help the farmers. This would not be a write-down but would be a reduction of the interest rate, which could be paid with that $40 million. During the committee meetings the officials informed us that 100 per cent of the $39.7 million will be used for operation and administration costs of those debt review boards. As far as I am concerned, that seems to be a lot of money to be used for that purpose. I was hoping there would be financial assistance provided to help the farmers.

I am not arguing or complaining that the government is being very specific in helping out some people. I happen to believe that this is a time to have specifically targeted assistance. Some people got into a debt problem because they made capital investments—particularly in land—at the peak of the inflationary period, 1979 to 1981. In some cases they are still paying the very high interest rates that were imposed at that time. For example, I know one farmer—and there are hundreds of farmers out there—who was paying 18 per cent to the Federal Business Development Bank until June of 1987. That is long after the rates had gone down. The FBDB said that the interest rate was to be left at that level until his loan was paid off. In my view, that is unfair. After a lot of hard work, we finally got them to bring it down to the level of current interest rates.

As I have said, there is a very wide range of severity or difficulty experienced by farmers in the same district, depending on when they bought certain capital assets. Land was the biggest purchase, but machinery comes into this equation to some extent.

I urge the government to be very sympathetic to some of those situations. No one has control over when they are born; no one has control over when they become 21 or 25 years of age, or when they enter the labour market, or when they begin farming. If someone happens to come of age and wants to enter the farming world, and it happens to be in an inflationary period when prices and interest rates are high, but, nevertheless, they decide to do it, then they are stuck with it. That is unfortunate. I think the government ought to be helpful in that situation.

Of course, we may have different philosophies. I happen to believe that the federal government's most important economic function is to help sectors that are in difficulty from time to time. There are other things they could do to promote industry, but the most important function of the federal government is to redistribute their resources and help an industry or a regional sector that is in difficulty. It happens in the fishing industry; it happens in the construction industry; it happens in the footwear industry and the textile industry. We have helped all of those sectors.

Senator Barootes: Petroleum!

Senator Olson: I can see Senator Barootes is getting primed up.

Although some may argue that nobody has to sign a note if he or she does not want to, I sincerely believe that not only young farmers but others who got into this severe debt—service charge difficulty—did so, in many cases, through no fault of their own. As I explained a few minutes ago, people in almost every part of Canada who bought land from about 1978 and 1979 up to 1981 are carrying a debt and a debt-service cost that is completely out of line with their revenue in 1987. Therefore, I believe the government ought to have specific targeting in trying to help some of those people out of that difficulty, and they should provide funds to do it.

● (1440)

The government did provide $30 million to the Farm Credit Corporation to rearrange some of those loans, but very little money—in fact, only about $7 million—was given to those farmers who were caught in that debt situation if they had borrowed the money from anyone other than the Farm Credit Corporation. There was no assistance at all. Quite frankly, I was led to believe that there would be some, but, after hearing the cross-examination which took place in the Standing Senate Committee on Agriculture and Forestry, I know the money is not there.

Honourable senators, I wanted to draw those facts to your attention. I hope the government feels that part of my comments are an acknowledgement of some very positive, well-worthwhile steps that have been taken with respect to this matter. I hope they will take seriously the other suggestions I have made with respect to the debt problem and come in with a program which will give some relief in that respect.

Hon. Senators: Hear, hear!

Hon. Fernand-E. Leblanc: Honourable senators, Senator Olson quoted from the report of the Standing Senate Committee on National Finance currently being considered as if the quotation related to the findings of the committee this year. However, I would point out that what he quoted was stated in a previous report of the committee and was used as a quotation in the report now under discussion. I believe Senator Olson should have said that the committee reported that it was pleased with this action, because it appears to respond to the comments made by the Standing Senate Committee on National Finance in its report on the Supplementary Estimates (A) 1987-88.

I merely wanted to clear up that matter.

Senator Olson: Honourable senators, I want to acknowledge that what the chairman of the Standing Senate Committee on National Finance has said is true. It is a quotation contained in this report.

Hon. Hazen Argue: Honourable senators, we all listened carefully to the speech made by Senator Olson as he outlined many of the provisions of this deficiency payment and referred to some of the changes that have been made.

I just want to add that in dealing with this matter we should try to keep in mind the agricultural situation that in fact prevails out there, and particularly in western Canada. We are seeing a very large exodus of farmers from the land. We see numerous foreclosures going forward. We see communities losing some of their best citizens and their most efficient farmers. We are also seeing towns fold up. We are seeing businesses going bankrupt, being sold, and we are seeing a proliferation of ghost towns on the Prairies, because there is this tremendous exodus of farmers from the land.

The president of the Alberta Wheat Pool was quoted the other day as having said that in the next year he expected to see more than 15,000 farmers leave the farms. It is in that kind of context that one has to consider the bill before us.

The farmers were looking for—and certainly asking for—a great deal more than this. They were probably saying, in general terms, that they needed three times as much as is provided if they were to meet their obligations and have a reasonable net income.

When I travel around the country I find that a lot of people, particularly urban people, think that farmers are really floating in money, and that when the government announces a $1 billion program city people will say, "How much more do you want? You guys got $1 billion." The inference is that each farmer received $1 billion. However, when you boil this down and decipher the matter, for the grain producers in the Prairies it will probably average out to $6,000 or $7,000 per permit bookholder. If a farmer has an obligation on a debt of $300,000 or $400,000 at a rate of 13 per cent interest—which is what the Farm Credit Corporation is still charging on many of their loans—that amounts to $40,000 or $50,000 in interest payments alone. However, $7,000 is welcome, and it makes a few creditors happy for a short time, but it really does not meet the situation.

The single most important problem in the world grain markets today is the give-away program of the Government of the United States. We were able to live with—perhaps not as well as we would have liked—the subsidies of the European Economic Community, but when the United States got into this business and started putting a price tag of zero on certain quantities of grain going into the international market that, of course, depressed world prices to no end.

I said a year ago, and I repeat—and I draw this to the attention of the Leader of the Government in the Senate—there should be a cap placed on the payments. I was glad that that principle was adopted and that a cap, a maximum payment for an individual producer, was placed at $25,000. Personally, I would have been much happier with a lower cap than that which would have resulted, of course, in a higher average payment. I would think that this kind of a program should be targeted in that way.

[Senator Leblanc.]

Although I was unable to attend, as I read the evidence that was taken at the Standing Senate Committee on National Finance, it appears that some 750 farmers received the maximum and who, without the cap, would have received more. The cap has not affected a very large number of farmers, but certainly I think it is all to the good that that principle is in place.

I believe the government needs to take a different approach or a stronger approach with the United States. I feel that when George Shultz was in Ottawa some two or three weeks ago our Secretary of State for External Affairs should have, once again, raised with him the great difficulty that the American program is causing for all the grain producers of the world.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): He did say that.

Senator Argue: If the Leader of the Government would look at his reply to a question which I asked, he will see that he did not say that. However, I will take his word for it. However, he was not able to give me that advice when I asked him before. I should now like to know in what terms he raised it.

Senator Murray: I do not have a transcript of those conversations so the honourable senator can hardly expect me to say exactly what was said by Mr. Clark and Mr. Shultz.

The Honourable senator concluded, quite wrongly, as usual—

Senator Argue: You don't have to throw that in!

Senator Murray: —concluded quite wrongly from the replies I gave him some days ago that the matter had not been raised by the Secretary of State for External Affairs. I am telling him that it was raised on that occasion, as it has been raised on previous occasions to which I referred and as it has been raised in the leadership role by Canada at the OECD, at the GATT, at the Cairns Group of Agriculture Exporting Countries and, as I say, in all of our bilateral discussions with the United States.

Senator Olson: What was Mr. Shultz's response?

Senator Argue: I think a careful reading of the exchange I had with the Leader of the Government the other day on this subject will show that the Leader of the Government did not say categorically that it had been raised at that time.

Senator Murray: No, but the honourable senator said quite categorically that it had not been raised.

Senator Argue: Somewhat later the Leader of the Government said it was raised. I think that if it had been raised in a strong way this member of the cabinet would have known it at that time, but it was done in such a quiet, ineffective way—

Senator Doody: No, no!

Senator Argue: —that the press didn't know it was raised and the agricultural press didn't know it was raised. It was certainly not raised in the same strong terms that were used in raising the question of acid rain. So this isn't put forward in a strong way.

● (1450)

Senator Murray: How do you know?

Senator Argue: Well, it was not taken up by the press, and the press usually know.

Senator Doody: Oh, the press know?

Senator Argue: Just keep wagging your head—either up or down, it does not make much difference which way it goes. If it had been important, it would have been in the press release. Joe Clark would not have been bashful, he would have been out saying how he really got a hold of George Shultz and talked to him about the grain situation. But it wasn't that at all.

They then brought us the Free Trade Agreement that cancels $280 million in the two-price system.

Senator Murray: It was very popular with the Liberals.

Senator Argue: No, not at all. I had the honour to attend a meeting of 300 people, in the town of Humboldt a week ago Monday, and heard not a single comment from anyone in the audience—although they commented for more than an hour—in favour of the Mulroney free-trade deal, but I heard from those opposed to it.

Senator Murray: I simply want to remind my friend that the latest poll on this matter taken by his friend, the Angus Reid firm—

Senator Frith: Our friend? Is he your friend, Senator Argue?

Senator Murray: Well, he was the pollster for Mr. Turner. That poll shows that 47 per cent of the respondents on the Prairies are in favour of the Free Trade Agreement.

Senator Olson: They are not asking the farmers!

Senator Murray: Indeed, that 47 per cent is a higher percentage than any other region, except Quebec, where 55 per cent are in favour of it.

Senator Olson: Did they ask farmers?

Senator Doody: Very sensible!

Senator Argue: Well, the leadership of the farm movement that I pay some attention to are not lauding this trade agreement.

Senator Barootes: Which one is that?

Senator Argue: The farmers have—

Senator Barootes: Which one is that?

Senator Argue: It is not your Western Grain Growers Association—it is not those.

The fact is that by this trade agreement the farmers have lost $280 million from the two-price system. The government says that they will make it up in deficiency payments by increasing the deficit to pay it, because that is a more business-like way to deal with the situation. The farmers were quite happy and supportive of getting the two-price system out of the market in Canada, but that will be gone.

Senator Murray: And 40 per cent of Liberal respondents are in favour of it.

Senator Argue: And instead of that, the government has said in this deal that "We will send a little more wheat into the United States."

Senator Murray: That is up from 32 per cent.

Senator Argue: As soon as the announcement was made—not more wheat going into the United States but just the announcement—the National Wheat Growers Association in the United States was up in arms. They went to Washington. The government got them all excited. Instead of slipping a little more wheat into the U.S. market, the market will probably be shut off if this trade agreement should ever take place.

I think there will be just about as much luck in Washington with this trade agreement as the President of the United States had yesterday in the vote in the House of Representatives, where he was trying to get some more money to keep a war going in Nicaragua that most people thought should be ended by peace negotiations.

In any event, the Canadian Wheat Board has been quite successful over the years in developing a market for Canadian wheat in the U.S. I think the United States turns out to be our fifteenth best customer. However, the Canadian Wheat Board sells wheat in the United States whenever the American millers think it is a good buy. The Canadian Wheat Board—and this has been going on for many years—is cautious and careful. When some eruption in Congress is seen they do not sell any more for a while, but when things kind of die down they sell a little more. Now it is all so-called "out in the open." I would venture to suggest that if the trade deal should ever go through—and I do not expect it ever will go through—there will be less Canadian wheat sold in the United States and a lot more American wheat sold in Canada, resulting in marketing programs being much more difficult to achieve.

Senator Murray: Will the Senate block the Free Trade Agreement?

Senator Frith: Can we? Present it to us! Are you going to present it to us?

Senator Argue: Come on, bring it on! We will deal with that when we get to it.

Senator Frith: A different question!

Senator Argue: As part of the government's agricultural program I would like to have seen a cancellation, reduction and restructuring of debt for a lot of young farmers out there who are heavily in debt, but who are technically good farmers. The government said that they will not do that. They do not want to go in that direction, they want to let the creditors in and often foreclose. But in the announcement in December the

same government that was not prepared to cancel any of the debt, or to have it rolled back for individual farmers dealing with farm credit or other creditors, said, "Oh, the Western Grain Stabilization Act is deeply in the red in the amount of $1.5 million. We will not fire the management, because their recommendations got us in trouble; we will not blame anyone. The international price for grain is down, and that is why the WGSA deficit is so high. We will cancel $750 million." A government that isn't able to have any laws that give farmers a right to a write-down with their creditors has been able to cancel $750 million as a deficit in the WGSA.

I suppose there will be amendments to the WGSA in the weeks or months to come. I express the hope that when we see those amendments there will be no increase in the maximum amount on which a producer can contribute. Today a producer can contribute on up to $60,000 of income, and I think that is high enough. If it should be increased, then all it means is that the money which is paid out will be paid out more to a certain few and less to the rank-and-file farmer.

When I was the minister in charge of the Wheat Board and in charge of the WGSA we had to look at how it was functioning. There was a tremendous demand then by many producers to get out of the fund and withdraw their money. They were saying, "Look, we paid in for a large number of years and have received little or nothing from the fund; we want out." It was my opinion at that time that the way things were going there could well be some substantial payments made in the future. My recommendation to the cabinet—and it went through Parliament—was that the day on which producers could get out of the program would be postponed for more than two years, and if payments were made they would not want out of the fund. The wisdom of doing that kind of thing has been proven. The demand now is not for farmers to get out of the fund; the demand is to make it easier for people who are not in the fund to join the fund and be paid out at an earlier date than is currently provided for by the terms of the WGSA. So, amendments will need to be made.

I hope that the farmers will not be called on to pay a heavy contribution into the fund, that the ceiling will not be increased, and that steps will be taken to make certain that the fund is structured in such a way that if grain prices continue at their current level the fund will continue to pay out large sums of money. It is structured now, as I understand it, so that as prices go down it triggers large payments, but if you get into a valley when the low prices are continued for a number of years the payments dry up. I hope that when this is being restructured it will be done in such a way that payments can be made out.

Senator Barootes: It is not "dried up," you mean "lessened to the five-year average."

Senator Argue: Well, we will not go that far. I hope it will be structured in such a way that if the prices should remain at a low figure payments of the magnitude that farmers have received recently will be continued in the future

[Senator Argue.]

• (1500)

There have been some changes made to the program, and I welcome the inclusion of summer fallow. I think that the one-third provision is a little onerous. I think it might well have been half of the acreage. But, in any event, it has been recognized that in a large part of Saskatchewan and Alberta, and perhaps in some parts of Manitoba, summer fallow is a normal practice, and to have an act which does not include summer fallow is really an indication to farmers that they should have a larger seeded acreage. At a time when I think we would all agree that it might be better to have less production it was an encouragement to have greater production.

I would think that some further changes might well be made in this program—everything would need to be on a voluntary basis—and that there should be a larger sum of money allocated for summer fallow as an encouragement to producers to cut back on their total acreage where it seemed wise to do so. Certainly we can all support this measure. I do not believe that it goes far enough, and I believe that further changes should be made. Many changes are required to our agricultural policies in this country if the exodus of farmers from the land, particularly in western Canada, is to be halted and if our agricultural and rural communities are to be kept viable.

Hon. Efstathios William Barootes: Honourable senators, it had not been my intention to speak on Bill C-108, but there are two or three things which impel me to do so. The first is to again extend to Senator Olson, for his very kind and helpful remarks, the invitation that I offered once before, namely, that, in view of his great acquiescence to what is being done by the Government of Canada, we do have room on this side of the house for him at any time.

Some Hon. Senators: Hear, hear!

Senator Barootes: We are great friends, and I appreciate his help. The other thing that impels me to speak is that Senator Argue, today, finally has agreed that this is a very helpful bill; and I am sure that all of us feel some relief that that has happened.

We all know that the Canadian farmers are hurting, and hurting badly, because of low grain prices. Those prices are undoubtedly the effect of unfair practice in the international marketing area. We are caught in the crossfire as a marketer of grain. Prices for grains and oilseeds are now at the lowest level in real dollar terms that they have been in the last 50 years.

In 1986 the federal government responded to the severe financial problem facing Canadian farmers by consulting with farm groups and creating the Special Canadian Grains Program, which is the subject of Bill C-108. This year the program is being extended to provide assistance for the 1987 crop year. Also, this year the government is changing the program so that most of the money going to farmers through this program will be in their hands in the spring of this year, before seeding, which was one of the pleas made by our friends on the other side last year.

We are being asked to look at the bill at this time in order to be able to include that first grain payment in March of this year. I should add that the second payment will be made probably in June, before the start of the summer inputs and the harvesting. Therefore, this money will come at a very timely juncture.

As has been mentioned, the first payment will be $803 million, which is quite substantial. The second payment, in June, will be around $300 million. In total, in this fiscal year, the sum of $1.5 billion will have been paid to Canadian farmers through this Special Canadian Grains Program—because, as honourable senators will recall, some of the payment from the first program fell into this year.

Including the money which farmers received in that year—in the first program and this program—it represents a very substantial input of dollars into the grain industry. In my opinion, there is no doubt that without the Special Canadian Grains Program our Canadian farmers could not pay the bills for putting in their crop and for harvesting it this year.

As has been said, this is not because Canadian farmers are inefficient or bad managers. Our farmers are caught in the crossfire between the United States and the European Economic Community. Price support programs from them are linked to production so that farmers are encouraged to produce more and more. In order to dispose of the surplus from that heavy production, those countries are subsidizing their exports. With a great deal of grain on the market the Canadian Wheat Board and our farmers are forced to sell at bargain-basement prices.

Therefore, we all agree—and I include our friends on the other side—that ending subsidies is the real solution to the problem faced by Canadian grain farmers. The Minister of State for Grains and Oilseeds, the Minister for International Trade, the Secretary of State for External Affairs and the Prime Minister have all taken advantage of each and every international forum they have attended to make the case for ending agricultural export subsidies—and I might add parenthetically that the Saskatchewan Minister of Agriculture, Premier Grant Devine, has been working like a beaver to accelerate and push this process.

Canada is actually committed to reducing international subsidies, but farmers will not see those results for two, three or more years. The government knows that farmers cannot afford to wait for that to happen. As Senator Olson has said, some harbingers have recently shown that there may be some correction of those low prices.

The return that farmers are getting for their grain is so low that, at this time, we urgently need to help them with some kind of support program, such as the Western Grains Stabilization Program and this special program.

In 1986 the government responded by creating the Special Canadian Grains Program to compensate farmers for the drop in world prices. The government talked to farmers and to farm organizations from every part of this country about the kind of program that was needed and how it could best be delivered—and it followed the advice it received. The result is the program that is now before us as a supplementary estimate amounting to over $1 billion, of which $803 million will be distributed this year.

While the program will compensate our farmers for losses, the Special Canadian Grains Program does not affect the decision of farmers about what and how they should plan. No direction is given to them about that. That is very important when Canada goes to other countries to talk about eliminating their support programs, which, on the other hand, are designed to encourage farmers to grow a surplus. Senator Argue was good enough to touch on that in connection with summer fallow and special crops programs.

Without the Special Canadian Grains Program many of our grain and oilseed producers today would be out of business. According to a recent survey of farmers eligible for this program, the payment put them on a break-even basis—and I wish to emphasize this. Farmers are using the money from this payment to reduce their debts and to buy the farm inputs that they need, and when the farmers are in business so are the implement dealers, so are the fertilizer dealers, and so are all of the people in businesses related to agriculture. So these dollars will help to keep other small businesses in the rural areas alive.

Senator Argue reminded us that the payment from this program this year will probably amount to $6,000 or $7,000—it is probably closer to $8,000—per farmer. Let us leave it at $7,000. He is happy that the top payment to be made will be $25,000, and I, too, think that is a good thing. In fact, he suggests that the payment should be lower so that there will be more money to spread around among the other farmers. He also puts forward the premise that farmers require and desire three times the $1.1 billion. If my friend multiplies that $8,000 by three, he will reach close to the $25,000 top that he said was too high to begin with, so there is a little contradiction somewhere in this. I can say that I am pleased with the $25,000 top payment, so that the big industrial farmer does not take advantage of the smaller farmer, who is indeed in need.

● (1510)

Honourable senators, the Special Canadian Grains Program is vital to the survival of farmers and farming communities all across Canada. The farm community was almost universally pleased when the Prime Minister announced the extension of the program in December. There were only a few murmurs of discontent.

The Special Canadian Grains Program, however, is only a short-term solution to the problems Canadian farmers are facing. In December the Prime Minister announced a series of both short and long-term incentives to help farmers survive the drop in world grain prices. Including the Special Canadian Grains Program, these initiatives represent the biggest support package for the industry in Canadian history.

To help farmers meet their immediate needs, in addition to that program, there is the farm fuel tax rebate program, which

has been extended to 1991, saving farmers approximately $400 million. The farm debt review boards and the Canadian Rural Transition Program have been extended to help farmers in financial difficulty until 1991, at a cost of approximately $400 million.

To help farmers meet their long-term needs the Farm Cedit Corporation has been given extra funding of $30 million for this fiscal year and $100 million in each of the next three years.

As we heard from the two gentlemen who entertained us in the Agriculture Committee the other day, there is a great deal of explanation as to how this works. Indeed, through the Farm Credit Corporation, with commodity-based loans, many of these farmers are able to reconstruct their loans down to as low as 6 per cent. That does not apply to farmers borrowing in the private sector but only to farmers borrowing through the FCC. With the money that has been made available through the FCC some help is being given to a considerable portion of our farm community.

We were somewhat concerned about how the Farm Debt Review Board works, and went into this in a fair amount of detail in committee. I regret that Senator Argue was not there to put his good and cogent questions to these gentlemen.

Senator Argue: I have attended quite a number of those meetings, although perhaps not all of them.

Senator Barootes: He missed this one, however.

Senator Argue: I had more important duties at the time.

Senator Barootes: It was pointed out to us that there were some difficulties, and I sympathize very much with those young, efficient farmers, who, through—what should I say—misfortune—that is the kindest term I can use—

Senator Argue: They listened to the banks!

Senator Barootes: —got into debt at a time of high interest rates. I, too, wish that sooner or later something can be done to ameliorate that problem. Perhaps that is something we can look at down the way. There is nothing now to be done, except through the Farm Credit Corporation, to lower the payments for those farmers. There may be a misunderstanding in this regard, and that misunderstanding is that people from the FCC do not have the right to say to the credit unions or the banks, "You write this man's debt down. He borrowed thousands of dollars and we want you to write it down." That is not the way the FCC was designed to work. It was explained to us that it is to work as a mediator to bring the debtor and the creditor together and to bring to their attention facts which, as was said, some of them were not even aware of in some instances. Then, between the two parties, some kind of voluntary decision is taken that could help one, the other or both. I think it was made quite clear that write-downs are not the order of the day, nor does the FCC have the authority to tell the banks or the credit unions that they have no access to the farmers' money or assets. In summary, the FCC tries to make re-arrangements that will enable the farmer to survive on his land for the time being.

[Senator Barootes.]

To help farmers meet their long-term needs the Farm Credit Corporation is being given an extra $30 million this year and $100 million over the next three years, for a total of $330 million. The Western Grain Stabilization Program, of which Senator Argue spoke, is being changed to encourage more farmers to join it. Additionally, it is being revitalized and re-established by infusions of cash from the general treasury, since it has already expended all of the moneys that were available to it in funds from its insurance collection scheme.

The federal government is willing to spend up to $100 million on joint ventures with the provinces. These include research on ethanol blended gasolines, initiatives in soil conservation, and an agricultural research centre in western Canada.

I thank honourable senators for their general support of this bill, despite their minor criticisms. We know that the farmers need some help, and they are going to get it. The farmers know they can count on this government to help them survive the drop in world grain prices for as long as that difficulty exists. The federal government is actively working internationally to put an end to the subsidy battles between the U.S. and the EEC, but the negotiating process is slow, and farmers need financial support if they are going to make it through the drop in commodity prices. This government is committed to providing that support through programs like the Special Canadian Grains Program, the subject of this bill.

If I may, I will conclude by saying that never in recent history, in my memory, have the farmers of Canada, through no fault of their own, been in such a difficult financial state. And never in Canada's history has a government responded so quickly, so willingly and so generously to bring them the support that they require.

Senator Argue: And the foreclosures continue.

Senator Olson: If I may, I will ask Senator Barootes a question. I wonder whether he understood clearly what I meant when I talked about the money that was being made available to the Farm Credit Corporation to pay down some of the interest. I was not asking for write-downs. Senator Barootes is not talking about the same people as I am. People who owe their money to a credit union, a bank or an institution other than the FCC have no funding to help them with their debts. That is what we are talking about. Does he understand that? It does not matter how much is given to the FCC. If a farmer does not owe money to that institution, he is not getting much help.

Senator Barootes: In answer I will say that you are partially correct, and I agree. The Farm Debt Review Board, as you yourself have said, has been funded with $40 million, of which, as you also said, approximately $39.3 million is for administration. These farm debt review boards, which consist of a chairman and two other farmers who have no vested interest in a particular situation, bring the information that they have, together with the information that the bank has, and provide it to the farmers. The $39.3 million is an expenditure of this government, or of any government, to assist those farmers who have debts with banks and credit unions as well as those who

have debts with the FCC. There is an extra fund available for those who have debts with the FCC, in case there are some sums of money required to stretch out and help that farmer.

• (1520)

Therefore, that approximately $40 million has not been set aside only for clients of the FCC but also for clients of banks and credit unions, and that is the kind of money I was speaking of.

Senator Olson: The problem I have with that explanation is that that money is for administration, and they do not bring any money to the table to help pay the interest.

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators—

The Hon. the Speaker: I wish to inform the Senate that if the Honourable Senator Doody speaks now his speech will have the effect of closing the debate on the motion for second reading of this bill.

Senator Doody: Honourable senators, yesterday, as I introduced this bill, Senator Stewart asked me one question; he asked me if I could try to determine for him when the government intended tabling the Main Estimates. I have made inquiries and I can only say that it is the hope of the government to have those estimates ready before the end of March. The target date, I believe, is somewhere between the middle and the end of March. I have been unable to ascertain a more definite date than that. However, if I receive further information on that matter, I will certainly be only too happy to provide it for Senator Stewart.

I would like to thank the senators who participated in this debate. It was a very informative one. With these few comments I commend second reading.

Motion agreed to and bill read second time.

THIRD READING

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

Hon. C. William Doody (Deputy Leader of the Government): With leave of the Senate, now.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I would like to note for the record that normally we allow the full day's notice provided for by the rules between the adoption of second reading and dealing with third reading. However, we have always made an exception if the bill is unopposed and if Royal Assent is planned for the same day. In that case we often accelerate the process. As I understand it, there will be Royal Assent later today, so I think the bill should receive third reading now.

Senator Doody: I appreciate the cooperation, honourable senators.

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

Hon. Senators: Agreed.

Motion agreed to and bill read third time and passed.

ROYAL ASSENT

NOTICE

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

RIDEAU HALL
OTTAWA

THE SECRETARY TO THE GOVERNOR GENERAL

4 February 1988

Sir,

I have the honour to inform you that the Honourable Gerald Eric Le Dain, Puisne Judge of the Supreme Court of Canada, in his capacity as Deputy Governor General, will proceed to the Senate Chamber today, the 4th day of February, 1988, at 4.45 p.m., for the purpose of giving Royal Assent to certain Bills.

Yours sincerely,
Anthony P. Smyth
Deputy Secretary, Policy and Program

The Honourable
The Speaker of the Senate
Ottawa

SENATE AND HOUSE OF COMMONS ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations) moved the second reading of Bill C-83, to amend the Senate and House of Commons Act.

He said: Honourable senators, this bill comes to us from the House of Commons with the explanation that it is the result of certain reforms that have taken place in the practices and procedures of that chamber.

The bill provides remuneration for members of that chamber who have special responsibilities as the representatives of their parties in that House. They include the Deputy House Leader of Her Majesty's Loyal Opposition; the Deputy House Leader of any party that has 12 or more members of that House; the National Caucus chairpersons of the government or of Her Majesty's Loyal Opposition; and the National Caucus chairpersons of any party with 12 or more members of that chamber.

The bill also provides for remuneration for members of the House of Commons who are chairpersons of standing committees, including standing joint committees; chairpersons of

legislative committees of that House; and chairpersons of special committees of that House.

I do not intend to discuss this bill at any length today, beyond providing the explanation that I have just conveyed to honourable senators. I understand that there is some interest on the part of honourable senators in seeing this bill referred to one of our standing committees for consideration so that we may consider at the same time the implications this bill might have for this chamber, because it is, after all, a bill to amend the Senate and House of Commons Act.

Therefore, honourable senators, in placing the bill before you for second reading I put honourable senators on notice that, at the end of second reading, it will be my intention to move that the bill be sent to the Standing Committee on Internal Economy, Budgets and Administration of this place for their consideration.

Hon. Charles McElman: Honourable senators, I can understand the lack of enthusiasm on the part of the Honourable Leader of the Government in the Senate in his glowing support of this bill. Before I move the adjournment, I would like to say to the honourable senator that my preference would be for a very, very long adjournment of this debate. However, I shall restrain myself and simply say that I move the adjournment of the debate at this time.

• (1530)

On motion of Senator McElman, debate adjourned.

COPYRIGHT ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Richard J. Doyle moved the second reading of Bill C-60, to amend the Copyright Act and to amend other acts in consequence thereof.

He said: Honourable senators, I wish to thank the Senate for allowing me to proceed with second reading this afternoon. This will permit me to go with the Legal and Constitutional Affairs Committee to carry the good news contained in Bill C-55 to the Canadian West.

My friend, Senator Barootes, advises me that, notwithstanding the wonders being wrought by medical science, prospects are that only the pages among us will be alive and kicking in the year 2052. That is when we might expect Parliament, if it proceeds at its historical pace, to next consider Canada's Copyright Act.

Sixty-four turbulent years have passed since Royal Assent was given to the present act, and we have gone from Geoffrey O'Hara to Corey Hart and from Lucy Maude Montgomery to Margaret Atwood without substantial revision of the legislation which gives a creator the exclusive right to copy his or her work or to give permission to someone else to do so. In three-score and four years we have tinkered the old act up and made it do in the establishment of the right to publish, produce, reproduce, translate, broadcast or adapt a work or to perform it in public. Copyright applies to all original literary, dramatic, musical and artistic works, such as books, songs, sculptures, paintings, photographs and films. It protects the literary form of what you read in newspapers. News itself cannot be copyrighted, although you might try to inhibit that through the trademark legislation, as the Canadian Olympic Association has attempted to do with its action in the courts.

Over the years we have stretched the Copyright Act of 1924 to cover products unknown to the men who framed it. The act includes, for instance, provisions for the protection of audio and visual tapes, even the naughty ones. But the band-aids, the pink string and sealing wax used to patch the legislation have long since become obvious, as has the need to overhaul our entire approach to regulation of the use we make of intellectual property. Property, that is what we are dealing with, as surely as if we were talking about the family farm. Creations of the mind and spirit are as vital to the health and vigour of a nation as any of its natural or material treasures and far more vulnerable to neglect and maltreatment. Michael I. Pitman, for a seminar of Canadian publishers, put it this way:

> The great benefit that copyright has brought to our society has been that, by controlling the right to intellectual property and its exploitation, it has provided an incentive to artists and other creators to produce new works.
>
> The ultimate answer to the why of copyright is that it has successfully stood the test of time, and there is no reason to suppose that it will not continue to do so.
>
> Invariably, copyright law has to be adapted to meet new challenges, normally in the form of technological innovation. The challenge of technical innovation today is really no different from that of the past. The same technology which causes the challenge can be used advantageously in finding new solutions. Copyright itself has not failed our society. We have been slow sometimes in recognizing the need for change and in being imaginative enough to introduce change. It is worth remembering, however, that the major country that abandoned copyright in its revolution, the U.S.S.R., has recently reintroduced copyright and has become a member of the Universal Copyright Convention, mainly to enjoy the reciprocal benefit of international copyright. There seems to be a lesson here which should not be lost on us.
>
> There are many reasons for copyright, but the most important one is that it works.

I should tell honourable senators that those words have been copyrighted by the University of Toronto Press, and you would be well advised not to make use of them beyond these precincts without permission. I might also note that the words were written in 1981, and the message of "need for change" has been in limbo since, a situation that in no way could be blamed on want of irritation or agitation.

Bill C-60 is not this government's complete response to the chorus of calls for change. It is what the minister, the Honourable Flora MacDonald, calls the first phase. Other aspects of copyright will be dealt with in legislation which may come to us as early as the fall of this year. Bill C-60 proposes nine

major amendments to the law as it now stands. I commend them to the careful consideration of a committee of this chamber, and touch upon them only briefly today. What six of the nine amendments have in common is that they are intended to benefit our cultural industries and individual creators.

First is the stimulation of the establishment of collectives such as those which now deal with music. It is intended that these organizations which negotiate and collect royalties for creators will be supplemented by new kinds of collectives dealing in all areas of copyright protection. Second is extension, through a new agency, of the Copyright Appeal Board, which now deals only with music or performing rights. The powers of the board will be expanded to deal with other collectives as well. Third is the strengthening of moral rights protection for creators. The powers in this section will be expanded. Here we are caught up with the issues of an artist's right to safeguard his name and his creation, even though ownership may be held by another. It is most frequently epitomized by the attempt of the Eaton Centre in Toronto to tie red ribbons around Michael Snow's sculptured geese. Fourth is extended protection of choreographic works, which are now treated as dramatic subjects with plots or specific sequences. The amending bill goes further and recognizes compositions which are simply visually aesthetic expressions.

• (1540)

Senator Frith: The third was the strengthening of moral rights protection to creators. What was the fourth?

Senator Doyle: The fourth is extended protection of choreographic works.

Fifth is abolition of compulsory licences for the protection of sound recordings. As things stand, you or I have the right to make our own recording of any musical composition once a first recording has been produced. The price is something of a bargain—it is two cents a copy, the same as it was in 1924 when Al Jolson was selling "Swanee". Under Bill C-60, composers can negotiate royalty rates freely with recording companies, a clause that should make Gordon Lightfoot smile once he gets over all of those songs already under the two-penny bridge.

Sixth is the right to exhibit artistic works in public, which will provide artists with a new, legal right to compensation when their works are displayed in public.

There are three other major aspects of the legislation which are the shared concern of the Minister of Communications and the Minister of Consumer and Corporate Affairs.

First, the bill protects software creators by including computer programs—hardly anticipated in 1924—under literary works. We Canadians have been robbing these authors blind for years.

Second, penalties will be increased for commercial dealings in unauthorized copies. As things are, the maximum penalty for unauthorized copying is a fine of $200, which is totally inadequate. It is probable, however, that a Senate committee will want to examine the bill's provision of $1 million fines and five-year jail terms for conviction on indictment of copyright infringement; at least before they Xerox 60 copies of that snappy article in *Saturday Night*.

Third, Bill C-60 will provide an objective means for determining whether an article, gimcrack or what-have-you can be protected by copyright, industrial design or both.

Minister MacDonald said in the other place that the obvious urgency of copyright reform impelled the government to proceed in two stages. She said:

> The matters to be addressed in the second phase have just as high a priority as those in C-60. But because of the complexity of these issues, the drafting of legislation to address them has not yet been completed.

We should, honourable senators, be concerned not only with Bill C-60 but with those complexities beyond; concerned perhaps that matters left out of Bill C-60 remain on the agenda and are not lost between the stools. We may want to review the arguments for the exceptions from the application of the copyright law, such as those proposed by Erik Spicer who presides over our Parliamentary Library.

We might also wish to examine the possibility of copyright being used as a means of destruction rather than protection. Now, that might seem to be an unlikely hazard, but might I take just a few minutes more of your time to deal with a very real problem described in a letter I have received from David Eustace, who is proprietor of the Nostalgia Cinema in Toronto. He writes:

> What I am most concerned about is that in granting copyright ownership, it be stressed that such ownership by a corporation or individual must not be used to destroy works, either physically or by withholding their distribution. I am thinking mainly of film. We have the example many times over in the United States where motion picture films have been destroyed to save storage costs, or to make way for a re-make. According to the American Film Institute, Los Angeles, 50 per cent of motion picture films registered for copyright in the U.S. before 1951 is destroyed. This includes many films considered works of art by film critics. Of course, the reasons for films being lost or destroyed are many and include film companies going bankrupt, wilful destruction, deterioration of negatives, and plain neglect.
>
> Some films have survived solely on account of an individual tucking a copy away privately. This is far too chancy a way for a country to preserve an important part of its culture. Yet such was the case of "The Milky Way".
>
> This favourite film of movie star comedian, Harold Lloyd, was an enormous success in 1936. Sam Goldwyn decided to re-make it ten years later as a vehicle for Danny Kaye. Now called "The Kid From Brooklyn", it was launched only when Goldwyn's company had bought up all rights to "The Milky Way" and ordered all copies and negatives destroyed. That "The Kid From Brooklyn" is the much inferior film is not even the point. The point is a company had completely destroyed (or attempted to in this case) the work of another. (A private collector

managed to latch onto a print in 16 mm so at least one can see "The Milky Way" now if one seeks out obscure museums and archives.)

Surely ownership of copyright in film is not meant to give an individual or a corporation the right to destroy the work of another. Even if I write, produce and direct a film with my own money—

And I might inject here that this is something that David Eustace has done.

—I should not have the rights, once the work is edited and completed, to destroy the performances of others; the cinematography by a cameraman, the dancing and choreography of another, the music written by yet another. This is not the case of Ayn Rand's architect destroying what is his; the vast majority of film encompasses many other arts and talents.

I might say that what almost happened to "The Milky Way" did happen to the first film version—made in 1921—of Lucy Maude Montgomery's "Ann of Green Gables". None of us will ever see that film.

Eustace goes on to discuss possible legislative remedies, but whether the question he raises was forgotten in phase one of Bill C-60, or is intended for study in phase two, it is one that honourable senators might want to ask as they examine the salutary thrust of the legislation now before us.

On motion of Senator Frith, for Senator Grafstein, debate adjourned.

[*Translation*]

STANDING RULES AND ORDERS

THIRD REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the Third Report of the Standing Committee on Standing Rules and Orders (Rule 67(1)(*d*) of the *Rules of the Senate*), presented in the Senate on February 3, 1988.

Hon. Gildas L. Molgat: Honourable senators, the Third Report of the Committee on Standing Rules and Orders was presented in the Senate yesterday. It is very short, and I would ask the Senate to adopt the report.

We have a slight problem, however, because the French text is not correct. Where it reads:

Le comité mixte d'examen réglementaire

We have a problem here because, in fact, it should read:

. . . d'examen de la réglementation.

Unfortunately, something went wrong in the translation, and the request came to us in this form from the House of Commons. The request originated from the same committee that is requesting the name change.

We discussed this with the House of Commons, and it was suggested that we adopt the report as is and just amend the Rules. For the time being, I am not going to suggest that the Rules be reprinted because we intend to ask the Committee to send us its request a second time, duly corrected. So we will make the correction at that time. Senator Doody—

[Senator Doyle.]

Hon. Royce Frith (Deputy Leader of the Opposition): Does that mean—

[*English*]

Senator Molgat: The problem is that the French text is incorrectly translated.

[*Translation*]

Senator Frith: Senator Molgat, do you want us to adopt a version of the committee's report that is not acceptable? Why don't we wait for the corrected version?

Senator Molgat: I think the problem is that if we wait, the committee will be in a difficult position. In fact, we will be calling the committee by one name and the other place will be calling it by another name. The committee has work to do.

If we adopt the report now, the committee can continue its work, make the change in the French text and send it back.

That is the problem we have to deal with.

Senator Frith: In that case, Senator Molgat, perhaps your solution is the more pragmatic one.

Senator Molgat: Indeed, Senator Frith. I think we should accept the report, refrain from reprinting the Rules, and wait. The committee will then exist under its new name in both chambers, which is important, since it is a joint committee. It then meets again, asks for a change in the French text and subsequently we return their request.

Therefore, honourable senators, I move that the report be adopted.

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

Hon. Senators: Agreed.

Motion agreed to and report adopted.

[*English*]

STANDING RULES AND ORDERS

FOURTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the Fourth Report of the Standing Committee on Standing Rules and Orders (Rule 112 of the *Rules of the Senate*), presented in the Senate on February 3, 1988.

Hon. Gildas L. Molgat: Honourable senators, this is again a request from another committee—in this case a committee of this place, and not a joint committee. It is a request by the Standing Committee on Internal Economy, Budgets and Administration simply asking for a later reporting date for the reports of the Clerk.

The fiscal year was changed, and at the time that was done our own rule was not changed. The Clerk and the Director of Finance find it impossible to make the report in the month of May, as our rule presently prescribes, and request that it be done in the month of October.

The members of the Standing Committee on Standing Rules and Orders have discussed this in detail. At that time there were members present from the Standing Committee on Inter-

nal Economy, Budgets and Administration, and the committee recommends that the change be made.

Motion agreed to and report adopted.

CANADA-UNITED STATES FREE TRADE AGREEMENT

DEBATE CONTINUED

On the Order:

Resuming the debate on the inquiry of the Honourable Senator Gigantès calling the attention of the Senate to the Canada-U.S. Free Trade Agreement.—(*Honourable Senator Gigantès*).

Hon. Philippe Deane Gigantès: Honourable senators, I will try to be brief in my concluding remarks. I have great sadness in my heart, because I see that too many people both in this chamber and outside of this chamber have not considered some of the truly vital issues involved in this debate. Unfortunately, the debate will last another seven years. We cannot avoid trade with the United States. We want this trade to be as free as possible, but we are now involved in a bilateral relationship with a giant, and we will have to harmonize our policies over the next seven years to produce a level playing field. Imagine, if you will, a Canadian football field. The space between the goal line and the ten-yard line at one end is the Canadian space, and the rest of the field is the American space. If it is going to be level, I submit it will be the Canadian space that will be brought to the level of the American space. In many instances that level is lower than ours.

I deplore this agreement, because there is no mention of what the Prime Minister said on April 2, 1987, was his principal goal—a binding dispute-settlement mechanism. We have a dispute-settlement mechanism, but, in the final analysis, the bottom line of that mechanism is that if either of the two parties does not like what the dispute-settlement mechanism has produced it need not obey, and the other party can retaliate. There is no other reading of the text.

Now, the elephant and the mouse. Senator Cogger obviously is an "elephantophile"—he loves elephants. I have a weakness for mice.

Senator Cogger: I just said that I had heard that line before.

Senator Gigantès: Well, it is worth repeating.

There are often comparisons made by the government to the European Common Market. They have a dispute-settlement mechanism; they have a commission. However, the four largest members of the 12-member board of that commission have eight votes. The remaining eight nations—the smaller ones—have nine votes. In our case, with the United States, there is one giant and one dwarf. In the Common Market the small nations can join together and thwart the giants. In any case, there are four giants and they can be divided, and have been repeatedly.

Moreover, the Common Market commission can appeal to the Common Market Court. The Common Market Court is a tribunal and does not apply the law of any of the participant members. The dispute-settlement mechanism will be applying U.S. law in the case of Canadian exports to the U.S. or Canadian law in the case of U.S. exports to Canada. The Common Market Court applies the law of the Common Market, and that law has evolved into a context in which the small members have the votes and the clout to ensure that one partner will not be dictated to by another. We are continually told that we have achieved that, but obviously we have not. We have given up an enormous amount to get this thing which, in fact, we will not get. We have given up the right to use our comparative advantage in energy. We have given up the right to use our comparative advantage in certain natural resources. We have given up the right to impose export taxes in order to ensure that things such as fish will be processed here rather than in the United States. We have given up far too much.

• (1600)

One of the arguments is: Then why do businessmen support it?

Senator Cogger: Why does Mr. Bourassa support it?

Senator Gigantès: Mr. Bourassa has gotten into bed with Mr. Mulroney, and I cannot say anything about that since they are consenting adults.

Businessmen are supporting it for either of two reasons. One is the belief in the myth of Adam Smith. Adam Smith, if one reads his text today, would have been horrified by the idea that trade could be regulated by what the Americans call trade remedy laws. These are obstacles to trade and are totally against the free market idea. That is what we will be applying in this bilateral mechanism. There is another reason, of course, that businessmen support it, especially big businessmen. If they are American subsidiaries, naturally they support it. If they are not American subsidiaries but big Canadian companies, you should read Eric Kierans' article in "Policy Options" of July if you want to see why they support it. To summarize, he says, in effect, that what this agreement gives large Canadian companies is U.S. corporate citizenship. They will be able to invest in the United States without being hassled. As you know, the Americans are very nationalistic in that they do tend to hassle people from abroad who come to invest in their country.

We have given up control of our banking system protection. We have given up control of our service industry protection. We have entered into arrangements which will allow the Americans to come in here and buy up any creative, small Canadian research company and move its technology and its best people south of the border.

The fate that is staring us in the face is the fate of the northern-tier states in the United States. They enjoy a free market, free trade arrangement, with the rest of the United States, but they have been growing much more slowly than Canadian provinces over the past 25 years. They have been growing much more slowly than the rest of the United States. They have been losing resources, investment and people to the rest of the United States. It is cheaper to build a factory where

you do not have to heat it. It is cheaper to build a factory where the friendly sheriff will not allow a union to be formed.

I also object to the fact that our public servants were asked to write documents—including "A summary of the Free Trade Agreement"—which were distributed among us, and which are not an objective presentation of the deal, because the data about the deal is interspersed with goverment rhetoric about how beautiful it is. I do not think public servants should have that role. The equivalent American document is dry. It just gives the text. They have not fallen to the cheapness of using public servants—and here they are paid by the tax dollars of all Canadians—to write government propaganda.

Above all, I object to giving false hope to the less-developed regions of this country by telling them that this trade deal is going to cure their ills. The Common Market deal has not cured the ills of the less-developed regions of the Common Market, or even those ills to be found within each country of the Common Market. As I was saying to you earlier, the existence of free trade within the United States, among the 50 states, has not helped North Dakota or Idaho. This deal is not going to help our under-developed regions. We have had that explained to us by the Deputy Secretary of Finance. He admits it. Yet, government propaganda insists that it will happen. It is a bad deal. It is presented dishonestly.

The fate of the country is at stake, because what is quite clearly happening is that the mixture of private enterprise and government intervention, which was instituted by Sir John A. Macdonald himself and which was the basis of the creation of Canada—it was a reaction to the capricious and arbitrary trade actions of the United States which abrogated a trade agreement it had with Canada—is being eroded. But that is what brought Canada into existence. That mixture of private enterprise and government intervention, which is accepted, and has been accepted, by a majority of Canadians throughout our history, has, of course, displeased some business people, some ideologues, who think that Adam Smith lives. After many years they have given up the hope of convincing Canadians to get rid of this mixed economy through the ballot box, and now they are bringing about the change they want through a trade treaty with the United States, because we are going to have harmonization between their standards and ours. When you are harmonizing one-eleventh with ten-elevenths the ten-elevenths will prevail.

We are going to become a poorer version of the U.S.—another tier of the northern tier. We are going to have a less tolerant and less friendly society. One day we might even elect a non-existent president who has come to his exalted office, as has happened south of the border, through being a talking head on television, selling various products. He continues selling things and contradicting himself on important issues, showing that he does not understand. The power of the American lobbyists and of the American media will inflict things like that on us, and I regret it.

Happily, we have seven years of negotiations ahead of us. Honourable senators, whether there is a trade deal or not, we cannot avoid negotiating endlessly with the Americans. We shall do so to the end of time. The only salvation for the country is to ensure that we do not have at the head of our negotiations our current Prime Minister, who seems to think that any sacrifice is worthwhile in order to make a deal. It is very easy to make a deal if you give away everything. We are going to play strip poker with the Americans, and we should not have as Prime Minister the kind of strip poker player who gives away his shirt before the cards are dealt.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I may have misinterpreted Senator Gigantès opening comments, but I thought he expressed some "sadness," as I remember his word, that there was a certain amount of indifference to the consequences of this agreement between Canada and the United States. This, therefore, would seem to me to be an appropriate time to note that the Senate is not treating the matter indifferently at all, and that the Standing Senate Committee on Foreign Affairs—the commitee that has already studied this subject and published three reports thereon—is taking this matter very seriously and is in the midst of a very thorough study of all aspects of this agreement. Let us make it clear that if Senator Gigantès does feel sad about some indifference about this agreement and its consequences that allegation of indifference certainly cannot be levelled at the Senate.

• (1610)

Senator Gigantès: I was not levelling it at the Senate but at some senators on this side, where, unfortunately, I have to sit for lack of space.

Hon. C. William Doody (Deputy Leader of the Government): You do not really, sir; there are various alternatives. Let me say that there is one senator who sits on this side who hopes to demonstrate shortly that he is somewhat enthusiastic rather than indifferent. With that, I move the adjournment of the debate.

On motion of Senator Doody, debate adjourned.

[*Translation*]

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

CONSIDERATION OF NINTH REPORT OF COMMITTEE ON CONSULTATION PAPER ON TRAINING AND DOCUMENT ENTITLED "EMPLOYMENT OPPORTUNITIES: PREPARING CANADIANS FOR A BETTER FUTURE"—DEBATE CONCLUDED

The Senate proceeded to consideration of the Ninth Report of the Standing Senate Committee on Social Affairs, Science and Technology entitled: "In Training, Only Work Works" (Sub-committee on Training and Employment), tabled in the Senate on December 1, 1987.

Hon. Philippe Deane Gigantès: Honourable senators, my presentation will be very brief. It concerns the report produced by the Subcommittee on Training and Employment of the Committee on Social Affairs, Science and Technology.

Senator Tremblay was so kind as to table the report on my behalf, since I had the privilege of chairing this subcommittee.

I want to thank Senator Tremblay for his tremendous co-operation and infinite patience with the work of the subcommittee.

If I may, I would like to thank committee members who took part in the subcommittee's work.

[*English*]

I will begin with the deputy chairman of the subcommittee, Senator Robertson, who was a great help and had a great knowledge of the field; and Senator David, who brought to this his knowledge of social issues and his care for education and the young. I have a special weakness for the role that Senator Mira Spivak played in this. We visited certain parts of the country together and she spoke to editorial boards, on the radio and on television on this report. I envied her her eloquence.

On the Liberal side of the house, I would like to express my thanks to Senator Bonnell, deputy chairman of the mother committee, and to the members of the subcommittee, Senator Marsden, Senator Rousseau and Senator Hébert. Without them this work would not have been completed.

I would also like to point out—I do not know if this is usual—that the subcommittee had an extremely able researcher, whom we have lost now to Mr. David Peterson's government, Miss Christine Dearing, who worked long and hard, and did splendid work in research, drafting organizing and policy advice. All the members of the subcommittee have great respect for her and wish her luck in the higher job she now occupies.

The report itself is brief. It looks fat, but most of it is evidence. It is organized for easy reading. On the English side it has a summary that takes a page and a half, which starts on page 3; the same summary is on the French side, and also starts on page 3. On the English side, the report starts on page 7 and ends on page 30.

[*Translation*]

On the French side, the report starts on page 7 and ends on page 35. The rest of this volume, which looks impressive, consists of the testimony of over fifty experts, each of whom we interviewed for three hours. The interviews were summarized and subsequently submitted to the interviewees. They, in turn, approved the summaries and corrected them if necessary, so that all views given are contained in this report. People reading the report will notice that we have conveyed the main philosophy reflected in the testimony of all the people we consulted.

I suggest that honourable senators read from page 29 to 35 on the French side.

[*English*]

On the English side, in pages 25 to 31, they present one recommendation of this report which was the subject of much research, and that is a combination of job creation and training. We found no one opposing it. Various provincial authorities examined it, liked it, and asked for more copies. We even have a letter from the OECD which asks us for more copies, saying that:

> The study covers a subject which is getting increasing attention. I would be grateful if you could send additional copies.

It is a report which Senator Roblin kindly characterized as non-partisan. It is not aimed at criticizing this or previous governments. When it does criticize, it criticizes policies adopted by the Liberals as well as policies that are now being applied by the Conservatives. It was not done with the purpose of criticizing one party or the other. I do not have to tell you what the report contains. This is a chamber that does not contain any functional illiterates, and if you read the page and a half summary and it arouses your interest you can then read the other 23 or 24 pages of the report.

I am grateful to you for accepting the report and for listening to me this afternoon.

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

IMMIGRATION ACT, 1976

BILL TO AMEND—MESSAGE FROM COMMONS

The Hon. the Speaker: Honourable senators, I have the honour to inform the Senate that a message has been received from the House of Commons which reads as follows:

HOUSE OF COMMONS
CANADA

Wednesday, February 3, 1988

ORDERED,—

That a Message be sent to the Senate to acquaint Their Honours that this House agrees with amendments 8 and 13(e) made by the Senate to Bill C-84, An Act to amend the Immigration Act, 1976 and the Criminal Code in consequence thereof, but disagrees with amendments 4, 5(a), (b) and (c), 6(a) and (b), 9, 10, 11, 12 and 13(a) because this House believes they contradict the principles of the Bill for the following reasons:

Amendment 4 would exclude only criminals and war criminals from the refugee determination process, but would allow terrorists, spies and subversives to pursue a claim to refugee status, notwithstanding the fact that Article 33 of the UN Convention would permit the removal of these latter individuals to their countries of nationality or permanent residence, even if they were determined to be Convention refugees.

Amendment 5(a) would eliminate the authority of the Minister to direct a ship to leave or not to enter Canadian waters. This amendment would re-open a significant gap in Canada's ability to control its borders.

Amendments 5(b) and (c) arise out of Senate amendment 5(a), which is not acceptable, and are therefore inappropriate.

Amendments 6(a) and (b) would reverse the policy on which the Immigration Act, 1976 was based, which policy

was not changed in the Bill as passed by this House. The amendments jeopardize the possibility of successfully prosecuting persons who profit from organizing illegal migration and from counselling fraud among refugee claimants.

Amendments 9 and 10 would restrict the ability of peace officers and immigration officers to act quickly to search for evidence of major offences under the Immigration Act, 1976, in exigent circumstances, where lives are at risk or where evidence with respect to those offences may be lost or destroyed.

Amendments 11 and 12 would restrict the ability of peace officers and immigration officers to execute search warrants which have been duly authorized by a justice of the peace, by denying explicit authority to break open containers where it is reasonably believed evidence will be found and by limiting the authority to execute these warrants at night.

Amendment 13(a) would reduce the initial period of detention without review from seven days to forty-eight hours, which would allow insufficient time for the gathering of information to substantiate allegations or to identify the individual, particularly when large groups of undocumented persons arrive at one time.

And that this House agrees with the principles set out in amendments 1, 2(a), 3, 7 and 13(b), (c) and (d), but would propose the following amendments:

Amendment 1 be amended to read as follows:

"Strike out lines 22 and 23 on page 1, and substitute the following:

(c) to deter those who assist in the illegal entry of persons into Canada and thereby minimize the"

Amendment 2 be amended to read as follows:

"Strike out lines 29 to 39, on page 4, and substitute the following:

(a) examine within seven days, *in camera*, the security or criminal intelligence reports considered by the Minister and the Solicitor General and hear any other evidence or information that may be presented by or on behalf of those Ministers and may, on the request of the Minister or the Solicitor General, hear all or part of such evidence or information in the absence of the person named in the certificate and any counsel representing the person where, in the opinion of the Chief Justice or the designated judge, as the case may be, the evidence or information should not be disclosed on the grounds that such disclosure would be injurious to national security or to the safety of persons;"

Amendment 3 be amended to read as follows:

"Strike out lines 7 to 12, on page 5, and substitute the following:

(d) determine whether the certificate filed by the Minister and the Solicitor General is reasonable on the basis of the evidence and information available to the Chief Justice or the designated judge, as the case may be, and, if found not to be reasonable, quash the certificate; and"

Amendment 7 be amended to read as follows:

"Add, immediately after line 6, on page 10, the following:

95.21 No proceedings for an offence under section 95.1 or section 95.2 shall be instituted except by or with the personal consent in writing of the Attorney General of Canada or Deputy Attorney General of Canada."

Amendment 13(b) be amended to read as follows:

"Strike out lines 1 to 22, on page 21, and substitute the following:

(2) Where, with respect to a person detained under subsection (1), the Minister certifies in writing

(a) that

(i) the person's identity has not been established, or

(ii) the Minister has reason to suspect that the person may be a member of an inadmissible class described in paragraph 19(1)(e), (f) or (g), and

(b) that an additional period of detention is required to investigate the matter referred to in subparagraph (a)(i) or (ii),

the person shall be brought before an adjudicator forthwith and at least once during every seven-day period thereafter, at which times the adjudicator shall review the reasons for the person's continued detention."

Amendment 13(c) be amended to read as follows:

"Strike out lines 23 to 47, on page 21, and substitute the following:

(2.1) Where the Minister has issued a certificate under subsection (2), the Minister may amend the certificate to which the detention relates to include any matter referred to in subparagraph (2)(a)(i) or (ii), following which the person shall be brought before an adjudicator forthwith and at least once during every seven-day period thereafter, at which times the adjudicator shall review the reasons for the person's continued detention.

(3) Where a person is detained under subsection (1) and the Minister has not issued a certificate under subsection (2), the person shall be brought before an adjudicator forthwith after the expiration of the period during which the person is being detained and that person shall be brought before an adjudicator at least once during every seven-day period thereafter, at which times the reasons for continued detention shall be reviewed."

Amendment 13(d) be amended to read as follows:

"Strike out lines 48 to 50, on page 21, and lines 1 to 18, on page 22, and substitute the following:

(4) Where an adjudicator who conducts a review under subsection (2) or (2.1) is satisfied that reasonable efforts are being made by the Minister to investigate the matter referred to in subparagraph (2)(a)(i) or (ii), the adjudicator shall continue the person's detention.

(4.1) Every review under subsection (2) or (2.1) of the detention of a person suspected of being a member of an inadmissible class described in paragraph 19(1)(e), (f) or (g) shall be conducted *in camera*.

(4.2) Where

(a) the Minister is of the opinion that any evidence or information to be presented by or on behalf of the Minister at any review under subsection (2) or (2.1) of the detention of a person referred to in subsection (4.1) should not be disclosed on the grounds that its disclosure would be injurious to national security or to the safety of persons, and

(b) a request therefore is made by the Minister,

the adjudicator shall order that the review or any part thereof be conducted in the absence of the person and any counsel representing the person.

(4.3) Any person excluded by any order under subsection (4.2) from the whole or any part of the review under subsection (2) or (2.1) may apply to the Chief Justice of the Federal Court or to a judge of that Court designated by the Chief Justice for the purposes of this subsection to have the order quashed and sections 36.1 and 36.2 of the *Canada Evidence Act* shall apply, with such modifications as the circumstances may require, to such applications.

(4.4) Unless quashed, an order under subsection (4.2) shall, with respect to the person to whom the order relates, apply to every review under subsection (2) or (2.1), or part thereof, at which the Minister is of the opinion that any evidence or information to be presented by or on behalf of the Minister at the review, or part thereof, should not be disclosed on the grounds that its disclosure would be injurious to national security or to the safety of persons.

(5) Where the adjudicator who conducts a review under subsection (2) or (2.1) does not continue a person's detention under subsection (4), the adjudicator shall make the appropriate order under subsection 104(3).

(6) An adjudicator who conducts a review under subsection (3) shall make the appropriate order under subsection 104(3)."

and

That Bill C-84, An Act to amend the Immigration Act, 1976 and the Criminal Code in consequence thereof, be further amended in Clause 11 by striking out line 2 at page 13 and substituting the following therefor:

"exigent circumstances" means circum-";

and

That the Bill be further amended in Clause 16 by striking out line 16 at page 24 and substituting the following therefor:

"82.1(2), 83(1) and 91.1(1), and any such power,".

ATTEST

Robert Marleau
The Clerk of the House of Commons

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, this message from the House of Commons is rather lengthy, and honourable senators might wish to have further time to read it rather than deal with it this afternoon.

Hon. Royce Frith (Deputy Leader of the Opposition): Will the message be placed on the Orders of the Day for consideration on next Tuesday?

The Hon. the Speaker: I gather that Senator Doody is moving that the message be taken into consideration at the next sitting of the Senate.

Senator Doody: Honourable senators, I move that the message be taken into consideration at the next sitting of the Senate.

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

The Senate adjourned during pleasure.

At 4.45 p.m. the sitting of the Senate was resumed.

The Senate adjourned during pleasure.

ROYAL ASSENT

The Honourable Gerald Eric Le Dain, Puisne Judge of the Supreme Court of Canada, in his capacity as Deputy Governor General, having come and being seated at the foot of the Throne, and the House of Commons having been summoned, and being come with their Deputy Speaker, the Honourable the Deputy Governor General was pleased to give the Royal Assent to the following bill:

An Act to correct certain anomalies, inconsistencies, archaisms and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada (*Bill C-104, Chapter 2, 1988*)

The Honourable Marcel Danis, Deputy Speaker of the House of Commons, then addressed the Honourable the Deputy Governor General as follows:

May it please Your Honour:

The Commons of Canada have voted certain supplies required to enable the Government to defray the expenses of the public service.

In the name of the Commons, I present to Your Honour the following bill:

An Act for granting to Her Majesty certain sums of money for the Government of Canada for the financial year ending the 31st March, 1988 (*Bill C-108, Chapter 3, 1988*).

To which bill I humbly request Your Honour's assent.

The Honourable the Deputy Governor General was pleased to give the Royal Assent to the said bill.

The House of Commons withdrew.

The Honourable the Deputy Governor General was pleased to retire.

The sitting of the Senate was resumed.

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

THIRTY-SECOND REPORT (REVISED) OF COMMITTEE TABLED AND ADOPTED

Leave having been given to revert to Reports of Committees:

Hon. Royce Frith, Deputy Chairman of the Standing Committee on Internal Economy, Budgets and Administration, presented the following report:

Thursday, February 4, 1988

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

THIRTY-SECOND REPORT
(revised)

Your Committee has examined and approved the Senate Estimates for the fiscal year 1988-89 and recommends their adoption.

A copy of the said Estimates accompanies this report (Sessional Paper No. 332-682).

Respectfully submitted,

ROYCE FRITH
Deputy Chairman

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

Senator Frith: With leave of the Senate and notwithstanding rule 45(1)(*f*), I move that the report be adopted now.

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

Hon. Senators: Agreed.

Senator Frith: Honourable senators, I think an explanation is required, because we are asking the Senate to adopt the overall estimates of the Senate for the fiscal year 1988-89. Obviously, that is not something we would ask the Senate to do on the spot, late on a Thursday afternoon, if there were not some background provided. I shall, however, be brief.

What has happened is this: The Internal Economy Committee has studied for some time, both the committee itself and through long hours of work undertaken by the Subcommittee on Budgets, the estimates for this year. Eventually the committee presented a report, which is currently on our order paper, but which I will ask leave to withdraw if the Senate is prepared to adopt this revised report.

Upon examination of those estimates presented by the committee, the government requested of the Internal Economy Committee, and particularly the subcommittee, possible adjustments and revisions to those estimates to provide for an increase, as is shown here, of 9.77 per cent over last year's estimates and 5.1 per cent over last year's actual and forecast expenditures—"last year" meaning the fiscal year 1987-88. After considerable and very inventive work, done by the staff, the Internal Economy Committee and the Subcommittee on Budgets, was completed, as late as today, these revised estimates were prepared.

What I am presenting to honourable senators now is the result of the work done by the government, by the staff in consultation with Treasury Board, and by the Subcommittee on Budgets. This morning the main committee authorized the subcommittee to work with the staff to prepare these revisions to the estimates. Therefore, it appears unnecessary to have a report back from the subcommittee to the main committee. For that reason I am presenting these revised estimates at this late stage. I ask honourable senators to take into account that this is not something suddenly presented but something which has been the subject of a great deal of study, both in its original and revised forms.

Motion agreed to and report adopted.

THIRTY-SECOND REPORT OF COMMITTEE—ORDER WITHDRAWN

On the Order:

Consideration of the Thirty-second Report of the Standing Committee on Internal Economy, Budgets and Administration (Estimates of the Senate, 1988-89), tabled in the Senate on 17th December, 1987.—(*Honourable Senator Frith*).

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, may I have leave to withdraw Order No. 9, standing in my name, which is the motion for consideration of the thirty-second report of the Internal Economy Committee? That previous report dealt with the unrevised estimates, those which were the subject matter of the revised report just adopted.

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

Hon. Senators: Agreed.

Order withdrawn.

The Senate adjourned until Tuesday, February 9, 1988, at 2 p.m.

THE SENATE

Tuesday, February 9, 1988

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

Prayers.

PRIVILEGE

Hon. Philippe Deane Gigantès: Honourable senators, I rise on a question of privilege. I may have given a wrong impression the other day when I was speaking about wanting to move to the other side of the house. This simply has to do with my views on free trade. I would not want anyone to mistake me for being a proponent of free trade, should they have left the gallery and not have heard me talk.

My comments were in no way intended to mean that I have anything personal against any of my Tory colleagues close to whom I am sitting. They are people I like a lot. If any of them should agree to serve as a trustee looking after the inheritance of my children, I would have full confidence that they would manage it honestly, and if anything went wrong with the investment I would assume it was an error of judgment and not venality.

I suspect no Tory in this house of not being a patriot. I just mistrust their judgment when it comes to free trade.

[*Translation*]

Hon. Jean-Maurice Simard: Honourable senators, I want to raise a question of privilege, and it concerns Senator Gigantès. His speech just now reminded me this is the first time I have been in this chamber since the event leading to my question of privilege occurred. In other words, this is my first chance to advise the Senate of a statement made by Senator Gigantès. You will be the judge whether privilege is indeed involved here.

In any event, I can assure you the people of Edmundston and probably most of the population of the Atlantic Region are shocked and appalled, and I imagine they resent Senator Gigantès because he decided to show his contempt for the people of Edmundston on a CBC television program.

On that occasion, Senator Gigantès, posing as chairman of his own one-man committee, as usual, asked the interviewer to explain why it was difficult and in fact unrealistic to even consider retraining workers in the Maritimes. After putting this question to the interviewer, he asked her the following leading question: "Would you move to Edmundston, knowing that they do not have all the required facilities?". Senator Gigantès repeated this question twice during the same interview—I have it on tape—and at the time he saw Halifax as the only place in the Maritimes where people could go to be trained and get jobs.

I think this is absolutely outrageous. I want to ask Senator Gigantès to retract and apologize to the people of the Atlantic provinces and especially those of Edmundston whom I have had the honour of representing for fifteen years in the New Brunswick Legislature and I continue to represent today in the Senate.

I can inform you that the capital of the Republic of Madawaska, the city of Edmundston, is a good place to live and that I am proud to represent the people of Edmundston here in the Senate.

I hope Senator Gigantès will apologize to representatives of New Brunswick and the Atlantic provinces, and especially to the people of Edmundston.

Senator Gigantès: Honourable senators, if I have inadvertently hurt the feelings of the people of the great province of New Brunswick and the province of Nova Scotia, I would like to give my colleague, Senator Simard, my assurances that it was due to an unfortunate turn of phrase on my part. I was trying to illustrate the problems of disparity in development and the tendency people sometimes have to leave, and so forth.

If I did not get my meaning across and hurt someone's feelings, I must say I am very sorry. I would ask Senator Simard to transmit my apologies to the people of the Republic of Madawaska, to Edmundston, the capital, and to all his friends in Halifax.

CORPORATIONS AND LABOUR UNIONS RETURNS ACT

BILL TO AMEND—REPORT OF COMMITTEE

Hon. Arthur Tremblay, Chairman of the Standing Senate Committee on Social Affairs, Science and Technology presented the following report:

Tuesday, February 9, 1988

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

TWELFTH REPORT

Your Committee, to which was referred the Bill C-91, An Act to amend the Corporations and Labour Unions Returns Act, has, in obedience to the Order of Reference of Wednesday, January 27, 1988, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

ARTHUR TREMBLAY
Chairman

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

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

[*English*]

FRUIT AND VEGETABLE CUSTOMS ORDERS VALIDATION BILL

REPORT OF COMMITTEE

Hon. Ian Sinclair, Chairman of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Tuesday, February 9, 1988

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

TWENTY-SECOND REPORT

Your Committee, to which was referred the Bill C-96, An Act to validate certain customs duty orders relating to fresh fruits and vegetables, has, in obedience to the Order of Reference of Thursday, 28th January, 1988, examined the said Bill and has agreed to report the same without amendment.

Respectfully submitted,

IAN SINCLAIR
Chairman

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

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

TAX REFORM

EXTENSION OF DEADLINE FOR PRESENTATION OF REPORT—NOTICE OF MOTION

Hon. Ian Sinclair: Honourable senators, I give notice that tomorrow, Wednesday, February 10, 1988, I will move:

That, notwithstanding the Order of the Senate adopted on Tuesday, 26th May 1987, the Standing Senate Committee on Banking, Trade and Commerce, which was authorized to study tax reform in Canada, be empowered to present its report no later than Wednesday, 21st December 1988.

QUESTION PERIOD

[*English*]

ABORTION

EQUAL ACCESS IN PROVINCES—DECISION OF BRITISH COLUMBIA RE FUNDING

Hon. Jack Austin: Honourable senators, I would like to ask the Leader of the Government a question in his capacity as Minister of State for Federal-Provincial Relations. The minister is aware that on January 28 the Supreme Court of Canada made a decision on the question of the constitutional right of Canadian women to have equal access to abortion.

In part, the decision of the Supreme Court of Canada found that the existing laws were unconstitutional in that they denied Canadian women equal access to abortion all across Canada.

Can the minister advise us whether the federal government intends to hold consultations with the provinces to ensure that the dictum of the Supreme Court of Canada with respect to equal access will result in reasonably consistent approaches by the various provinces to this question of access to abortion?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, a meeting of officials in the justice field from the federal government and the provinces will be held very shortly, and the provincial attorneys general and the federal Minister of Justice will be meeting in mid-March on this matter so far as it relates to the striking down of section 251 of the Criminal Code by the Supreme Court decision.

Meanwhile, the Honourable Jake Epp, Minister of National Health and Welfare, is in touch with his counterparts in the provinces to discuss the manner in which the provinces will carry out their responsibilities in the field of health in light of the Supreme Court decision.

Senator Austin: I thank the minister for his answer, and I congratulate the Minister of Justice and Attorney General of Canada, the Honourable Ray Hnatyshyn, on a statement made to the Ontario branch of the Canadian Bar Association on Thursday, February 4 last, in which he said that the federal cabinet wants "the widest possible consultation" with the provinces to "bring Canadians together to try to develop consistent approaches" to any future position on abortion.

While that is commendable, I wonder whether the minister could give us the view of the government with respect to the decision of the Province of British Columbia to remove all funding for abortions performed in the province of British Columbia, except where there exists an immediate life-threatening situation. I wonder whether the federal government has a policy view with respect to that action.

Senator Murray: Honourable senators, there have been at least three statements made by government authorities in the province of British Columbia, the most recent being that which Senator Austin has cited on the part of the Premier of British Columbia. It is precisely to discuss those matters that Mr. Epp is entering into consultations with his counterparts in the provinces.

RIGHTS OF UNBORN—GOVERNMENT POSITION

Hon. Stanley Haidasz: Honourable senators, I have a supplementary question. Would the Leader of the Government in the Senate inform this house of the federal government's views on the rights of the unborn?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, the honourable senator will be aware that in several of the judgments written by members of the Supreme Court in ruling on section 251 of the Criminal Code Parliament was invited to consider legislation having to do with when the rights of the fetus come into play. This, of course, is a matter that we are considering.

RIGHTS OF UNBORN—INTRODUCTION OF LEGISLATION

Hon. Stanley Haidasz: Honourable senators, I have a further question. Can the Leader of the Government in the Senate tell us whether the government will bring forth an amendment to the Constitution of Canada, before the next election, relating to the rights of the unborn?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, as a result of the Supreme Court decision of January 28, a legal void has been created. Canada is perhaps the only western industrialized country, at the moment, that does not have a law governing abortion. Therefore, it seems obvious to us that at least within our area of jurisdiction we will have to move to fill that legislative void, and that we should discuss, this being a federation, with the provinces the exercise of their responsibilities as well. Insofar as the first part of my proposition is concerned—that is to say, filling the legislative void—we are now considering the legislative options within our jurisdiction.

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have a number of delayed answers. I would like to follow the format that seems to have become accepted in this place. I shall read the name of the senator who asked the question, the date on which the question was asked, identify the question, and ask that it be printed as part of today's proceedings, if the Senate does not require me to read it.

PHARMACEUTICAL INDUSTRY

DRUG PRICES REVIEW BOARD—COMING INTO FORCE OF POWERS—DRUG PRICE INCREASES—BASIS OF STATISTICS—REQUESTS RE DRUG PRICING

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have answers in reply to three questions asked by Senator Sinclair on January 26 regarding the Drug Prices Review Board—Coming into Force of Powers—Drug Price Increases—Basis of Statistics—Requests Re Drug Pricing

(*The answers follow:*)

Drug Prices Review Board—Coming Into Force of Powers

The section giving the Board its powers was proclaimed by the Governor in Council on December 7, 1987. However, the rules and regulations surrounding the obligatory provision of information to the Board and the mechanics for the issuing of the Board's orders have not yet been gazetted. Once they have gone through the public consultation process the Board will have a uniform and efficient mechanism to assess whether or not the price at any time is or is not excessive. The Board is already monitoring prices in this regard.

Drug Price Increase—Basis of Statistics

The numbers quoted by Senator Murray were based on Statistics Canada published data.

The Drug Price Index referred to by the honourable senator was the Consumer Price Index for Prescription Medicines. That means that it includes drugs that are subject to generic competition.

Requests Re Drug Pricing

There have been a number of concerns expressed by some citizens regarding the increase of particular drugs. However, to the best of the government's knowledge there have been no representations from such organizations regarding the movement of prices since the Board has been proclaimed.

ROLE OF DRUG PRICES REVIEW BOARD—ROLLBACK OF PRICES—GOVERNMENT ACTION—GENERIC DRUGS—REMOVAL FROM SALE

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have answers in response to questions raised in the Senate on January 26 last by Senator Buckwold regarding Role of Drug Prices Review Board—Rollback of Prices—Government Action—Generic Drugs—Removal from Sale.

(*The answers follow:*)

Role of Drug Prices Review Board—Rollback of Prices—Government Action

The Board can examine prices for all patented drugs whether they are newly introduced or have been on the market for some time. The statute gives the Board the power to look at all patented drug prices.

The statute contemplates the Board examining newly introduced drugs by providing two tiers of criteria by which excessive pricing can be assessed. For drugs that have been on the market for some time they can look at prices for the past five years and the rate of change of the CPI. If, as in the case of new drugs, this information is not available, the Board can look at the cost of making

and marketing the medicine or any other factor to determine whether or not the price is excessive.

If the Board finds that a drug's price is excessive it can remove the exclusivity on that drug and on one other. Therefore, if the removal of exclusivity on that drug would not be sufficient as a penalty, then the Board can look at any other patented drug sold by the company in question.

The government will not interfere with the statutory operation of the instrument of price monitoring and protection that Parliament has established.

The Board, once it is operational, will be able to examine each and every price increase that has taken place to determine whether the price of any drug is or is not "excessive" at the time the Board examines it. The determination of excessive pricing is at a point in time, whether or not the price has risen recently or not. Keep in mind that the Board can consider prices over a five-year period and past increases may make a current price excessive.

The Board will examine the prices of drugs in Ontario once it is operational to determine whether or not, on a case by case basis, to roll back prices.

Generic Drugs—Removal From Sale

No generic that was on the market on June 27, 1986, has to be removed. All generics on the market as of June 27, 1986, stay on the market. The Board will be able to look at price increases that occurred before it became fully operational in determining whether or not the price level at the time of its examination is excessive.

ROLE OF DRUG PRICES REVIEW BOARD—ROLLBACK OF PRICES—GOVERNMENT ACTION—DRUG PRICE INCREASES—COMPENSATION TO PROVINCES

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have answers in response to two questions raised in the Senate on January 26 last by Senator Thériault regarding Role of Drug Price Review Board—Rollback of Prices—Government Action—Drug Price Increases—Compensation to Provinces.

(*The answers follow:*)

Role of Drug Prices Review Board—Rollback of Prices—Government Action

Subsection 41.15(2) gives the Board the power to reduce prices or to remove exclusivity from the drug in question and any one other drug.

Section 41.24 also requires the Board to report to Parliament annually on pricing trends and to name those patentees of whom it has requested cost information for having exceeded the CPI in its price increases under Sections 41.15(1.1) and 41.16(5.1). This public record of price performance will be a major source of pressure on drug companies.

Drug Prices Increases—Compensation to Provinces

The provisions of Bill C-22 dealing with the transfer of some $100 million to the provinces was made "for the purpose of research and development." There is no reason to increase the money to the provinces at this time.

The provinces are the largest purchasers of medicines and are therefore in a position to negotiate with the drug companies for good prices. This and the Board's mandate will provide adequate measures to protect provincial and other consumer interests.

DRUG PRICE INCREASES—POSSIBLE GOVERNMENT REQUEST FOR EXPLANATION FROM PMAC OR MULTINATIONAL DRUG COMPANIES

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have the response to a question raised in the Senate on January 26 last by Senator Haidasz regarding Drug Price Increases—Possible Government Request for Explanation from PMAC or Multinational Drug Companies.

(*The answer follows:*)

The Minister of Consumer and Corporate Affairs has communicated with the drug companies to remind them of their obligations to keep prices from being excessive and to meet their commitments relating to research and development.

It is the responsibility of the Board as an independent review body to examine the prices of drugs; they have undertaken this task and will be fulfilling this responsibility.

DATE OF RESTRICTION OF DRUG PRICE INCREASES

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have an answer in response to a question raised in the Senate on January 26 last by Senator Stewart regarding Date of Restriction of Drug Price Increases.

(*The answer follows:*)

The government does not like to give regulators retroactive powers as implied in the question. Generics have not been removed since June 27, 1986. The Board's powers and the periods of exclusivity both commenced at the same time, November 19, 1987, and any suspension of compulsory licenses due to periods of exclusivity if they apply, apply only since that date.

The Board will be able to look at price levels extant once it is operational and decide whether or not they are excessive as a result of the increase in prices that has taken place since 1986 or even before.

DRUG PRICE INCREASES—ROLLBACK POWERS OF MINISTER

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have an answer in response to a question raised in the Senate on January 26 last by Senator Grafstein regarding Drug Price Increases—Rollback Powers of Minister.

(*The answer follows:*)

The new *Competition Act* provides for criminal penalties if competitors enter agreements that would lessen competition unduly. If the honourable senator has any evidence that the executives of those companies have agreed to raise prices then he should bring that information to the attention of the Director of Investigation and Research under the *Competition Act*.

ANSWERS TO ORDER PAPER QUESTIONS

OCEAN INDUSTRY DEVELOPMENT SUBSIDIARY AGREEMENT

PROJECTS IN NEWFOUNDLAND

Question No. 24 on the Order Paper—**By Hon. Jack Marshall.**

11th August, 1987—What is the list of the projects approved and granted in the Province of Newfoundland under the Canada/Newfoundland Ocean Industry Development Subsidiary Agreement by federal district in 1984-85 and 1985-86 under (a) name of company; (b) amount of contribution by federal government; (c) amount of contribution by provincial government, if applicable; (d) amount invested by companies receiving funding; (e) number of jobs provided; and (f) cost per job?

Reply by the Leader of the Government in the Senate and Minister of State for Federal-Provincial Relations:

See Appendix "A", p. 2664.

ATLANTIC ENTERPRISE PROGRAM

PROJECTS IN NEWFOUNDLAND

Question No. 25 on the Order Paper—**By Hon. Jack Marshall.**

11th August, 1987—What is the list of the projects approved and granted in the Province of Newfoundland under the Atlantic Enterprise Program (AEP) by federal district in 1984-85 and 1985-86 under (a) name of company; (b) amount of contribution by federal government; (c) amount of contribution by provincial government, if applicable; (d) amount invested by companies receiving funding; (e) number of jobs provided; and (f) cost per job?

Reply by the Leader of the Government in the Senate and Minister of State for Federal-Provincial Relations:

The Atlantic Enterprise Program was not operational during this period.

INDUSTRIAL AND REGIONAL DEVELOPMENT PROGRAM

PROJECTS IN NEWFOUNDLAND

Question No. 26 on the Order Paper—**By Hon. Jack Marshall.**

11th August, 1987—What is the list of the projects approved and granted in the Province of Newfoundland under the Industrial and Regional Development Program (IRDP) by federal district in 1984-85 and 1985-86 under (a) name of company; (b) amount of contribution by federal government; (c) amount of contribution by provincial government, if applicable; (d) amount invested by companies receiving funding; (e) number of jobs provided; and (f) cost per job?

Reply by the Leader of the Government in the Senate and Minister of State for Federal-Provincial Relations:

See Appendix "B", p. 2667.

IMMIGRATION ACT, 1976

BILL TO AMEND—CONSIDERATION OF MESSAGE FROM COMMONS—DEBATE ADJOURNED

The Senate proceeded to consideration of a Message from the House of Commons regarding certain amendments to Bill C-84, to amend the Immigration Act, 1976 and the Criminal Code in consequence thereof.

Hon. William M. Kelly: Honourable senators, I want to take this opportunity to make some comments relating to the message and to the bill. I must say at the outset that my comments are mine and that they emanate largely out of my experiences with the Committee on Terrorism I chaired last spring and summer. The official response to the message from this side is not my job to perform.

● (1420)

I have watched the debate on Bill C-84 unfold both in this chamber and in the other place. Much of what I have heard concerns me a great deal and has motivated me to wade into this very complex and contentious area. I may well regret doing so and, in fact, it may be too late. However, I want to try to refocus the debate by discussing what the bill is truly about, in my opinion.

Honourable senators, Bill C-84, in my opinion, is not an anti-refugee bill, although it may be convenient for some to portray it as such; neither is it, in my opinion, a racist bill, but, again, it may be convenient for some to portray it in that fashion. It is not an anti-humanitarian bill; it is not aimed at innocent church groups or individuals acting in a strictly humanitarian fashion. Quite frankly, I do not find the bill itself to be particularly draconian, in light of the challenges it is intended to meet. In the simplest possible terms, what Bill C-84 is about is the safety and security of Canada and Canadians. Its focus is not on refugees or immigrants wishing to come to Canada but is on criminal or terrorist elements who try to avoid being brought to justice by misusing or abusing the Canadian refugee determination process. The purpose of Bill C-84 is to allow officials to increase their ability to identify, detain or deport security risks who try to enter Canada.

As I mentioned before, for a good portion of this past year I served as chairman of the Special Senate Committee on Terrorism and Public Safety. What I heard while serving in that capacity worried me a great deal. I heard how a number of people who were implicated in criminal or terrorist incidents elsewhere in the world came to Canada, claimed refugee status, and abused our complex and dilatory refugee determination process in order to avoid or delay deportation and to avoid or delay being brought to justice. The description of the system and how it can be misused and abused in this fashion is set out in our committee report, and I do commend it to your attention.

Honourable senators, let me be clear: These are not refugees fleeing the oppression of totalitarian right or left-wing regimes in developing countries; these are terrorists or criminals, many of whom have been implicated in incidents in Italy, Germany, the United States, France or elsewhere. Many of these people are still here. Some have been here for five, six or seven years. They are free to move about as they choose within the country. We are all familiar—courtesy of the *Globe and Mail*—with the recent story of Mahmoud Muhammad Issa Muhammad. This is an individual who was—or is—a member of the PLO, and who was sentenced by a Greek court for his role in the attack on an El Al jetliner. He now resides in Brantford, Ontario, and has just claimed refugee status.

There are a number of other cases that have not received the same level of publicity. Let me give you some examples: Take, for example, the case of Francisco Piperno, who was convicted by the Italian courts of terrorist activities that he undertook or promoted as a member of the Red Brigades. Some of these activities related directly to the assassination of the Italian Prime Minister, Aldo Moro. Piperno fled to Canada to escape incarceration and claimed refugee status here. Even though his request for refugee status was denied in 1983, he stayed in Canada, apparently unrepentent, until he returned recently to Italy to seek an amnesty.

Another example is illustrated by an article in the *Toronto Star* of Saturday, November 21, 1987. This article concerned two West Germans, who claimed they were on a "spying" mission to identify weaknesses in our immigration system. They were caught and convicted of theft, abduction and possession of dangerous weapons.

A third example is far more serious and has, to date, been given little or no publicity. Last year an individual applied for a Canadian visa at our London mission. His application was denied on security grounds. He was identified as a leading figure in the Internatonal Sikh Youth Organization. This organization has been implicated in terrorist violence in India and elsewhere in the world. In Canada the ISYO has been directly linked to the attempted assassination of a Punjabi cabinet minister and to other terrorist incidents.

The individual concerned was put on a look-out list. Airlines and Immigration officials were alerted to watch for him. In spite of these precautions, he landed at Pearson International Airport on July 15, 1987, seeking entry as a visitor. He was detained, but, rather than continue in detention and risk deportation, he voluntarily left the country. Had he not left he would still be in Canada today, and probably at large, because current laws would not allow us to detain him longer.

Honourable senators, can you imagine what our allies—especially the Italian, Israeli or Indian governments—must think of our system? In the last case I mentioned there was a man with extremist connections arriving, coincidentally, with the arrival of 174 Sikhs by ship.

This was a few months before the scheduled arrival in Canada of Prime Minister Gandhi. All we could do was allow this man to leave the country.

In the Piperno case, can you imagine the consternation of the Government of Canada and members of this house if someone convicted of involvement in the assassination of a Canadian prime minister had been given refuge in an allied country?

These examples, in my opinion, demonstrate our vulnerability, the ineffectiveness of our systems and procedures, the loopholes that the bill and the message is designed to close.

Let me take you sequentially through a set of conclusions reached by the Special Senate Committee on Terrorism and Public Safety. First, terrorism in Canada is quantitatively and qualitatively different from terrorism in most other countries, including the United States. Second, the principal threat to Canada is from international terrorists, terrorism motivated by history, issues and hatreds originating in another country. The ultimate focus of such terrorism is the institutions, symbols and policies of the government and people of that other country. When those institutions or government representatives are in Canada, we are bound under international law to protect them. Furthermore, Canadians and Canadian institutions may, and have been, caught in the cross-fire.

Let me give you some examples. Although it was a symbol of India that was the target, 329 people, most of them Canadians, perished on Air India Flight 182, apparently victims of terrorism arising out of the Indian-Sikh dispute.

Although it was the Turkish Embassy and Turkish diplomats who were the targets, it was a Canadian security guard—a university student—who was killed in the siege of the Turkish Embassy in 1985 by Armenian terrorists.

So our particular brand of terrorism focusses on the symbols and institutions of other governments in Canada—on foreign diplomats, on foreign diplomatic establishments, on foreign airlines, travel offices, and so on—and comes from those who wish to use Canada as a base or safe haven from which to mount their terrorist violence against other countries, or as a place of respite from the travails of terrorism, a sort of terrorists' R&R.

I believe that these conclusions are generally supported by our security, intelligence and law enforcement agencies. If you accept them, logic would also compel you to accept the duty of our government to be particularly vigilant against those who perpetrate such terrorism.

My point is that we can be as vigilant as we like. Our current refugee-determination process and general immigra-

tion system make us vulnerable to the entry of such terrorists. Bill C-84 tries to reduce our vulnerability.

Let me give you some examples of the parts of the system that make us vulnerable. Let us say that a visitor to Canada is identified on his arrival as a known criminal or terrorist by the authorities. As the authorities move to deport him, he claims refugee status. He is thus able to remain in Canada for however long it takes—perhaps years—for the process to exhaust all avenues of appeal and to reach a conclusion.

Let us say that a visitor arrives in Canada with no documentation—none whatsoever. During the time the authorities seek to validate his identity—which in many cases can take months—he is probably free to travel about as he wishes.

Some say that in many of these cases we can currently detain a person who appears to be a real risk until his status is established.

The committee report on terrorism refers to an IRA member who came to Canada and was apprehended. The immigration adjudicator overruled evidence from police and security agencies suggesting that the individual should be detained. He moved freely in Canada until he removed himself voluntarily, before the scheduled date for his inquiry.

Furthermore, although detention can be one solution, it entails real risks. The more frequently we detain terrorists, the more Canada will become a focus of terrorist attention and terrorist reprisals.

Some say that we should put additional resources into checking entrants at airport and border points. This, too, is a partial solution. No matter how good we become at identifying security threats as they enter the country, our refugee-determination system may still let them enter and reside in the country for a considerable period of time.

Can anyone say this is a system designed to meet our international obligations? I think not. Can anyone say that this is a system designed to protect the safety and security of Canadians? Again, I think not.

Although Canada has not been a focus of terrorist attention worldwide, as other countries tighten up their immigration, surveillance and anti-terrorist policies, systems and procedures, as targets harden worldwide, Canada is being left behind. If we do not keep pace, Canada could increasingly become a haven for terrorists, a venue for mounting terrorist attacks, or even a target of terrorist attacks.

• (1430)

Other "friendly" governments have already expressed their increasing concern about Canada in this regard. I contend that there is no duty for government greater than to protect the safety and security of its citizens.

In Canada we have to recognize that we are part of a large continent and that we live next to a nation whose power and prominence in the world have made it the focus of terrorist attack from many quarters. We have to realize that we provide part of a North American defence system against terrorism and that our vulnerability can translate into a vulnerability for our neighbours and allies.

We have to realize that our world is changing. The current Immigration Act was prepared more than a decade ago during a much more innocent time, before terrorism as we know it today had touched us. Our current refugee policy was primarily based on Canada choosing refugees from internment camps around the world and bringing them to Canada. Even a decade ago, no one foresaw or contemplated the vast number of people who would present themselves at Canadian ports of entry and claim refugee status. It is only reasonable and responsible, therefore, that our legislation, our systems and our procedures change with the times.

Honourable senators, we have to strike a balance: a balance between the safety and security of Canada and Canadians and Canada's moral and legal obligations to provide refuge to those fleeing harassment, torture or death because of their race, political beliefs, religion or colour.

That balance will not be achieved as long as we focus exclusively on just one side of the equation. We fail as legislators if we do not consider and represent this legislation in its full context.

Honourable senators, there have been a lot of bogus arguments raised about Bill C-84; arguments designed to deflect attention from the real issues and concerns behind that bill.

For example, there is an article in the December 21, 1987, *Globe and Mail*, by a Mr. Waldmen, that contends that Bill C-84 will result in genuine refugees being deported without a hearing and sent to countries with no guarantee of their future safety. In fact, all the government has said it would do is to deport persons to third countries; but only to countries that have the same procedural and substantive protections as Canada.

We have heard a great deal about the plight of refugees arriving without proper documentation, and how Bill C-84 would disadvantage them or discriminate against them. A direct association has been drawn between refugees and people without documents—that one means the other.

The association is wrong and misleading; 80 per cent of the people who present themselves at a Canadian port of entry and claim refugee status have come not from the country of persecution but from a second "safe" country. They therefore have had the opportunity to present themselves at a Canadian mission in that country and arrange properly for refugee status.

The people coming to Canada without proper documentation, in the main, therefore, are those who have chosen not to follow the process, or who have been rejected by the process.

Most of the people who claim refugee status come from countries that require all adults to carry identity cards. Yet many "refugees" from these countries do not carry such cards when they enter Canada. Why? Should not the system be suspicious of such people, and should not the system have the ability to detain them until identity is verified?

Of the total number of people who arrive in Canada and claim refugee status 40 per cent have no documentation whatever—not even their airline tickets to show a name or travel

itinerary. Obviously these people have gone to great lengths to conceal their identity. Why? Should the system not be able to detain such people until origin and identity are established?

I am concerned that if we do not improve the effectiveness of our refugee determination process we will have—sooner or later—a major terrorist incident that will clearly demonstrate our vulnerability and the source of that vulnerability. I am concerned that the government and the public will then overreact and impose draconian controls that will, in effect, close our borders to legitimate refugees.

Honourable senators, let me close by emphasizing three basic points:

First, our immigration legislation, systems and procedures are outdated. Let us revise them with attention both to the needs of legitimate refugees and the safety and security of Canada.

Second, let us make the revisions with calm deliberation, understanding the total context in which the revisions are proposed and the very dangerous world in which we find ourselves. Bill C-84 is at least as much about safety and security as it is about refugees and immigrants.

Third, Bill C-84 is about:

Fining or jailing those who misuse the system by smuggling in people who are "inadmissible" under the law. I emphasize that these are, in the main, illegal entrants from Europe, not fugitives from persecution;

Giving authorities the power to detain those who arrive in Canada with no documentation until their identity can be verified;

Giving authorities the power to detain those who are suspected of constituting security threats and, more importantly, giving authorities the power to remove them before Canadians at home and abroad are jeopardized.

All of these changes will incur some inconvenience for legitimate refugees. I contend, however, that the benefits of the added security far outweigh the disadvantages of such inconvenience.

In making these changes we are not breaking new ground. We are following precedents already in place in other countries. As honourable senators know, in response to a number of terrorist atrocities, France now requires visas for everyone who wishes to enter that country.

Australia, the United States and the United Kingdom have also tightened their immigration and entry procedures. In Australia, for example, a "legal fiction" has been devised whereby one is not considered to have entered the country until one's identity is verified and status approved.

We have not suggested going that far, because we searched for a balance between the safety and security of Canadians and recognizing the plight of legitimate refugees.

Other countries have recognized this threat and have taken remedial action. I do not believe we should be so naive or so blissfully unaware of the risks that face us that we are, in effect, willing to put our citizens at risk without even giving them the opportunity to express their views on the subject.

[Senator Kelly.]

Honourable senators, I appreciate the opportunity to make these rather general remarks, but I felt it was important to discuss the issue at this time.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, the debate on Bill C-84 is bound to be enriched by a contribution from the chairman of the Special Senate Committee on Terrorism and Public Safety, but I must say for the record that I believe that, essentially, Senator Kelly's observations represent, to a considerable extent, an oversimplification of the issues that the Senate and others in the country have felt were at play with Bill C-84.

I heard some detail, but I did not hear him enunciate any principles that had not been the subject of debate in Parliament and consideration in the Standing Senate Committee on Legal and Constitutional Affairs, which made a report to the Senate after quite intensive study. That report was adopted by the Senate and was the basis for the amendments that were sent to the other place, and, in turn, those recommendations are the basis for the message that we have now received, setting out the House of Commons' reaction to the Senate's suggestions.

The three basic principles that Senator Kelly announced as guidelines for our consideration of this message—the most recent development on Bill C-84—were that our immigration laws, particularly as they deal with refugees, are outdated. I know that that principle was taken into consideration by the Senate and its committee. He also asked that we approach the question calmly. I do not think our committee or the Senate approached the question with any hysteria. In fact, if there was any hysteria in any quarter about this bill, it was the hysterical way the government brought it in during the summer as emergency legislation.

His other principle, the need to prevent abuse, was also the subject of consideration by the Senate and its committee. He feels that the questions of human rights, in some of its aspects at least, are outweighed by, as I heard him say, "the added security." All that does is beg the question by restating the problem. The problem that the Senate and the committee was considering essentially was simply that, namely, how do we balance the real needs and concerns for security brought by Senator Kelly from his background of expertise—which I do not denigrate in any way—with democratic civil rights. So he has brought forward concerns about needed security, but he must realize that those were not overlooked, and that the Senate committee tried to balance those against the need for fairness, respect for human rights, and an adherence to our international obligations when we subscribe to the United Nations declaration on this subject.

I am glad that Senator Kelly has spoken out on this question from the background of his experience and expertise as chairman of our special committee. I know that if this message is referred to the Standing Senate Committee on Legal and Constitutional Affairs for further consideration, as I think it

should be, the committee will take into account Senator Kelly's comments. I have no doubt he will be interested in discussing and elaborating on them before the committee. I hope he will be prepared to do so, because I believe that most of the points he raised have already been considered by that committee. Again, I thank him for his intervention.

• (1440)

Some Hon. Senators: Hear, hear!

On motion of Senator Doody, for Senator Nurgitz, debated adjourned.

DISTINGUISHED VISITOR IN GALLERY

The Hon. the Speaker: Honourable senators, may I point out the presence in the visitors' gallery of one of our former members, Senator John M. Godfrey, who has probably come back to listen to further words of wisdom.

Hon. Senators: Hear, hear!

CONSTITUTION ACT, 1867

BILL TO AMEND (QUALIFICATIONS OF SENATORS)—SECOND READING—DEBATE CONTINUED

On the Order:

Resuming the debate on the motion of the Honourable Senator Marchand, P.C., seconded by the Honourable Senator Robichaud, P.C., for the second reading of the Bill S-12, An Act to amend the Constitution Act, 1867 (Qualifications of Senators).—(*Honourable Senator Doody*).

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I spoke with Senator Marchand, the sponsor of this bill, a little while ago and told him that I had no desire or intention to try to slow up the progress of this bill.

As I see it, and as many of my colleagues, at least on this side, see it, the problem with this particular amendment to the Constitution Act does not relate to the amendment itself but, rather, to the size of the amendment in terms of the hoped-for general reform of the Senate, which we are told is soon to be considered at the First Ministers' meeting.

I am afraid that the Canadian public generally might consider this to be an answer to Senate reform, and I believe that Senate reform encompasses a great deal more than this one item, important though it is.

I fully understand and sympathize with Senator Marchand's concern for this matter. There is no reason I can think of that a qualification or, indeed, any part of the Constitution should so obviously discriminate against any group of Canadians.

Having said that, I would have to return to my contention that I think it more important that we deal with Senate reform as a whole rather than perhaps nibbling at it with one small amendment here and another small amendment there, as is demonstrated by another order on our order paper relative to the attendance of senators.

Those are the concerns I have about this bill. Having said that, I will take my seat and trust that others will look at this particular amendment in that light. It is to be hoped that we will move on toward real, lasting and meaningful Senate reform in the full sense of the word.

On motion of Senator Frith, debate adjourned.

FISHERIES

CONSIDERATION OF FIFTH REPORT OF COMMITTEE—DEBATE CONCLUDED

On the Order:

Resuming the debate on the consideration of the Fifth Report of the Standing Senate Committee on Fisheries entitled: "The Marketing of Fish in Canada" (Interim Report II), tabled in the Senate on 9th December, 1987.—(*Honourable Senator Doody*).

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, this order, which deals with the fifth report of the Standing Senate Committee on Fisheries regarding the marketing of fish, stands in my name. I stood the debate in my name in anticipation of someone wishing to speak on this item.

If no one else wishes to speak, I would ask that the debate be considered concluded. I have no intention of speaking on it myself at this time.

Hon. Jack Marshall: Honourable senators, I spoke on the consideration of this report, and I believe Senator Perrault responded. Then, I believe, the Speaker indicated that the debate was concluded. I would suggest that the record will indicate that the order was considered debated.

Senator Doody: Whether the order had been considered debated or not, if it is the pleasure of the Senate, I think the matter should now be considered debated.

The Hon. the Speaker: As no other honourable senator wishes to participate in the debate, this report is considered debated.

INTER-PARLIAMENTARY UNION

SEVENTY-EIGHTH CONFERENCE, BANGKOK, THAILAND

Hon. M. Lorne Bonnell rose, pursuant to notice of January 27, 1988:

That he will call the attention of the Senate to the Seventy-eighth Conference of the Inter-Parliamentary Union, held in Bangkok, Thailand from 12th to 17th October, 1987.

He said: Honourable senators, I gave notice that I would call the attention of the Senate to the Seventy-eighth Inter-Parliamentary Union Conference which took place in Bangkok, Thailand, from October 12 to 17, 1987.

Since the Senate is not sitting in Committee of the Whole this afternoon, I thought I would deliver my rather short speech now.

The fall session of the IPU was held in Bangkok from October 12 to 17, 1987. On the agenda was the Iran-Iraq question. Senator Marchand, Senator Phillips and Mr. Marcel Prud'homme, MP, attended the meetings of the Committee on Political Questions, International Security and Disarmament. The draft text of this resolution was unanimously adopted in the plenary session.

The second item on the agenda was the refugee question, which was submitted for the agenda during the meeting in Nicaragua by Canada. Mr. Don Ravis, MP, and Mr. Svend Robinson, MP, represented Canada on the Committee on Parliamentary, Judicial and Human Rights. The draft resolution was adopted unanimously, both in committee and in the plenary session.

The third item on the agenda was decolonization and apartheid. Madame Suzanne Duplessis, MP, spoke in the plenary session, and Senators Phillips and Marchand, Mr. Don Ravis, MP, and Mr. Svend Robinson, MP, represented Canada on the Committee on Non-Self-Governing Territories and Ethnic Questions. In the plenary session there were three amendments proposed; the Canadian group cast its 12 votes as follows: yeas, 1; nays, 3; abstentions, 8.

● (1450)

The fourth item on the agenda was on the "current world situation." Mr. Benno Friesen, MP, and I participated in this debate.

Senator Neiman represented Canada on the Special Committee on Human Rights of Parliamentarians. The committee submitted eight resolutions on 52 cases for the conference to consider, and noted that 13 former Chilean parliamentarians had been able to exercise their right to return to Chile and six former Vietnamese parliamentarians were released in September 1987.

There was also a meeting held of the "European Groups and those of Canada and the United States," where discussion took place for an international television hook-up to permit an exchange of views among parliamentarians from East and West by satellite.

A special *ad hoc* committee was set up to discuss the health and well-being of the elderly. This was chaired by Congressman Claude Pepper from Miami, the topic being the "role of parliamentarians in facing the social and economic implications of the change in demographics regarding aging." It was agreed by the executive that this be continued as an *ad hoc* committee for the next meeting in Guatemala.

The next meeting should be held in Guatemala City in April 1988. Canada proposed a topic on the environment, which was accepted unanimously by the Inter-Parliamentary Union in Bangkok.

Honourable senators, rather than read into the record more information about the meetings in Bangkok I would like to table in both official languages a report that I ask to be printed as an appendix to today's *Debates of the Senate* to form part of the permanent records of this house.

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

Hon. Senators: Agreed.

(*For text of report, see Appendix "C", p. 2672.*)

Senator Bonnell: I also ask that the text of the speech I made concerning AIDS, which I also table, be printed as an appendix to the *Debates of the Senate* of this day.

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

Hon. Senators: Agreed.

(*For text of speech, see Appendix "D", p. 2721.*)

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

Senator Bonnell: Honourable senators, in case Senator Phillips wants to adjourn the debate, I will tell him that I have concluded my remarks.

Hon. Orville H. Phillips: Honourable senators, it would be presumptuous of me to think that I could improve on Senator Bonnell's remarks.

Senator Frith: That's a good point!

[*Translation*]

CHILD CARE

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE AUTHORIZED TO CONTINUE STUDY OF FINAL REPORT OF SPECIAL HOUSE OF COMMONS COMMITTEE ON CHILD CARE ENTITLED "SHARING THE RESPONSIBILITY" AND FEDERAL RESPONSE

Hon. Arthur Tremblay, for Hon. Mira Spivak, pursuant to notice of May 5, 1987, moved:

> That, notwithstanding its order of reference of 5th May, 1987, the Standing Senate Committee on Social Affairs, Science and Technology be authorized to continue the examination of the Final Report of the Special Committee of the House of Commons on Child Care, entitled: "Sharing the Responsibility";
>
> That the Committee be further authorized to examine the Federal Response to the said Final Report in which is outlined the National Strategy on Child Care; and
>
> That the Committee present its Report no later than June 30, 1988.

He said: Honourable senators, in the name of Senator Spivak who unfortunately cannot be here today I seek leave to move the motion of which she gave notice last week. This motion did get the approval of the Committee on Social Affairs, Science and Technology from which it originates.

Hon. Royce Frith (Deputy Leader of the Opposition): What is the nature of the motion?

Senator Tremblay: The purpose of the motion is simply to correct the date of reference to the Committee on Social

Affairs, Science and Technology with respect to the child care issue.

The date specified at the time was September 30, 1987. We went on with the consideration of this matter without realizing that in a way this was a time limit.

So we want to correct this technical oversight. That is the purpose of the motion of Senator Spivak. I am seeking leave of the Senate to move this motion in her name because she was unable to attend the sitting today, as she had said herself.

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

Hon. Senators: Agreed.

Motion agreed to.

The Senate adjourned until tomorrow at 2 p.m.

APPENDIX "A"

(See p. 2657)

OCEAN INDUSTRY DEVELOPMENT SUBSIDIARY AGREEMENT

PROJECTS IN NEWFOUNDLAND

ACCEPTED OFFERS FOR FISCAL YEAR 1984/85

OCEAN INDUSTRY DEVELOPMENT SUBSIDIARY AGREEMENT

REPORT PRODUCED 10 SEPTEMBER 1987

COMPANY LEGAL NAME	FEDERAL CONTRIBUTION	PROVINCIAL CONTRIBUTION	COMPANY INVESTMENT	ESTIMATED JOBS MAINTAINED	ESTIMATED JOBS CREATED	COST PER JOB
007 - ST. JOHN'S WEST						
NORDCO Limited	242,664	0	373,330	0	0	0
C M P/Barnard Assoc.	8,500	8,500	17,000	0	0	0
ST. JOHN'S WEST	251,164	8,500	390,330	0	0	0

OCEAN INDUSTRY DEVELOPMENT SUBSIDIARY AGREEMENT

REPORT PRODUCED 10 SEPTEMBER 1987

COMPANY LEGAL NAME	FEDERAL CONTRIBUTION	PROVINCIAL CONTRIBUTION	COMPANY INVESTMENT	ESTIMATED JOBS MAINTAINED	ESTIMATED JOBS CREATED	COST PER JOB
001 - BONAVISTA-TRINITY-CONCEPTION						
M M & M Marine Consultants	4,745	0	9,490	0	0	0
Saunders Howell Manu.	2,772	0	5,550	0	0	0
BONAVISTA-TRINITY-CONCEPTION	7,517	0	15,040	0	0	0
002 - BURIN-ST. GEORGE'S						
Marystown Shipyard	5,302	0	24,800	0	0	0
BURIN-ST. GEORGE'S	5,302	0	24,800	0	0	0
006 - ST. JOHN'S EAST						
NFLD Ocean Industry	20,790	0	23,100	0	0	0
NFLD Ocean Industry	2,008	0	4,310	0	0	0
NFLD Ocean Industry	1,663	1,662	5,800	0	0	0
National Petroleum	688,218	0	1,012,085	0	0	0
NFLD & Lab. Institute	17,500	0	65,075	0	0	0
A.J. Holleman Engineering	2,313	0	4,769	0	0	0
Atlantic Derrick	1,660	0	6,400	0	0	0
Brown Offshore	2,681	0	9,538	0	0	0
Capital Crane	2,385	0	4,769	0	0	0
East Coast Catering	2,385	0	4,769	0	0	0
Eastern Chemicals	2,385	0	4,769	0	0	0
Frederick Hann Assoc.	2,385	0	4,769	0	0	0
McDonald's Welding	2,763	0	4,769	0	0	0
NORDCO Limited	2,506	0	5,011	0	0	0
NORDCO Limited	4,250	0	8,500	0	0	0
NorTek Engineering	4,214	0	8,428	0	0	0
Spracklin's Building Supplies	2,500	0	5,000	0	0	0
Buckingham's Machine	59,328	0	98,880	0	0	0
Deltaport Limited	20,000	0	35,000	0	0	0
Newfire Systems	256,200	0	427,000	0	0	0
Systems Engineering	44,700	0	74,501	0	0	0
Ice Pro Limited	19,098	0	31,830	0	0	0
ST. JOHN'S EAST	1,161,932	1,662	1,849,072	0	0	0

ACCEPTED OFFERS FOR FISCAL YEAR 1985/86

OCEAN INDUSTRY DEVELOPMENT SUBSIDIARY AGREEMENT

REPORT PRODUCED 10 SEPTEMBER 1987

COMPANY LEGAL NAME	FEDERAL CONTRIBUTION	PROVINCIAL CONTRIBUTION	COMPANY INVESTMENT	ESTIMATED JOBS MAINTAINED	ESTIMATED JOBS CREATED	COST PER JOB
007 - ST. JOHN'S WEST						
Artec NFLD Limited	24,000	0	40,000	0	0	0
City of St. John's	36,000	0	40,000	0	0	0
Metal Fab Limited	8,790	0	8,791	0	0	0
Rob Strong	1,146	0	1,146	0	0	0
C & W Welding	2,506	0	5,011	0	0	0
Provincial Sandbl	2,472	0	4,944	0	0	0
Woosley Marine Int.	2,539	0	10,700	0	0	0
ST. JOHN'S WEST	77,453	0	110,592	0	0	0

APPENDIX "B"

(*See p. 2657*)

INDUSTRIAL AND REGIONAL DEVELOPMENT PROGRAM

PROJECTS IN NEWFOUNDLAND

ACCEPTED OFFERS FOR FISCAL YEAR 1984/85

INDUSTRIAL AND REGIONAL DEVELOPMENT PROGRAM

REPORT PRODUCED 10 SEPTEMBER 1987

COMPANY LEGAL NAME	FEDERAL CONTRIBUTION	PROVINCIAL CONTRIBUTION	COMPANY INVESTMENT	ESTIMATED JOBS MAINTAINED	CREATED	COST PER JOB
001 - BONAVISTA-TRINITY-CONCEPTION						
Bay Roberts Seafoods	15,000	0	72,000	0	2	7,500
Island Tile & Slate	26,600	0	103,000	0	12	2,217
Paul Garland Forest	7,500	0	53,984	0	6	1,250
Plaza Investments Limited	42,538	0	122,000	0	5	8,508
Sparkes Limited	46,763	0	140,608	0	2	23,382
Trinity Brick	452,900	0	1,294,000	0	38	11,918
BONAVISTA-TRINITY-CONCEPTION	591,301	0	1,785,592	0	65	54,775
002 - BURIN-ST. GEORGE'S						
Gillis Cabins Ltd.	14,850	0	49,500	0	3	4,950
Plaza Motel Ltd.	201,600	0	775,000	0	7	28,800
South West Coast Dev. Corp.	6,625	0	6,625	0	0	0
BURIN-ST. GEORGE'S	223,075	0	831,125	0	10	33,750
003 - GANDER-TWILLINGATE						
Fogo Island Co-Op Society	66,500	0	95,000	0	0	0
Heritage Woodworks	33,134	0	87,000	0	5	6,627
Metal Products Ltd.	26,800	0	67,000	0	2	13,400
Ocean Contract Ltd.	6,450	0	12,900	0	0	0
Seven Oaks Tourist Home	26,150	0	56,300	0	4	7,038
Three J's Limited	127,774	0	379,069	0	8	15,972
GANDER-TWILLINGATE	288,808	0	697,269	0	19	43,037

004 - GRAND FALLS-WHITE BAY-LABRADOR

Atikonak Fishing	15,350	0	43,000	0	3	5,117
Bernard W. Bartel	21,000	0	70,000	0	3	7,000
G. Pelley Limited	8,750	0	25,000	0	1	8,750
Iron City Chemical	274,920	0	1,114,000	0	11	24,993
John Reeves Ltd.	10,900	0	21,800	0	0	0
Labrador Craft	45,000	0	50,430	0	0	0
Leech Brook Dev.	45,000	0	150,000	0	14	3,214
P. Janes & Sons	25,000	0	51,200	0	0	0
Red Indian Lake Dev.	6,625	0	6,625	0	0	0
White Bay Dev. Assoc.	6,625	0	6,625	0	0	0
White Bay South Dev.	6,625	0	6,625	0	0	0
GRAND FALLS-WHITE BAY-LABRADOR	465,795	0	1,545,305	0	32	49,074

005 - HUMBER-PORT AU PORT-ST. BARBE

Barachois Dev. Assoc.	6,625	0	6,625	0	0	0
Bonne Bay Dev. Assoc.	6,625	0	6,625	0	0	0
Brophy's Dairy Farm	40,000	0	50,000	4	4	10,000
Central Dev. Assoc.	6,625	0	6,625	0	0	0
George Alteen Ltd.	10,100	0	26,000	0	2	5,050
George's Service St	33,309	0	111,030	0	3	11,103
Harvey, Wanda	10,280	0	28,000	0	6	1,713
Humber Cold Storage	97,332	0	324,720	0	0	0
Humber Valley Dev. Assoc.	6,625	0	6,625	0	0	0
NFLD Multi Foods	35,687	0	299,000	0	17	2,099
North Shore Bay	6,625	0	6,625	0	0	0
Pandl Limited	7,650	0	57,000	0	3	2,550
Spence's Service	44,673	0	148,910	0	2	22,337
St. Barbe Dev. Assoc.	6,625	0	6,625	0	0	0
Straits Dev. Assoc.	6,625	0	6,625	0	0	0
Wesco Dairy & Poultry	181,350	0	403,000	0	17	10,668
HUMBER-PORT AU PORT-ST. BARBE	506,756	0	1,494,035	4	54	65,520

006 - ST. JOHN'S EAST

Austin Advertising	6,898	0	32,000	10	0	0
Blue Buoy Foods Ltd.	30,550	0	122,200	0	8	3,819
Canadian Sealers	45,000	0	50,000	0	0	0
General Research	202,217	0	323,000	0	10	20,222
Governor's Park	1,148,000	0	5,316,000	0	17	67,529
Instrumar Ltd.	152,225	0	354,450	0	10	15,223
Mercer's Machine Shop	57,126	0	190,419	0	6	9,521
NFLD & Lab. Crafts	55,000	0	55,000	0	0	0
NFLD Ocean Ind.	40,500	0	54,000	0	0	0
Precision Rebuilding	65,362	0	193,000	0	15	4,357
Purity Factories	12,750	0	43,000	0	2	6,375
Resource Centre for the Arts	4,875	0	6,500	0	0	0
Shea Foods Ltd.	8,750	0	35,000	0	0	0
Shoreline Meat Ent.	165,550	0	508,000	0	17	9,738
Vic Andrews	41,750	0	167,000	0	0	0
ST. JOHN'S EAST	2,036,553	0	7,449,569	10	85	136,784

007 - ST. JOHN'S WEST

ERCO	964,000	0	5,400,000	0	36	26,778
IMP Group Ltd.	71,000	0	311,000	0	7	10,143
L & Brothers Metals	31,500	0	171,000	0	4	7,875
NORDCO Limited	70,000	0	210,000	0	16	4,375
Thomas J. Lipton Ltd.	44,560	0	245,000	35	0	0
Tors Cove Fisheries	30,300	0	67,335	0	0	0
Vanguard Paper Box	45,000	0	100,000	0	0	0
ST. JOHN'S WEST	1,256,360	0	6,504,335	35	63	49,171

ACCEPTED OFFERS FOR FISCAL YEAR 1985/86

INDUSTRIAL AND REGIONAL DEVELOPMENT PROGRAM

REPORT PRODUCED 10 SEPTEMBER 1987

COMPANY LEGAL NAME	FEDERAL CONTRIBUTION	PROVINCIAL CONTRIBUTION	COMPANY INVESTMENT	ESTIMATED JOBS MAINTAINED	ESTIMATED JOBS CREATED	COST PER JOB
002 - BURIN-ST. GEORGE'S						
Daley Brothers Ltd.	60,000	0	237,773	0	0	0
Gillam, Mr. Stanley	8,711	0	29,036	0	2	4,356
Hazel Industries	28,934	0	122,738	0	0	0
BURIN-ST. GEORGE'S	97,645	0	389,547	0	2	4,356
003 - GANDER-TWILLINGATE						
Fogo Island Co-Op	60,250	0	280,000	0	0	0
GANDER-TWILLINGATE	60,250	0	280,000	0	0	0
004 - GRAND FALLS-WHITE BAY-LABRADOR						
Abitibi-Price Inc.	3,067,280	0	15,336,400	1,025	0	0
Labrador Fisheries	15,658	0	62,633	0	4	3,915
Pardy's Tire	23,350	0	346,667	0	8	2,919
Penny Motors Ltd.	6,459	0	95,584	0	3	2,153
Superior Logging	279,132	0	804,000	0	25	11,165
GRAND FALLS-WHITE BAY-LABRADOR	3,391,879	0	16,645,284	1,025	40	20,152
005 - HUMBER-PORT AU PORT-ST. BARBE						
North Star Cement	2,039,375	0	6,000,000	0	11	185,398
Portland Creek	243,900	0	1,064,000	0	20	12,195
Smoked Seafoods	42,186	0	137,465	0	5	8,437
Straits Wholesale	16,722	0	67,000	0	3	5,574
HUMBER-PORT AU PORT-ST. BARBE	2,342,183	0	7,268,465	0	39	211,604

006 - ST. JOHN'S EAST						
Eagle Tire Co. Ltd.	25,000	0	126,000	0	4	6,250
Frontier Offshore	3,416	0	14,360	0	0	0
Instrumar Ltd.	20,202	0	40,404	0	0	0
Martin's Industrial	99,000	0	396,000	0	5	19,800
McDonald's Welding	7,198	0	19,195	0	0	0
Robin Hood Multifoods	43,631	0	117,000	0	30	1,454
Robin Hood Multifoods	92,000	0	460,000	0	0	0
ST. JOHN'S EAST	290,447	0	1,172,959	0	39	27,504
007 - ST. JOHN'S WEST						
Continental Marble	4,752	0	9,505	0	4	1,188
ERCO	77,800	0	155,600	0	0	0
Nelco Marine Dev.	83,224	0	332,896	0	6	13,871
Terra Nova Fishery	134,050	0	383,000	0	15	8,937
Thomas J. Lipton	47,500	0	190,000	0	0	0
ST. JOHN'S WEST	347,326	0	1,071,001	0	25	23,996

APPENDIX "C"

(*See p. 2662*)

REPORT ON THE 78TH INTER-PARLIAMENTARY CONFERENCE

BANGKOK, THAILAND

12 - 17 OCTOBER 1987

The official Parliamentary delegation which participated in the 78th Conference of the Inter-Parliamentary Union in Bangkok, Thailand from October 12-17, 1987 was led by Mr. Benno Friesen, M.P., Chairman of the Canadian Group, Member of the International Executive Committee and Member of the Inter-Parliamentary Council. The other members of the delegation were:

The Honourable Lorne Bonnell, Senator
Vice-Chairman of the Canadian Group and
Member of the Inter-Parliamentary Council

Mrs. Suzanne Duplessis, MP

The Honourable Len Marchand, Senator

The Honourable Joan Neiman, Senator *

The Honourable Orville Phillips, Senator

Mr. Marcel Prud'homme, MP

Mr. Don Ravis, MP

Mr. Svend Robinson, M.P.

Mr. Stephen Knowles
Parliamentary Relations Secretariat
Executive Secretary of the Delegation

Mrs. Barbara Reynolds
Parliamentary Centre for Foreign Affairs and Foreign Trade
Adviser to the Delegation

* Senator Neiman attended the Conference in her capacity as Substitute Member of the Special Committee on Violations of the Human Rights of Parliamentarians.

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XI MEETING ON HEALTH AND WELL-BEING OF THE ELDERLY

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XIII VISIT TO REFUGEE RESETTLEMENT CAMP

I. INTRODUCTION

The 78th Inter-Parliamentary Conference took place at the Bangkok Convention Centre in Bangkok, from 12 to 17 October 1987.

The Members of the Canadian delegation were:

Mr. Benno Friesen, M.P.
Chairman of the Canadian Group
Member of the International Executive and
Member of the Inter-Parliamentary Council

The Honourable Lorne Bonnell, Senator
Vice-Chairman of the Canadian Group and
Member of the Inter-Parliamentary Council

Mrs. Suzanne Duplessis, MP

The Honourable Len Marchand, Senator

The Honourable Joan Neiman, Senator

The Honourable Orville Phillips, Senator

Mr. Marcel Prud'homme, MP

Mr. Don Ravis, MP

Mr. Svend Robinson, MP

The delegation was accompanied by Mr. Stephen Knowles, Executive Secretary of the Canadian Group, and Mrs. Barbara Reynolds, Adviser.

Mr. Charles Lussier, Clerk of the Senate, and Mrs. Nora Lever, Principal Clerk, House of Commons, participated in the meetings of the Association of Secretaries-General of Parliaments. During the course of the meetings Mr. Lussier was elected President of the Association.

II. PREPARATORY MEETINGS

A. Briefings in Ottawa

Prior to the Conference the Canadian delegation held briefing sessions in Ottawa where it examined the current state of national and international developments affecting the main subject items on the agenda. On 15 September the briefers were: Mr. Raph Girard, Director, Refugee Determination Task Force, Canadian Employment and Immigration Commission; Mr. Gerry Campbell, Deputy Director, Refugee Policy, Department of External Affairs and Mr. Scott Heatherington, Director, Refugee Affairs, Canadian Employment and Immigration Commission. On 16 September, the briefers were: Mr. Nick Etheridge, Director, Political and Strategic Analysis Division,

Department of External Affairs; Mr. Simon Williams, Desk Officer, Indonesia, Department of External Affairs; Mr. Michael Welsh, Deputy Director, South East Asia Division, Department of External Affairs; Mr. Nigel Godfrey, Trade Development (Thailand), Department of External Affairs; Mr. Peter McKellar, Director, Energy and Environment Division, Department of External Affairs; Mr. François Bregha, Director, Northern Programs, Environment Canada and Mr. Phil Paradine, Chief, Environmental Division, Canadian International Development Agency.

Prior to the Conference, the delegation also received a bibliography prepared by Mrs. Lucienne Eshelman of the Library of Parliament as well as a number of background papers prepared by research officers of the Library of Parliament: Mr. Michel Rossignol, Thailand; Mr. Grant Purves, The Process of Decolonization and Ms Margaret Young, Refugees: Some Global Aspects

B. Twelve-Plus Meetings

A meeting of the western and like-minded delegations was held in Bangkok 9 October. Mr. Friesen and Senator Bonnell were our representatives. Further meetings of the Twelve-Plus took place each morning as the Conference proceeded. The Twelve-Plus discussed the following matters: the agenda of the current conference, proposals for the agenda of the 79th Conference, review of the 77th Conference, nominations for members of the Executive Committee and the report of the Working Group on the Implementation of the Union's Resolutions and the Functioning of Conferences.

Mr. Friesen presented the Canadian Group proposal to include an item on the environment in the agenda of the 79th Conference:

The contributions of parliaments:

-- in the promotion and implementation of environmental strategies for achieving sustainable development in particular those outlined in the report of the World Commission on Environment and Development

— in the recognition of the importance of sustainable development for developing and developed countries

— in the establishment of national policies, machinery and legislation to attain sustainable development and which integrate environmental objectives into transport, energy, agriculture, forestry, population, health and economic goals and enhance the preservation of the world's natural and cultural heritage

— in the recognition of the global dimension of environmental issues and the urgent necessity of promoting international co-operation including the development of an international legal framework and the implementation of changes in the mandates of U.N. agencies

— in the development of regional structures to resolve transboundary issues and enhance regional cooperation.

After discussion, the Canadian Group agreed to shorten the item to read as follows:

> The promotion and development of environmental strategies at national and global levels for achieving sustainable development while enhancing the preservation of the world's natural and cultural heritage.

C. Delegation Meetings in Bangkok

Everyday at 07:30 the delegation met to review the previous days's events, plan the day's work, discuss resolutions and speeches and to be briefed on administrative and policy items.

D. IPU Executive Committee Meetings

The Committee met on 9, 10 and 15 October under the chairmanship of the President of the Inter-Parliamentary Council, Mr. Hans Stercken (Federal Republic of Germany). Mr. Friesen attended, assisted by Mr. Knowles.

The President and the Secretary-General reported on the work of the Union since the 77th Conference in Managua. The Working Group on the Implementation of the Union's Resolutions and the Functioning of Conferences occupied much of the the Secretariat's time. The Working Group's Report and the analysis of follow-up on Conference decisions in Union member countries was discussed in great detail. The Working Group, set up during the 77th Conference, recommended an annual format of one major Conference with all Committees meeting and a Conference consisting of Inter-Parliamentary Council members only. The Council meeting would deal with Union administrative and policy matters and international questions as well. The Executive Committee generally endorsed the Working Group's recommendations for the consideration of the Council, but decided to promote further reflection and discussion and to make its final recommendation at the 79th Conference to take place in Guatemala City in April of next year. The new format would come into effect in 1990.

Preparations are continuing for the Union's centennial in 1989. The leaders of the Hungarian and British Groups, hosts respectively of the 1989 spring and autumn conferences, are planning a number of appropriate events such as a world children's drawing contest and an international television debate. The Union's Secretariat will contract the preparation of a 25 minute documentary film on the Union's past and present. A popular book on Parliaments in the World will be written by Mr. Phillip Laundy, Clerk Assistant of the House of Commons. The Speaker of the House of Commons has authorized Mr. Laundy to work on the book on House of Commons time, thus making a major contribution to the centennial. The Canadian Group has also asked the Canada Post Corporation to issue a commemorative stamp.

The Committee examined and recommended action for the following special conferences and activities:

- Working Group to examine the viability for holding a television debate as requested by the members attending the meeting of the CSCE Country delegations.

- Conference on Health - A Basis for Development in Africa, Brazzaville, Congo, 27 June - 1 July 1988.
- Symposium on Participation by Women in the Political and Parliamentary Decision-Making Process, Geneva, January 1989.
- Consideration for a Conference on World Intellectual Property.
- The request to national groups to report on any steps taken on the 77th Conference (Managua, April/May 1987) Resolution "To establish a Parliamentary Support Committee to actively contribute to the world campaign for the successful holding of the international peace conference on the Middle East"

III. THE INAUGURAL CEREMONY

The opening ceremony of the 78th Conference of the Inter-Parliamentary Union took place in the Viphavadi Ballroom of the Hyatt Central Plaza Hotel at 4:30 p.m. on 12 October in the presence of His Majesty King Bhumibol Adulyadej. His Excellency Mr. Bhichai Rattakul, Deputy Prime Minister, welcomed the delegates and expressed the hope that the Conference would be successful in promoting understanding between the parliaments of the world. Mr. Hans Stercken, President of the Inter-Parliamentary Council, noted that ordinary people looked to politicians to create conditions in which they could look for a better future. The ending of conflicts throughout the world had to be the dominant topic of this conference if the IPU was to play an important role in the dialogue for peace and reconstruction. But after peace had been achieved there was still the question of international co-operation in dealing with the tens of millions of refugees throughout the world. He concluded by saying that the voice of parliamentarians was a powerful one and they should make it heard so as to fulfill common objectives.

Mr. S.A.M.S. Kibria, Under-Secretary General of the United Nations and Executive Secretary of the Economic and Social Commission for Asia and the Pacific, read a message from the Secretary-General of the United Nations, Senor Perez de Cuellar, in which he greeted the delegates of the 78th Inter-Parliamentary Conference. He said that like the United Nations the IPU reflected peoples' aspirations for peace and justice within a framework of international law. The programme of the Conference properly paid attention to questions of development and human rights and problems of refugees. Global mobilization was necessary if the rights of individuals were to be respected and assistance brought to the needy.

His Excellency, Mr. Ukrit Mongkolnavin, President of the National Assembly of the Kingdom of Thailand and the President of the Thai National Group of the Inter-Parliamentary Union, welcomed delegates and said that as parliamentarians committed to promoting world peace and justice, delegates had a special duty to close the gap between talking and doing and to examine the causes of war, in which the sovereignty and integrity of nations were violated. They also had to address the plight of refugees and give urgent consideration to finding appropriate remedies for the problems of the world's poor.

His Majesty the King, Bhumibol Adulyadej, said that it was a great pleasure to welcome the representatives of parliaments from so many countries throughout the world and to preside over the opening ceremony of the 78th Inter-Parliamentary Conference. To co-operate in maintaining peace and security was one of the most important duties of countries which wanted to see peoples of all races and religions co-existing and progressing in equal freedom. The Inter-Parliamentary Union was one of several international institutions which had been established to bring about permanent peace and security. For almost a century it had been working to that end. It was meeting in Bangkok in order to address the many problems detrimental to world peace and to study means of promoting freedom and prosperity throughout the world.

IV. INTER-PARLIAMENTARY COUNCIL

The Council, which met at 10:00 a.m. Monday, 12 October, was attended by Mr. Friesen and Senator Bonnell. The council welcomed the National Group of the Philippines for reaffiliation to membership in the Union. Regrettably, the Council had to suspend the membership of the National Group of Burundi.

In his report the Secretary General, Mr. Pierre Cornillon, reported that 108 countries are now represented within the Union. He also reviewed the various activities of the Union since the last Council meeting including follow-up to the recommendations of the previous conference, preparations for the Union's Centennial, meetings of parliamentarians attending the UN General Assembly and the promotion of parliamentary institutions. Mr. Hans Sterchen, President of the Council, reported on the activities of the Executive Committee including its study of the report of the Working Group on Implementation of the Union's Resolutions and the Functioning of Conferences.

Much of the meeting was devoted to consideration of the report of the Working Group. There was a consensus that national groups should make every effort to promote the implementation of the Union's resolutions. The Executive Committee recommended that an evaluation of the follow-up measures taken by the Groups be made every four years instead of the current practice of two years in order to avoid danger that this becomes a routine matter. This was adopted by a vote: yeas - 70, nays - 25. There was extensive debate on the functioning of the Union's conferences. Among the proposals were: one major conference in the fall with a meeting of the Council in the spring, increasing the number of committees from four to five, lengthening the conference from one week to ten days and increasing the size of delegations. After extensive discussion it was agreed that each national group would review the proposals with their own members and would be prepared to discuss these matters at the next IPU Conference. The Council also agreed with the recommendation of the Working Group to limit

speaking time to 10 minutes for each delegation on each of the three debates.

The Council continued its deliberations on Saturday 17 October by resuming discussion of the Working Group Report. The Group of the Federal Republic of Germany had submitted a proposal for amending Articles 3, 11 and 19 of the Union's Statutes to provide for greater participation by women in the Union. The Working Group felt that these amendments were not admissible because the amendments would "have the value of recommendations whereas, by nature, statutes enshrine obligations". The Executive Committee had endorsed the report of the Working Group on this point and recommended its acceptance by Council. At the insistence of the Group of the Federal Republic of Germany a vote was taken with the following results: yeas - 75, nays - 25, abstentions - 5.

Article 8 of the Statutes and Rule 42 (2) make it a duty for national groups to promote the implementation of the Union's resolutions and to report on actions taken and results obtained. A detailed report on the activities undertaken by national groups in applying these provisions during 1985, 1986 and 1987 was examined. Unfortunately, less than half of the member Groups comply regularly with this obligation. Only 38 countries including Canada had submitted a report for each of the three years under study. This can be contrasted with twenty years ago when 45 of the 66 member countries filed annual reports.

Elections for the four positions on the Executive Committee were held with the following results -- Mr. Huan Xiang (China) 137 votes; Mr. S. Khunkitti (Thailand) 126 votes; Mrs. M. Molina Rubio (Guatemala) 120 votes; Mr. J. Maciszewski (Poland) 99 votes and Mr. Kabimbi Ngoy (Zaire) 71 votes. Mrs. Rubio is the first woman to be elected to the Executive Committee.

The Council also examined and adopted unanimously the report of the Special Committee on Violations of the Human Rights of Parliamentarians described elsewhere in this report.

The agenda for the 79th Conference was discussed and the Council accepted the proposal by Canada for an item on the environment.

The Council also accepted, on division, the recommendation of the Executive Committee to establish a "Parliamentary Support Committee to contribute actively to the world campaign for the successful holding of the international peace conference on the Middle East".

V. FIRST PLENARY SESSION - ELECTION OF PRESIDENT AND SUPPLEMENTARY ITEMS

The first plenary session of the Conference took place on the afternoon of Monday, 12 October, starting at 6:00 p.m. Item 1 on the agenda was the election of the President and Vice-Presidents of the Conference. Dr. Ukrit Mongkolnavin was elected President by acclamation and then each delegation nominated one vice-president, Mrs. Duplessis being Canada's choice.

Item 2 was the adoption of an amendment to Article 23.1 and 2 of the Statutes to increase the number of members on the Executive Committee from ten to twelve.

Item 3 was the adoption of an amendment to Rule 23.1 and 2 regarding speaking time for delegations. It was agreed that no more than two representatives of each delegation may speak; every delegation shall be entitled to 10 minutes speaking time; the time may be shared between the two speakers in the most appropriate way.

Item 4 was the consideration of requests for the inclusion of a supplementary item on the Conference agenda, from the following proposals:

1. The contribution of Parliaments to the implementation of UN Security Council resolution 598 (1987) on ending the war and achieving comprehensive and just peace between Iraq and Iran (Iraqi Group)

2. Initiative of Parliaments against drugs and, in particular, in view of the aggravation of the problem, encouragement of action by the international community against organized crime, in favour of crop reconversion, and in support of the activities of the United Nations Fund for Drug Abuse Control (Italian Group)

3. Security in the Persian Gulf and the necessity of withdrawal of foreign forces (Group of the Islamic Republic of Iran)

4. The Esquipulas II Agreements: A hope for peace in Central America (Groups of Guatemala and Nicaragua)

Upon the recommendation that the Conference pass a statement of support for the recent initiatives in Central America, namely the Espuipulas II Agreements, the Groups of Guatemala and Nicaragua agreed to withdraw their requests. The Italian Group also agreed to withdraw its request as this subject would be discussed at the forthcoming IPU conference on drug trafficking in November in Caracas.

The Spanish delegation reflecting the consensus of the Twelve Plus Group proposed an amendment to the Iraqi request which is as follows:

> Contribution of Parliaments to achieving comprehensive and just peace between Iran and Iraq and to security of navigation in the Gulf on the basis of the implementation of UN Security Council resolution 598 (1987)

Subsequently, the Group of the Islamic Republic of Iran agreed to withdraw its request, but did give an explanation of its position. There being only one request before the Conference, it was included as the supplementary item on the agenda and was referred to the Ist Committee, the Committee on Political Questions, International Security and Disarmament.

VI PLENARY DEBATES

Mr. Ravis spoke on behalf of Canada in the debate on human rights and refugees. The conference proceedings summarized his intervention as follows:

> **MR. D. RAVIS** (Canada) thanked the Thai Group for their hospitality. He congratulated Thailand too on her hospitality to over a million refugees from Kampuchea. The solution to the problem lay with the parliaments and governments represented at this Conference. The world contained 15 million refugees - "the fourth world" - and their story was as old as the Exodus. In contrast with many other international problems, this one was getting worse. Canada was built by immigrants and refugees, and led the world in helping them. She had taken in 100,000 refugees since 1981, and expected to receive 20,000 more this year. In 1986 she had received the Nansen medal from the UN High Commissioner for Refugees. She offered asylum to all genuine refugees though she would not stand for abuse. But most refugees, though grateful for a new home in the West, would rather return to their own homelands, as was their right. Parliamentarians should press their home countries to "clean up their act". Richer countries should see that their overseas aid reached the poorest people. Many refugees came from member countries of the IPU; he therefore challenged the IPU to put its own house in order. He pledged that Canada would continue to receive refugees, and to confront those governments which betrayed their own citizens.

Mrs. Duplessis spoke on behalf of Canada in the debate on decolonization and elimination of apartheid. The conference proceedings summarized her speech as follows:

MRS. S. DUPLESSIS (Canada) emphasized that peace, justice and equality were principles dear to all those who believed in freedom. The injustice suffered by the black population in South Afica was intolerable. The right to vote was a fundamental right, yet it had been refused to millions of Africans by the Government of Pretoria at the elections held in May 1987. All countries represented at the Conference must strengthen coordination of their struggle against apartheid. It was indispensable to find effective ways of increasing pressure for change. The consensus was widening in that respect: some States had discovered that apartheid was not only morally condemnable, but also disadvantageous for business.

The heads of government of the Commonwealth were meeting in Vancouver and were studying the problem. Since South Africa had left the Commonwealth, the organization had spared no effort to re-establish a democratic regime in South Africa. It had set up a group of seven eminent persons, which had published a report on the problem; three weeks later, South Africa declared the state of emergency. Commonwealth leaders meeting in London in 1986 had all, with the exception of the British representative, adopted a recommendation on 11 economic measures against South Africa. The Prime Minister of Canada had raised the problem of apartheid at the meeting of industrialized countries and they had agreed that, in order to find a peaceful and lasting solution to the current crisis in southern Africa, the apartheid regime should immediately be replaced by a democratic regime. Recently, the second Summit of French speaking countries, held in Quebec, had brought together 40 heads of state who had reaffirmed their strong and resolute condemnation of apartheid - source of violence - as well as their determination to work towards the establishment of a democratic regime.

Apartheid was undoubtedly the source of violence: a study by the University of Pretoria had shown that, since 1985, 100-200 deaths could be attributed to ANC action against 1,000-2,000 to the Government of South Africa. The government of Canada condemned such violence and would do all in its power to end it. As the Prime Minister had stated before the United Nations General Assembly on 23 October 1985, he was ready to impose total sanctions and to terminate relations with South Africa if the latter did not renounce apartheid. Such measures would obviously be more effective if they were implemented by a greater number of countries, but if nothing was done, there was a danger of a blood bath without precedent since the Second World War.

Senator Bonnell spoke on behalf of Canada in the general debate on the current world situation. The conference proceedings summarized his remarks as follows:

MR. L. **BONNELL** (Canada), as a physician, addressed the social and economic implications of AIDS. AIDS promises to kill more people than the two world wars put together and to have consequences as catastrophic as the Great Plague of the Middle Ages. It worried scientists and frightened the public, and no cure was likely to be found for several years. Progress had been made but much more needed to be done. The number of cases in Canada had reached 1112 in May, of whom 512 were already dead, and was rising fast; the Canadian health service was under strain. Most victims were young - in Canada 45 per cent were in their thirties - and national productivity was therefore threatened. The stage was set for a "pandemic". The problem was international, Governments should educate the public and support research. He called for a special IPU conference like the one on the environment in Nairobi.

VII. COMMITTEES

A. 1st Committee - Committee on Political Questions, International Security and Disarmament

The Committee on Political Questions, International Security and Disarmament met on 13 October to consider agenda item no. 4:

> The Contribution of Parliaments to achieving comprehensive and just peace between Iran and Iraq and to security of navigation in the Gulf on the basis of the implementation of UN Security Council resolution 598 (1987).

Senators Marchand and Phillips and Mr. Prud'homme attended the meeting of this committee. A drafting committee was established which reported back to the Committee on 16 October. Its draft resolution was adopted by consensus. (See Appendix 5 for text of draft resolution).

B. IInd Committee - Committee on Parliamentary, Juridical and Human Rights Questions

The Committee on Parliamentary, Juridical and Human Rights Questions met on 14 October to consider agenda item no. 5:

The Contribution of Parliaments:

- to the respect, development and promotion of human rights
- to the respect for the fundamental principles, treaties and obligations governing relations among nations in order to solve the problem of refugees and displaced persons.

The Canadian Group was one of twenty groups submitting a draft resolution for consideration by the Committee (See Appendix 1 for text of Canadian resolution). Mr. Ravis and Mr. Robinson represented Canada on this Committee. A drafting committee was established which reported back to the

Committee on 16 October. Its draft resolution was adopted unanimously by the Committee. (See Appendix 3 for text of draft resolution.)

C. IVth Committee - Committee on Non-Self Governing Territories and Ethnic Questions

On 15 October the Committee met to discuss agenda Item No. 4:

> The contribution of Parliaments to efforts aimed at the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and elimination of apartheid and all forms of racism.

The Canadian Group was one of fourteen groups submitting a draft resolution for consideration by the Committee. (See Appendix 2 for text of Canadian resolution.) Senator Phillips, Senator Marchand, Mr. Ravis and Mr. Robinson represented Canada on this Committee. Canada was one of thirteen countries to serve on the drafting committee. Using the texts submitted by Britain and Zimbabwe as basis working texts, the drafting committee met on 15 and 16 October to prepare a draft resolution for consideration by the Committee on 17 October. Amendments to 3 preambular paragraphs and 12 operative paragraphs were proposed. Only the motion to add the words "according to the principles of self-determination" to operative paragraph 46 was adopted. The entire resolution was adopted by 30 votes to 4, with 2 abstentions.

VIII. SPECIAL COMMITTEE ON THE HUMAN RIGHTS OF PARLIAMENTARIANS

Senator Neiman who was elected as a substitute member of this committee in 1979 replaced Mr. Klaus de Vries of the Netherlands during the committee's deliberations from 13 to 15 October. The Special Committee considered the (public or confidential) information forwarded by some National Groups relating to the implementation of the resolutions adopted by the Inter-Parliamentary Council in Managua and on action taken to give effect t con-

fidential decisions. In the two sets of meetings held since the Managua Conference, the Special Committee considered in camera the individual situations of 124 parliamentarians of 16 countries in all regions of the world. The Committee submitted 52 cases from 7 countries to the IPU Council: Chile (3 cases); Columbia (4 cases); Indonesia (1 case); Somalia (7 cases); Swaziland (1 case); Turkey (27 cases); Viet Nam (9 cases). It also submitted 8 resolutions on these cases which were adopted unanimously. The committee reported with satisfaction that 13 former Chilean parliamentarians have been able to exercise their right to return to Chile, that 6 former Vietnamese parliamentarians were released in September 1987 and that these cases subsequently were closed.

IX. MEETING OF DELEGATES FROM STATES PARTICIPATING IN THE CSCE PROCESS

A meeting of delegates from Europe, Canada and the United States took place during the afternoon of 14 October to exchange views on east-west relations and various matters within the context of the CSCE process. Mr. Prud'homme and Mr. Robinson attended, assisted by Mr. Knowles. Mrs. Leni Fischer (Federal Republic of Germany) was elected Chairman. Delegations reported on their contact with groups from the other blocks, Canada mentioning that Czechoslovakian and Soviet Parliamentary delegations have recently visited Canada.

The major part of the meeting was devoted to a discussion of the Soviet proposal for an international television hook-up to permit an exchange of views among Parliamentarians from east and west. The idea was enthusiastically received and supported by all members including Canada. It was agreed that all three baskets of the Helsinki Final Act should be included in the television exchange which should involve representation from the neutral and non-aligned states as well as those from NATO and the Warsaw Pact. It was decided to ask the Executive Committee to set up a Committee including members of each group to study the policy and technical factors involved in setting the television link.

X. MEETING OF WOMEN PARLIAMENTARIANS

Mrs. Duplessis, Mrs. Lever and Mrs. Reynolds attended the meeting of women parliamentarians chaired by Mrs. Supatra Masdit, Member of the Thai Parliament on 11 October. Among the items on the agenda were discussions on ways and means to improve the participation of women parliamentarians in activities of IPU including amendments to the Statutes. The Canadian Group was selected to serve on an ad-hoc committee along with the Republic of Korea, Cameroon, USSR and Sweden, to investigate the possibility of nominating, at the next IPU conference, a woman to serve on the IPU Executive Committee.

The results of questionnaires completed by national groups on measures to promote equal rights and responsibilities for men and women were presented. Delegates agreed with the recommendations of the Working Group to give this report the widest possible distribution. Future assessments will concentrate on the participation of women in the political life and the decision-making process and will be carried out every four years. The next study will be carried out in 1991.

Mrs. Duplessis reported on various initiatives since 1984 to improve the status of women in Canada. Among the items were: the child care task force, the appointment of more women to federal commissions and agencies and the judiciary and employment equity legislation.

The women parliamentarians agreed to ask the IPU Executive to approve a symposium in 1988 or 1989 on "The Participation of Women in the Political and Parliamentary Decision-Making Process". This symposium would take place in Geneva with both male and female legislators in attendance.

XI MEETING ON THE HEALTH AND WELL-BEING OF THE ELDERLY

On Wednesday 14 October, Senators Bonnell, Neiman and Phillips, Mr. Prud'homme and Mr. Ravis attended a meeting of an informal group to consider issues relating to the health and well-being of the elderly. The

theme of this meeting which was chaired by Congressman Pepper of the United States was "The role of parliamentarians in facing the social and economic implications of the change in demographics regarding aging". The meeting opened with a few brief remarks by Dr. Thomas Mahoney, a specialist on aging, who pointed out that there are currently 290 million people over age 65 and this group is expected to grow to 410 million by the year 2000. The growth of older populations poses a considerable challenge to public policy. It is an unprecedented social phenomenon which will require new ways of thinking, innovative ideas, and different approaches than hitherto on the part of those charged with finding viable solutions. The delegates discussed how their various countries are responding to this increased longevity. At the conclusion of the meeting delegates decided to report to the Council about their deliberations, to recommend a similar meeting at the next Conference and to investigate the possibility of a special conference on this subject.

XII THE FINAL PLENARY

At the final plenary session on Saturday 17 October, the four successful candidates for the Executive Committee elected by the Council were accepted. The conference then considered the three resolutions drafted by the committees. Mr. Tavernier of France who was rapporteur for agenda item 5 presented the draft resolution on human rights and refugees, which had been unanimously adopted by the Committee on Parliamentary, Juridical and Human Rights Questions (see Appendix 3 for copy of text). The Conference also unanimously adopted this resolution.

Mr. Nuis of the Netherlands who was rapporteur for agenda item 6 presented the draft resolution on decolonization which had been adopted by the Committee on Non-Self-Governing Territories and Ethnic Questions by 30 votes to 4, with 2 abstentions (see Appendix 4 for copy of text). The Morroccan Group introduced a motion to amend paragraph 26 of the preamble by deleting the reference to "the people of the Sahrawi Arab Democratic Republic (SADR)" and replacing it with "Sahrawi people". This motion was defeated

with yeas - 222, nay, 323, abstentions - 544. The Canadian Group voted with 12 abstentions. The Indonesian Group introduced a motion to delete paragraph 33 of the preamble and paragraph 46 in the operative section which referred to East Timmor. This motion was defeated with yeas - 171, nays - 515, abstentions - 414. The Canadian Group voted with 11 yeas and 1 nay. The Conference then voted on the resolution as a whole: yeas - 791, nays - 121, abstentions - 207. The Canadian Group cast its votes as follows: yeas - 1, nays - 3 abstentions - 8. Mr. Prud'homme gave a short explanation of his vote of abstention saying that while he wanted to support a resolution condemning South Africa, the draft resolution contained unacceptable language. He urged fellow delegates to show good will and to pursue the objectives of the Union by drafting resolutions which national groups could support.

Mr. Martinez of Spain, who was rapporteur for the supplementary item, presented the draft resolution on the Iran-Iraq conflict which had been adopted by consensus by the Committee on Political Questions, International Security and Disarmament. (See Appendix 5 for copy of text). The Conference unanimously adopted this resolution.

XIII TOUR OF REFUGEE RESETTLEMENT CAMP

The delegation went to Phanat Nikhom Refugee Resettlement Camp, near Bangkok on 11 October on a visit organized by the Canadian Embassy. On the way to the camp Mr. Cliff Shaw, Canadian chargé d'affaires and Mr. Gardner Wilson, Counsellor and Consul, provided briefing on the current situation in Thailand, aspects of Canada-Thai relations and an overview of the embassy's immigration program which covers the People's Republic of Viet Nam and Laos, as well as Thailand. In fact the embassy's immigration program deals almost exclusively with refugee and family unification problems.

Mr. Alain Théault, Second Secretary (Immigration) provided an overview of the refugee problem in Thailand. Most of the 6 camps are in the north near the Laotian border. Care of the refugees is the responsibility of the

United Nations High Commissionare for Refugees while the camps are administered by the Thai Government. Phanat Nikhom is a transit camp mainly for Vietnamese and Kampuchean refugees in the process of being accepted and documented for being sent to third countries, mainly the United States whose processing area takes up a large part of the camp area. All Vietnamese boat arrivals are sent directly to the camp. Mr. Théault explained that Canadian processing procedures have been streamlined but that factors outside of our control such as transport facilities and priority given to other countries' programs slows down processing and transit of Canada bound refugees.

The delegation was welcomed to the camp by the Thai camp commander, Mr. Khan Karan and his senior staff members, Mr. Khan Prapakora Smitt and Mr. Khan Viboon from the Ministry of the Interior. A briefing illustrated with slides was presented. The camp was opened in 1980 and has a maximum capacity of 30,000. Presently there are some 20,000 in camp with 53 per cent from Viet Nam, 9 per cent from Kampuchea and 38 per cent from Laos.
Boat refugees number an average of 700 persons a month. They are confined to Section C, the part of the camp which is most crowded and most lacking in facilities. Some 10,000 residents of this section have yet to be accepted by a resettlement country.

Mr. Leo Glensing, UNHCR representative and a Danish national next welcomed the delegation. He stated the view that Canada is the country doing the most for refugees and mentioned the Nansen Medal. Canada is one of the few countries carrying out "open selection" that is processing refugees who have no family or other connections with Canada.

Mr. Glensing expressed his concern over the practice of Vietnamese families sending away a son believing that refugee status and eventual third country resettlement to be the best chance for the child, who might also be able to send for his family. At the present there are over 700 unaccompanied minors between the ages of 6 and 18 in Phanat Nikhom. The problem is that if the unaccompanied minors are resettled then other parents may be encouraged to send out their children.

A large number of voluntary agencies support and organize care services and activities. These include medical services, language and orientation programs relevant to a receiving country and occupational training. Two organizations prepare refugees who have been accepted for Canada. They are the Mennonite Central Committee and the Quebec Government. The MCC Center operated by Henry and Tina Neufeld, teaches health and family planning, provides orientation in English to Canadian life and seeks to involve Canadian churches in supporting refugees. Mr. Neufeld recounted a number of incidents to illustrate the tragedy of the refugee situation, for example, the case of families otherwise eligible for resettlement except for the medical clearance of one family member. The delegates visited the Quebec government refugee orientation centre directed by Mrs. Thérèse Senechal and met members of the teaching staff who are all refugees.

Respectfully submitted,

(Signed)

Benno Friesen, MP
Leader of the Delegation

Appendix 1

Item 5

CONF/78/5-DR.20
12 October 1987
Original : bilingual

CONTRIBUTION OF PARLIAMENTS:

- TO THE RESPECT, DEVELOPMENT AND PROMOTION OF HUMAN RIGHTS;
- TO THE RESPECT FOR THE FUNDAMENTAL PRINCIPLES, TREATIES AND OBLIGATIONS GOVERNING RELATIONS AMONG NATIONS IN ORDER TO SOLVE THE PROBLEM OF REFUGEES AND DISPLACED PERSONS

Draft resolution presented by the Canadian Group

The 78th Inter-Parliamentary Conference,

Gravely concerned about the increasing number of refugees and displaced persons who are in need of protection throughout the world,

Deploring the situations which produce refugees and displaced persons, including persecution, armed conflict and violations of human rights,

Recalling the 1951 Geneva Convention relating to the Status of Refugees and the 1967 Protocol thereto,

Aware of violations of the fundamental rights of refugees and displaced persons which threaten their safety and well-being,

Convinced of the need for international burden-sharing to solve the problem of refugees and displaced persons,

Affirming the principle that secure voluntary repatriation is the most desirable and effective solution to the problem of refugees and displaced persons,

Aware of the difficulties faced by host countries in receiving refugees and displaced persons,

Commending States which have admitted large number of refugees and displaced persons despite obvious strains on their own economies,

Also commending the work of the United Nations High Commissioner for Refugees in providing assistance, ensuring the safety and well-being of refugees and searching for lasting solutions,

1. Reaffirms the principle of international solidarity and burden-sharing;

2. Urges all States which have not yet done so to ratify the 1951 Geneva Convention relating to the Status of Refugees and the 1967 Protocol thereto;

3. Calls on all signatories to the 1951 Geneva Convention and the 1967 Protocol to respect their obligations;

4. Also calls on all States to support the mandate of the United Nations High Commissioner for Refugees by providing generous financial support, protecting the safety and well-being of refugees and displaced persons within their territories and working towards lasting solutions for refugees and displaced persons;

5. Urges all States to create conditions to enable refugees and displaced persons to return to their countries of origin with the full and effective guarantee of their fundamental rights;

6. Calls on all States to respect the fundamental principles, treaties and legal obligations governing relations among nations, particularly the peaceful settlement of disputes, the right of peoples to determine their future, without interference and with respect for human rights, in order to reduce situations producing refugees.

Item 6

CONF/78/6-DR.13
12 October 1987
Original: Bilingual

CONTRIBUTION OF PARLIAMENTS TO EFFORTS AIMED AT THE IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES AND ELIMINATION OF APARTHEID AND ALL FORMS OF RACISM

Draft resolution presented by the Canadian Group

The 78th Inter-Parliamentary Conference,

Aware that nineteen non-self-governing territories, with a total population of about three million, remain colonial dependencies,

Supporting the principle of the right of all peoples to self-determination,

Recalling the 1960 United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples (resolution 1514-XV) which proclaimed "the necessity of bringing a speedy and unconditional end to colonialism in all its forms and manifestations",

Noting that, in the twenty-seven years since the adoption of the Declaration, more than 75 million people have emerged from dependent status,

Welcoming the exercise of the right of self-determination by peoples formerly under colonial rule,

Aware that almost half the remaining colonial population lives in Namibia,

Recalling the negotiating efforts of the Western Contact Group and the African countries concerned to set out a basis for bringing Namibia to independence,

Recalling resolution 435 (1978) of the United Nations Security Council which stipulates that the Constitution for an independent Namibia is to be drafted by representatives of the Namibian people chosen in a free and fair election,

Rejecting any linkage between the achievement of independence for Namibia and the withdrawal of Cuban troops from Angola, while expressing regrets at the need for the presence of foreign troops in any country,

Critical of South Africa's failure to implement resolution 435 of the United Nations Security Council,

Noting that colonial attitudes form the basis for the policy and practice of apartheid,

Condemning the policy and practice of apartheid in South Africa as a gross violation of basic human rights,

Recalling the Commonwealth Accord on southern Africa (Nassau, October 1985) which outlined special measures designed to promote a process of dialogue in South Africa that would, within six months, bring about concrete progress in dismantling apartheid and erecting structures of democracy,

Profoundly disappointed that a new and more widely repressive state of emergency has been imposed and political freedom more rigorously curtailed,

Recalling the Report of the Commonwealth Group of Eminent Persons (EPG) following its mission to South Africa, particularly the "negotiating concept" as a means of helping to begin a dialogue between the Government of South Africa and legitimate black leaders,

Deeply regretting the rejection of the "negotiating concept" by the South African Government,

Recalling the Communiqué of the Commonwealth Heads of Government (London, August 1986) which outlined further measures to impress upon South Africa the need for concrete action,

Further recalling the economic measures adopted by the European Community Council of Ministers in September 1986,

Disappointed with the results of the Whites-only election in South Africa in May 1987 where three million Whites voted to support the continued repression and racial segregation of the 20 million non-voting Blacks,

Recalling the closing remarks at the Venice Economic Summit in June 1987 "that a peaceful and lasting solution can only be found to the present crisis if the apartheid régime is dismantled and replaced by a new form of democratic non-racial government",

Further recalling the resolution adopted by the Francophone Summit in September 1987 on the deplorable situation in South Africa,

Noting that sanctions are one of the few peaceful options open to countries opposing apartheid,

Recognizing that sanctions are visible and tangible proof to the average South African that the world sees this system as repugnant and that they demonstrate to the victims of apartheid that other nations are prepared to do more than just talk,

Supporting the objective of increasing regional economic independence for Front-line States,

Recognizing the contribution of the South African Development Co-ordination Conference (SADCC) in developing the regional economy and reducing economic dependence on South Africa,

Further recognizing SADCC's commitment to developing alternative transport routes to those which pass through South Africa,

1. Calls on all Governments to respect the principle of the right of all peoples to self-determination by providing them with the opportunity freely to determine their political status and to pursue their economic, social and cultural development;

2. Urges all Governments, Parliaments and international organizations to contribute to the rapid elimination of colonialism;

3. Calls for the cessation of all armed action or other repressive measures directed against dependent peoples;

4. Reaffirms that the only agreed basis for internationally recognized independence for Namibia is UN Security Council Resolution 435;

5. Calls on the Government of South Africa to bring Namibia to independence in accordance with UN Security Council Resolution 435;

6. Calls on the Government of South Africa to dismantle apartheid and establish non-racial representative Governments;

7. Urges all Governments to encourage the adoption of a peaceful solution that results in freedom and equality in South Africa;

8. Encourages all Governments to implement effective and sustained measures, including economic sanctions, to build up the pressure for change;

9. Calls on all Governments to provide both moral and tangible support to Front-Line States, thereby helping them to achieve regional economic independence;

10. Urges all Governments which are committing vast resources to aid and development in the region to co-ordinate their effors so as to increase the impad of their contribution.

Item 5

CONF/78/5-DR.25
16 October 1987

CONTRIBUTION OF PARLIAMENTS:

- TO THE RESPECT, DEVELOPMENT AND PROMOTION OF HUMAN RIGHTS;
- TO THE RESPECT FOR THE FUNDAMENTAL PRINCIPLES, TREATIES AND OBLIGATIONS GOVERNING RELATIONS AMONG NATIONS IN ORDER TO SOLVE THE PROBLEM OF REFUGEES AND DISPLACED PERSONS

Draft resolution unanimously adopted by the Committee on Parliamentary, Juridical and Human Rights Questions

Rapporteur: Mr. Y. Tavernier (France)

A. With regard to the respect, development and promotion of human rights

The 78th Inter-Parliamentary Conference,

Recognizing that universal respect for and observance of human rights constitute an essential factor in the attainment of peace and security as well as the basis for freedom, justice and well-being, and are indispensable to ensuring the stable development of friendly relations and mutually advantageous co-operation between States,

Conscious of the need to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion, in accordance with the aims of the Inter-Parliamentary Union,

Recalling that the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women, and have determined to promote social progress and better standards of life in larger freedom,

Mindful that the Universal Declaration of Human Rights provides that all persons are entitled to realization of the civil, political, economic, social and cultural rights which are indispensable to their dignity and the free development of their personality,

Referring to the preambles to the International Covenants on human rights which recognize that the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everybody may enjoy his or her economic, social and cultural rights, as well as his or her civil and political rights,

Convinced that the full implementation of civil and political rights is inseparably linked to the exercise of economic, social and cultural rights,

Recognizing that the realization of the right to development can promote the exercise of civil, political, economic, social and cultural rights,

Reaffirming the inalienable right of all peoples to determine their own form of government and to choose their own economic, political and social system free from outside intervention, subversion, coercion or constraint of any kind whatsoever, it being accepted that denunciations of violations of international obligations concerning human rights cannot be rejected as interference in the internal affairs of States,

Mindful of the importance of the principles of human rights and fundamental freedoms laid down in the Helsinki Final Act as well as in a number of other regional agreements on human rights,

Aware that the prevention of nuclear and conventional war and the strengthening of international peace and security are prerequisites for the full attainment of fundamental human rights and freedoms,

Noting that human rights form a global, universal and indivisible notion, and that they represent an ideal which no State can claim to have reached,

Concerned, nonetheless, at the violations of human rights occurring in the world and particularly at the cases of mass and flagrant violations of these rights which constitute, in certain cases, a threat to international peace and security,

Expressing regret over the increase in acts of terrorism,

Fully determined to use the weight and prestige of Parliaments in transforming the human rights issue from an object of propaganda polemics into an area of fruitful international co-operation in the general context of seeking solutions to global humanitarian problems,

Desirous of enhancing the contribution of Parliaments to the effective realization of human rights worldwide and thus promoting international humanitarian co-operation, and increasing trust and mutual understanding between States and peoples in the search for a nuclear-free and non-violent world,

Conscious of the significant role that institutions at the national level can play in promoting and protecting human rights and fundamental freedoms and in developing and enhancing public awareness of those rights and freedoms,

Reaffirming the importance of public information activities, including education programmes, for the effective promotion and protection of economic, civil, political, social and cultural rights, and the role that non-governmental organizations can play in this regard,

Recognizing the priority which should now be accorded to development or appropriate arrangements at the national level to ensure effective implementation of international human rights standards,

1. Appeals strongly to all States that have not yet become parties to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, as well as other international instruments concerning human rights, to do so, to give these instruments genuine universality;

2. Asks all national Parliaments to ensure that national legislation conforms with these instruments;

3. Urges States which have not already done so, to guarantee protection for fundamental rights and freedoms, including a guarantee of effective remedies in the case of their violation in accordance with their respective constitutional systems and international agreements covering human rights;

4. Appeals to all States to ensure respect and support for human rights and where anyone has been detained for exercising these rights as laid down in the International Covenants on Civil and Political Rights, and Economic, Social and Cultural Rights, to release them immediately;

5. Affirms that apartheid, all forms of racial discrimination, colonialism, foreign domination and occupation, aggression and threats against national sovereignty, national unity and territorial integrity, as well as the refusal to recognize the basic right of all peoples to self-determination and the right of all nations to exercise full sovereignty over their natural heritage and resources are situations which in themselves constitute and lead to massive and flagrant violations of all the human rights and fundamental freedoms of peoples and individuals;

6. Reiterates its call for member States to spare no effort in providing for effective legislative and other mechanisms and procedures and adequate resources to ensure more effective implementation of existing international standards relating to human rights particularly in the administration of justice;

7. Emphasizes the importance of education and public information programmes in the field of human rights particularly for law students, the legal profession and all those responsible for the administration of justice;

8. Welcomes the recent entry into force of the African Charter on Human Rights and Peoples' Rights as an important contribution towards improving international protection of human rights;

9. Recommends the holding of special parliamentary sessions on human rights, for example on Human Rights Day, 10 December every year;

10. invites Parliaments to undertake constructive joint efforts at the international level for promotion of human rights in the search for mutual understanding and common ground, for improvement of the general psychological climate of international relations and for solutions to global problems such as hunger, disease, poverty, homelessness, destruction of the environment, thereby contributing to the creation of moral safeguards for the maintenance of peace

and for ensuring mankind's safe passage into the third millennium;

11. Requests the Parliaments of member countries to call on their respective Governments to support and step up their action within the framework of the United Nations;

12. Calls upon the international community to subject to constant review the effectiveness of international and multinational human rights bodies and to suggest improvements;

13. Expresses recognition of the work being carried out for the protection of human rights by United Nations bodies;

14. Urges all States to consider, within the framework of the United Nations, the possibility of establishing an international court of justice responsible for examining human rights violations.

B. With regard to the respect for the fundamental principles, treaties and obligations governing relations among nations in order to solve the problem of refugees and displaced persons

The Conference,

Recalling the contents of the resolution unanimously adopted by the 67th Inter-Parliamentary Conference held in 1980 in Berlin (GDR),

Expressing its deep concern at the massive, steady flow of refugees to several regions of the world and at the alarming dimensions which this problem has assumed,

Conscious that the increasing number of refugees and displaced persons is tied to the rise in the number of human rights violations in the world, to the persistence of national and international military conflicts, to foreign interventions and occupations, to social and economic difficulties, and to natural phenomena such as earthquakes, floods, drought and desertification,

Particularly concerned by the fact that in various regions, military or armed attacks, acts of piracy and other forms of brutality, often originating in the countries of refugees origin, continue to pose a grave threat to the safety and well-being of refugees as well as displaced persons and to persons seeking asylum,

Recalling the obligations stemming from the international and regional juridical instruments relating to refugees and displaced persons,

Reaffirming the purely humanitarian and apolitical nature of the activities of the Office of the United Nations High Commissioner for Refugees, UNRWA, the International Committee of the Red Cross and the United

Nations Border Relief Operation to improve the protection of the rights of refugees and displaced persons and their living conditions,

Concerned that economic difficulties and security problems have, for some years, caused uncontrolled displacements of persons, and that the fact that victims of such situations have been taken in hand by certain channels has resulted in an incipient erosion of the liberal asylum policy of host countries,

Regretting nonetheless the increasingly restrictive policy adopted by the developed countries towards refugees,

Also regretting that certain countries do not contribute financially organizations and programmes for refugees and displaced persons and do not admit refugees to their territories for resettlement purposes,

Deploring the fact that considerations of a political nature are increasingly taking precedence over the purely humanitarian aspect of the situation of refugees and displaced persons,

Also deploring the violations, by certain countries, of international instruments on assistance to and protection of refugees and displaced persons, in particular the restrictions on the right of asylum and freedom of movement of refugees,

Noting with concern that the majority of refugees are received by the poorer countries which do no possess the capacities and resources even to feed their own populations and which are further strained by the added efforts which hinder their development and could endanger their political and social stability,

Desirous of helping to improve the lot of refugees and displaced persons, and more particularly, to ensure that they enjoy the broadest possible exercise of human rights and fundamental freedoms,

Aware of the important role of Parliaments in all these areas as supreme legislative bodies with a decisive influence on the domestic and foreign policies of States,

1. Urges all Governments to contribute to a lasting solution to the problem of refugees and displaced persons, which calls for the elimination of the root causes of the problem, in particular massive and flagrant violations of human rights, internal and

international military conflicts and the occupation of foreign countries, and which requires the assent and political will of parties, the development of regional co-operation and assistance to the competent international bodies, and reaffirms the right of all refugees to return to their countries in dignity and safety;

2. Calls upon all Parliaments and Governments to be conscious of their responsibility to protect refugees and to receive victims of persecution as defined in the 1951 Geneva Convention relating to the status of refugees;

3. Urges Governments to ratify the international and regional juridical instruments relating to refugees and displaced persons, or, where applicable, to withdraw their reservations limiting their obligations under those instruments;

4. Also urges Parliaments to call on their respective Governments to implement effectively these texts;

5. Denounces bilateral agreements and arrangements which are aimed at restricting the rights of asylum and freedom of movement of refugees and displaced persons;

6. Supports efforts aiming at better co-ordination of asylum procedures, the granting of asylum and assistance to refugees in developed receiving countries, thus helping to avoid shifting the influx of refugees to neighbouring countries, thereby causing unbearable anguish to those seeking asylum;

7. Calls for the conclusion of a "Convention on Territorial Asylum", by means of which the legal status of refugees would be improved and standardized worldwide, and for the consideration of a new definition of the terms "refugee" and "country of first asylum";

8. Urges Parliaments to promote, in co-operation with their executive organs, the establishment of procedures for the formal determination of refugee status in every State;

9. Further urges States to show greater solidarity in sharing the burden of refugees and displaced persons, and requests them to help the receiving countries in dealing with the added difficulties created by the presence of refugees and asylum seekers, by contributing financial relief and organizational assistance;

10. Invites Parliaments and the international community to give assistance to whole populations which have been dispossessed of their homelands by annexation, occupation, or in other ways, so that they may achieve self-determination and the number of refugees and displaced persons be reduced;

11. Calls upon Parliaments to work towards ensuring that the problem of refugees and displaced persons is given greater consideration in the fields of economic and developmental assistance, as well as in other areas of international co-operation, with a view to creating conditions in the countries and regions of origin that will enable refugees to return to their home countries;

12. Invites States to consider the special plight of displaced persons who have no international legal protection and to envisage drafting appropriate juridical instruments for their protection;

13. Draws the attention of States to the plight of prisoners of war, detainees and civilian populations in zones of armed conflict and other hotbeds of tension, and invites them to support the activities of the International Committee of the Red Cross to protect such persons;

14. Commends the international humanitarian organizations for assistance to and protection of refugees and displaced persons, in particular UNHCR, the ICRC and UNRWA, for their work; urges all States to support those organizations in their efforts to provide lasting solutions to the problem of refugees and displaced persons, mainly by means of voluntary repatriation with the assent and assistance of the persons concerned, but also, when appropriate, through integration in countries of asylum and only with the prior consent of these countries, or resettlement in third countries, and also urges them to increase their material assistance to those organizations;

15. Also commends non-governmental organizations responsible for providing relief and assistance to refugees and displaced persons and stresses the need for States to support those organizations.

Appendix 4

Item 6

CONF/78/6-DR.15
17 October 1987

CONTRIBUTION OF PARLIAMENTS TO EFFORTS AIMED AT THE IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES AND ELIMINATION OF APARTHEID AND ALL FORMS OF RACISM

Draft resolution presented by the Committee on Non-Self-Governing Territories and Ethnic Questions, by 30 votes to 4, with 2 abstentions

Rapporteur: Mr. A. Nuis (Netherlands)

The 78th Inter-Parliamentary Conference,

Recalling the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in United Nations General Assembly resolution 1514 of 14 December 1960, and resolution 2621 of 12 October 1970 containing the Programme of Action for the Full Implementation of the Declaration and resolution 35/118 of 11 December 1980, the annex to which contains the Plan of Action for the Full Implementation of the Resolution,

Noting UN General Assembly resolution 40/56 of 2 December 1985 on the 25th anniversary of the above Declaration,

Noting in particular the observation in UN General Assembly resolution 40/56 that a large number of former colonial territories have achieved independence, and that many former trust and non-self-governing territories have exercised their right to self-determination and independence in accordance with the Declaration,

Recognizing the important role played by the United Nations as a whole, and the above Declaration in particular in bringing about the granting of independence to a large number of former colonies, trust and non-self-governing territories,

Reaffirming the right of peoples oppressed by colonialism, neo-colonialism, racism, racial discrimination and apartheid to independence, national sovereignty and self-determination, as well as their right to struggle by all means available, including armed struggle, to achieve those goals,

Aware that since the adoption of the above Declaration, the concept of neo-colonialism has received increased attention,

Stressing that recognition of both the right of self-determination and the principle of territorial integrity, constitutes the basis on which decolonization can be satisfactorily achieved,

Recalling the important role played by Parliaments in all countries in accomplishing the process of decolonization by ensuring respect for the interests of colonial peoples,

Reaffirming its firm determination and its commitment to eradicating totally and unconditionally racism in all its forms, racial discrimination and apartheid;

Expressing solidarity with the international community in its efforts to promote human rights, fundamental freedoms and decolonization, in accordance with the principle of self-determination, and to eliminate apartheid and all forms of racial discrimination,

Condemning any policy which is based on the superiority of one race or ethnic Group over another,

Deeply concerned with the continuous lack of privilege and denial of equal opportunities to ethnic minorities/majorities in certain countries,

Emphasizing the importance of and urgent need to focus international attention on the intolerable oppression and racism in South Africa and Namibia,

Concerned that the welcome bulk of recommendations of the Paris World Conference on Sanctions against Racist South Africa have yet to be implemented primarily because of the self-centred economic interests of certain Western countries in South Africa and Namibia,

Expressing admiration for those who at great personal sacrifice render legal, medical and financial help to mitigate the suffering of children and to inform the world of the barbarious treatment by the racist régime of its most vulnerable citizens,

Convinced that nothing positive can happen in South Africa without the release from prison and detention of all political prisoners and detainees and the participation of the liberation movements in any negotiations to transfer power to the majority,

Viewing with satisfaction the mounting resistance by Blacks to racist laws and the recent Dakar initiative by White liberals from South Africa to talk to the African National Congress (ANC), both of which are indicative of the growing failure of the racist State's propaganda machinery and use of brutal force to intimidate the masses,

Believing that the international community has an obligation to assist Namibians in their fight for self-determination and independence which is separate and not in any way linked to external issues,

Rejecting efforts by the racist South African régime to annex certain parts of Namibia to its territory,

Reaffirming SWAPO's authenticity as the sole legitimate representative of the Namibian people,

Deeply concerned by the fact that the apartheid régime is treating the black majorities in South Africa and Namibia in an increasingly violent and intolerable manner, while trying to ensure that any semblance of opposition is silenced,

Appalled by South Africa's tactics of executing its total onslaught on the neighbouring independent black States, causing destruction worth billions of dollars to the economies of those States and killing and maiming thousands of innocent citizens directly or through its engagement of surrogate bandit groups of UNITA and MNR,

Taking note of the peace initiatives proposed by the People's Republic of Angola with a view to providing an honorable, just and lasting solution to the problems of southern Africa and contained in the platform of comprehensive negotiations submitted in 1984 by His Excellency the President of the People's Republic of Angola, Mr. José Eduardo dos Santos, to the Secretary-General of the United Nations, Mr. Javier Perez de Cuellar, as well as the proposal for a Comprehensive Agreement by Angola, Cuba, South Africa and SWAPO, which was drafted under the auspices of the United Nations Security Council or its permanent members and presented by the Angolan Government to the present United States Government on 4 August 1987,

Commending the flexibility and political will of the Angolan Government in seeking a peaceful settlement to the problems of southern Africa,

Aware that the prevailing poverty of the people of Namibia is the result of the non-compliance of the South African colonial régime with the provisions of United Nations Decree No. 1 for the Protection of the Natural Resources of Namibia,

Upholding the right of the people of the Sahrawi Arab Democratic Republic (SADR) to struggle for self-determination and independence,

Supporting the efforts made by the Secretary-General of the United Nations and the President of the Organization of African Unity (OAU) to promote the implementation of relevant resolutions on the right of the Sahrawi people to self-determination and independence through a democratic referendum in order to achieve a just and peaceful solution to that problem,

Expressing its keen concern over the continued tension in Northwest Africa due to the Western Saharan conflict, which represents a grave threat to peace and stability in the region,

Recalling resolutions 38/40, 39/40, 40/50 and 41/16 of the United Nations General Assembly relating to the question of Western Sahara which take up the peace plan of the OAU as contained in resolution AHG/104 (XIX) on Western Sahara which was adopted by consensus by the Conference of Heads of State and Government of the OAU at its Nineteenth Regular Session (Addis Ababa, 6-12 June 1983),

Reiterating the calls by the Inter-Parliamentary Union in recent Conferences for the reaffirmation of the inalienable right of the Sahrawi people to self-determination and independence,

Recognizing the Polisario Front as the sole legitimate representative of the Sahrawi people which is defending its legitimate right to live in peace and to occupy its rightful place among independent States,

Recalling the resolution on the question of the Falkland Islands (Malvinas) adopted by the 76th Inter-Parliamentary Conference in Buenos Aires in October 1986,

Considering that the situation in East Timor gives rise to concern,

Deeply concerned over the colonial situation that still prevails in Puerto Rico, Guam, the British Virgin Islands, the United States Virgin Islands, the trusteeship territories in the Pacific Ocean, Bermuda and other so-called small territories under the domination of foreign powers, on which many resolutions have been adopted by the General Assembly and other United Nations bodies,

1. Expresses its appreciation for the work of the United Nations in promoting the independence of colonial peoples, based on the principles of the Declaration on the Granting of Independence to Colonial Countries and Peoples;

2. Remains committed to finding ways and means to support fully all just struggles of peoples still suffering from colonialism, external interference, intervention, hegemonism, destabilization and other forms of domination;

3. Regrets that certain colonial situations still exist while acknowledging the progress made in decolonization, and declares that the continuation of colonialism in all its forms and manifestations, and all forms of racism and apartheid are incompatible with the Charter of the United Nations, the Declaration and the principles of international law;

4. Reaffirms that all Administering Powers are obliged, under the Charter and in accordance with the Declaration, to create economic, social and other conditions in the territories under their administration which will enable those territories to achieve genuine independence and economic self-reliance, and strongly urges the Administering Powers to draw up an urgent time-table for the granting of the right of self-determination to all peoples still under colonial domination;

5. Requests the Administering Powers to preserve the cultural identity, as well as the national unity, of the territories under their administration and to encourage the full development of the indigenous culture, with a view to facilitating the unfettered exercise of the right to self-determination and independence by the peoples of those territories;

6. Resolves once again that all forms of racism and racial discrimination, particularly in their institutionalized form, such as apartheid or resulting from official doctrines of racial superiority or exclusivity, are among the most serious violations of human rights in the contemporary world and must be combated by all available means;

7. Appeals to all Governments and to international and non-governemental organizations to increase and intensify their activities to combat racism, racial discrimination and apartheid and to provide relief and assistance to the victims of those evils;

8. Reaffirms that the policy of apartheid and denial of equal rights to certain ethnic groups of any country are forms of racism deserving condemnation and elimination;

9. Appeals to all States immediately to remove any legal or other restrictions which hinder any ethnic or other groups from the full enjoyment of equal rights as citizens;

10. Reaffirms the legitimacy of the struggle for national liberation in South Africa and Namibia, both morally and legally, as action in self-defence deserving material and moral support by the international community;

11. Welcomes the International Conference on Children, Repression and the Law in apartheid South Africa held in Harare in September 1987 and the impact of its observations and proposals;

12. Condemns the bantustanization of parts of South Africa and the installation of puppet administrations in the Bantustans;

13. Rejects any attempts by the racist régime to involve moderate Black groups in the proposed National Statutory Council as divisive and insignificant to the aspirations of the masses;

14. Also rejects any reforms to the system of apartheid as a shameful and futile attempt to divert international attention from the enormity of the violence and crimes against millions of innocent South Africans;

15. Advocates the release of all political prisoners, including Nelson Mandela and other leaders, as a pre-condition for negotiations involving all political organizations and leading to the abolition of the oppressive and inhuman apartheid system and the establishment of a non-racial society under a government elected by all South Africans by means of a universal adult suffrage in a non-fragmented South Africa;

16. Abhors the imposition of a state of emergency and the detention of members and leaders of civic associations, trade unions, youth, student and women's organizations;

17. Rejects the validity of the Whites-only election, which excluded 85 per cent of the population, as a farce and an affront to the principle of democracy;

18. Recognizes with appreciation the efforts made by six nations' leaders and the Non-Aligned Movement in creating an African Fund under the chairmanship of India to aid the just struggles of the peoples under colonial rule and racial suppression;

19. Calls for an increase in national and international pressure, in the context of the universal call for the imposition on mandatory and effective comprehensive sanctions by the United Nations Security Council under Chapter VII of the Charter, and the application of economic sanctions against South Africa up to the breaking off of all trade and diplomatic relations; welcomes the positive initiatives already taken by some countries along those lines and condemns those countries which provide succour to the apartheid régime by failing to respond positively to this call;

20. Also calls for the repeal of the Internal Security Act, the racist and Nazi-inspired Population Registration Act and other repressive legislation covering the right of assembly, censorship and police powers;

21. Condemns the racist South African régime for granting its State security system sweeping powers to control the press, ban public meetings and control funerals in the Black townships and giving it blanket indemnity to exercise repression with impunity;

22. Also condemns the racist régime, a signatory to the Geneva protocol of 1977, for executing political activists and captured combatants of the African National Congress (ANC);

23. Encourages a greater understanding of the application of the Nuremberg principles providing for punishment for crimes against humanity and the crime of apartheid under the International Convention for the Suppression and Punishment of the Crime of Apartheid;

24. Appeals to the international community to provide the necessary assistance to the South African and Namibian liberation movements and populations for their welfare and rehabilitation;

25. Further appeals to organizations to monitor closely and combat the indiscriminate detention and imprisonment of masses, especially children under eighteen years, in jails, police cells and "corrective" camps, as well as the exploitation of child labour;

26. Declares that Walvis Bay, the Penguin Islands and all adjacent off-shore islands, in accordance with relevant United Nations resolutions, are integral parts of Namibia;

27. States that the imposition by the Security Council of comprehensive and mandatory sanctions, in accordance with Chapter VII of the United Nations Charter, is the only effective and peaceful means remaining to compel South Africa to eliminate apartheid, halt its acts of aggression against the Front-Line States, which are peace-loving and legitimate countries, and end its illegal occupation of Namibia;

28. Categorically rejects once again all linkage between the independence of Namibia and the presence of Cuban troops in the People's Republic of Angola, and reaffirms that the presence of Cuban troops in that country or their withdrawal can only be decided by the sovereign State of the People's Republic of Angola;

29. Strongly condemns all attempts by the apartheid South African régime and its Western allies to divert the attention of the international community from the principal question, namely, the decolonization of Namibia, by cynically pretexting East-West rivalry, thereby merely prolonging the people's suffering;

30. Calls for the immediate dissolution of the puppet provisional administration in Namibia, and reaffirms its unreserved support for United Nations Security Council resolution 566 (1985), which states that the establishment by the racist régime of South Africa of a "provisional" Government in Namibia, in violation of United Nations Security Council resolution 435/78, is illegal and null and void;

31. Calls upon all Western countries to abstain from lending assistance to or co-operating with the apartheid régime in the nuclear field;

32. Strongly condemns the current Government of the United States of America for its flagrant and inacceptable interference in the internal affairs of the People's Republic of Angola and for its so-called policy of constructive engagement;

33. Calls for the immediate withdrawal of all racist South African troops from Angolan territory and respect for the sovereignty and territorial integrity of the People's Republic of Angola;

34. Urges the Government of the United States of America and the Government of South Africa to endeavour seriously and without

subterfuge to bring peace in southern Africa, in accordance with the initiatives submitted by the Angolan Government on 4 August 1987;

35. Urges all States to provide economic, financial and military assistance to the Front-Line States and the SADCC countries, as an effective way of combating apartheid and with a view to guaranteeing their security and reinforcing their economies which have been weakened by aggression, destabilization and dependence;

36. Requests all Parliaments of the world to urge their respective Governments to take all appropriate measures to ensure that all corporations and individuals within their jurisdiction fully apply and comply with the provisions of Decree No. 1 for the Protection of the Natural Resources of Namibia;

37. Further requests all Parliaments of the world to encourage their respective Governments to increase their support and assistance for the benefit of the education and training of the Namibian people through the United Nations subsidiary organs established for those purposes and to supply technical assistance in anticipation of the independence of the Namibian people;

38. Calls for the implementation without delay of resolution AHG/104 (XIX) of the Nineteenth OAU Conference and resolutions 40/50 and 41/16 of the United Nations General Assembly so to allow the people of Western Sahara to exercise their inalienable right to self-determination and independence;

39. Recalls resolutions 38/40, 39/40, 40/50 and 41/16 of the United Nations General Assembly and those adopted by the Movement of Non-Aligned Countries at its Eighth Summit in Harare on the question of Western Sahara, which take up the peace plan of the OAU as contained in resolution AHG/104 (XIX);

40. Renews its call to the two parties to the conflict, the Kingdom of Morocco and the Polisario Front, to begin direct negotiations as soon as possible in order to declare a cease-fire and thereby create the necessary conditions for a peaceful and fair referendum, held under the auspices of the OAU and the United Nations and with a view to the self-determination of the people of Western Sahara, without any administrative or military constraints, and to fix the modalities thereof;

41. Commends the efforts made by the sitting President of the Organization of African Unity and the Secretary-General of the United Nations to reach a fair and definitive solution to the question of Western Sahara;

42. Calls on all Parliaments to support the efforts of the UN and the OAU to implement the relevant resolutions relating to the decolonization of Western Sahara;

43. Requests Morocco not to compromise the international efforts for a peaceful solution and to put an end to its policy of population settlement aiming at changing the demographic equilibrium in Western Sahara in violation of all international conventions relating to the occupied territories;

44. Reasserts the right of the Argentine Republic to the territory of the Falkland Islands (Malvinas), South Georgia and the Sandwich Islands, and reiterates its appeal for a peaceful settlement of the dispute between that country and the United Kingdom, condemning the unilateral decision in relation to the exclusive economic zone established by the United Kingdom;

45. Welcomes the fact that, following the Brussels declaration, Spain and the United Kingdom have established a negotiation process in order to solve all their differences on Gibraltar, including questions of sovereignty;

46. Invites the parties concerned by the East Timor question to work together with the United Nations Secretary-General to find, as soon as possible, a solution in the interests of the populations of that territory according to the principles of self-determination;

47. Reaffirms the right of the people of Puerto Rico to self-determination, independence and sovereignty, in accordance with resolution 1514 (XV) of the United Nations General Assembly, and the full validity of that resolution in the case of Puerto Rico;

48. Supports the decisions and resolutions of the United Nations General Asembly on the territories of Guam, the trusteeship territories of the Pacific Ocean, the British Virgin Islands, the United States Virgin Islands and all other so-called small territories still subjected to colonial domination.

Appendix 5

Item 9

CONF/78/9-DR.5
16 October 1987

CONTRIBUTION OF PARLIAMENTS TO ACHIEVING COMPREHENSIVE AND JUST PEACE BETWEEN IRAN AND IRAQ AND TO SECURITY OF NAVIGATION IN THE GULF ON THE BASIS OF THE IMPLEMENTATION OF UN SECURITY COUNCIL RESOLUTION 598 (1987)

Draft resolution adopted by consensus by the Committee on Political Questions, International Security and Disarmament*

Rapporteur: Mr. M.A. Martinez (Spain)

The 78th Inter-Parliamentary Conference,

Calling to mind all relevant resolutions adopted by the Inter-Parliamentary Union, the United Nations General Assembly and the United Nations Security Council on the Iran-Iraq conflict,

Also calling to mind the statements and efforts by the United Nations Security Council and the United Nations Secretary-General,

Guided by the obligation imposed on member States by the United Nations Charter to settle their disputes by peaceful means, in a way that does not endanger world peace and international security, and in their relations with other countries, to refrain from the threat or use of force against the territorial integrity or political independence of another country,

Confirming once again the firm support, expressed in resolutions of previous Inter-Parliamentary Conferences on the Iran-Iraq conflict, for an immediate cease-fire and the termination of all hostilities, as well as the withdrawal without delay of all forces behind internationally recognized boundaries as a first step towards settling the conflict,

Supporting the efforts being undertaken by the United Nations, as well as by the Non-Aligned Movement and the Organization of the Islamic Conference in the search for a peaceful, comprehensive, lasting, just and honorable settlement between Iran and Iraq, which should be based on United Nations Security Council resolution 598 (1987), the principles of which have received wide support by the international community,

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* Reservations by the delegation of Italy to operative paragraph 3 and by the delegation of Iran (Islamic Republic of) to the word "sequence" in operative paragraph 7.

Convinced that such a settlement can only result from the joint efforts of both parties to the conflict,

Deploring the initiation and continuation of the conflict,

Expressing deep concern at the further escalation and spread of the conflict, thus endangering world peace and international security,

Also expressing deep concern at the bombing of civilian centres and the attacks against neutral States, ships and civilian aircraft,

Deploring the violations of international humanitarian law applicable to armed conflicts, and calling on the parties to the conflict strictly to observe and implement the instruments in force, particularly the Geneva Protocol of 17 June 1925 on the use of chemical weapons and the Geneva Conventions of 12 August 1949 on the protection of prisoners of war and war victims,

Expressing concern at the fact that despite all the efforts made by international organizations and individual countries, the conflict between Iran and Iraq continues unabated and the two countries have not yet begun peace talks to settle their dispute,

Affirming the right under international law of freedom and security of navigation and deploring the threats to and attacks on merchant shipping and civilian aircraft, which in part have contributed to an increased military presence in the region, a development which has not facilitated the search for a solution to the conflict,

Confirming once again its belief that all Parliaments and parliamentarians bear responsibility with regard to the creation of an atmosphere of trust and understanding in the region,

1. Calls on Iran and Iraq to settle their conflict through negotiations and in a peaceful way, further co-operating with the efforts and proposals of the United Nations Secretary-General, and in particular, by fully implementing United Nations Security Council resolution 598 (1987);

2. Calls on Iran and Iraq to cease attacks on civilian shipping and aircraft and to respect the principle of free navigation for all States;

3. Calls for the re-establishment of freedom and security of navigation in the region and the withdrawal of all military forces therefrom;

4. Calls on all other States to refrain from any acts that might contribute to the continuation, escalation or spread of the conflict;

5. Further calls on all Parliaments and Governments to support and encourage all constructive efforts, particularly those made within the United Nations, to bring about a peaceful, comprehensive, lasting, just and honorable solution to this conflict;

6. Expresses its firm support once again for the efforts by the United Nations, as well as by the Non-Aligned Movement and the Organization of the Islamic Conference to arrive at a peaceful settlement to the conflict;

7. Welcomes the efforts of the United Nations Secretary-General to inquire as to where responsibility lies for the conflict in the manner and sequence stipulated in United Nations Security Council resolution 598 (1987);

8. Stresses that subsequent steps, even the most severe ones provided for in Chapter VII of the United Nations Charter, should be taken if, after the current negotiations, either of the parties fails to comply with United Nations Security Council resolution 598 (1987), which is regarded by world public opinion as the key instrument in solving the conflict;

9. Urges the international community, and especially the two parties to the conflict, to conform to and respect international humanitarian law, particularly the Geneva Protocol of 17 June 1925 regarding the use of chemical weapons and the Geneva Conventions of 12 August 1949 on the protection of prisoners of war and war victims;

10. Expresses its support for the proposal of a reconstruction plan, with appropriate international aid on cessation of the conflict, and for the adoption of measures that could reinforce the security and stability of the region.

APPENDIX "D"

(*See p. 2662*)

TEXT OF SENATOR BONNELL'S SPEECH TO IPU ON AIDS

Mr. Chairman:

My topic for discussion today is one of an economic and social nature.

As a physician and a parliamentarian I am becoming quite concerned about the economic impact on our modern world of a deadly and incurable disease called "AIDS" or Acquired Immuno Deficiency Syndrome.

It has been compared to the "Bubonic Plague" of our earlier European history. This dreaded, fast-spreading disease, although very different than the Bubonic Plague, its consequences are for today's world, equally devastating.

The first case of AIDS in Canada was reported in 1982, eight months after the Syndrome was first described in the U.S.A. Since then, the number of individuals who have contracted AIDS has risen dramatically.

Because of the severity of AIDS, the lack of effective treatment and its epidemic nature, a great deal of public fear, as well as concern in the scientific and public health community have arisen.

AIDS is a consequence of an attack on the body's immune system which directly compromises an individual's ability to fight diseases.

Because of the complex nature of the AIDS virus, a cure or vaccine may not be found for several years.

The projected number of individuals in Canada who will contact AIDS and require medical assistance and hospital care is likely to place a strain on existing medical care and assistance programs, both financially and personnel wise.

A further cause for concern is that the spread of AIDS to so many countries indicates the pandemic potential of the virus.

Since the recognition of AIDS, many major advances have been made in understanding this complex illness. These include

(1) The identification of the risk factors which increase the risk of contracting AIDS—including social behaviour, blood transfusion, infants from infected mothers, drug users, etc.

(2) We now recognize the characterization of the virus which is the primary cause of AIDS.

(3) We have also now developed blood tests that can identify persons who have antibodies to the virus.

But there are still many important questions to be answered before AIDS can be effectively controlled.

The numbr of AIDS cases in Canada has increased rapidly since it was first discovered in 1982. As of May 1987 there were 1,012 cases of AIDS reported of which 51% had died. In the U.S.A., 35,518 cases of AIDS had been reported by May 1987 with a 58% mortality.

The vast majority of AIDS victims are relatively young. In Canada 45% of the victims have been in the 30-39 year old age group.

This being the case it could cause a great productive and financial loss to any country to lose its young growing productive generation.

It appears possible that the stage is now set for a lethal AIDS pandemic of world wide proportions.

It is estimated that 10 million are now infected on a global scale and the World Health Organization (WHO) predicts 100 million people will be infected by 1991, though it warns this could be a serious underestimate if the virus were quickly to spread to South America and Asia.

AIDS is an international health problem of extraordinary scope and urgency. Governments throughout the world must mobilize to fight this killer.

(1) Through public education on TV, radio, newspapers and other media about its transmission.

(2) To continue to carry out research and development about this virus until we find a cure and wipe it off the face of the earth.

The Government of Canada announced it will be spending $138.1 M on AIDS during the next four years.

$81.0 M on Public Education

27.4 M on Research

13.9 M on International Assistance

8.6 M on Administration

7.2 M on Health and Social Program

The WHO has launched a $31 M education program. The WHO hopes to expand its anti AIDS programs jointly funded by 140 member countries.

I believe it is now time for the I.P.U. to have a special conference on AIDS similar to the one on the environment in Nairobi last year and to the one taking place in Caracas, Venezuela in November this year on Illicit Drugs.

Thank you.

THE SENATE

Wednesday, February 10, 1988

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

Prayers.

[*Translation*]

BUDGET SPEECH

ACCOMMODATION FOR SENATORS IN SENATE GALLERY OF HOUSE OF COMMONS

The Hon. the Speaker: Honourable senators, the Minister of Finance will deliver his budget speech in the other place at 4.30 this afternoon.

[*English*]

Honourable senators, may I be permitted to remind honourable senators that none but senators will be admitted to the Senate Gallery of the House of Commons on this occasion. This step is being taken for the purpose of providing accommodation in the Senate Gallery for as many senators as possible. In this manner senators will not be excluded from the Senate Gallery because many of the places are occupied by relatives and friends of senators.

Senator McElman: Not today!

Senator Frith: Like the Super Bowl, this is an over-hyped, non-event.

The Hon. the Speaker: That is a matter of opinion.

Senator Frith: Quite, Your Honour, and I am not asking Your Honour for his.

The Hon. the Speaker: I thought you did.

Senator Frith: I meant that I would not expect you to give it.

PATENT ACT

BILL TO AMEND—FIRST READING

Hon. M. Lorne Bonnell presented Bill S-15, to amend the Patent Act.

Bill read first time.

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

On motion of Senator Bonnell, bill placed on the Orders of the Day for second reading on Tuesday next, February 16, 1988.

FISHERIES

COMMITTEE AUTHORIZED TO ATTEND BOSTON SEAFOOD SHOW, MARCH 8-10, 1988

Hon. Jack Marshall: Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*e*), I move:

That for the purpose of its examination of and report upon the marketing of fish in Canada, and all implications thereof, the Standing Senate Committee on Fisheries be authorized to travel to Boston, United States, to attend the Boston Seafood Show which will take place on March 8-10, 1988.

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

Hon. Senators: Agreed.

Motion agreed to.

QUESTION PERIOD

[*English*]

INTERNATIONAL WHALING

IMPOSITION OF SANCTIONS—GOVERNMENT POLICY

Hon. Jack Austin: Honourable senators, I would like to ask the Leader of the Government in the Senate a question regarding the conservation of whales and the operation of the International Whaling Commission. I am sure that the Leader of the Government in the Senate has the information at his fingertips, but, if he does not, I would be pleased to have him take notice of the question.

A serious dispute has arisen between Japan and Iceland, on the one side, and the United States, on the other, with respect to the conservation of whales. It was agreed, under the aegis of the International Whaling Commission, that there would be a moratorium on whale hunting until 1990. However, at an informal meeting of six nations, including Canada, which was held in Reykjavik, Iceland, in January, the Japanese announced that they intended to hunt for 300 whales in the current whaling season. At that meeting it is reported that the United States threatened sanctions against Japan if they proceeded with that objective. Japan is reported to have replied that if sanctions were levied they would be accepted and Japan would look for other means of dealing out its own level of sanctions with the United States.

Could the Leader of the Government in the Senate advise whether Canada, in participating at that meeting, has also suggested that it would support the U.S. sanctions initiative with sanctions of its own, and whether we are maintaining our commitment to do our best, in international terms, to persuade these countries not to hunt whales at a time when a number of these species are believed to be endangered?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I shall obtain a considered statement of the government's policy on this matter from Mr. Clark.

THE ENVIRONMENT

PRINCE EDWARD ISLAND—EFFECT OF POLLUTION FROM SUNKEN VESSEL "IRVING WHALE"

Hon. M. Lorne Bonnell: Honourable senators, while we are still talking about whales, may I ask the Leader of the Government in the Senate if he could give us any information about the "Irving Whale," a ship that sank off the coast of Prince Edward Island some ten years or so ago, which is full of oil and could burst open at any time and contaminate our waters? Is any research being done by the environment people or any other branch of the Government of Canada as to the effect on the environment off the coast of Prince Edward Island resulting from the sunken "Irving Whale" at this particular time?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I shall have an update prepared on that for the honourable senator.

FISHERIES

TOXIC MUSSELS—PROGRESS OF RESEARCH

Hon. M. Lorne Bonnell: Honourable senators, I have another question for the Leader of the Government in the Senate.

Could the Leader of the Government in the Senate inform this house as to the progress being made by the Department of National Health and Welfare or the Department of Fisheries and Oceans in the research as to the poisonous toxins of mollusks off the Atlantic coast, and if other areas of Prince Edward Island will be permitted to sell their mussels soon.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, there again, I shall obtain an up-to-date report and provide it to the honourable senator at the first opportunity.

POST-SECONDARY EDUCATION

PROVINCIAL EDUCATION—GOVERNMENT INITIATIVES

Hon. John B. Stewart: Honourable senators, I should like to ask the Leader of the Government in the Senate if, as a result of the national forum on post-secondary education held last fall, the government is preparing to take any initiatives or to trigger provincial initiatives in the area of education. Can we anticipate any action as a consequence of that national forum?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I am sure there is, but I shall ask Mr. Crombie to prepare a report.

HEALTH AND WELFARE

AIDS—AVAILABILITY AND COST OF DRUG AZT IN CANADA

Hon. Stanley Haidasz: Honourable senators, I should like to ask the Leader of the Government in the Senate whether he can inform this house if he has obtained any information about the availability and cost to patients of a drug, called AZT in its short form, for the treatment of patients with AIDS.

• (1410)

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I thought I had brought in a report on this matter some time ago in answer to a question put by the honourable senator, but I shall ask Mr. Epp if there is some further information he is in a position to convey on that matter at this time.

HEALTH PROTECTION BRANCH—REQUEST FOR TABLING OF REPORTS AND STATEMENT ON ACTION TAKEN BY GOVERNMENT

Hon. Stanley Haidasz: I have a supplementary question. Since other drugs are also being examined for the treatment of the disease, the epidemic, called AIDS, and in view of the Auditor General's criticism in his recent annual report that it takes over 735 days to review an application for new drugs, instead of the prescribed 120, and as many of these drugs are emergency drugs, for example, those that are needed for the desperate patients with AIDS, I should like to ask the Leader of the Government in the Senate whether he would table in this house the Stein Commission report and any other reports that have been prepared, or any other action taken by the minister to improve the work of the Health Protection Branch of the Department of National Health and Welfare.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I will see what documents can properly be released on that subject at this time.

I am not in a position to comment on the Auditor General's report or his findings in that regard, except to say that I am sure honourable senators would not want the work of the Health Protection Branch in this regard to proceed too hastily.

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have delayed answers to two questions, which I ask be printed as part of today's proceedings.

TRANSPORT

CANADIAN NATIONAL RAILWAYS—RESTORATION OF SOREL-NICOLET BRANCH LINE

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have a delayed answer in

response to a question asked in the Senate on December 1 last by the Honourable Fernand-E. Leblanc regarding Transport—Canadian National Railways—Restoration of Sorel-Nicolet Branch Line.

(*The answer follows:*)

In accordance with the Railway Act, Canadian National must accommodate all traffic offered to it by shippers. It is only after the railway has exhausted its best effort to attract new business, and the line in question is still operating at a loss, that it will prepare to apply for abandonment. CN must apply to the National Transportation Agency (NTA) for permission to abandon each line, and this permission will only be granted after an extensive review of each case in terms of economics, transportation alternatives and the public interest.

CN did file such a request on November 2, 1987, for the abandonment of the Sorel-Saint-Grégoire section.

The legal process to be followed is a very democratic one: organizations and individuals affected will be able to submit their arguments to the NTA.

It would not be appropriate for the Minister to intervene in this process.

PRINCE EDWARD ISLAND

INCREASE IN MARINE ATLANTIC FERRY RATES

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have a delayed answer in response to a question asked in the Senate on December 10 last by the Honourable Lorne Bonnell regarding Prince Edward Island—Increase in Marine Atlantic Ferry Rates.

(*The answer follows:*)

Rate increases are recommended on a regular basis in order to help offset rising operating costs and to control subsidy levels.

Recently, the Minister of Transport approved ferry rate increases of 4 per cent for subsidized services in Atlantic Canada. The increase has been kept to the level of inflation and is not expected to hurt traffic or the economy in the region.

On the Borden, PEI and Cape Tormentine, New Brunswick service, the passenger fare will increase to $2.40 up 10 cents from the current cost while rates for cars rise by 25 cents to $6.25. On the North Sydney, Nova Scotia, and Port-aux-Basques, Newfoundland service fares will increase 50 cents to $12.50 a passenger and by $1.50 to $38.50 an auto.

The changes came into effect on January 1, 1988, or will come into force at the beginning of the operating season for Marine Atlantic Inc. services and five other services operated by private companies.

The senator's question concerning the disposal of ice-breaking ferries is premature since no final decision has yet been made to build a fixed link between Prince Edward Island and the mainland. In the event that a fixed link is constructed and the existing ships become surplus to requirements, they would be disposed of in accordance with the rules governing the disposal of surplus crown assets.

[*Translation*]

EDUCATION

SCHOOL SYSTEM—ROLE OF PARENTS—ROLE OF NATIONAL COMMISSION OF FRANCOPHONE PARENTS—GOVERNMENT SUPPORT—NOTICE OF INQUIRY

Leave having been given to revert to notices of inquiry:

Hon. Maurice Simard: Honourable senators, I give notice that on Tuesday, March 1, 1988, I will call the attention of the Senate to the role of parents as essential partners in the school system, and more particularly to the Canadian government's duty to support parents in assuming this role and to enable the national commission of francophone parents to participate with federal and provincial governments in the process of developing measures and programs aimed at the French-language school population in Canada.

[*English*]

IMMIGRATION ACT, 1976

BILL TO AMEND—CONSIDERATION OF MESSAGE FROM COMMONS—MOTION FOR CONCURRENCE IN COMMONS AMENDMENTS AND FOR NON-INSISTENCE UPON SENATE AMENDMENTS—DEBATE CONTINUED

On the Order:

Resuming the debate on the consideration of the Message from the House of Commons regarding certain amendments to Bill C-84, An Act to amend the Immigration Act, 1976 and the Criminal Code in consequence thereof.—(*Honourable Senator Nurgitz*).

Hon. Nathan Nurgitz: Honourable senators, I rise today to urge acceptance of the message from the other place on Bill C-84.

Hon. Allan J. MacEachen (Leader of the Opposition): To "urge," is that the word?

Senator Nurgitz: "Urge" acceptance of the message. My colleague, Senator Roblin, thinks that is quite good.

Hon. Royce Frith (Deputy Leader of the Opposition): I want to ask Senator Doody and Senator Nurgitz: Are we still dealing with just consideration of a message? I know that yesterday we did. The order before us then was taking the message into consideration, and it was taken into consideration yesterday by Senator Kelly, speaking not on a motion but on consideration of the message. I then had some comments to make about his intervention.

Previously, in these circumstances, we have had either a motion for concurrence or a motion that we do not insist on our amendments. I am not urging that we have such a motion; I would just like to understand what it is Senator Nurgitz is

speaking to. Is he speaking to a motion that we concur in the message from the other place? We do not have before us a motion to that effect.

Senator Nurgitz: Honourable senators, in response to the question, I have some comments to make and will conclude by formally moving a motion of concurrence.

Senator Frith: That's fine.

Senator Nurgitz: As honourable senators are aware, the government has accepted, in whole or in part, many of the recommendations from this chamber on this important piece of legislation. The comments from the Senate came about as a result of the report of the Standing Senate Committee on Legal and Constitutional Affairs. I think all senators know that that committee studied this legislation very thoroughly.

Bill C-84 addresses an issue of extreme concern to Canadians—the flagrant abuse of Canada's refugee claims process by illegal immigrants, criminals and terrorists. After years of steady growth, the number of refugee claims received in Canada has jumped from some 9,000 in 1985 to some 26,000 in 1987. We now have a backlog of more than 40,000 claims pending, and that 40,000 backlog has arisen in just the last 18 months. I regret to inform senators that this backlog is growing by some 2,500 claims or more every month. Thousands of recent claimants have arrived with fraudulent documents or no documents at all. There is a growing concern that criminals, arms dealers and terrorists are taking advantage of this situation for their own ends.

Bill C-84 and Bill C-55, which is now the subject of study undertaken by our committee—in fact, I left the committee yesterday as it was making its way through western Canada—are essential parts of the government's strategy for restoring the integrity of Canada's immigration and refugee programs. In addition, Bill C-84 was introduced to send a message worldwide that Canada would no longer tolerate abuse of its system and would deal with security risks. The passage of Bill C-55 will establish a new refugee determination system in Canada. On the other hand, Bill C-84 is part of the process to improve the system.

Honourable senators, this legislation has received careful scrutiny by two legislative committees, that of the House of Commons and our own Legal and Constitutional Affairs Committee, each of which has made, as a result of listening to various witnesses, some suggestions for change. Of course, our own committee's changes were substantial.

Minister Bouchard met with the Senate committee on December 8, at the conclusion of more than three months of Senate hearings on the bill. In his appearance before the committee he was helpful and conciliatory. Naturally, the minister indicated that he would not change the principles of the bill. However, he demonstrated his sensitivity to questions of Charter challenges and indicated his willingness to consider amendments that addressed those concerns and clarified the bill.

The minister obviously gave careful consideration to the report of the Legal and Constitutional Affairs Committee. In his address to the other place, on January 26 of this year, Minister Bouchard accepted nine of our recommendations. He also sought and received unanimous consent to make changes that did not fit within the confines of his response but which fulfilled his undertakings to this chamber. Two recommendations came as a result of suggestions from the Department of Justice.

Mr. Bouchard rejected those amendments which were found to be inconsistent with the principles of the bill or to be unhelpful in achieving its objectives.

The minister stated the objectives of Bill C-84 as follows:

> The primary objective of the bill is to protect genuine refugees. The bill seeks to deter the wholesale abuse of the refugee claims system that has taken place over the last ten years. It creates a scheme of penalties to ensure that abusers are properly punished.

● (1420)

> These provisions do not affect the thousands of genuine refugees whom we bring to Canada each year. They do not make it more difficult for people who need our help to obtain it.

The amendments which the government has accepted include: substituting the term "illegal entry" for the word "smuggling" in the bill's statement of objectives.

There is also an accepted amendment amending the English version of subsection 103.02(1), changing the ground for issuing a search warrant from "evidence that may be found" to "evidence that will be found," and by permitting the judge to review the reasonableness of a security certificate. Originally the legislation was drafted that a judge would merely review the material that was before the Solicitor General and the Minister of Immigration in issuing a security certificate—that is to say, that someone was a security risk. A judge can now look at all reasonable evidence.

Amendments were also made providing discretion to the Federal Court judge with regard to the presence of the person concerned at hearings involving alleged security risks; and other amendments requiring the personal written consent of the Attorney General or the Deputy Attorney General for the prosecution of those who organize illegal immigration.

Another amendment that was accepted was to provide for a weekly review of the detention of unidentified arrivals and suspected security risks by an adjudicator. This change maintains the additional powers for detention, but ensures compliance with the Canadian law that every person detained by the government has his or her detention reviewed by an independent tribunal.

Honourable senators, these changes address many of the most serious concerns of senators and the public at large. I think they improve the bill. In making these changes the minister has demonstrated his good faith and careful attention to the legislative process.

There are areas, of course, where the minister did not agree with this chamber's recommendations. The minister has indicated that the recommendation of the Senate to grant the

right to make a refugee claim to persons who pose a risk to the security of Canada is one that he rejected. It was rejected on the ground that no country has an obligation to protect a person who is a serious criminal or who constitutes a threat to its security. We in the Senate have already accepted this principle in the case of war criminals, and, in any event, the 1951 Geneva Convention on Refugees specifically excludes such persons from the benefits of the convention.

A very contentious issue was the turning away of ships. The Senate recommended the abolition of any power by which the Minister of Employment and Immigration could turn ships away.

Honourable senators, the minister argues that this authority is required in order to send a clear message to the world. Right now there are stories of the unscrupulous selling of boat passages to migrants in Europe, with a guarantee of a long stay in Canada.

Honourable senators, particularly those from the coasts of our country, will know that in 1986 and 1987 the migrants were fortunate to land safely. I am speaking of the two boat incidents. The risks of sea voyages and landings are great. We must remove the largest selling point that unscrupulous merchants employ to persuade people to take those risks—that is, as I have said, the guarantee of a long stay in Canada.

Senators will note further that the minister does not reject the argument that bringing ships into port may be the appropriate action. Rather, the government is saying that it is not the only action. The government requires that option to turn those ships away. This is not a power that is aimed at situations of direct flight from homelands. It is aimed at the traffic in illegal migrants between countries that are signatories to the UN Refugee Convention.

The minister has not accepted any changes to the substance of this provision. In order to provide yet another safeguard, however, the government has adopted an amendment which will ensure that the decision to use this power will be taken personally by the responsible minister. Further, as one reads the section carefully one notes that due regard is given to the safety of passengers, to the seaworthiness of the ship, to its being able to make its way back to port, and, as well, that it could only be turned away in strict compliance with the UN Refugee Convention.

The Senate sought to change the penalty provisions to import the notion of "manifestly unfounded claims." The government rejects this change as impractical. The additional requirement of a finding on the quality of a refugee claim leads to issues of jurisdiction between criminal courts and refugee tribunals. It also leads to further delays in the prosecution of such cases. The Senate recommended amendments which would have limited powers of search and seizure, and confined warrantless search in instances where lives are at risk. That is, warrantless searches for the purpose of obtaining evidence only would not be allowed. The minister accepted the more narrow definition proposed in the Senate report. Restriction on its exercise, however, has not been accepted, because the amendment would seriously hamper the ability of our investigating officers to apprehend and prosecute those who organize groups of illegal migrants. Transborder schemes could be conducted, perhaps, mainly at night so that the perpetrators could escape Canadian jurisdiction if something went wrong.

[Senator Nurgitz.]

This chamber recommended that the penalties for organizing illegal migration be restricted to those events carried out in a "clandestine" manner. The minister has rejected that amendment. He has indicated that if the amendment were adopted it would allow ships to steam right into Halifax harbour, with their unauthorized passengers, and the government would not have the power to do anything. The practices the government is trying to deter are not always clandestine. We need to deter not just those practices that are clandestine but all forms of illegal entry. Let me be clear, as well, that during consideration of that matter before the Senate Legal and Constitutional Affairs Committee a great deal of time was spent by members on both sides of this chamber arguing as to the appropriateness of the wording. While the word "clandestine" may well have been something of a consensus in the committee, it was not unanimously accepted by either side.

In conclusion, honourable senators, the government's overriding concern is twofold: to continue to offer protection to genuine refugees, and, second, to stop the flagrant abuse of our refugee claims or refugee claims system. I suggest that Bill C-84 is the first step in dealing with these concerns. I recommend that we not delay the passage of this bill, as it would do a grave disservice both to genuine refugees and to the Canadian public.

At the current rate, the backlog of refugee claims will exceed 50,000 by the end of March. By not moving quickly to close a gaping loophole in our defences we are inviting more and more dangerous abuses. In the past two summers we have seen two boatloads of illegal migrants arriving off our shores, in perilous circumstances. This is not a comment on migrants. It is a condemnation of the unscrupulous and the immoral persons who engage in this form of human transportation. At the same time, thousands upon thousands of persons have arrived at our airports, with little or no identification. We cannot allow this situation to deteriorate any further. I suggest that we proceed as quickly as we can so as to be helpful in this matter. We in this chamber recognized the need to improve security and to reform the refugee process. We all know that the increasing flow of refugee claimants is harmful. It is harmful to the genuine refugees who need our help and protection. It is harmful to the integrity of our immigration policy, a policy which, I suggest, ought to be aimed at increasing legal immigration to this country. It is harmful to the public support of our generosity toward genuine refugees and those who legally immigrate to Canada.

● (1430)

Honourable senators, if I thought that the Senate had failed to study this matter adequately when we received the bill I might agree that we should study it further. However, I am not so certain that that is the case. I think the Senate

committee has given this bill very careful consideration. We know that the minister and the government did not adopt a belligerent or intransigent positon. Our concerns were carefully noted and considered. Where the minister thought he could make changes he did so.

I urge honourable senators to adopt the bill as it now stands. It is the product of a healthy legislative process between our two chambers. With that in mind, honourable senators, I move, seconded by the Honourable Senator Doody:

> That the Senate concur in the amendments made by the House of Commons to its amendments 1, 2(*a*), 3, 7, 13(*b*), (*c*) and (*d*) to the Bill C-84, an Act to amend the Immigration Act, 1976 and the Criminal Code in consequence thereof;
>
> That the Senate do not insist on its amendments 4, 5(*a*), (*b*) and (*c*), 6(*a*) and (*b*), 9, 10, 11, 12 and 13(*a*);
>
> That the Senate agree to the further amendments made by the House of Commons to clauses 11 and 16; and
>
> That a Message be sent to the House of Commons to acquaint that House accordingly.

The Hon. the Speaker: Honourable senators, it is moved by the Honourable Senator Nurgitz, seconded by the Honourable Senator Doody:

> That the Senate concur in the amendments made by the House of Commons to its amendments 1, 2(*a*), 3, 7, 13(*b*), (*c*) and (*d*) to the Bill C-84, an Act to amend the Immigration Act, 1976 and the Criminal Code in consequence thereof;
>
> That the Senate do not insist on its amendments 4, 5(*a*), (*b*) and (*c*), 6(*a*) and (*b*), 9, 10, 11, 12 and 13(*a*);
>
> That the Senate agree to the further amendments made by the House of Commons to clauses 11 and 16; and
>
> That a Message be sent to the House of Commons to acquaint that House accordingly.

Honourable senators, is it your pleasure to adopt the motion?

Some Hon. Senators: Agreed.

The Hon. the Speaker: Carried—

Senator Frith: No.

The Hon. the Speaker: Honourable senators, we did not hear any objection to that motion.

Senator Frith: Your Honour, we will have something to say on this matter. Senator Grafstein will start.

The Hon. the Speaker: Senator Grafstein?

Hon. Jerahmiel S. Grafstein: Honourable senators, the House of Commons has now sent us their specific amendments in response to our message and amendments to Bill C-84, to amend the Immigration Act, 1976 and the Criminal Code in consequence thereof. The Honourable Benoît Bouchard, the Minister of Employment and Immigration, carefully reviewed our message and our amendments.

Honourable senators will recall that we proposed 20 amendments under 13 headings and made a number of other recommendations and suggestions. The government has now accepted nine of the 13 amendments in principle, with some minor drafting revisions. Also, two additional major amendments were proposed by the government and passed, partially in response to our message. These included the written consent of the Attorney General of Canada or the Deputy Attorney General for the prosecution of those who organize illegal immigration. This amendment made by the government was in response to the minister's undertaking to our committee and the Senate's suggestion that the principle of accountability—in other words, the minister's accountability to Parliament—should be expressly incorporated in the legislation so that should the government decide to prosecute persons who may violate the Immigration Act pursuant to a humanitarian impulse this amendment would act as one check, at least, on an abuse of this power and compel the minister to be directly accountable to Parliament for his actions or his deputy if that power is abused.

The role of the Senate in respect to the Senate's amendments to Bill C-84 and the response of the government to those amendments differs from the Senate's role in consideration of previous bills. In this case the role of the Senate is now different, since the 1982 passage of the Constitution. No longer can we agree with Bismarck's edict: "Laws are like sausages. It is better not to see them being made." The role of the Senate under the Constitution must be a transparent role. We must appear to be constitutionally correct. Indeed, Parliament, including the Senate, has been reformed since the introduction of the Charter and the Constitution in 1982. The Charter has placed Parliament, the House and the Senate below the law. Parliament is no longer supreme. Rights of individuals cannot be tampered with by a government, by Parliament, by a House of Commons or by a Senate. So, the paramountcy of the Charter and the paramountcy of the Constitution is supreme. This is a dramatically different element in law-making, and it is now democratically accepted by all parts of the country.

The role of the Senate with respect to Bill C-84 amendments and the government's response to these amendments is thus different because of the nature of evidence received by committees and the Senate in respect to previous bills considered in the Senate. The Senate, as a legislative parliamentary body, which has been democratically imbedded in a democratically-approved Constitution, has to demonstrate that the amended bill is still not seriously constitutionally flawed, particularly when there appears to be unanimous evidence to that effect. It appears that the other place has not produced any new evidence that the amendments they did not pass had been repaired or were free of such flaws. It appears that these unamended provisions still contravene the Constitution, still contravene the Charter, and still contravene the international covenants and obligations that Canada so solemnly entered into and adopted.

The question before us is whether or not those remaining flaws have been repaired. You will recall, honourable senators, that the evidence that we heard in committee was not partisan,

as Senator Nurgitz pointed out, but covered the broad political consensus amongst professional and volunteer groups and amongst all regions of the country. That is why the Senate, in my view, did not divide on this issue.

Let me congratulate the minister. I believe it was the intent of the senators of both parties, as well as those senators who sit independently, that the concerns elicited from public-spirited groups, as well as professional groups, that came before the committee were truly bi-partisan and non-political in their nature. Nobody was prepared to make any gains on a political basis. Indeed, this was a rather interesting and unique opportunity for all senators to focus on the issues, rather than the Senate as a proper instrument granted full powers under a democratically approved Constitution. The work of the Senate on Bill C-84 did not thwart the democratic will of the House. Rather, the work of the Senate made Bill C-84 more constitutionally acceptable and ultimately more democratically acceptable.

Therefore, I credit the minister and government that they did not seek to bait the public and to raise the straw spectre of the Senate as a negative, undemocratic force. Rather, the minister focussed on the proper considerations—the pith and substance of the Senate amendments of Bill C-84 itself and recommendations. In the process I believe that there has been a change in the attitudes of the public and the media towards the Senate. Despite the political fireworks last summer, the Senate indeed did act as a chamber of sober second thought. It sought to obtain the views of those committed citizens and those committed volunteers and professionals who give of their time and effort "pro bono" and "pro publico" in the public and national interest. The Senate sought to ensure that all regions were fully and fairly heard. The Senate sought to reduce the heat and increase the clarity of thinking in a quiet and rational manner, in a manner that did not infect its thinking with the virus of public hysteria that is so easily injected into the body politic by the government or by those in the electronic media, who seek to highlight controversy and have difficulty grappling with complex issues on the nightly news.

So we are here, honourable senators, to praise the minister, to praise his open attitude, and to congratulate the government on its willingness to improve on this most important bill. We are pleased that there is no divisive controversy over the bill's major principles and objectives. We all want to invite genuine refugees to Canada. There is a national consensus that we want a fair and efficient bill to restore, as the minister so properly stated, "the integrity of Canada's immigration and refugee program." Canadians are law abiding. Canadians respect their laws and expect those who come from other lands to respect their laws as well. Canadians do not like abuses of their system. Canadians want to be civilly obedient. All Canadians agree it is necessary to protect genuine refugees. All Canadians agree with Clarence Darrow, the great American lawyer called the "Attorney for the Damned," who said: "You can only protect your liberties in this world by protecting the other man's freedoms. You can only be free if I am free."

[Senator Grafstein.]

Canadians agree with that. Canadians agree that the strength of our people depends on our attitudes to freedom for others.

• (1440)

Honourable senators, there is a genuine consensus in the country from the government, from the spokespersons of the various groups, opposition parties, volunteers and professionals that we all want a humane and efficient refugee policy. However, we are seeking, at the same time, a just system. Canadians also accept that the means must be just in accordance with the well-debated and well-established Charter, with our accepted international obligations and our existing standards of criminal deterrence.

And while we are praising the government and the members in the other place, we should, at the same time, congratulate Senator Neiman and Senator Nurgitz, the chairman and deputy chairman, respectively, of the Standing Senate Committee on Legal and Constitutional Affairs, and the staff of that committee who participated over long and difficult hours to help shape and refine the Senate's message so that it could go to the other place quickly and expeditiously and in a targeted fashion. There was no excessive rhetoric in that message. As a result, we approached our task in a non-partisan way, we approached our task in a non-political way, and I believe that we obtained a broad consensus in the Senate for our amendments. No opposition was registered, because the spirit and commitment of all senators was directed towards the same goals, towards common goals.

So today, honourable senators, we are not seeking to have a rematch ping-pong game where Canadians focus on the plays rather than the policies. We are seeking in this place to obtain once again consensus on the remaining matters that cause many of us difficulty, that still cause many of the groups that appeared before us difficulty. We hope that the minister will understand our position and will understand that we are not trying to frustrate his will or to obstruct his policies or delay his objectives.

Before proceeding to the three areas of concern, let me dwell on a major misconception, in Parliament, in the government and in the media, respecting the role of Parliament and, in particular, the role of the Senate. Under the Constitution, particularly arising out of the recent Supreme Court of Canada decision on abortion, critics have suggested that the Supreme Court of Canada and the courts are now the "bosses" of the political processes. This is not correct either in theory or in practice. The Supreme Court of Canada and the supreme courts of the provinces have clearly indicated time and time again that their role is not to make law, their role is to determine whether the laws passed by Parliament or the legislatures contravene the Charter or contravene the division of powers in the Constitution. The judges have said, in effect, that it is not their job to remedy sloppy legislation, that that is the job of the provincial legislatures and of Parliament. The courts presume, when an individual challenges any legislation, that the laws passed by Parliament or a provincial legislature are constitutionally valid. Therefore, there is a higher duty on Parliament—on the House of Commons and on the Senate—

to ensure that the laws that are passed do not contravene the Charter.

I do not belong to the school that says that if lawyers or others challenge the constitutionality of draft legislation on the basis of some alleged constitutional flaw Parliament should immediately run to the courts for a preliminary or a declaratory judgment. That is irresponsible government. That is an irresponsible Parliament. That is an irresponsible Senate. Such action would clearly delegate powers to the courts, which the courts themselves do not want. The courts do not relish usurping Parliament's primary function. The Chief Justice has said as much. Therefore, the onus on Parliament, the onus on the Senate as an integral part of Parliament, is to take account of all integral parts of our constitutional framework and seek to pass legislation that is constitutionally valid and that conforms to our Charter.

This applies as well to our international obligations. Such action would clearly delegate conforming powers to the courts, which the courts are reluctant to accept. We have incorporated international obligations as part of our domestic law by many statutes of Canada. Therefore, it is equally important that we examine carefully our international obligations and seek to have our Canadian laws conform to those covenants and obligations. If we are uncomfortable with our international treaty obligations, then we should seek an amendment to those obligations. We should opt out if we do not wish to conform. Our international covenants become standards, if not the domestic law of the land. Foreign policy can only be a reflection of our domestic practices and domestic laws. Therefore, the challenge to the Senate, the challenge to Parliament, is to act as a legislator, not as a blind trustee that blindly passes legislation by closing its eyes to constitutional or international flaws and says, "They will be fixed up by the courts," or, even more imprudently, to suggest that citizens should seek to have their rights redressed by the courts rather than seek redress from the legislative processes of Parliament itself.

So, honourable senators, we cannot take our legislative responsibilities lightly in this matter. We cannot turn a blind eye. Canadians expect us to take our international obligations as seriously as we do our domestic laws, and we in the Senate, I believe on all sides, have sought to do so in a careful, prudent and restrained manner. We have not sought to be excessive in our rhetoric or excessive in our requests. We have sought to honour the responsibilities of government and respect the constitutionally restricted role of the courts.

But, honourable senators, let us turn to those areas that still give us cause for concern. First, the provisions dealing with the turning back of boats. We were clearly told and heard overwhelming evidence before the Senate committee, which appears not to have been changed by any new evidence adduced in the other place, that the government would be in breach of Canada's international obligations if we turned away boats. To do so would be inconsistent with our international convention obligations. The minister has implied that his concern is not so much with our international obligations but with the question of symbolism. He wants a symbol of deterrence. I say to all honourable senators that symbolism is important, symbolism as a deterrent is important, but it is not important if it contravenes our international convention obligations. That symbolism diminishes the power of and respect for the government's authority.

We adopted in 1948 the United Nations Declaration of Human Rights; we adopted the 1951 Convention on the Status of Refugees; and, finally, we adopted the Refugee Protocol of 1967 in 1968. What these various protocols, conventions and obligations say is that a contracting party such as Canada will not turn back a refugee without due process, except on the grounds of national security or public order. A refugee should be allowed to submit evidence to a competent authority. Where there are compelling reasons of national security or public order we can lawfully deport a refugee, provided we allow a reasonable period for such a refugee to obtain legal admission elsewhere.

It is virtually impossible, therefore, to see how we can maintain the symbol as a deterrent to turn boats away and still conform to our international conventions. How can we determine, when a boat is on the high seas, whether it carries genuine refugees without some form of due process? What jeopardy do we place such genuine refugees in if we leave it to an unscrupulous sea captain to put human cargo overboard 200 miles away from our shore? Will this act as a deterrent? Will this be a discouragement? The evidence seems to suggest that the number of people who come by boat is minuscule compared to those who arrive by charter flight, by car, by bus or by foot.

The minister certainly does not intend to turn back other modes of transportation. What national or international reaction would be provoked by a symbol that projects a double standard?

But, honourable senators, we understand the frustration of the minister. We understand the comments of Senator Nurgitz. We understand their desire to remove the abuses. Surely there are other more appropriate ways to meet our international obligations, create a symbolism of deterrence, and still avoid these dramatic boat replays. Let us not mix our legal metaphors and our deterrent symbols. Canadians do not want history to repeat itself with respect to turning away boats.

The other day, honourable senators, I read the following words by a celebrated refugee, Anatoly Sharansky, and I think they will find an echo in this chamber. He said this when he first arrived in a land of freedom:

> They tried their best to find a place where I was isolated. But all the resources of a superpower cannot isolate a man who hears the voice of freedom, a voice I heard from the very chamber of my soul.

Honourable senators, I believe all Canadians share that cry, that cri du coeur.

• (1450)

The next area of concern are the excessive police powers which the government seeks to grant to immigration officials in the search and seizure provisions of Bill C-84. Here the

amendments that were proposed by the Senate committee were careful. They were a means of avoiding what the Senate, and virtually all of our witnesses, indicated were constitutional flaws in that portion of the bill. The question of police powers has been considered by our courts. When it comes to the question of constitutionality of police powers the courts have adopted a test of proportionality. In other words, where there appear to be excessive powers given to the police, they must be appropriate to the circumstances. The means must be legislated in such a fashion that they are limited to what is necessary for the purposes intended. Here the powers sought by the government appear to exceed those sought by Parliament for drug busting, treason or murder. If, in fact, the minister or his officials can demonstrate that immigration officials must have these excessive powers to curb refugee abuses, I think he should target his evidence to that particular comment and that particular line of reasoning.

We do not wish the refugee process to be bogged down. It would become bogged down if these powers were challenged in the courts, and, in turn, the courts said that the police powers were excessive. This, in turn, would clog the very process that we are all seeking to reform. We must carefully review and consider, honourable senators, what the minister has said with respect to these powers and determine whether or not he has indeed sought appropriate power within constitutional limits.

Others have suggested that on the question of security risks a person's criminal record should in itself determine a person as a security risk. This principle, again, appears to be contrary to our international treaty obligations. This issue was widely debated in the other place last week. We should carefully, quickly, and without any delay, review the minister's comments with respect to this issue to come up with a fair and appropriate response.

In conclusion, honourable senators, I do not believe the Senate wishes to debate anew the goals of Bill C-84. I do not believe the Senate wishes to challenge the government's powers to administer, to frustrate the government's goals, or to delay. I do believe that all senators will wish to ensure that the laws that we pass are targeted, appropriate, fair, constitutionally correct and in conformity with our international obligations.

Finally, let me return to the role of the Senate. It was particularly gratifying, honourable senators—and I suggest you all do this—to read *Hansard* of the other place and the spokesmen's references and comments about the role of the Senate and these amendments. It was gratifying to hear the positive comments made on all sides of the House about the role of the Senate with respect to these amendments, particularly from those in the other place who in the past did not find the Senate either an agreeable or compatible democratic institution.

The work that we proposed with respect to the amendments and the contents of our amendments were well received. Clearly the role of the Senate as a Charter champion is a role that can only benefit Parliament and all Canadians. We want to do our work. We want to do it cost effectively. We want to do our work in committee quickly. Let us refer this bill quickly to a committee, examine the areas of concern expeditiously, and seek a broad consensus in the Senate, on all sides, to see if the evidence still warrants the remaining amendments we considered fair and reasonable. Let us do so in the realization that the role of the Senate, as envisaged by the founding Fathers of Confederation, can be fully and fairly restored.

Finally, let us prove the adage of Machiavelli wrong. Machiavelli said that "Princes and governments are more dangerous than other elements of society." Let us save the government from itself. The Senate has work to do. Let us do so quickly and in good faith.

On motion of Senator Stanbury, debate adjourned.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, it is a little past three o'clock now. Pursuant to the order of the house, we shall now go into Committee of the Whole, if it is agreed.

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, if I may, there are several third readings on the order paper and the second reading of Bill C-60. It is not my intention to try to delay the proceedings of the Committee of the Whole, but would I be safe in assuming that we will be able to deal with these tomorrow afternoon? We would like to have Bill C-60, the Copyright Act, referred to committee before the break.

Hon. Royce Frith (Deputy Leader of the Opposition): Is it the intention to have Royal Assent tomorrow for the third readings?

Senator Doody: Yes. We have three bills and, if possible, I would like to have them cleaned up before we break.

Senator Frith: Honourable senators, there is no doubt that we should deal with third reading of the bills referred to by Senator Doody before the end of this week—and, if we have a chance, today. But if Royal Assent is arranged for them, tomorrow would be adequate. We should also strive to get Bill C-60 to a committee this week.

THE CONSTITUTION

FIRST MINISTERS' ACCORD AND AGREED TEXTS— CONSIDERATION IN COMMITTEE OF THE WHOLE CONTINUED

On the Order:

> The Senate again in Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to.

The Senate was accordingly adjourned during pleasure and put into a Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to, the Honourable Gildas L. Molgat in the Chair.

The Chairman: Honourable senators, our witnesses are waiting without. If the committee is ready to proceed, we will invite our first witness to enter.

Pursuant to Order adopted on June 18, 1987, Professor Albert Breton was escorted to a seat in the Senate chamber.

The Chairman: Honourable senators, this afternoon we have three witnesses who have come from some distance—one from Toronto and two from the west coast. It is unfortunate that when the planning was done for this some time ago we did not know that the budget would be announced on the same day. However, having made the commitment it was impossible to have the date changed.

[*Translation*]

Honourable senators, our first witness this afternoon is Professor Albert Breton who teaches at the University of Toronto. I may add that he received part of his education in my native province of Manitoba.

Honourable senators, I sent you a summary which is on your desks, so I don't think any further introduction of Professor Breton is necessary, but I would like to welcome him to this Chamber and tell him how pleased we are to have him with us this afternoon.

Honourable senators, we do not have a summary of the presentation Professor Breton intends to make this afternoon. We will listen to the presentation directly.

Professor, our normal practice is to give you about 20 minutes for your presentation, followed by a question period. We have one hour altogether.

Senator Frith: Mr. Chairman, you said that we had a summary provided by our witness.

The Chairman: Honourable senators, I was referring to his curriculum vitae.

Senator Frith: Mr. Chairman, I suppose you mean a career summary.

The Chairman: Yes, but not a summary of the presentation he intends to make this afternoon.

Professor Breton, you may of course use either official language, as you prefer. We are delighted to have you with us, and you may now proceed.

Professor Albert Breton, Department of Economics, University of Toronto: Thank you, Mr. Chairman. I will read a text I prepared for the committee and which I drafted in English. It is of course understood that during the subsequent question period, I will answer your questions in either of Canada's two official languages.

There are three points I wish to consider in my presentation. If the senators want to ask questions about other subjects either directly or indirectly related to my text, I will of course try to answer to the best of my ability.

● (1500)

[*English*]

How should we evaluate constitutions and constitutional procedures? There is, of course, no unique and natural way of doing so, nor are the principles which may be efficient at one time necessarily valid for all times. For example, prior to what may be called the "constitutional revolution of 1981-82," Canada's Constitution served primarily to regulate the governmental institutions of the country and the relationships between them. For that reason the Constitution was very much the preserve of jurists and of legal experts. No one else really cared.

The revolution of 1981-82—if you will allow me to continue using this expression—brought the Canadian people into the Constitution. The document still regulates intergovernmental relationships, but, in addition, it also regulates the relationships of the governments of Canada with the people of Canada. As a consequence, Canadians are now in the process of becoming a constitutional people.

In that capacity, they are not only developing views about what their governments can and cannot do to them but also about such arcane matters as the division of powers; the role of the Senate; the structure of government; and many others. No one should be surprised, therefore, that the 1987 Meech Lake Constitutional Accord has provoked—in all senses of that word—so many Canadians and induced a large number—in spite of their wish to see Quebec formally join the Canadian constitutional family—to organize against the accord, though the media and the political establishment seem to be finding it difficult to accept that the pre-1981-82 dispensation is really passing.

If what I have said is a good approximation of the truth, it follows that the ongoing discussions as to the virtues and faults of this or that amending formula are really of secondary importance. What is profoundly wrong in the procedure to amend to the Constitution is that it is done by 11 persons, without popular input. We must find ways to end a practice which is no longer befitting. When the Constitution's primary function was the structuring of intergovernmental relations it might have been appropriate—though, no doubt, a bit too cosy—for the parties involved to settle matters alone among themselves. This they can no longer do. The efforts that the signatories to the accord have displayed to muzzle the Canadian public are truly indecent.

A new amending procedure, suitable to the new dispensation, must be devised and put in place. The legitimacy of government is at stake. I would like to suggest that it should be a priority of the Senate to give prominence to that question.

Constitutions serve many purposes. They can, as does the post-1981-82 Canadian Constitution, serve to guarantee rights and freedoms. Many Canadians are profoundly disturbed by what they perceive to be the effects of the Meech Lake Constitutional Accord on rights they thought they had won. I do not want to add to this debate except to say that, at the minimum, the accord has increased the level of uncertainty surrounding the Charter's rights and freedoms. The fact that Ms. X says "Yea" and Mr. Y says "Nay" on what has happened to the Charter's rights is proof of that proposition.

The more uncertain a right becomes, the more it is like a right denied. I surmise that the architects of the Meech Lake Accord would have no problem grasping this fact if, somehow, uncertainty in respect of their right to property was to be

increased by as much as the accord has increased uncertainty with respect to basic Charter rights. The augmentation of the uncertainty makes the accord retrogressive on the rights issue.

A constitution, to be efficient, must do more than guarantee rights and freedoms; it must also, as a priority, foster political stability. In two respects the Meech Lake Accord, if it becomes law, will not fulfill that function if and when stability is challenged. These are: first, the "distinct society" provision, and, second, the mechanism envisaged for appointments to the Senate and to the Supreme Court.

You are no doubt aware that I appended to the report of the Macdonald Commission on the Economic Union and Development Prospects for Canada a longish text, which the report's copy editor quaintly labelled a "supplementary report," but which is, in effect, a minority report. In it I argued, among other things, that the relationships between governments in any federation are, in their original state, competitive relationships. That view raises a serious analytical problem, because, as economic theory teaches us, competition can be stable and efficient, but it can also be unstable and destructive.

I do not have the time or the competence to analyze all the conditions which would ensure that intergovernmental competition is always stable and beneficial. That task has not even been completed in conventional economics, but some conditions can be specified. In my minority report I focussed on what federal or central governments in federations could do to promote that end. I will not repeat here what I wrote there. I will instead focus on numbers.

Ever since the systematic analysis of competition was begun by Cournot in 1838, economic theory has emphasized the role played by the number of competitors in a market on the stability and on the outcome of competitive behaviour. The results of a century and a half of concentrated research can be summarized and, unfortunately, caricatured as follows: When numbers are small, competition is less stable and less productive than when numbers are large.

Applied to the matter which concerns us here, one would have to say that intergovernmental competition in the Canadian federation would be less stable and less productive if the number of provinces were smaller than it is now. It could even become destructive. It is in that light that I suggest one must evaluate the "distinct society" clause as that clause is written and positioned in the 1987 Constitutional Accord. One of the implications of that clause is that for a class of issues, whose dimension is unknown, but which is surely very large, the number of competing governmental units in the federation will be reduced to two—Ottawa and Quebec. Why? Simply because the accord defines the distinctiveness of Quebec in relationship to the rest of Canada and not in relation to the distinct societies which are Newfoundland, Alberta or Ontario. That will serve to destabilize intergovernmental relations in the Canadian Federation in respect to some subjects.

It would be possible to document the point by reference to historical cases. Let me simply mention that there is an important school of historians which traces the origin of the Civil War in the United States to a polarization of the country into north and south, a polarization which, on a basic issue, effectively reduced the number of competing entities to two.

It has been said that the "distinct society" clause has no real meaning, that it is more or less a symbolic sop. I take exception to that view, as anyone must who analyses intergovernmental relations as competitive relationships. But even if the clause has meaning, it cannot be made operational. That is why, when needed, it will be used as a competitive instrument in government-to-government relations.

One can gain some insight into what is likely to happen by imagining that the 1867 British North America Act had instructed the government of Ontario to "promote the distinct identity" of that province. It is not too far-fetched to assume that the United Empire Loyalists' version of Britishness made up the distinct character of Ontario at that time. It is not too difficult to imagine, either, some of the things which a constitutional instruction would have instigated as supplemental to the things—not all of them "nice"—which were actually done to forestall the forces which, over the last half century or so, have operated to effectively extinguish the British character of the province.

Like Ontario of yesteryear, Quebec is now undergoing a radical demographic revolution which will in the forseeable future make the province into a multicultural, multiethnic and multiracial society in which the descendants of the 1763 stock will be absorbed and will dissolve more or less as the United Empire Loyalists have dissolved in Ontario. If the government in Quebec City chooses, as it is possibly instructed to by the Meech Lake Accord, to promote the distinct identity of the 1987 Quebec society—the society of those whose genotype can be traced to 1763—imagine the attacks to which Ottawa will be subjected when legislating for what is instead of what has been; and imagine the flow of litigation challenging the provincial government that will come to the Supreme Court from all corners of the province, including, obviously, from the new Canadians who will make up the new Quebec.

• (1510)

There is irony in what the accord has done. It has generated a context in which the Supreme Court of Canada—a federal body with a built-in constitutionally entrenched two-thirds anglophone majority—will have the task of defining in what sense Quebec is a "distinct society," and whether this or that measure "promotes the distinct identity of Quebec." Irony there is, but there is more. The accord, if it becomes law, will have created a device—in French we would say "un dispositif"—that would make it possible for the Supreme Court's legitimacy to be undermined in Quebec.

Let me turn to my final point. In June of last year I argued on the radio network of Radio Canada that the Meech Lake Accord, if implemented, would be a godsend to any separatist government in Quebec. Mr. Hugh Segal, who was on the air with me, said that separatism was dead. There is probably less certainty on the matter now that Jacques Parizeau has reappeared, but, even if Parizeau does not succeed, the best assumption must be that separatism will return to Quebec at

some time. It has cyclically manifested itself throughout the twentieth century, and every time more vigorously and more broadly based than the time before. It may not re-emerge often in the future, because, as Quebec becomes multicultural and multiethnic, the hard core irrédentistes, which have always provided the soil in which separatism germinated and first blossomed, will be washed away. But it could return once or twice before that happens. In any case, it would be folly to assume anything else in designing a constitution.

After Meech Lake, an optimal strategy—but only an example of an optimal strategy—for a separatist government in Quebec, or, for that matter, anywhere in the country, would have two components. The first would be to appoint hard-bitten separatists to the Senate. That could be achieved quite rapidly by the simple device of offering choice appointments elsewhere to incumbent senators from Quebec. The stage would then be set for the separatists to stay the business of Parliament. The second component of an optimal separatist strategy would be to refuse to appoint anyone to the Supreme Court while sending case upon case to that body. In a short time the legitimacy of the central judicial machinery would have been undermined.

It must be stressed that what the Parti Québécois government of Réné Lévesque tried to achieve while in power was essentially to sabotage the legitimacy of the federal government in Quebec. It did not succeed and, as a consequence, separatism made one of its periodic exits. It is disturbing that just a few years after the defeat of the Parti Québécois Canada's First Ministers—one must assume acting in full lucidity—designed a mechanism which Lévesque would not have dreamt ever to have at his disposal, but which he would have used to great effect if he had.

Where should we go from here? I hope I have made clear that if the accord is implemented Canada will lose. It is also a fact that if it is not enacted the reaction in Quebec is likely to be such that Canada will also lose.

The vibes one detects from Ontario's Queen's Park to the effect that the accord must be signed as it stands, but amended in the shortest time afterwards, is a response to this dilemma as well as a back-handed and aberrant way of acknowledging that the accord contains one or possibly more egregious errors, which the First Ministers agreed should cause it to be reopened. After reflection and discussion, I have come to the view that what I detect to be Ontario's response is unacceptable.

If the accord cannot be reopened for amendment, it should be killed. There will be a bad reaction in Quebec, but the re-emergence of Mr. Parizeau should be a guarantee, over the short term, that neither Mr. Bourassa nor those of his ministers who, like him, in the past have shown separatist proclivities will be able to raise the political temperature in Quebec. It is probably the only occasion that we will have to be grateful to the Parti Québécois.

The Chairman: Thank you very much, Professor Breton. My first questioner is Senator Marsden.

Senator Marsden: I would first like to thank Professor Breton for such a clear and definitive statement. Professor, I want to go back to your dissenting or minority statement to the Macdonald commission report, especially with respect to executive federalism. You wrote this statement before we had even heard of Meech Lake and before, I think, Mr. Bourassa had presented his five points to the First Ministers in Edmonton, although, presumably, after the Beige Paper in Quebec. In that report, having argued why executive federalism is a problem, you said:

> For this reason I believe it is important that federal-provincial consultation on virtually all matters follows, not precedes, debate in the House of Commons and in provincial parliaments. Parliamentary debate should extend to a specification of the areas which could be reasonably coordinated and those which should not be.

Could you amplify your views in that statement with respect to the process and in relation to what we are now faced with, should this accord go forward, as to the future constitutional agenda—fisheries, Senate reform, and so on?

Professor Breton: The only thing I would add to what I have said in the past on this matter is that, first, the procedure should be more open. People should have a chance to voice their views. There should be public debate that precedes instead of follows agreements.

In the case of Meech Lake, for example, it would have been easy for the federal government to say that it was interested in considering seriously the five conditions of Quebec, as spelled out by Mr. Gilles Rémillard, and then in allowing a big discussion throughout the country. The way in which the debate should be structured and the business of Parliament should be structured on this is really beyond my competence, but I would say that the important thing is to open the debate so that there is the benefit of input on the part of a large number of people who are willing and seriously want to make a positive contribution to the solution of an issue that they take to be a problem.

With respect to all matters that will come up now if Meech Lake goes through, every year we are going to have a constitutional conference. It becomes a very complicated matter to think through, but I think that one has to think of a process whereby every year we will not be saddled with enormous constitutional amendments in which no one really participates except the First Ministers.

Senator Marsden: If I could pursue that one further step, you commented in your opening remarks this afternoon that the effect of 1981 and 1982 was to bring the Canadian people into the constitutional process. As you and everyone else knows, the women of Canada fought a major battle to be part of that process in 1981 and 1982 and to have rights protected in the Charter. It was a very painful struggle.

This time we find that when people concerned about the rights of women made presentations before the joint committee, first, the members of the committee completely failed to understand the points—at least, that appeared to be so on the

evidence of their responses—and, second, they both misinterpreted and then dismissed those points in the report of the joint committee. If that is an example of opening up the discussion, even though the timing was wrong, do you have any views on how we are going to do any better on the question of fisheries or Senate reform?

Professor Breton: No, not really. May I just say on this point that, although I am grateful to the Senate for these hearings and for listening to Canadians voicing their views, we must all acknowledge that this is more or less a cul de sac. Nobody has the great impression that somebody out there is listening—somebody who really wants to transform the Meech Lake Accord and to make some amendments which, in my view, would be quite easy to do. This process, therefore, is one whereby we debate between ourselves.

Canadians are learning more and more about becoming a constitutional people as a result of what is going on in the country, and this is true, in particular, among the intellectual classes, if you will. There is a seminar every month at the University of Toronto on the Meech Lake Accord—which is very funny, because, in a way, academics never thought that anyone except those connected with the law would be talking constitutional matters.

● (1520)

But, again, the reason why I think that the joint committee was not able to take anything very seriously—you mentioned the women's groups—was essentially because you are faced with a situation where you cannot reopen, you cannot amend. You have put yourselves in a situation where listening is just a formal act; it is not something that is real. I think the important thing is that we put ourselves in a situation where listening to Canadians is genuine.

Senator Marsden: With respect, the Prime Minister and the premiers said that they did not want to reopen it. Those are 11 Canadians. You are telling us that the other millions are part of the constitutional process. Why are all of the members of the Ontario Legislature, the Quebec Legislature and the House of Commons—who presumably are also Canadians in this process—being so compliant on this? Is it the process? Is it party discipline? Is it charismatic leadership? How are we going to get out of this?

Professor Breton: First, I would say that I do not think that Canadians are that compliant. There is quite a bit of opposition and, in a way, it is growing. But, at the same time, you must recognize that even though Canadians think that they have a role to play, and seek a voice in the process, in terms of procedure they do not have any; and I think that is really where the matter lies.

Senator Frith: Professor, there are two points on which I have questions. I want to pursue this very important question about the process, because you know that the reservations that you have about the process are shared by many people. We know that is so from reading comments in this forum and others. I wonder if you have had a look at the sections—I assume you have—in Part V, headed "Procedure for Amending Constitution of Canada." I assume that that is what gave rise to your reservations about the system.

Do I understand that you think that we should make some amendment to provide for a different method other than what has become known as executive federalism or manifestation of executive federalism? Let me explain why I ask you that. I get the feeling when I read sections 38 through to 50—that is, all of Part V—that the drafters of the amendments did not really think about how it would work in fact. Put yourself, for example, in the position of the Prime Minister. He wants to make amendments to the Constitution. If he goes to Part V, it simply says that the amendments can take place by proclamation where authorized by resolutions of the Senate and the House of Commons and resolutions of the legislative assemblies. So clearly there is contemplated an initiating resolution either from the Senate or the House of Commons or one of the legislatures; and then, in their turn and separately, they have to pass their necessary resolutions.

Is it not reasonable to expect anyone who is going to initiate an amendment to call together all of the other partners and discuss it with them? Would you agree that it would at least be reasonable to go that far—or do you think that he should just sort of toss it into the ring?

Professor Breton: No. I would say that what is formally in the text could probably be accommodated to a genuine procedure of opening up. You can make the case that what has been agreed upon at Meech Lake, so far as the amending procedure is concerned, is an improvement on what we have had.

However, if every constitutional amendment is going to be made by First Ministers, who sign a document and then agree that it will not be reopened unless there are egregious errors, then that is like closing the thing up, because, in a way, we all know that First Ministers do not make egregious errors; they may not even make errors of any kind.

Senator Frith: Not ones that they would admit to!

Professor Breton: Not ones that they would admit to. Consequently, you can reclose the procedure that way. If, in fact, the genuine parliamentary machinery were at work at the present time, where essentially the First Ministers will have agreed that after hearings and after debate in each of their local parliaments or assemblée nationale they will come back and try to discern a consensus among Canadians, and, in fact, contemplate seriously some amendments, we would have a more open machinery, I agree.

Senator Frith: Could you tolerate the thought of actually putting into the amending formula the requirement for public hearings by the legislatures involved in the operation?

Professor Breton: Personally, I would like that very much, yes. I really believe that it would be a tremendous improvement. I really think that over the years, in the future, we will be forced to this. I think the interest in these matters will grow, and judgments like the one by the Supreme Court on abortion constitutionalizes Canadians to a degree which we could not imagine when we look at our past. Consequently, the

pressure will come from these things, and the more that we go ahead and open it up the easier it will be.

Senator Frith: Do you agree that the only way to guarantee opening it up would be to have something requiring hearings, some wording that required the legislatures involved in the process to have hearings?

Professor Breton: Yes, I agree.

Senator Frith: That will be a form of constitutional conference—that is, the kind that has sometimes been proposed, an Estates General kind of thing—which you are not suggesting here, but which would involve the hearing process that you think should be included.

Professor Breton: Yes.

Senator Frith: I want to ask you a question on your point that the present Meech Lake Accord, if enshrined in the Constitution, would be a great political instrument for separatism. Is that a fair way to put it?

Professor Breton: Yes.

Senator Frith: I thought you put it very dramatically, and not simply academically; so I thank you for thinking through the actual hard-edged concrete political steps that could be taken in order to bring that about. I have in mind that some separatists have in fact agreed with you publicly; they have said that this would make separatism easier—that it would make a separate sovereign association or separate Quebec state easier. Am I right about that, or do you know?

Professor Breton: I did not hear anything. The only thing that I was aware of is that essentially the separatists reacted against the Meech Lake Accord. It is my understanding that they reacted against the Meech Lake Accord essentially because it brings Canada within the constitutional family, a symbolic act which they do not like. But I doubt that they have looked at the guts of the accord to come to that judgment. It is just that they do not like it.

Senator Frith: I heard that Mr. Morin had said this, and I wondered whether you, being a professor, had noted that—but if you didn't then that's fine.

Professor Breton: No, I didn't.

The Chairman: I now have Senator Grafstein, followed by Senator Gigantès.

Senator Grafstein: Professor, we welcome you. I recall reading a footnote or an article of yours many years ago dealing with a Charter of Rights, written by the former Prime Minister, Pierre Elliott Trudeau. I think he gave you credit for some of his ideas in an article that he wrote in 1955. Am I going back too far in history?

Professor Breton: My memory is dim on that, but it is possible.

Senator Grafstein: So your interest in Charter issues goes back three decades, if that is correct. Let me deal with the major argument that was made by premiers, who are not happy with the compromise, but who said that our nation was built on compromise and therefore this was the only acceptable compromise to, in effect, bring Quebec into the Charter. The argument was made that had the government chosen not to propose this compromise we would have national paralysis. In effect, a third of the country would have been unrepresented in the political forums of the nation. For example, Quebec would not participate in conferences dealing with international trade obligations. In effect, Quebec would opt out by its conduct and by its attitude, and it would cause the reverse of what you suggest the separatists might do—that is, they would paralyze by not participating. What do you recommend the Senate do to deal with this issue? We have not heard the voices in Quebec as we did in the debate over separatism. We have not heard the federalist voices in Quebec on this issue. With the passing of the Prime Ministership of Mr. Trudeau we have not heard strong federalist voices in Quebec giving us the other side of this coin. How are we in the Senate to deal with this issue? I have heard debate on the issue, but I have not heard any acceptable political argument as yet from Quebecers.

• (1530)

Professor Breton: Are you asking me to put myself in the frame of mind where we are amending the document?

Senator Grafstein: We are now confronted with a fait accompli. The question is: Can we now amend without returning to the alleged "paralysis" of Quebec opting out by not participating? In the first place, was there a paralysis?

Professor Breton: I do not know if there was a paralysis. I do not know whether Quebec would have formally stayed out of federal-provincial matters or whether it would have continued to play the game. I think there was a genuine desire on the part of Mr. Bourassa and his government to solve the problem. The general approval of the Meech Lake Accord in the province of Quebec is a reflection of the fact that Quebecers want to be inside the Canadian constitutional family.

Where do we go now? Essentially, the most serious issue to me is the "distinct society" clause. I have often discussed this matter with people at seminars and other kinds of meetings. Some have said that there will never be separatism in Quebec again, that it will not re-emerge. But if Quebec says, "We are going to play the game differently than we have played it in the past. We are still going to compete one with the other, and we are still going to struggle, but whenever it appears that we are not winning on a particular issue we will just pull our marbles out of the game"; I would say that the document is not very good. It is not the best that we can do. For example, the document contains a lot more than Quebec was asking for.

However, as to your question of where do we go from here, I have to say that I really do not know. I really do not know how to deal with the issue. It is really a procedural fault of the first order that we cannot amend. We are placed in the position where, if we say "no", in a way we are saying "no" to the federalist forces in Quebec, or to those who are not genuinely interested in separatism. I know that prophets are not always welcome and that they have been wrong in the past. However, it appears to me at the present time that we will not see separatism around for a while. The chances of Parizeau being

successful, I think, are very dim. However, if Mr. Parizeau is able to constitute the opposition, there will be two parties, the Liberal Party and the Parti Québècois. One day, merely through the evolution of the political process, separatism will reappear.

Would it be best to make amendments now? I really do not know. I really have no answer to your question. We are really in a fix. We have put ourselves in the box, where to say no—and my colleagues and I at the University of Toronto have debated this a great deal—would be a terrible thing at this point in time, because it will be badly taken in Quebec, even by people who do not give great emphasis to constitutional matters. It will be seen as a rejection of Quebec, and it will be exploited as such. So what can we do in the event? Perhaps we could propose something else where the five conditions suggested by Quebec are immediately accepted. The five conditions of Mr. Remillard could easily be accepted. I do not think we would have any problems with them.

Senator Grafstein: I have one final question with respect to the constitutional impasse of the endless agenda. There is now a constitutional agenda, which we have never had in the past. For instance, Senate reform has been put on an endless constitutional agenda, which could be either a positive or a negative force with respect to any other issue if there is not concurrence for change on the issue. In your experience, have we ever had such a comparative constitutional situation before, where a constitutional agenda has been fixed by the Constitution in the sense that we now need unanimity to remove Senate reform or other items from the agenda?

Professor Breton: The clause requiring constitutional meetings every year is really an aberration in terms of thinking about constitutions. You just do not force yourself to amend the Constitution or to consider constitutional matters every year. As I have tried to say, a constitution's primary function is to enhance the political stability of the country. Stability requires that things be put aside, that things be allowed to accumulate, and once in a while you do something about them. By the way, Quebec did not ask for this clause. We do not know how it got into the accord. But that every year the 11 First Ministers will have to consider constitutional matters I find abhorrent, totally abhorrent, and any such revision or amendment should be removed.

Perhaps there should be an economic meeting every year. It does not strike me as a good idea that it be constitutionally required, but I could live with that item. There are always economic problems.

The Chairman: I have four more names on my list. I shall have to cut the list off now or we will not be able to stay within our time limit. I ask that the four senators be concise in their questioning.

Senator Gigantès: Mr. Chairman, I have a factual question pertaining to the witness's text. I am not sure I heard you right, but I believe, at the very end, you said that because of Mr. Parizeau's emergence Mr. Bourassa cannot become more nationalistic. Would you read that last bit again, or tell me what you meant by it?

Professor Breton: It is not a very profound political analysis, and it may be all wrong. Essentially, suppose the accord is removed from the agenda. It cannot be amended, so it is killed off. Mr. Parizeau decides to make political capital from this action. Mr. Bourassa will be forced to adopt the political strategy of distancing himself from Mr. Parizeau, and, even though he may feel bad about it, he will, if straws are thrown at him such as what I was suggesting to Senator Grafstein a few moments ago—that the will of the First Ministers is to keep on working on the five conditions—have to use these straws and begin speaking of a new process. Otherwise, Mr. Bourassa could make such statements as, "It is very hard for us to live in Canada," and so on.

Senator Gigantès: Do you not think that the latter possibility is more likely, because it gives him the opportunity to push his opponents farther off the field, so to speak?

• (1540)

Professor Breton: Perhaps it would, senator.

Senator Gigantès: Thank you, Mr. Chairman.

The Chairman: Thank you, Senator Gigantès. Senator Le Moyne is next, followed by Senator MacEachen.

[*Translation*]

Senator Le Moyne: Thank you, Mr. Chairman. Professor Breton, have you by any chance read or perhaps examined Bill C-93, an Act for the preservation and enhancement of multiculturalism in Canada?

Professor Breton: No, I have not examined this bill.

Senator Le Moyne: Are you aware of its general intent?

Professor Breton: Yes.

Senator Le Moyne: Would you agree that I myself and others with me are right to be concerned about the possible consequences of this bill, if it were to come into effect, considering our two official languages and their status under the Meech Lake Accord?

What kind of consequences could we expect? How disruptive could this legislation be? Could we expect to have three or four official languages in Canada twenty or twenty-five years from now?

Professor Breton: Senator, personally I have always had a number of reservations, not about multiculturalism as such, since Canada is a multicultural country, and I hope it will remain so, but about multiculturalism as an official policy of the government, as a phenomenon structured and fostered by the government.

When I was a member of the Applebaum-Hébert Commission on Arts and Culture, we met many multicultural groups.

My position at the time, and I have not abandonned it since, was and is that basically, multicultural groups are cultural and as such should be dealt with through Canada's cultural institutions such as the Canada Council. They should not be struc-

tured autonomously within the government machine. The dangers you mention, including the splinter effect it might have on our country, and there are many others I could name, are still a very real threat. These groups can go in either direction, especially when they become rather substantial. In fact, they could go anywhere at all. They might start promoting a third or fourth official language, which would make the administration of this country far more difficult than it is at the present time.

Consequently, I am in favour of supporting multiculturalism, but always through our cultural agencies.

Senator Le Moyne: I certainly hope that someday, you will publish a thorough study of this bill which I see as a new mechanism for the balkanization of Canada, whether we like it or not. Thank you, Professor Breton.

[*English*]

The Chairman: Senator MacEachen is next, followed by Senator Robichaud.

Senator MacEachen: Thank you, Mr. Chairman. Professor Breton, I want to ask you whether you will elaborate on how you think the concept of the "distinct society" could be used by the Government of Quebec, as you put it, as an instrument of competition in intergovernmental relations or in extending the authority of the Province of Quebec in the economic field. I ask the general question first, and then perhaps I will give you a faulty illustration and ask you to comment on it. However, if you would give me a general answer, I would appreciate it.

Professor Breton: Essentially, the concept being undefined and undefinable, it can be used virtually in every domain in terms of the promotion of what will be defined by any government in Quebec at any time as being within its purview. For example, things that are marginally economic or cultural. However, the whole area of cultural industries could easily be used by a government of Quebec as a vehicle for saying: "We cannot go along with Ottawa on this particular matter; we must promote our own."

I can even see trouble arising with respect to such institutions as Radio Canada; I can see problems arising in matters that have to do with such mundane things as the generation of electricity. In a different world than the one we are apparently about to enter, it could have repercussions in terms of the tariffs that Quebec wants with respect to certain things that it deems to be terribly important for Quebec.

Consequently, every time Quebec wins on one of these matters, even though each of these matters might be very small, while it does not increase the separateness of Quebec, it increases the perception which becomes more and more real as time goes by that Quebec really does not need Ottawa in order to govern itself; that essentially, in all matters that have to do with economics, with culture and with everything else, it is able to do everything.

Perhaps we should look at the relationship of the "distinct society" clause to what has been tried within the last 15 or 20 years with enormous success in Canada, and that has been to give an incredibly important role to Ottawa in terms of the promotion of the culture of francophones in Canada, as well as in Quebec. I see Ottawa playing a very important role, and I think the history over the last 20 years shows that Ottawa can do, and has done, a great deal.

However, I suspect that in the future, any time that some groups in Quebec find it to be in their interest to argue that certain things should be done in Quebec, they can use that "distinct society" clause to try to prevent the central government from pursuing its own actions in matters of culture, economics, or in virtually all matters that can come forward.

Senator MacEachen: When I first entered Parliament, Mr. St. Laurent was Prime Minister. One of the issues that was frequently discussed at that time by us Members of Parliament was the dairy policy. It was often a contentious issue, particularly when there were requests to increase the support for the dairy farmers.

I remember one time Mr. St. Laurent saying: "Of course, in Quebec the preservation of the dairy farmer is essential; it is part of Quebec." I think that was right. Perhaps it has changed a great deal since then; maybe the proportion of Quebec farmers who make their living on a dairy farm is reduced. Certainly, I am not putting this example forward as a perfect one, but, if, for example, a federal government in Canada acted to reduce or eliminate support for the dairy farmers in Quebec, would the "distinct society" clause be a possible way of attempting to strike against the development of such a policy? It is not that I am recommending such action; I am merely asking whether the "distinct society" has the expansibility to affect the economic field and have an impact upon the formation of economic policy, even with respect to a particular industry.

It is clear, for example, that in Europe the politicians of France would argue that the preservation of the dairy farmer is essential to the wellbeing of France. It would seem to me that, in this competitive relationship, the "distinct society" provision could have very important economic application, and I think you are the first economist we have heard talking expertly about the Meech Lake Accord. I wonder if you could tell me whether or not I am in the right ballpark in making this argument.

Professor Breton: Senator MacEachen, I think you are absolutely in the right ballpark. Whatever the accord does in terms of law, the "distinct society" clause is going to become part of the jargon of politics in Quebec. That clause will be used on all issues, whether they are closely related or only very remotely related to the distinctness of Quebec, precisely because nobody knows what makes the distinct character of a society.

I very seldom follow what is going on in the press in Quebec, but Ramsey Cook of the Department of Political Sciences, University of Toronto, who gave a seminar last week, brought forward a huge amount of literature produced since the Meech Lake Accord. In this literature people are arguing about what they will be able to do with the "distinct society" clause.

Already there is a great deal of literature from people who see in that clause the capacity for obtaining more from Ottawa than they ever thought possible. Any subject under the sun is going to become a proper subject for contention, because everything that you want to define as a characteristic of Quebec will be definable within the terms of this concept.

In previous years this clause would possibly have been used by the Quebec government to legislate the church with respect to the practice of religion. This clause would be used to pass legislation not only vis-à-vis Ottawa but inside Quebec to structure the relationship of groups within Quebec.

Senator MacEachen: You have said that it will become part of the political jargon. But presumably it will also become part of the constitutional process. We have been told by Senator Murray, for example, that the concept of the "distinct society" will give Quebec greater maneuverability in the courts, because the Constitution must be understood in light of the ability of Quebec to promote and maintain a distinct society. To what extent do you think the political jargon will be validated in the courts?

Professor Breton: I do not know. Who wants to predict what direction the courts will go? It will be part of the political jargon, but it will also be part of the political reality of the relationship between the federal government and Quebec henceforth if it becomes law. The courts may be used to determine which direction to go, but it will become part of the relationship of Quebec with the rest of Canada. You are right to emphasize that it will be not only jargon but it will be political reality.

If the Supreme Court consistently rejects Quebec's view of what constitutes its distinctiveness, you can imagine the problems that will arise in relation to all federal and provincial matters in Canada.

Senator Frith: Professor Breton, do you know if Ramsey Cook, who gave evidence before the provincial legislative committee, brought forward this material that you are talking about?

Professor Breton: I do not know, senator.

[*Translation*]

The Chairman: Senator Robichaud will be the last one to ask questions.

Senator Robichaud: Professor Breton, your answers to all questions were very clear. However there is one answer which I may have misunderstood, an answer to a question from Senator Grafstein.

[*English*]

As I understood what you said earlier, Quebec received a lot more than it expected to receive. Could you enumerate what Quebec asked for and what Quebec received that the other provinces did not receive under the Meech Lake Accord?

Professor Breton: No, I could not do that. From memory I cannot repeat the five things that M. Remillard asked for. However, to give you an example of one of the things that M. Remillard asked for, in the preamble to the Constitution he asked that Quebec be recognized as a distinct society. The Quebec government would have been satisfied with that.

If I recall the discussions around 1981-82, the federal government was willing to give that to Quebec at that time. There may be problems with wording and problems with constitutional negotiations, but there is no great problem in writing in the preamble of the Constitution that Quebec is a distinct society.

The only problem that I can see is that there are a large number of other groups in society that would want to be recognized as distinct, and they may ask to be recognized as distinct in that part of the Constitution. My point is that Quebec did not want its distinctive character to become an interpretative clause in the Constitution. I do not know the process that brought that about, but Quebec was not asking for a constitutional conference every year. I do not know how that came to be in the bargaining, but, clearly, it came out of the bargaining process.

Senator Frith: Or appointments to the Senate.

Professor Breton: Or appointments to the Senate, for that matter, and things of that kind.

Senator Robichaud: Outside of Quebec becoming a distinct society, did Quebec receive more than what they expected to receive from the Meech Lake Accord? I am not talking about the other provinces.

Professor Breton: I do not know what they expected, but they received more than they had asked for, yes.

Senator Robichaud: What are the items that they received?

Professor Breton: With respect to the "distinct society" clause, Quebec received more than they wanted. In the preamble to the Constitution, they wanted to be recognized as a distinct society. We then included that clause in the Constitution as the basis on which to interpret the whole of it.

Senator Robichaud: Besides that clause, did they receive any more than any of the other provinces?

Professor Breton: I do not think so. Except for the "distinct society" clause that touches Quebec specifically, my memory right now is that nothing else specifically touches Quebec.

Senator Frith: There is the matter of immigration.

Professor Breton: Yes, immigration.

Senator Frith: They simply asked for a greater provincial role in immigration, but they got more than the other provinces got.

Senator Robichaud: But they had asked for that. That was one of their requests.

Senator Frith: They asked for a provincial role. They did not ask for a special role for themselves, but they got a special role for themselves; is that not right?

Professor Breton: Yes, that is true.

The Chairman: Thank you, Senator Robichaud. There are others who wish to ask questions and I had some questions myself, Professor Breton, but we will have to forgo those, because our time has passed.

[*Translation*]

Thank you so much for coming here today and for expressing your ideas.

Professor Breton: I do thank you, Mr. Chairman.

[*English*]

The Chairman: Our next witness is Doctor Hugh Allan Cairns, Professor of Political Sciences at the University of British Columbia. Once again, everyone has received Professor Cairn's personal resume.

Pursuant to Order adopted on June 18, 1987, Professor Hugh Allan Cairns was escorted to a seat in the Senate chamber.

The Chairman: Professor Cairns, normally we proceed with a 15- or 20-minute presentation by the witness and then ask questions. We have a total of one hour at our disposal.

• (1600)

Since we did not receive a text from Professor Cairns, we will be operating without one.

If you are ready, please proceed.

Professor Hugh Allan Cairns, Department of Political Science, University of British Columbia: Thank you, Mr. Chairman. I was informed by the Clerk that a written text was not necessary. So I apologize if I am in error in my understanding.

The Chairman: You are not the least bit in error. You are quite welcome without a text.

Professor Cairns: Thank you, Mr. Chairman.

I have had the good fortune of listening to some of Professor Breton's presentation. I am not sure whether to be chagrined or pleased that we are in agreement on certain important aspects of the Meech Lake issue.

In thinking about my presentation it seemed to me there were two approaches the various presenters to this committee and to the joint committee had adopted, one was to make a case for what should be done to improve the Meech Lake Accord, to modify it, to amend it, and so forth. That, naturally, is the approach that most of the interest groups which appeared before the joint committee and, I assume, before this committee, have adopted, because they have particular interests which they feel are jeopardized by the accord.

My preferred approach is to try to make sense of where we are in constitutional terms. This, I think, is more properly the task of the academic, and I find the Meech Lake Accord does, in a sense, bring together an understanding of constitutional development which rather deeply disturbs me. So, I thought I would address, in a sense, the cause of my disturbance.

My basic position is that we have now in the Constitution a profound incoherence or contradiction. This exists at the heart of our constitutional existence, and I really think that it is the task of this committee and of opinion leaders and others over the next several years to address that incoherence or contradiction. This incoherence or contradiction is manifest, I believe, in the profound anger, sense of outrage, and so forth, of the many groups that have appeared before the joint committee and this committee. Their anger, in other words, I view not just as the normal anger of interest groups but as a constitutional anger. I think, therefore, their sense of outrage is constitutionally significant.

What it reveals is a dispute about the nature of the Canadian Constitution, about what its relation is to Canadian society, and, to put it differently, about whose Constitution it is.

For what we might call "Meech Lakers"—that is, those who have brought about the Meech Lake Accord, essentially composed of 11 individuals from the ten provincial governments and one federal government—it can be called the "governments' Constitution." The fact that it is the "governments' Constitution" from their perspective I think is fairly self-evident in the process that has been adopted, one dominated by governments primarily meeting in secret, which then announce a constitutional *fait accompli* which they indicate will not be changed unless egregious errors, which they retain the right to define, are discovered. The perception that the Meech Lake Accord reveals this as being the governments' Constitution is also quite explicit in various statements made by the current federal government. According to the federal government, in a position paper it released on Meech Lake, the task of public participation in presumably this and other committees is "to explore the implications of the Constitutional Amendment, 1987 so it is well understood by everyone, and in so doing to influence the future agenda in the annual rounds of constitutional discussions which are to take place."

So, quite clearly, the perspective of the leading actors is that the governments possess the Constitution, it is theirs to change, and it is for others to be in the audience.

This government domination of the amending process presupposes, I think, that the written Constitution is mainly about federalism, and federalism is mainly an affair of governments. Before 1982 this might have been a reasonably accurate perspective; it might have been a reasonably valid statement of a condition of affairs which most Canadians would have accepted. Since 1982 that is no longer a valid position, it seems to me, and that, of course, is also what Professor Breton was asserting in his earlier presentation to you.

What seems to have happened is that the Constitution Act of 1982, and in particular the Charter, has produced an alternative vision of the Constitution. I call this—and I am not sure the phrase is exactly right, but it does serve to highlight the difference from the "governments' Constitution"—the "citizens' Constitution." And what has happened, of course, is that the Charter has brought new groups into the constitutional order, new individuals, new leaders of organizations, new social categories of Canadians who have been induced by the Constitution Act of 1982—primarily the Charter, but not exclusively the Charter—to think of themselves in constitutional terms as having a constitutional existence. The illustra-

tions of this are manifold, but they are worth underlining, because I do not think we have yet learned to live with the increasingly complex constitutional arrangement which 1982 has left us as its legacy.

As an example, there is initially, of course, and possibly most clearly, the position of women and section 28 of the Charter. The language that women use in describing their relation to section 28 is remarkably revealing. It seems to me that they describe section 28 as being "their section." An interesting book has been written by one of the participants in the process leading to the recognition of gender and equal treatment in the 1982 Constitution called *The Taking of Section 28*, which makes the point that the women's movement feels it was responsible, by its political mobilization, for seeing that section 28 has the status it has in the Constitution.

Then there is section 27, which we can call the "multiculturalism section." Here again, to read the presentations of the various groups which have appeared before this and the joint committee of the Senate and the House of Commons is to make it clear that, for them, section 27, mandating the recognition of the multicultural heritage of Canadians, is a constitutional clause towards which they have a certain proprietary attitude. It is their clause; it is their way of saying that Canada is not entirely composed of the two original Charter communities.

Then, of course, we have the aboriginals, who have scattered references throughout the Constitution, some in section 91.24, which reserves jurisdictional authority over Indians and lands reserved for Indians to the federal government, and then in section 25 of the Charter, which refers to the rights of aboriginal peoples, and again in other sections of the Constitution Act.

Then we have the official language minorities, who are singled out for privileged treatment as compared to other linguistic communities in Canada, primarily in section 23.

Then, if we look at section 15, subparagraphs (1) and (2) we see multiple statements about particular categories of Canadians who, in 15(1), are to be accorded equal treatment in a variety of ways listed, and in 15(2), to be eligible, in certain circumstances, for affirmative action, and this includes such groups as the disabled, the visible minorities, and so forth.

What has happened, it seems to me, is that these various social categories have acquired niches in the Constitution. They have achieved for themselves a form of constitutional recognition and, accordingly, they, not unnaturally and not surprisingly, have come to view themselves as constitutional actors, at least in certain particular circumstances. At a minimum, they have come to feel entitled to participate in constitutional changes which might downgrade the status of what they view as "their constitutional clause or clauses."

● (1610)

To me, this means that at the heart of our Constitution we have a clear conflict between what, on the one hand, I have called the governments' Constitution, which is primarily concerned with federalism, and which, in terms of the written British North America Act, might be considered the predominant significance of that earlier version of our written Constitution; on the other hand, we have this citizens' Constitution, which focuses on the Charter and hands out various recognitions to different groups which are not territorially defined. This conflict, then, centres on two important aspects of the Constitution.

[Professor Cairns.]

First, the conflict contains competing assertions of the role and purpose of the Constitution. From the perspective of the governments' Constitution, the role and purpose of the Constitution remains primarily to regulate the affairs of government, with essential relationship to federalism.

With respect to the citizens' Constitution, this is not so. From the perspective of the citizens' Constitution, the constitutional order regulates relations between citizens and the state and singles out a variety of particular categories for explicit recognition, significant component parts of the Canadian Constitution and society. Second—and it necessarily follows—it generates a conflict as to who should be a legitimate participant in the amending process. To put this differently, what has happened is that we now, in 1988, are caught up in an explicit contradiction that was built into the 1982 Constitution Act, which we are only now beginning to discern with clarity.

On the one hand, there was the Charter that stressed citizens' rights and brought new groups into the overall constitutional order. This, of course, is the basis of the citizens' Constitution. It is also important to keep in mind that the Charter was viewed by those who were its crucial supporters in the federal government to be a significant nation-building instrument. That is, it was to induce Canadians, in addition to protecting their rights against governments, to think of themselves as members of a national community. We also know that the inclusion of the Charter, and in particular the provisions dealing with minority language communities, was the prime objective of the federal government in the 1982 Constitution compromise.

On the other hand, the 1982 Constitution Act has left us with an amending formula which is controlled by governments and is highly protective of government interests. It is important to remember that this amending formula rejects the referendum role for the electorate, which had been part of the original federal government proposals. The amending formula, with some modifications, unlike the Charter, which primarily reflects the pressure of the national government in the 1982 Constitution Act, is a product of what was called "the gang of eight."

So, the 1982 Constitution Act contains a basic contradiction reflecting the political compromise that went into its making. To put it differently, the addition of a significant citizens' component in the Constitution was not reflected in the amending procedure. Accordingly, the future operation of the latter, the amending procedure, was likely, as Meech Lake confirms, to offend the beneficiaries of the former, who might well feel that the part of the Constitution that was theirs was unfairly and illegitimately interfered with by the fact that governments played the key role in the amending formula. This is precisely what has happened in the Meech Lake discussions. Diagnostically, this is why many of the citizens' groups that appeared

before this and the joint committee have been so offended and so outraged. I suggest that they experience a sense of constitutional outrage.

In trying to understand this phenomenon we also have to recognize that the Constitution now plays a significantly different role in Canadian society than it formerly did. It is not just an affair of governments mainly dealing with federalism. Even to add to the role of the Charter and say, as is often said, "We have moved from two pillars, federalism and parliamentary government, to three, federalism, parliamentary government and the Charter, and the latter should be thought of as an instrument for the protection of rights," does not encompass the extent of the change which has taken place. I think the Constitution has become, in addition to its regulation of federalism and the role of the Charter in the protection of rights, a significant instrument of what I call "social recognition." By that I mean that it readjusts the official status and public recognition of various social categories of Canadians whose identities are sprinkled through the various clauses of the Charter: women, aboriginals, ethnic groups, various minorities, the disabled, and so on.

As I read the evidence of the groups who presented briefs, the concerns of these social categories and the group that represents them are not strictly instrumental. They are not narrowly utilitarian, and that is why I view this much more eclectic Constitution in terms of its purpose of having become this instrument of social recognition. These groups are now concerned with how they are officially regarded in what is the main public statement of who the important actors are in Canadian society. They are therefore ever watchful when constitutional change threatens to affect detrimentally their relative recognition. We also have to keep in mind that these groups are engaged, to some extent, in competition with each other for the degree of recognition they would like to attain in the Charter or, more generally, in the Constitution.

In summing up, therefore, I think at this time, when the Meech Lake Accord is still being discussed in a number of provincial arenas and in the second chamber of the federal Parliament, that we are in transition from a government-dominated written Constitution concerned with federalism to a mixed Constitution which now has a significant citizens' component. The Charter has generated, in relation to that citizens' component, a participant culture with respect to constitutional change. The groups that were deliberately brought into the Constitution in 1982 are no longer content to be spectators at subsequent bouts of constitutional change. The Meech Lake process, accordingly, seems to me to be out of touch with irreversible developments in the constitutional culture of Canadian citizens.

• (1620)

An annual repetition of the Meech Lake process, which may be implied by the requirement for an annual conference on the Constitution to be dominated by governments, I believe, is a recipe for deepening frustration and alienation at the citizen base of the constitutional order. It threatens, I feel, to delegitimize a Constitution that is no longer the property of the 11 governments of Canadian federacy.

If I may conclude, Mr. Chairman, I will quote from several paragraphs of a previous paper I wrote, which, I think, sum up my perspective and which, I hope, will not take me over my allotted 15 or 20 minutes.

The conjunction of a growing rights consciousness, the linking to the Constitution of groups who previously had little or no constitutional recognition, and the symbolic power of the Charter have modified the Canadian constitutional order in ways that will take decades to work out. This change goes beyond the conventional assertion that the Supreme Court has acquired an enhanced role as a national policymaker.

An even more profound change is taking place at the citizen base of the constitutional order. Yesterday's deference to governing elites in constitutional matters has been replaced by a resentment when citizens, who think of themselves as constitutional actors, are defined as spectators by governments. In the eyes of many of the group elites for whom this psychological change is most pronounced, and who see their fate as affected by constitutional change, the Constitution is no longer an affair of governments.

In addition to the governments' Constitution, which tends to focus on federalism, there is a citizens' Constitution, which the Charter symbolizes. A central task of the constitutional theory and practice of future decades is to find ways in which these two visions, warring in the bosom of the Canadian Constitution, can be reconciled. The major site for that resolution must be the amending process where, as Meech Lake exemplifies, their incompatibility is most pronounced.

The Meech Lake Constitutional Accord underlines a basic contradiction at the very heart of the Canadian constitutional system. The constitutional division of powers, from which strong interventionist governments have emerged, lends continuing credibility to the thesis that federalism in Canada is about governments. That thesis is reinforced by the executive supremacy which party discipline and the theory of responsible governments sustain. In the intergovernmental arena of constitutional politics, the practice of federal-provincial diplomacy, as the Meech Lake Accord almost exaggeratedly confirms, is the very perfection of governmental hegemony when unanimity of governments can be achieved in private.

However, while federalism may still be largely about governments—and I view this next statement as being very important—federalism itself has lost relative status in the Constitution as an organizing principle. The Constitution is now also about women, aboriginals, multicultural groups, equality, affirmative action, the disabled, a variety of rights, and so on. Since it is not possible to separate clearly the concerns of the governments which dominate federalism from the concerns of these newly constitutionalized social categories, it logically follows that the Constitution, with its many non-federal concerns, can no longer be entrusted exclusively to governments in the process of constitutional change. Government domination of the constitutional process has therefore seriously declined in

legitimacy. The intergovernmental bargaining process structures outcomes in terms of one set of cleavages—the federal-provincial. The public hearing process responds in terms of a different set of cleavages. The latter delegitimatizes the former.

Those who ran the Meech Lake constitutional show falsely assumed that the Meech Lake agenda could be confined to federalism and, thus, could be dominated by governments with little opposition. The Meech Lake Accord may succeed and the Constitution may be changed accordingly. However, the constitutional contradiction laid there by the Meech Lake process will not go away. It seems to me to be the task of those of us concerned with the Constitution to address that contradiction and to try to reconcile it in the future.

The Chairman: Thank you very much.

Hon. Senators: Hear, hear!

The Chairman: The first questioner on my list is Senator Lucier, followed by Senator Frith.

Senator Lucier: Professor Cairns, I found your presentation most interesting. In your opening remarks you ask the question: "Whose Constitution is this?" You were expressing the cause of your concerns about where the accord is taking us.

I represent the Yukon in the Senate, and being from there and taking into account what the Meech Lake Accord does to the two northern territories and to the aboriginal peoples in those two northern territories by leaving them off the agenda and replacing them with fish, you can imagine the indignation of the people of the North.

I would like to deal with one of the items on the permanent agenda until it is solved, which, I have a feeling, may be some time. That item is Senate reform. I thought you, being a westerner, might have some interest in this.

Premier Getty's great achievement for the people of Alberta, it seems to me, was that he was going to get some kind of trade-off in terms of whatever he gave up at Meech Lake. He was going to get some meaningful Senate reform with a triple-E Senate—effective, equal and elected. He managed to get that on the agenda of the constitutional conference. Do you see a possibility of meaningful Senate reform now that we have the unanimity clause applying to Senate reform rather than the seven out of ten and 50 per cent rule?

Professor Cairns: I would have to agree with Senator Forsey, who has said that transitional Senate reform—which we have already proceeded with since one senator from Newfoundland has already been appointed under it, even prior to its having gone through 11 legislatures, which, I must say, strikes me as highly anomalous—is the extent of Senate reform we will get. I think that that is, in a sense, by the back door, unexplained and the purposes for which it was put in were not laid out. It is Senate reform which will have significant consequences for the second chamber, but it is not the Senate reform that Premier Getty and other western groups were aiming for.

[Professor Cairns.]

Senator Lucier: Do the people of western Canada really think that this accord is going to do anything for them in that particular area? It seems to me that they have given up an awful lot in exchange for that. Do you really think they understand what is taking place here?

Professor Cairns: I do not really know. I have no idea what the polls are saying about the Meech Lake Accord and/or about the possibility of Senate reform in these annual constitutional conferences. I simply cannot answer the question.

In terms of British Columbia, one of the difficulties in answering a question such as that is that, although the Meech Lake Accord greatly enhances the role of the provincial governments in the overall operation of Canadian federalism in response to the principle of equality of the provinces, which allows them, in a sense, on the coat tails of Quebec, to get very significant constitutional advantages for themselves, I think it is not an exaggeration to say that there has been zero discussion from the provincial-government perspective of how it views what it has got and how it views what might be the kind of Senate reform which could follow from these annual constitutional conferences. This is one of my frustrations with the whole process.

• (1630)

Take Senate reform, for example. Neither the provincial government nor the federal government has put forward any significant position papers indicating what particular objectives with respect to Senate reform are to be served by this interim constitutional transitional arrangement—and reform is probably the most important change in the structure and composition of the Senate since 1867. I believe I have read everything that has come out in the process, and I can find absolutely nothing that indicates what the present government expects to happen in the existing Senate as a result of a process which is already under way, independently of what might happen—and I do not think much will happen—at the annual constitutional conferences.

Senator Frith: I want to thank Professor Cairns for the very articulate way in which he has made this important distinction between the constitutional context pre- and post-1982. As he has stated, before 1982 the Constitution was the property, in effect, of governments and legislatures, and that after 1982 a totally new dimension was added to the Constitution. I can reinforce what he has said by saying that at law school we were taught that Parliament could do whatever it wanted to do prior to 1982. There was nothing to prevent Parliament from doing anything, including making a man into a woman, as long as it was within its powers under section 91 or within the powers of the provinces under section 92.

Professor, I think your distinction is a good one, and I like the idea of talking about the governments' Constitution and the citizens' Constitution. I like the word "citizen"—it has a nice sort of *Tale of Two Cities*, Dickensian ring to it, but I am going to respectfully suggest to you that you might modify it somewhat. I hope you do not think my point is nit-picking, but, rather, that it adds, to use your own word, a highlight to your distinction. I make my point because the rights of the "citizen"

under the Charter are not as extensive as the rights of "everyone." In making your distinction, using simply "citizens," there could be created the impression that only Canadian citizens have rights under the Charter.

I know that you remember, for example, that under section 2 of the Charter everyone has the fundamental freedoms set out therein. Section 3, which deals with democratic rights, refers to every citizen of Canada; you are quite right. Section 6, which deals with mobility rights, surprisingly enough refers to citizens, not to everyone.

In section 7, which was the principal basis for the Morgentaler decisions, the Charter states that "everyone has the right to life," and so on. Section 8 states that "everyone has the right to be secure against unreasonable search or seizure."

So, while I totally support your position, I ask you to consider modifying it. Sections 9 and 10 refer to "everyone;" section 11 refers to "any person;" and section 12 refers to "everyone." Section 13 refers to "a witness," which could include someone who was not a citizen. Section 14 is the same. Section 15, dealing with equality rights, refers to "every individual." Section 17, which has to do with the official languages of Canada, refers to "everyone" in both subsections. Then on minority language educational rights reference is again made to "citizens." Enforcement is available, under section 24, to "anyone."

I repeat that I think your distinction is important, but I ask you to consider whether it would be better to talk about "the people's Constitution" so that we can reinforce the fact that, particularly under our system where the Queen's "protection" is not limited to citizens, those people who are not citizens still have rights—Charter rights, in particular.

Professor Cairns: I accept your qualification, senator, although I am a little unhappy at the damage it does to my rhetoric. I think the word "citizen" carries a constitutional import that the word "people" does not, and I am trying to identify those rights bearers who are citizens as having roles in the constitutional order. But you are quite right, some do and some do not apply exclusively to citizens.

Senator Marsden: I have a specific question on the distinction made between the governments' Constitution and what I will refer to as the "citizens' Constitution," for the moment. Let me first say that I think, Professor Cairns, that you are one of a very small number of people who have ever understood, or even bothered to try to understand, the events and feelings which caused the women of this country to unite and fight for sections 28 and 15 of the Charter in 1981 and 1982, and which are causing us to do precisely the same thing again. Your view is very much appreciated. What you are telling us is that the 11 ministers have accomplished an old-fashioned coup d'état—the restoration of the monarchy, or in this case the governments' Constitution.

The Deputy Minister of Inter-Governmental Affairs made a presentation on February 2 to the Ontario Select Committee in which he said the following:

> On the 17th of April, 1982, flags in Quebec were flown at half mast. In the eyes of many Quebecers, the new amending formula arbitrarily took away the historical constitutional veto of the Government of Quebec and subjected Quebec's future place in the federation to the discretion of the other provinces.

One could interpret that to mean that now it is the Quebec citizens who have a role in the Constitution, to follow your line of analysis, which also suggests a kind of government patronage model—women, aboriginal people, multiculturalism, now Quebec, next fish, the Senate, and on and on it goes. Could you comment on whether you think that is, in effect, what is going on, or is there something quite different going on in terms of the quotation I have just read and the Meech Lake Accord?

Professor Cairns: I am not completely sure I have the focus of your question, senator, but let me try a quick response so as not to consume too much time. If I do not have it, perhaps you can return to the query. One of my own concerns about accepting the phrase "citizens' Constitution" is that there is a way in which it might well be divisive, because particular groups might see themselves as having particular niches or parts of the Constitution that belong to them. Of course, the nation-building purpose of the Charter was to produce a coast-to-coast community of rights-bearing Canadians who would possess individual rights in common. It seems to me that most of the presenters before the joint committee have been there as defenders of particular clauses rather than as defenders of the Charter idea as a whole. Therefore, you get many more people talking about section 27 or section 28 or section 15 than you do about mobility rights or the rights contained in sections 2 to 14. Once we get to equality rights, political interest picks up again.

Possibly behind your question was a concern that I share, if I have the question correctly, that I think we are "ad hocking" it a great deal, and that we really need some kind of political theory or constitutional theory which makes sense of the tremendous amount of constitutional change that we are asking the system and the Canadian people to digest. From that perspective, I think annual constitutional conferences are about the last thing we need right now. I think we need a period of reflection, a period of consolidation, a period of trying to make sense, rather than a continuation of the kind of rhetoric and frantic pace of change which seems to be a response, in many cases, to individual lobbying groups. The way in which section 16 got into the accord, for example, is presumably because two particular communities managed to get access to some government minister between Meech Lake and the Langevin Block. Although, retrospectively, attempts have been made to cover that up with a glossy principle, I think it is *ad hoc* politicking. I am concerned about a Constitution which gets subjected to so many of those kind of ad hoc interventions by individual groups who are trying to adjust their relative status vis-a-vis each other.

• (1640)

Senator Marsden: So, in your view, this does not resolve the historical problem which is referred to in Professor Cameron's statement about the historical constitutional veto of Quebec, or what Professor Breton said earlier that had been asked for, which is the recognition of "distinct society," in the preamble. If I understand you correctly, you are saying that the Meech Lake Accord neither resolves that historic problem nor avoids the ad hoc problem of creating yet another constituency for the Constitution.

Professor Cairns: All I can say is that Mr. Bourassa seems to view the Meech Lake Accord with the extension of the unanimity principle and with the extension of the compensation principle with respect to the new definition of the spending power to meet Quebec's objections. So I take it that that is a satisfactory response so far as that government is concerned.

Senator Marsden: Do you consider it satisfactory?

Professor Cairns: Well, in terms of meeting that political response, that political demand, yes.

Senator Stewart (Antigonish-Guysborough): Professor Cairns, you say that the process by which the Meech Lake constitutional amendment was achieved is now open to a charge—not a conviction but a charge—of illegitimacy. I am interested in the result of the process. Let us say that none of the groups to which you referred feels seriously aggrieved by the result. Would questions be raised about the process; and, to come to the real nub of the question, do you think that there are aspects of the result which, quite aside from the process, could be regarded as illegitimate?

Professor Cairns: I do not really know how one could regard a particular result as illegitimate independently of the process that has produced it—that is, if it is not illegitimate for that process to have taken place, I cannot quite see, unless one has some particular definition of what a constitution must be about in all circumstances and at all times, how one can regard the outcome.

Senator Stewart (Antigonish-Guysborough): Let me put my question in a different way. Let me ask you if you think that, regardless of its legitimacy, the process has had results which are undesirable?

Professor Cairns: I myself regard the overall provincializing thrust of the Meech Lake Accord as undesirable from my perspective of what I think is the way I would like the national government to be constituted, to operate, to have responsibilities, to treat Canadians as members of a national community. I understand, of course, that there are competing visions of what the federal system is all about, but I do not accept that the Meech Lake Accord is a kind of pendulum response to the centralist nature of the 1982 Constitution Act, because I view the 1982 Constitution Act as a compromise in which there were significant provincial elements and significant central government elements of victory—in the sense of the Charter, not in terms of jurisdiction. So I do not particularly think that any balancing in that sense was required.

[Professor Cairns.]

What seems to have happened is that the other provincial governments used the political power they wielded in the amending process to extract for themselves everything that was granted to Quebec, with the exception of the "distinct society" clause, and with a few other bonuses thrown in for good effect.

What I find unfortunate about that is that there seems to have been no discussion anywhere throughout this whole constitutional process that this significant injection of a provincializing element into the Canadian Constitution is desirable because of various demands from the international, domestic or some other environment. That is, the whole discussion seems to have occurred independently of what the political system is doing or is expected to do in the future. It seems to have been entirely a contained internal response to a problem in the federal system of the non-signature of Quebec, which was politically important, as that response got worked out through the bargaining power of the other nine provincial governments in a context in which the federal government, for whatever reason, did not come with a competing vision of a national community which could have produced some sort of compromise, as in 1982.

Why that did not happen I do not know. Perhaps it could not have happened given the genesis of the demands from the Government of Quebec. I do not have an answer to that. But it does seem to me to be a one-sided response, for which Canadians in the future might pay the price, and which they have not been told they will pay.

Senator MacEachen: Professor Cairns, I will begin by thanking you for your intensely interesting presentation, in which you brought to our attention the citizens' Constitution, so to speak, and the proposition that the citizen had not been able to participate in the formulation of the constitutional proposals. That suggests to me two thoughts on which I would like you to comment.

The first is that following the development of the constitutional proposals the House of Commons has dealt with them, approved them, and certainly they are the best representatives that we know of the citizens. Likewise, all of the provincial legislatures will have to deal with the constitutional proposals—vote them down or accept them—and here again, presumably, the legislatures will be sensitive to the citizen point of view. So my question is: Does that not mitigate to some extent your concern about lack of citizen participation?

The second part of my question is: What has happened to the outraged constitutionalists in our society, and what are they going to do about their outrage? They have probably lost the opportunity insofar as the House of Commons is concerned, but they have the opportunity in at least six or seven of the legislatures which have not yet approved the constitutional text.

For example, in my own province the legislature has not yet dealt with the constitutional text. However, there will be no legislative committee. The government will put forward the resolution and get it passed as quickly as possible. But what I

find disturbing is that the citizens themselves do not seem to be enraged to the point where they can bring influence even on provincial legislatures, which I think is somewhat easier than bringing it on the Parliament of Canada. Your province of British Columbia is part of the process. I ask you to comment. It seems that there is in the country, even among the outraged constitutionalists, a reluctance on the part of the citizenry to exercise their responsibility within their own provinces with respect to the Meech Lake Accord.

● (1650)

Professor Cairns: In a sense, your latter comment answers your first question—should we not be satisfied that the matter does have to go through the ten provincial legislatures and the two federal legislative bodies, and has already received the support of some. For a variety of reasons—one of which, I suppose, relates to electoral prospects in the province of Quebec—it seems to me that the lining up of both opposition parties, through their leaders, at least, and the federal government, or the Conservative incumbant party behind the Meech Lake Accord, has made it quite difficult for dissenters to make their grievances known. A negative by-product of the unity of the three major parties in the House of Commons has been that the inquisitive aggressiveness, which often, by exploration, peels back some of the negative aspects of an activity of government in any sphere, simply has not taken place. So I think there has been a certain "bottling-up" of information, which has deprived those who might otherwise be concerned, outraged citizens, of resources which they might use to intervene.

The fact that not all parts of this agreement were subject to unanimity in terms of the 1982 amendment, but were treated as if they were subject to unanimity, in a way, does a disservice to the cause of having information about the process disclosed to the general public, because since all 11 First Ministers agreed in two meetings in private to put the accord to their legislatures in the context of party discipline—and in most provinces there will be no public hearings—there has not been a great deal of publicity about the Meech Lake Accord. In some provinces, such as British Columbia, the citizenry has been left in the situation of—and I do not know whether or not it is benign—relative ignorance. So, except for the efforts of those few groups who have managed to get mobilized to appear before the joint committee and before this Senate Committee of the Whole, the recognition of some of the negative features of the accord have not been drawn to public attention. For example, it is only very recent—the ink is almost still fresh—that the volume by Bryan Schwartz, called "Fathoming Meech Lake", a publication of the Legal Research Institute of the Faculty of Law of the Univeristy of Manitoba, was published. It is extremely disquieting. I would say that it is a devastating criticism of the Meech Lake Accord both in terms of process and of substance. The book has only been available for a couple of weeks, because it is not easy for individuals to mount comprehensive critics of the second most significant constitutional change we have experienced in our history. So some people such as Bryan Schwartz, who, I gather, played some kind of role as an adviser to the Manitoba delegation, have done what they view as their mix of citizen and academic duty and pointed out what they think are problems with Meech Lake.

I suppose what others will do, if the Meech Lake Accord does go through, is try to put the pieces together after the fact and see what can be salvaged. That is, they will argue with respect to Supreme Court appointments, for example, that conceivably the federal government could say, "All future nominees for Supreme Court appointments will be referred by us to this committee composed of the following representatives from the Canadian Bar Association, citizen groups, etc." That is, we may get various responses after the fact to try to restore some elements of constitutional order which they think have been damaged by this process. One other response might be to try to make sure that the annual conference on the Constitution does not turn into an annual recipe for ongoing provincialization, that we do not get annual Meech Lake Accords.

I think this process of the accord is only justified, if at all, as an extraordinary response to an extraordinary situation. I wish the federal government had so defined the accord that we could then take it out of the stream of precedent. Instead, they seem to be saying that this is the preferred way of changing the Constitution from now on, which I find deeply disturbing, primarily because I view constitutional change in the same way as judicial decisions which should involve judge and company. I think constitutional change should involve governments and company, so to speak, and the "and company" includes the citizenry, constitutional commentators in the academic community, and so on. These people cannot do their job if they are not provided with the raw resources of public explanation by governments of what they are trying to achieve. We have not been provided with those resources this time, so it is extremely difficult for us to engage in dialogue, because the government, aside from the important fact that they are bringing Quebec into the constitutional family, has not levelled with us on the probable consequences of particular clauses and what they think they will do to the Constitution. They have not done this, so it is very hard for us to debate with them. We should try to insist that in the future governments not be allowed to get away with constitutional change in that irregular fashion—by announcement and fait accompli, and by saying that only egregious errors will be looked at and that they will define them. It is simply unacceptable in an old political system such as ours.

Senator MacEachen: Mr. Chairman, I have one follow-up question.

The Chairman: Would you be very short, Senator MacEachen?

Senator MacEachen: Yes. Eleven governments have not in fact agreed. At least one government has not agreed—the Government of New Brunswick. I cannot say what the Government of New Brunswick will do. However, suppose that this new legislature, which was not involved in the discussions, decides to amend the constitutional accord. The First Ministers cannot dictate that no amendments will take place. If New

Brunswick amended the constitutional text, what, in your opinion, would be the next step in this process? In addition, if the Senate of Canada amended the constitutional text, what, in your opinion, would the next step be there? Would the House of Commons have to consider that text? Would the provincial legislatures have to consider it? I raise these points as they have interested me, and I would like your opinion as to what would develop in the event.

Professor Cairns: Some parts of your question are probably better answered by a constitutional lawyer than by a plain political scientist, which is what I am. I would assume that if the Senate of Canada proposes an amendment it only has a delaying power of 180 days, I believe, from the time it receives the resolution.

• (1700)

Senator Frith: I believe that is from the time that the House of Commons passes its resolution.

Professor Cairns: Very well. In any event, there is a time limit. It does not have an actual veto power. It can simply delay the process. It seems to me that if it were to amend, that is simply a public message to other actors in the political system that whatever the change is that you are introducing indicates certain dissatisfaction on the part of the Senate with the Meech Lake Accord, and they will or will not pay attention to that as their political interests and constitutional concerns dictate.

The position of the Government of New Brunswick is quite different in that it does have a veto, as, of course, does the Government of Manitoba, which is the other problematic government because of its slim majority in the house and the difference of opinion held by the New Democratic Party as to the virtues of the Meech Lake Accord.

I suppose that Premier McKenna of New Brunswick, assuming some dissatisfaction with the accord, could either pass an amendment or do something a little bit more innocuous by indicating the specifics of his government's dissatisfaction with the accord, which he would then take back to the bargaining table of the 11 First Ministers to see what changes, if any, could be introduced. If there was a positive response, then he would have achieved his objective; if not, he would then have to decide whether to proceed or not proceed.

I certainly find it unsatisfactory and offensive to be told that one cannot go back to the First Ministers and indicate that some modification of their achievement should be considered by them. There were improvements between Meech Lake and Langevin in that very limited timeframe, which I believe even the Prime Minister has admitted. Therefore, I think there is room for improvement, and if the Senate has concerns it should express those concerns.

What other actors do, I assume, is their choice. New Brunswick can influence the process, because it has a *de facto* veto. Also, I suppose it is not out of the question that, depending on what parts of the accord New Brunswick's unwillingness to acquiesce might affect, the federal government and the other nine provincial First Ministers might disentangle the accord and remind all Canadians that not all of it really was subject to unanimity; some was, but some was subject only to seven provinces and 50 per cent of the population. Therefore, your objections would be insufficient to kill it if they referred to those parts. That would include a fall-back extrication by the federal government.

The Chairman: Thank you very much, Senator MacEachen. Unfortunately, our time has run out. Professor Cairns, thank you very much for coming here to share your views with us. They have been very helpful to us.

Pursuant to Order adopted on June 18, 1987, Mr. Alex B. Macdonald, Q.C., was escorted to a seat in the Senate chamber.

Our next witness this afternoon is Mr. Alex B. Macdonald, Q.C. Mr. Macdonald has given us a copy of his notes, and these have been distributed to all honourable senators. As well, we have put on senators' desks a résumé of Mr. Macdonald. I will not go into details, except to say that he has the distinction of having sat here in Ottawa as a member of Parliament. He also sat as an MLA in his province of British Columbia, where he was a cabinet minister.

Mr. Macdonald, our normal practice is to proceed for 15 or 20 minutes and then proceed to a question period. Unfortunately, we must cease our hearings at six o'clock, because, under our rules, the Senate must rise at six o'clock. If time runs out, I may have to cut the questioners off. Therefore, if you are ready to proceed, Mr. Macdonald, please do so.

Mr. Alex B. Macdonald, Q.C., Professor, Simon Fraser University: Mr. Chairman, I am ready to proceed. I am very pleased to be here. I could say many things about the Canadian Senate, because my uncle, Mr. J.H. King, was government leader in the Senate. There was one point when he took umbrage, when I kept referring to the chamber as the "red chamber." However, he was a distinguished leader in the Senate when I was very young.

Mr. Chairman, I intend to speak from my notes rather than to read them. I am trying to envisage what the Meech Lake accords will do to the Canada of my grandchildren and yours, and to look at the situation in a very practical way. Although in these accords we are not merely passing another statute, at times it almost sounds as if we are: We have left out the North. We will fix it up next year. We have left out Senate reform. We will fix that up at another conference. It is being treated almost as if it were another statute.

Mr. Chairman, we are carving out the constitutional future of Canada for at least the next 100 years, and we are making a very basic change which a good Canadian premier, namely, Robert Bourassa, described in these words, immediately after the signing of Meech Lake. He said: "Canada is to be a much more decentralized country than it was last Wednesday."

I do not know of many constitutions—and here I am thinking of Australia, Germany or the United States—which grant to one of their federated states powers which are so clear, so important, and so watertight in their interpretation. That was what was said about this agreement in the *Toronto*

Star on May 4, 1987. In fact, this accord represents a major shift in the direction of a country that Wilfrid Laurier said should inherit the 20th century.

Honourable senators, I have listened to the discussion this afternoon and I have put down the basic reasons why I think that the First Ministers should be asked to return to the table. I know that is difficult, in view of the expectations that have been raised, particularly in the province of Quebec, but I think that that is something that will not come as too much of a shock for this country, which has the prospect of becoming a great country of the world. I think it is quite possible to say to the people of Quebec—as it is to the people of any other part of Canada—that we cannot have such a constitution in a modern, closely-interknit, global village where even national states have the greatest difficulty protecting the welfare of their citizens from the buffeting of monetary crises, trade cartels, and the like. It is clear that you cannot confer the necessary social and economic benefits and fairness on the people of a country to make it a great nation when you have balkanized that nation. After all, the provinces cannot do those things. They do not have coinage; they do not have a central bank; they do not have a common market, although they are part of a common market. Only the national government can do those things.

Therefore, honourable senators, in my brief I have set out my three basic concerns. I submit that these accords will fundamentally weaken the ability of the national government to meet the social and economic challenges of the modern world.

Somewhere in these pages I mention that John A. Macdonald and Étienne Cartier had a different kind of challenge to meet, because the world was different. They had the military threat from south of the border; they had the problem of how to prevent the western lands from being usurped; they had to try to develop some kind of public credit and put a railway across this country, if it was to be a country. Today our challenge is different. Our challenge is to give Canada a national identity, and be more than just an appendage or a follower or a satellite of one of the superpowers—in this case the superpower to the south. You cannot do that if the federal government—the national government—does not have the economic tools to set basic directions in social and economic matters.

People say to me, "What do you know about Quebec, la belle province?"

[*Translation*]

"You are a poor Scottish Canadian, perhaps an Indian from Vancouver."

[*English*]

As a British Columbian, looking at Quebec and loving the fact that its uniqueness is part of the richness of this country, I have some perspective in this matter. I think that by the weakening of the federal government, as I have been describing it and as Premier Bourassa described it, you will not have that strong government, along with strong provinces, which enabled Canada through the years to protect and to assist in the development of the Quebec culture.

If we follow the routes of the weakening of federal authority and—if I may say so, but I am out of order in saying so—if we lose the dictates over our own policy through free trade agreements, I see French-Canadian culture imperilled. Nobody seems to argue about that or say to the people of Quebec that there should be cultural, linguistic and educational autonomy. However, when you take economic and social powers away from your central government—it is yours as much as anybody else's—then, as Henri Bourassa said, you are getting close to la mer immense d'américanismes "saxonisant", if I can remember his words correctly. That was his fear.

The French-Canadian people recognized not only in 1865 but during the War of 1812 and the American Revolution of 1775 that they needed a Canada strong enough to give them provincial culture and autonomy. They did not go into the melting pot, but they are getting too close to it for comfort. The rest of Canadians are also getting too close for comfort to that melting pot, in my opinion, at the present time.

Not too long ago I was talking to Jean Chrétien. He said that Quebecers want a strong Quebec and a strong Canada. In his riding of Chicoutimi they elected a P.Q. and a strong federalist Liberal. In their minds there was nothing inconsistent about that, although logically there would be.

As you all know, there are a lot of people who are terribly unhappy about the process. However, let me go on to some of the practical things while my 15 minutes still abides. Let us talk about judges. I do not think that Robert Bourassa asked for this, but the provincial listings of appointments to the Supreme Court of Canada will mean, in practical terms, that the federal government will not be able to resist appointing a listed name from the province of Quebec for a vacancy—of course, someone with proper qualifications, somebody without two heads, and a good lawyer, and so forth. In time, the same will be true of Ontario. To resist will mean a Robert Bork case almost: "What are your reasons? Why are you doing that? We have the right to list names. This is an affront. Prove it before a committee that our nominee is unsuitable." There has been a provincial move in Canada for a long time—and when I was attorney general I did not participate in it—for provincial control of the appointment of superior court judges under section 96 of the Constitution. I can tell stories about how that has been used in terms of forcing the federal government to take such and such a nominee, but I do not have the time.

You are starting a trend here of the provinces naming the judges, those judges being representative of provinces and regions. I do not know how the West will work out the task of appointing its two judges. The provinces will either get together and create one list or they will compete with one another, but nobody has even discussed that point in any detail, as far as I know.

You are seeing a tilt in the judicial interpretation of the Canadian Constitution in favour of further provincialization in the Meech Lake Accord at the present time. In a period of

national crisis, the "6-and-5 per cent"—known as the anti-inflation case—was subjected to a court decision. I believe that there were three judges sitting with Chief Justice Bora Laskin. Justice Laskin said that this was a case with national dimensions; this was a matter that concerned all Canadians, and only all Canadians could cope with the problem. The 6-and-5 was upheld, but just upheld as an emergency, even though in this modern world most people recognize that the problems of inflation and unemployment and spending and deficits are all so closely intertwined and that they have to be tackled if we are to become a nation. So I regret this regression from the national authority in terms of the court.

You would expect spending programs to be close to my heart, and I suppose they are. I signed one of them a long time ago. The first matching-funds program was legal aid. At that time in British Columbia we were getting fifty cent dollars, but certain things were being done by that kind of program. You had the feeling you were not only getting some help to establish standards in British Columbia but this was going to spread *a mari usque ad mare*. You also had the feeling that it would be helping in terms of regional disparities, which are a bigger threat to Canadian unity than some of the other things that we talk about. With the national government drawing revenues from the richer provinces, the fifty cents they put up helps the poorer regions in social programs. Some people have called a halt to that process, because they thought we were interfering with section 92 of the Constitution—rights of the provinces. There were complaints, but I do not think it was the people complaining about 100 or so social programs; it was powercrats and provincial politicians. So the process was slowed down. No more were these programs imposed by constitutional usage. There was a great deal of consultation, and there would be.

In practice, the national spending power was being limited. But to rigidify that and put that in the Constitution so that whatever the social program, whatever the need is, you cannot set national standards? Can you not provide that incentive to spread some kind of a necessary social program from coast to coast, whether it is day care or educational enhancement? It could be medical in the future, because they say that the Meech Lake Accord applies to new programs. Change Medicare enough and it will be a new program. What's a matching fund program? Almost everything. It includes the Senate report *Only Work Works*.

● (1720)

But you cannot have a program like that, which, to me, sounds useful because it takes the money that is now going into welfare programs and puts young people to work so that they have a sense of pride. You have to have matching funds to do that. That will be the case under this arrangement, and there will have to be bargaining sessions, and the federal government will have to give more to the provinces in order to get the consent of all of the provinces, or the federal government will have to give some province a contract to build frigates. Perhaps British Columbia will be given a contract to build frigates if it agrees to some further advance in the constitutional debate, I just do not know.

I think we are balkanizing this country. I think my 15 minutes are just about up. I hope that people will then—

The Chairman: You are doing quite well.

Mr. Macdonald: I have many points that should be considered, but let me finish off properly by saying that I speak as a British Columbian and as a Canadian. By all means, let us support the legislative authority of the provinces to deal with provincial problems; equally, let us support the ability of the common centre to meet the great challenges of our times—unemployment, inflation, provincial and regional disparities. I think the ministers should go back to the table. I think that would be good for Canada and even good for them.

The Chairman: Thank you, Mr. Macdonald.

Some Hon. Senators: Hear, hear!

The Chairman: The first questioner will be Senator Perrault, followed by Senator Marsden.

Senator Perrault: Mr. Chairman, honourable senators, I have known Alex Macdonald for many years. We served in the British Columbia legislature together, and he has not lost one ounce of his fire or eloquence. He has made an excellent presentation this afternoon.

With respect to the manner in which this agreement has been brought into being, many have said it has been almost ushered into this world in furtive haste. In Australia all constitutional changes are put to a public referendum. They must achieve 50 per cent of the support of the general population as well as the support of all of the states. Would you suggest that a public referendum would be the desirable form of deciding on this issue in the ultimate?

Mr. Macdonald: I just wonder whether so complicated a matter, with so many clauses and subclauses and amending formulas, can go to a referendum. But I think if the ministers agreed to return to the negotiating table, and the legislatures and the Parliament held committee meetings to deal with the outstanding issues, that that would be much better. Some of those outstanding issues have been cleaned up, but the Parliament of Canada and the legislatures of the provinces could listen to people. What's the rush? What if it takes two or three years for that process?

This process is like Alice in Wonderland, sentence first, verdict after. We are committed. We have an expensive car that we agreed to buy and now we are sitting around in committees and appraising the value. It is too late.

Senator Perrault: The Leader of the Government in the Senate has suggested that this agreement is some sort of gossamer web, and that if we pull one strand the whole thing will come apart and that will be a disaster for the country.

But he did say, as you may well know, Mr. Macdonald, that if the agreement contained some sort of egregious error the government would go back to the drafting board.

Would you categorize your concerns as being egregious errors?

Mr. Macdonald: Some of this is amusing. They say that Canadians are dull, but if one reads the joint committee report on this one will see that there is a great deal of humour in it, although it is unconscious humour.

For a modern country to have an amending formula with respect to the Senate—I raise that because this is where I am—that gives our good friend Joe Ghiz a veto and, at the same time, allows him to name, over time, his four senators—and everybody has a veto. It is Alice in Wonderland, the Canadian soft option disease: "Everybody shall win, everybody shall have prizes. If Quebec wants a veto, give everybody a veto and we will solve the problem."

Senator Perrault: We have been reminded on a number of occasions that that negotiation represents a masterful piece of work, although several of the premiers have said that they received things they did not even ask for. I wonder, Mr. Macdonald, if you could tell us how you qualify the style of negotiation which this agreement represents. Do you think this agreement is the result of tough bargaining or concession on the part of the federal government?

Mr. Macdonald: No, I do not, and I think the point is so important that I will quote from the Meech Lake negotiations. It is important because creative federalism has got to be in a state of tension. There is bargaining back and forth. There is a bit of a quarrel always going on for power, perks and patronage. Those are the creative tensions that make a federal country important.

Premier Pawley was a very bad boy. Out of school he talked about the secret meetings with Francis Russell of the *Winnipeg Free Press*. He said: "Mulroney never once defended the national government's powers, but I felt that he was not unhappy that Peterson and I were doing that."

That sounds very political for me, and I am not trying to make this into a partisan debate, but I do not think every item in the Meech Lake Accord represents power flowing out from the centre to the peripheries.

I defy anyone to name one item where there was an egression of national authority to deal with the modern world, not one that I can see.

Senator Perrault: I had some questions on the North, but I will pass. I thank Mr. Macdonald for his responses.

The Chairman: Thank you. I now call upon Senator Marsden, followed by Senator Stewart (Antigonish-Guysborough).

Senator Marsden: Thank you, Mr. Chairman. Mr. Macdonald, I appreciate the comments you have made on the spending power, but I should like to ask you another question at this point. The previous witness, Professor Cairns, in another forum, said that the proper question to ask of the premiers was: What did they ask for and what did they get? We know what Premier Bourassa asked for and we know what he got.

Do you have any idea what Premier Vander Zalm asked for and what he got?

Mr. Macdonald: I think he said publicly—my premier—that he was against French on Corn Flakes boxes, and so forth. But he is a good hearted Canadian. I do not think that is a real prejudice. He said that he was against Bourassa's demands at the beginning, but when he went away he had such a fine feast offered him at Sussex Drive that he agreed. He now has the power to appoint prospective senators. He has the power to appoint judges. He will go for the rest of the judges under section 96. He will say, "If I can do it for one, why are you interfering with the other superior court judges?" He also has a veto of his own, which he may give up for something. That is the danger once you begin a one-way irreversible decentralization process—it can snowball.

Senator Marsden: You have also suggested this afternoon, twice, that the premiers should go back to the table and try to get something better. If that should happen—and most of our witnesses have suggested that that would be a very good thing—would not what you have just referred to occur with Premier Vander Zalm coming in with something he wanted? Why would that lead to an improvement?

Mr. Macdonald: The people did not speak on these proposals prior to the two Meech Lake meetings. My suggestion is that we hear from the people of Canada in the process of the First Ministers returning to the table.

Senator Marsden: Thank you, Mr. Macdonald.

The Chairman: Next on the list is Senator Stewart (Antigonish-Guysborough), followed by Senator Marchand.

Senator Stewart (Antigonish-Guysborough): Thank you, Mr. Chairman. Mr. Macdonald made reference to the method by which the judges of the Supreme Court of Canada are to be appointed under the Meech Lake provisions. I am seeking clarification. I believe Mr. Macdonald said that the government of a province might insist that "a listed name" be accepted by the Governor in Council. Did I hear that correctly? Does that imply that a province could submit a list consisting of only one name?

• (1730)

Mr. Macdonald: Yes. I do not see why it cannot be a list of one name, or a list of two names with one that is so obviously ineligible that, in effect, it is a list of one name.

Senator Stewart (Antigonish-Guysborough): I have heard that view before. I am asking you the question because you have had extensive legal experience. Do you know of any precedent that might help us with regard to the meaning of the word "list" in a context such as this?

Mr. Macdonald: No, I don't. You say that you have the right to "list." It could be interpreted that that means that you must have at least two names. However, I do not think it does. I know of no precedent.

Senator Stewart (Antigonish-Guysborough): But you are saying that, in your view, it might well be just one name, or, if

that proved not to be acceptable one way or another, the list could be compiled so that the other people on the so-called list were disqualified by reason of, for example, professional incompetence.

Mr. Macdonald: If Premier Vander Zalm, for example—to take a name, which I should not—wanted to have his "Bork" appointed to the Supreme Court of Canada, he would list the name if there was a B.C. vacancy. If the government said, "That is only one name," he could add a couple of other names on there that would be totally unacceptable so that, in effect, he is pushing one name. The result is that the federal government rejects the others. It then starts the whole process. He could say, "You have accepted them from other provinces, what is wrong with this person? Prove that he is unacceptable." It is difficult to do.

Senator Stewart (Antigonish-Guysborough): You spoke now of a B.C. vacancy. Are you suggesting that under the Meech Lake system not only will there be a certain number of places for Quebec but that each of the other provinces will develop, by convention perhaps, a claim to so many places or a place whenever the opportunity occurs?

Mr. Macdonald: The court is composed of nine persons. Out of that number, constitutionally three are for Quebec; Ontario traditionally has three members; there are two for the West spread over four provinces; and the North has nothing. It is difficult to understand how these two from the West will be chosen. Will they draw straws as to which province can submit a list or will they get together? I do not know. But it will be quite a game that will go on.

We were making some progress as a nation into improving the already high quality of the judges of the Supreme Court of Canada. They were not patronage appointments, they were going through the CBA, and other things were in the works. We have now stepped back and given it to the provinces in the way that I have suggested, with none of the safeguards as to quality and non-partisanship that were slowly emerging.

The Chairman: Thank you, Senator Stewart. I have four more names on my list, so I will have to cut the list off. We have a little less than 20 minutes, so I will have to ask each one of them to keep their questions down so that I do not have to use the gavel.

Next is Senator Marchand, followed by Senator Olson.

Senator Marchand: Thank you, Mr. Macdonald, for appearing in the Senate, and thank you for your excellent presentation. Welcome to the Senate from one British Columbian to another.

There are many questions to raise. I agree with the thrust of your statement so much that I find it difficult sometimes to frame some of the questions that I wanted to ask.

You have been involved in provincial government in the legislature for a number of years. The people of the Yukon and the Northwest Territories were extremely unhappy about many things in the Meech Lake Accord, but one in particular was the formation of new provinces. As you know, under the Meech Lake Accord unanimity is now required before new provinces can be formed. The Yukon and the Northwest Territories are thinking at some point in the future of becoming provinces.

Would you comment upon that? They would like—and I support this—to become a new province by direct negotiation with the federal government. Personally, I agree with that.

Mr. Macdonald: I do not know why we have tightened up that process of new province formation in this kind of unbelievable way. Originally, when we were a British colony, it was the British Crown that could carve out a new province. Then it was the federal government with the Alberta Act and the Manitoba Act. Under the 1982 Charter it was under the amending formula, which was two-thirds of the provinces plus 50 per cent of the population and that the new province not touch the boundary of any other provinces. Now the criterion is unanimity. We are closing the ability to make that provincial decision to an incredible extent, and I do not know why we are taking it away from the national government, even though it is not within provincial boundaries.

Senator Marchand: Do you agree with it?

Mr. Macdonald: No, I think it is an injustice to the people. I do not think they may be ready to become a province, but we are telling them that they are second-class citizens, that they are kind of out there in the North—mainly a native population, I may say; first Canadians—and that they are not really part of the mainstream, but if they are good people and get unanimity they might be some day.

The Chairman: Thank you, Senator Marchand. Next is Senator Olson.

Senator Marchand: I am not finished. May I ask one more question?

The Chairman: It will have to be fast, Senator Marchand. I have three other questioners.

Senator Marchand: I have one question on process.

Why aren't the people of Canada raising hell about Meech Lake? You heard Professor Cairns, and you heard this question from Senator MacEachen earlier. Why are they not raising hell? They should be raising hell about the Meech Lake Accord.

Mr. Macdonald: Because they have been let down by the party discipline system. Most of them have given up, because the three parties, through their leaders, all said, "Me, too,"—I presume for electoral reasons. In British Columbia people are saying that the premier will not hold hearings, it will be party discipline. And even if you do get the opposition to change its mind it will be majority endorsement. People become apathetic, and they are poorer Canadians for that.

The Chairman: Thank you, Senator Marchand. Next is Senator Olson.

Senator Olson: Mr. Macdonald, I would like to refer you to your notes where you talk about the national shared-cost programs. Based on your experience as a member of a provincial cabinet, what do you think will happen to some of the

programs that we have now? There is some renewing of the arrangements, for example, with Medicare and other cost-shared programs. You say, for example, that a provincial right to take the money and run is subject only to limitations as objectives or initiatives. As these programs come up for renewal, if these amendments are made to the Constitution where there is a financial compensation alternative, do you think they will renew these programs?

Mr. Macdonald: I am speaking now as a politician. If I were a national politician and knew that I could pony up money in a great social program that I would be proud of, but knew that a province could, on its own initiative, take the national money—because there are no set standards—and implement a program on its own, I would be inclined to say, "Let's spend the national money in some other way." I think there is a political disincentive, and I see, for example, Monique Bégin's gallant fight to stop extra-billing never happening again if this goes through. We are balkanizing. We will have better medical services in British Columbia than we will have in Newfoundland.

• (1740)

An Hon. Senator: Oh, oh!

Mr. Macdonald: Yes, we will, because we are a richer province and we are moving away from national standards under the terms of this Meech Lake Accord.

Senator LeBlanc (Beauséjour): Mr. Chairman, we may have a little more time, because Senator Olson asked exactly the question I had in mind.

However, I would comment on the fact that Mr. Macdonald, representing a province which is a "have" province, seems to be worrying about the distribution of wealth. On the other hand, at least three Atlantic premiers have gone along with this deal. I would like to know if Mr. Macdonald has any insight regarding how they intend to face their electorate if, for example, at one point it means poorer medical services in one of the "have not" provinces versus one of the "have" provinces.

Mr. Macdonald: If I were still running in British Columbia, would it be a political problem? I do not think so. I think that generally people in Canada wanted to correct regional disparities. I think the equalization programs were generally popular. I do not know what Senator van Roggen would say, but I did not find provincial backbiting about making us a country with reasonable standards from coast to coast.

I cannot speak for the Atlantic provinces. It is hard to make this a political issue. It is of grave concern to the country, and it should be a political issue, especially in places like Atlantic Canada, but, from my distance, it does not seem to be.

Senator LeBlanc (Beauséjour): In case I was misunderstood, I should like to say that I was thanking Mr. Macdonald for raising this issue, because I too am astonished as to how silent my part of the country has been. We would have been desperate had it not been for equalization—which we enshrined in the Constitution in 1982—and for cost-sharing programs. I also point out that over 90 per cent of university expenditures are covered by federal grants.

Thank you very much, Mr. Macdonald.

Mr. Macdonald: All of the political leaders said, "This is great." They should not have said that, and particularly the social democratic side should not have said that, because it shut off so much debate. People said, "If three of them think it is all right, then it must be O.K."

[*Translation*]

Senator Guay: Thank you, Mr. Chairman. First, I wish to sincerely thank Mr. Macdonald for his excellent presentation.

[*English*]

Being one of those westerners who is part of a large population of French-Canadians in western Canada, St. Boniface, I appreciate your comments on No. 3, which you submitted to us, and I would like to quote it. You state the following:

> A weakened Canada will no longer be able to cherish and preserve its unique cultures; in particular French-Canadian language and culture will slowly but surely drown in the vast North American market place.

Although I know time is short, I would appreciate it if you would expand on that.

Mr. Macdonald: I do not know what more I can say. The Americans are our closest allies in everything, but that market creates its own cultures, and you need these central powers to make a nation of Canada that is distinctive. You should not weaken that too much. Without that centre British Columbia will just be north of California and Manitoba may be part of the midlands of the United States.

I think the federal government has done a pretty good job of protecting the French language in Canada. I, for one, applaud it, although my French is mauvais. I think we are weakening it in respect to the anglophone minority in Quebec and the francophone minorities in the rest of Canada. This is a very bad thing from their point of view.

The Chairman: Senator Marchand, I cut you off in your questioning. If you wish to ask your question, there is some time left.

Senator Marchand: I have lost the context. My question would be a little disjointed now. I am satisfied with the answers given to me by Mr. Macdonald.

The Chairman: I apologize for cutting you off earlier, but it was a problem of time.

This concludes the questioning. Mr. Macdonald, I want to thank you for coming from British Columbia to share your views with us.

Some Hon. Senators: Hear, hear!

The Chairman: Is there a motion that the committee rise and report progress?

Senator Frith: Mr. Chairman, I move that the committee rise, that the chairman report progress and ask for leave to sit again.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

[*Translation*]

The Hon. the Speaker: Honourable senators, the sitting of the Senate is resumed.

REPORT OF COMMITTEE OF THE WHOLE

Hon. Gildas L. Molgat: Honourable senators, the Committee of the Whole, to which the Meech Lake Accord and texts subsequently agreed to were referred, reports progress and asks for leave to sit again.

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

Hon. Senators: Agreed.

The Hon. the Speaker: Honourable senators, when shall this committee have leave to sit again?

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I move that the Committee of the Whole be given authority to sit again on March 2.

Senator Molgat: Honourable senators, I propose that the Committee of the Whole be given authority to sit during the next sitting of the Senate, because there is a report I would like to make tomorrow.

Motion agreed to.

The Senate adjourned until tomorrow at 2 p.m.

THE SENATE

Thursday, February 11, 1988

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

Prayers.

THE HONOURABLE A. IRVINE BARROW
THE HONOURABLE JEAN LE MOYNE

TRIBUTES ON RETIREMENT FROM THE SENATE

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, if, as expected, the Senate adjourns today until March 1, between now and then we shall lose two valued colleagues, two excellent senators, who will reach the age of 75 and compulsory retirement. Senator Irvine Barrow retires on Monday next, February 15, and Senator Jean Le Moyne retires on Wednesday next, February 17.

Senator Barrow has been in the Senate for the past 13 years. The Leader of the Opposition the other day referred to the excellent timing that was present in 1963 when Senators Phillips, Walker and Bélisle were appointed to the Senate in the dying hours of the Diefenbaker government. In the case of Senator Barrow, the press release announcing his appointment arrived in the Parliamentary Press Gallery as the vote was being taken in the House of Commons on the day that the Trudeau government lost a confidence vote on the budget in 1974. So the instrument of appointment for Senator Barrow was, I suspect, the last document His Excellency signed before the Writ of Dissolution of that Parliament arrived at Government House.

Senator Frith: Going out in a blaze of glory!

Senator Murray: That Parliament went out in a blaze of glory, as Senator Frith suggests.

Before Senator Barrow was summoned to the Senate he was an eminent member of the chartered accountancy profession of Nova Scotia, a most generous and active contributor to many good causes in the community, a governor of Dalhousie University, and was active in the Maritime Provinces Board of Trade and the Atlantic Provinces Economic Council. He is a former director of the Bank of Canada and of the Industrial Development Bank, and served as chairman of the Halifax-Dartmouth Metropolitan Committee on Problems of Regional Development.

As I think all honourable senators know, throughout his time in the Senate he has been a valued member of the Standing Senate Committee on Banking, Trade and Commerce, and for a time was its chairman. He was also a member of the Internal Economy Committee and played an extremely important role as chairman of the Subcommittee on Budgets.

I simply want to record publicly my appreciation, that of the government and that of my colleagues for the splendid record of service of Senator Irvine Barrow to the Senate and, through the Senate, to Canada.

Hon. Senators: Hear, hear!

[*Translation*]

Senator Murray: Our friend, the Honourable Jean Le Moyne, is one of the greatest writers in French Canada. Already his first essays published in the 30s heralded *Convergences*, the masterpiece for which he received the Governor General's Award and the Athanas David Award in 1962, and the Molson Award in 1968.

Apparently ill at ease as a result of so much publicity, Jean Le Moyne decided to become Prime Minister Pierre Elliott Trudeau's ghost writer, a position he held between 1969 and 1978

This undoubtedly deprived us of a few masterpieces bearing the signature of Jean Le Moyne, but perhaps this is how we ever came to know a few others signed by Pierre Elliott Trudeau. As well, this is how he contributed to the proceedings of this august assembly.

Appointed to the Senate in December 1982, Senator Le Moyne was immediately carried away by the zeal of this institution. You are all aware of his outstanding contribution to our committees.

His eloquent speeches are probably the aspect of his work in this chamber that we will remember most readily.

Through his broad culture, his intense spirituality, and his enlightened interventions Senator Jean Le Moyne did contribute to raise the level of debates in this house. Even though I did not always share his views I could never remain indifferent to the nobility of his remarks.

So, to both Senator Barrow and Senator Le Moyne I say: Farewell, our best wishes go with you.

[*English*]

Much luck, good health and happiness in your retirement years.

Hon. Senators: Hear, hear!

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, most of you, if not all of you, will remember that last evening the Speaker offered his hospitality and that of his elegant chambers to Senators Barrow and Le Moyne, to the rest of us and to some guests to mark—I say "mark" rather than "celebrate"—the departure of these two valued colleagues. It is difficult to avoid repetition in paying the tribute that these two senators justly deserve. I say that because, after the appropriate comments made by the Leader

of the Government and the particularly appropriate comments made by the Speaker last evening, little is left to be said.

Therefore, I will make a suggestion that I hope will not necessarily become a precedent. Because I thought the words of the Speaker last evening were so appropriate, we should ensure that our fellow citizens have an opportunity to share them. Those words should appear in the records of the Senate so that what was an excellent expression of our feelings last night can be shared with the Canadians they served so well.

With your permission and support, I suggest that those comments appear as an appendix to *Debates of the Senate* for this day.

Hon. Senators: Hear, hear!

(*For text of His Honour's address, see appendix, p. 2775.*)

Senator Frith: I want only to add a comment about each of these valued colleagues and, I hope and believe, dear friends.

Concerning Senator Barrow, it has been justly said that he was a model senator. Although this is a personal comment, I make it as a former Deputy Leader of the Government and now as Deputy Leader of the Opposition, and to put it in the most simple terms, I can say about Senator Barrow that he always did whatever he was asked to do in performing his senatorial duties and he always did it well.

• (1410)

Hon. Senators: Hear, hear!

[*Translation*]

Senator Frith: As for Senator Le Moyne, I want to comment briefly on two aspects of his Senate work which struck me: his interest in languages, particularly Canada's two official languages, and the importance of a faithful translation of speeches and conferences here in the Senate. He wanted the translation to be both faithful and eloquent.

By the way, I believe he does not accept this cynical and perhaps chauvinist expression, but when I was a member of the Laurendeau-Dunton Commission I would be told that a translation is like a woman: if it is beautiful, it is not faithful; if it is faithful, it is not beautiful.

His other interest was poetry. One of Senator Le Moyne's many contributions other than his work here was his role as a poet. This combination struck me. Reflecting upon this mixture reminded me of a quotation, unfortunately not my own words but still: "Poetry is the mother tongue of mankind".

And in French I would say: "La poésie est la langue maternelle du genre humain".

[*English*]

That somehow struck me as a particularly appropriate way to describe not only Senator Le Moyne's interventions here but the way, the style in which we saw him live his life and the style in which we know he is going to continue to live his life and enrich all those who have the good fortune to know him.

Hon. Senators: Hear, hear!

Hon. Henry D. Hicks: Honourable senators, I should like to add a brief word even though almost everything relevant has already been said with respect to the two senators who retire within the next few days.

Senator Barrow and I were associates in various political endeavours and at Dalhousie University, where he was, as has been stated, a member of the Board of Governors for many years and chairman of the largest and most successful fund-raising campaign that that university had ever had up to that time. I have come to know and respect Senator Barrow very greatly over the years of our association.

Reference was made by Senator Frith to the fact that whatever he was asked to do in the Senate, he did. That applied throughout the whole of his career. I never worked with anyone like him—if phoned and asked if he would undertake a certain job, and if he said yes, you did not have to give it another thought. It was done exactly the way he said it would be done and it was done precisely when he said it would be done. I should add to all of that—and I think this is particularly relevant—that I have not known in my lifetime any person whose personal business and political integrity I would place ahead of that of Senator Barrow.

Hon. Senators: Hear, hear!

Senator Hicks: Senator Barrow has served us well in the Senate for almost 14 years. His departure will be a loss to the Senate and to the work of the Senate, and his departure will be a matter of personal concern and regret, as far as I am concerned.

I do not have the good fortune to have known Senator Le Moyne over the period that I have known Senator Barrow, but I know of his distinctions. He has been preferred in the Order of Canada, and senators have heard a recital of his other awards and accomplishments. I remember, Senator Le Moyne, the first conversation I had with you after you came to the Senate and the good impression that left with me. That impression has been enhanced in all of the contacts I have had with you since. It is amazing that you—and this goes for Senator Barrow, too—have attained what, when I was a younger man, I used to think was the ripe old age of 75, but since I am within about two years of that myself I think it is not such a ripe old age at all. I join with others who have expressed the wish that both of you, as I am sure you will, find interesting and useful things to do in the years that lie ahead.

Hon. Finlay MacDonald: Honourable senators, I had, about three-quarters of an hour ago, a call from our colleague, Senator David Walker, who sends his best regards to all of you. The poor man went down to Florida to get rid of a cold and hasn't seen the sun for something like five weeks. He would rather have been here today. He said, "Finlay, is this the last day of Barrow?" I said, "Yes." He said, "Are you going to say anything?" I said, "Yes, I was thinking of it." He said, "Would you associate me with your remarks? I am very fond of Barrow." I said, "How do you know what I am going to say?" He said, "I trust you."

Senator Frith: I believe he hasn't seen the sunshine for five weeks—or maybe he has seen a bit too much it!

Senator MacDonald: I must say, honourable senators, that his trust will not be misplaced.

With the exception of Senator Hicks, and possibly Senator MacEachen, I think I have known Augustus Irving Barrow longer than any other person in this chamber. We met in Halifax at the end of the war, over 40 years ago. Senator Murray has made reference to the contribution that Senator Barrow made to the post-war building of Halifax in all of its facets—academic, business, cultural and social.

I developed at that time a great deal of sorrow for people who were not involved in partisan activities. This particularly manifested itself in the old Halifax Club, where the bankers and those people who felt that involvement in political affairs might affect their business would stay off to one side while we, the partisans—the Liberals, Tories, et cetera—were invariably involved every day in the most vicious forms of warfare, obscenity and, usually, wagers. And pity help the person who lost the wager, because it meant that his home would be bombarded that night by those of us who sought to collect.

I developed, of course, a very close friendship with Senator Barrow all during those days. We had an enormous number of mutual friends. Familiar names abound. Alas, many of them are not here today. I found Senator Barrow to be a man of class, a man who kept his word, a man who would not speak often, and when he did he usually spoke very quietly; so much so that I nicknamed him "Mr. Excitement" in those days.

● (1420)

I only wish that I had known Senator Le Moyne one-half or one-quarter of that particular time so that I could also lend my voice in paying a tribute to him. But I have known of him and I have certainly followed everything he has done here.

My point in getting up today is to wish to Senator Barrow, to Joyce Barnstead, and to his family many more productive years in whatever career he should, and I know he will, follow.

Hon. Senators: Hear, hear!

Hon. B. Alasdair Graham: Honourable senators, I have known Senator Le Moyne for a good many years; but I must confess that, like many of you, for a time he was just a name. We knew him by reputation. He was practically invisible. But he was the architect of many of the thoughtful and eloquent phrases reflected in some of the most important speeches made in our country. His way with words was legendary in that awesome place called the PMO. It has been so much better to have you with us, Senator Le Moyne, to have the real person in person, with your great good humour, your powerful, your sensitive, your passionate beliefs in the most important issues of the day—and for your very considerable contribution to this institution.

Senator Barrow has been much more than a seat-mate to me. He has been my long-time friend and, on many occasions, my mentor, and his contribution to the various committees of this chamber has already been well documented.

I am especially grateful to him for his wise counsel, his advice and his excellent service during the period that I happened to be the chairman of the Internal Economy, Budgets and Administration Committee between 1980 and 1984.

I have heard it said that the highest tribute that can be paid to an individual is to say that his or her word, whether given in public or in private, can be relied on absolutely. Senator Barrow, our friend, is just such a person, and I join with others in this chamber in extending to Senator Barrow and Senator Le Moyne, and, indeed, to Joyce Barrow and Suzanne Le Moyne, our best wishes for continued happiness and good health in the future.

Hon. Senators: Hear, hear!

Hon. Heath Macquarrie: Honourable senators, I regret that the exigencies of the calendar make it necessary for us to pay tribute to two of our departing colleagues in one day. If I may say so, each of them deserves at least a separate day and a special day.

I have known Senator Barrow only since I came to the Senate, and I have a high regard for his assiduous attention to duty in this place and for all that he has stood for in Nova Scotia and the country as a whole. I very much appreciate his service here, and I heartily wish for him the best of success, satisfaction and happiness in the years of non-Senate duty ahead.

I met Senator Le Moyne only since I came here. I came to admire him early after meeting him. I appreciate his magnificent felicity in language. He is magnificent in the language of Shakespeare, Macaulay and Browning. I cannot mention my favourite author, Burns, because they say he is not terribly good in English most of the time. But if Senator Le Moyne is as great in the language of these people whom I mentioned, I am sure that he is far better in the language of Racine, Montesquieu, Montaigne and Rousseau.

He has been an inspiration to us all in his clarity of expression, his acuity of perception, his integrity as he views the great questions facing our country. But even beyond all those traits I have admired him for his candour and his humour. Once, in a committee, we were a little disturbed by the draft report. Senator Le Moyne said, "The French is terrible. And the revised version will be equally bad." I think a man with that candour endears himself to us all.

I have heard in the last few years a great deal of exaltation and exultation about what is now, in the words of the Right Honourable Arthur Meighen, "one of the great nostrums of public satisfaction," the idea of an elected Senate. Of all the speeches in this chamber that I heard on the subject, the one that sticks in my mind is that of our distinguished colleague Senator Le Moyne, who, in fact, argued with his brilliant, classical elucidation that, in fact, a non-elected Upper Chamber was, in fact, a positive good. As I have sent copies of his speech out to many academics in the country, who have asked me my views on the elected Senate, without exception I would get the answer, "By God!" or "By Jove!", depending on the individual's Presbyterianism or otherwise, "We never thought

of it in that way." So here is a man who has caused at least some of us to think of a popular solution in a different way, and what is intellectualism for if it is not to stimulate thought along some line other than the "Appian Way" of public acceptance?

So, honourable senators, I think that we have been enormously enriched by the presence of this man with his great mind, his enormous sensitivity to the present needs of his country, and with his genial personality which has caused all of us to love him dearly and to wish that perhaps in 1965 the termination of Senate incumbency at 75 years of age had never taken place.

Hon. L. Norbert Thériault: Honourable senators, it is almost nine years since I become a member of this great house, and I have never risen to make comments on the departure of any of my colleagues to this point. However, today I feel I have to, because in the retirement of Senator Barrow and Senator Le Moyne I am losing two great advisers. I want to add something to what Senator Macquarrie just said with regard to the law requiring senators to retire at 75. When that law was passed I was part of another house and I did not know much about the Senate. I remember thinking to myself at the time, "At least they have done one good thing up there in Ottawa." However, one should realize that no law is perfect, and today we are suffering the effects of a law that was passed with good intentions, but which prevents two distinguished members of this house from continuing as senators.

• (1430)

With respect to Senator Barrow, I want to say briefly that when I first came here to the Senate he noticed—as perhaps did some other senators—that I was not quite suited for this chamber. I had just come from another legislative house where things were more active. In that other place I was sitting on the front bench; I was house leader, and my colleagues here in the Senate who were members of that other place at that time will remember that I loved that place. I said when I left that I loved the legislature, and when I arrived here I can honestly tell you that, although I was very much impressed, I did not feel at all at home, and sometimes I used to confide in Senator Barrow. That is why I say I am losing friends as well as neighbours, because I had the great fortune of having an office in the East Block side-by-side with Senator Barrow. His secretary and mine shared an office, and what a neighbour and a counsellor Senator Barrow was! I remember at times I would tell him how dejected I was about the Senate, and he would put his hand on my shoulder and say, "Norbert, quiet down; you will learn." I want to say to him today that I have learned, Senator Barrow, and thank you very much.

[*Translation*]

I will also miss Senator Le Moyne because, as you all know, when I compare my French with Senator Le Moyne's spoken and written French, I am somewhat ill at ease. But for some years I have had the advantage of sitting near him and every time I needed a definition, a synonym, an interpretation, a pronunciation, a spelling, either in French or in English, I only had to turn to Senator Le Moyne and there was the answer. I will miss that, although I am lucky in that hopefully our friend Senator Corbin will remain near me, and as long as he is at his desk behind me, as well as Senator Hébert, I will have valuable consultants.

Senator Le Moyne has struck me since I have known him as a poet—there was reference to that—an author and a writer. I read some of his writings. He struck me as a French Canadian, a Quebecer who in my view always put his allegiance to his country before his province. In Quebec, many people are more loyal to their province. It is not for me to judge whether they have more or less, but they often claim they have a country. Senator Le Moyne is a French Canadian from Quebec but he is a true Canadian and all Canadian citizens and all senators will miss him.

[*English*]

Hon. Joyce Fairbairn: Honourable senators, I bring greetings and praise to our two retiring colleagues today from other colleagues who are travelling in another part of the country, namely, Senator Hébert, Senator Neiman and Senator Doyle. As you know, the four of us were travelling in the West with the Standing Senate Committee on Legal and Constitutional Affairs and were bemoaning the fact that we would miss the conviviality and friendship at the party held by Your Honour last evening.

Senator Graham raised the question of Senator Le Moyne's existence and career prior to being a member of this place, and, as one who worked with great enthusiasm and affection with Senator Le Moyne for a number of years in the office of former Prime Minister Pierre Elliott Trudeau, I developed enormous respect and affection for this man. In my mind, Jean Le Moyne has one of the rarest of gifts: he can make words live; he can make them live in English and, more particularly, in his beloved French. He is a very warm-hearted man. He has a passion for Canada which, from the moment I met him, has moved me. Through all of the issues in the last 20 years that have touched on the unity of our country Senator Le Moyne's loyalty to his province, inside a larger loyalty to his country, is a very touching and rare attribute in a Canadian politician.

I have only come to know Senator Barrow since I joined this chamber. I know from his friends what a distinguished gentleman he is. From my own observation he is a wise man and one who has been very kind to a newcomer in this house.

To both of them and to their families I wish many more years of great activity, happiness and good health.

Hon. Ernest G. Cottreau: Honourable senators, almost everything has been said that ought to be said. However, I feel the obligation to pay personal tributes to the two retiring senators—Senator Barrow and Senator Le Moyne. I have a great deal of respect for these two senators, and I regret that circumstances demand that they depart from this chamber.

[*Translation*]

Honourable senators, during his brief stay in the Senate, Senator Le Moyne earned esteem and even admiration from his colleagues. I am convinced that his departure is a regret-

table loss for the Senate. He served it well and he served his country well.

I wish him good health and happiness in retirement.

[*English*]

As for Senator Barrow, he and I were appointed to the Senate on the same day, namely, May 8, 1974. From that day on I got to know him and appreciate him. Throughout the years he has been a source of encouragement and guidance to me on very many occasions, as well as a true friend. I have greatly benefited from his presence here, as I am sure a great number of us have. I view his departure with a sense of sadness. However, this is not an occasion for sadness. Senator Barrow is a practical man, and on that basis my thought is that he is going into retirement with a well-prepared program as to how best to use his time and energy with his family in the days ahead. He has served the Senate very well and has served his country well. May he continue to enjoy himself in a more leisurely way of life. To him and his wife, Joyce, I extend my best wishes for a happy retirement.

Hon. William J. Petten: Honourable senators, I would like to associate myself with those who have spoken before me in paying tribute to our two colleagues who are about to retire.

Honourable Senator Barrow was a constant visitor, as a young accountant, to my home province of Newfoundland. After hearing him recount his experiences there, I feel that I have known him for much longer than his tenure here in the Senate.

● (1440)

As has already been said, Senator Barrow has been a conscientious and hard-working senator. He served with distinction on the Standing Senate Committee on Banking, Trade and Commerce and on the Internal Economy Committee. As his party whip, I can assure all honourable senators that he was always ready to cooperate in the orderly running of the Senate and its committees. I now wish to thank Senator Barrow publicly for his cooperation over the years.

May I take this opportunity to wish Senator Barrow many pleasant years of retirement with his charming wife, Joyce, and his family. I know he will not be going out to pasture but will be involved in other endeavours. I wish him well in them.

In the short time I have known Senator Le Moyne I have come to admire his sense of dedication and ready wit. He was always ready to cooperate in the work of the Senate and its committees. I now wish to thank him publicly for his cooperation.

When he and I were travelling with the Senate Committee on Fisheries, I convinced him to accompany me to a restaurant run by a well-known chain. He accepted that invitation, much against his better judgment. I hope he can now find it in his heart to forgive me for extending that invitation.

May I take this opportunity to wish Senator Le Moyne many pleasant years of retirement. I know he will not be idle. I wish him well in whatever he undertakes.

[*Translation*]

I wish you good health, my friend.

[*English*]

Hon. Senators: Hear, hear!

Hon. Philippe Deane Gigantès: Honourable senators, I will be very brief. I did not have the privilege of knowing Senator Barrow very long, but the few contacts I did have with him told me that I could trust him completely. Whenever he gave his word, he kept it.

I have had the privilege of knowing Senator Le Moyne longer. He always made me despair when I heard him speak, because I am a man of words, but, compared to him, of low quality.

I just received a telephone call from former Prime Minister Trudeau who wishes Senator Le Moyne well. He said that now that Senator Le Moyne is retiring he hopes to see him more often. He invites Senator Le Moyne to lunch on March 11, and has asked me to take him along. He said that he was, for him, the ideal man of Marcus Aurelius, a man of wisdom and good humour

[*Translation*]

CURRENCY ACT

BILL TO AMEND—REPORT OF COMMITTEE

Hon. Fernand E. Leblanc, chairman of Standing Senate Committee on National Finance, presented the following report:

Thursday, February 11, 1988

The Standing Senate Committee on National Finance has the honour to present its

SEVENTEENTH REPORT

Your Committee, to which was referred the Bill C-99, An Act to amend the Currency Act, has, in obedience to the Order of Reference of Wednesday, January 28, 1988, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

FERNAND-E. LEBLANC
Chairman

THIRD READING

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

[*English*]

Hon. C. William Doody (Deputy Leader of the Government): With leave, later this day.

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

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, there is a good possibility that we will not be here next week. If that is so, why not give this bill third reading now?

Senator Doody: That is agreeable, honourable senators. I thank Senator Frith for his cooperation.

The probabilities are that we will be adjourning for a two-week period. This may be an appropriate time to mention that various Senate committees have meetings scheduled during that adjournment. If things proceed today as we hope they will, Bill C-60 will be referred to the Banking, Trade and Commerce Committee. That is the bill relating to the Copyright Act. There is also the possibility that Bill C-84 will be referred to the Legal and Constitutional Affairs Committee, which currently is considering Bill C-55. That committee is currently meeting on the west coast regarding that piece of legislation.

There are various studies under way by other committees, namely, the Energy Committee, the Agriculture Committee, the Fisheries Committee and the National Defence Committee. Despite the fact that the Senate itself may not be sitting over the next two weeks, many members of the Senate will be actively engaged in committee work.

Motion agreed to and bill read third time and passed.

MEECH LAKE CONSTITUTIONAL ACCORD

SUBMISSIONS GROUP EMPOWERED TO PERMIT COVERAGE BY ELECTRONIC MEDIA

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*e*), I move:

> That the Submissions Group on the Meech Lake Constitutional Accord be empowered to permit coverage by the electronic media of its public proceedings with the least possible disruption of its hearing.

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

Hon. Senators: Agreed.

Motion agreed to.

ADJOURNMENT

Hon. C. William Doody (Deputy Leader of the Government), with leave of the Senate and notwithstanding rule 45(1)(*g*), moved:

> That when the Senate adjourns today, it do stand adjourned until Tuesday, March 1, 1988, at two o'clock in the afternoon.

[The Hon. the Speaker.]

Motion agreed to.

• (1450)

DISTINGUISHED VISITOR IN GALLERY

The Hon. the Acting Speaker: Honourable senators, may I draw to the attention of honourable senators the presence in the visitors' gallery of the Speaker of the Legislative Assembly of Saskatchewan, the Honourable Arnold Tusa.

Hon. Senators: Hear, hear!

QUESTION PERIOD

[*English*]

OFFICIAL LANGUAGES

STATUS OF LEGISLATION

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, can the Leader of the Government in the Senate tell us here in the Senate, not about proceedings in the other place but why the government is putting on hold the bill to strengthen the Official Languages Act?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I am not aware that that statement is accurate.

Senator Frith: Can we then take it that the reports to that effect are not true, and if they suggest that the government itself is not going to proceed with that bill but is going to put it on hold—which is the report—that those reports are not well founded?

Senator Murray: Honourable senators, those reports are not well founded. Bill C-72 has been introduced for debate on second reading and has had several days of debate on second reading.

Senator Frith: And it is still the government's policy to press forward with that bill?

Senator Murray: That is correct, honourable senators.

HEALTH AND WELFARE

ALBERTA NURSES' LABOUR DISPUTE—FEDERAL-PROVINCIAL CONSULTATIONS—POSSIBILITY OF SETTLEMENT

Hon. Hazen Argue: Honourable senators, I would like to raise a matter that I think is of some national importance, and that is the continuing strike of the Union of Nurses in Alberta.

I was in Edmonton on Monday and found on my visit there that there is a good deal of public support for the nurses. The public feeling is that their cause is just. Also, there is a concern about the health and welfare of the people of Alberta and, more particularly, of the people who are ill. There is an

urgency to this which is associated with the Winter Olympics, which will be under way soon.

I had the good fortune to visit the nurses on the picket line at the Edmonton General Hospital. I believe that they are concerned about the health of patients in hospitals, but took this action believing that the situation was desperate, understanding all the while that they play a major part in health services and the restoration of health for people in that province.

I heard some news reports today that I felt were quite disturbing and because of that I sent the following communication to Premier Donald Getty of Alberta. It states:

Dear Premier Getty:

News reports indicate that the Alberta Hospital Association appears determined to bring the Alberta Union of Nurses to its knees by threatening to discontinue the check off of union dues and by further refusing to agree to the rehiring of nurses dismissed for union activity.

I think the current attitude of the Alberta Hospital Association and the government of Alberta is anti-union; is opposed to free democratic trade unions and the free collective bargaining process.

I call on you Mr. Premier to use your good offices to try to bring this dispute to a settlement; a settlement that recognizes the right of the Alberta Union of Nurses to free collective bargaining and that all nurses discharged in this dispute be reinstated without penalty.

Hon. C. William Doody (Deputy Leader of the Government): Point of order! Is this a question, a document to be tabled, an inquiry, or a debate? Could the honourable senator tell us? I thought we were in Question Period, but this does not seem to be a question to me.

Senator Argue: I am coming to the question, and I hope that you will agree, when I come to it, that it is in order. I think the question of health for people coming to the Olympics from all over the world is important. I think there is national concern, and I think we should be concerned here also.

Senator Doody: There are rules governing Question Period, honourable senators. I know that we have been most tolerant, understanding and reasonable in not calling them to the attention of the Senate and demanding that they be enforced, but surely there comes a time when one has to recognize what is a preamble, what is a debate, and what is a question in this house. I think we have gone beyond what is reasonable in this particular instance.

Senator Olson: Does that include when you were in office?

Senator Argue: If the Honourable Senator Doody would contain himself, what I was reading would take just one minute—I have almost concluded. I intend to continue. I go on to state:

Such a settlement would assist in restoring competent and efficient health services in Alberta, and I urge you to act.

I then signed this communication.

I ask the Leader of the Government in the Senate if there has been any consultation or contact, to his knowledge, between any member of the federal government—particularly, I think of the Minister of Health and the Minister of State (Fitness and Amateur Sport), who is responsible for the Olympics—and the provincial government with regard to this situation. Also, can he say whether or not there seems to be hope that this dispute will be settled at an early date?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, we respect the Constitution.

Senator Argue: And you do not consult on matters concerning the Olympics, public health and the administration of health services in this country?

Senator Murray: Honourable senators, an honourable gentleman from the province of Saskatchewan in the federal Parliament has just risen to deliver himself of a presumptuous and superfluous speech about a matter in Alberta, which is entirely within the jurisdiction of that province. That is unhelpful, and is also an abuse of his position and of the time of the Senate. I do not intend to indulge him further.

Senator Argue: I reject that entirely and completely. I think that when the Government of Canada provides 50 per cent, or close to that, of the budget for health services in this country, and when we have a stake of many millions of dollars in the Olympics, that the health of people going to the Olympics, the health of the people of Alberta, and this labour dispute should be a matter of concern for the federal government to the point that they might engage in some consultation. But the minister's reply is clear: The federal government does not seem to care about what is happening, and that's a shame.

IMMIGRATION ACT, 1976

BILL TO AMEND—CONSIDERATION OF MESSAGE FROM COMMONS—MOTION FOR CONCURRENCE IN COMMONS AMENDMENTS AND FOR NON-INSISTENCE UPON SENATE AMENDMENTS—DEBATE CONTINUED

On the Order:

Resuming the debate on motion of the Honourable Senator Nurgitz, seconded by the Honourable Senator Doody:

That the Senate concur in the amendments made by the House of Commons to its amendments 1,2(*a*), 3, 7 and 13(*b*), (*c*) and (*d*) to Bill C-84, An Act to amend the Immigration Act, 1976 and the Criminal Code in consequence thereof;

That the Senate do not insist on its amendments 4, 5(*a*), (*b*), and (*c*), 6(*a*) and (*b*), 9, 10, 11, 12 and 13 (*a*);

That the Senate agree to the further amendments made by the House of Commons to clauses 11 and 16; and

That a Message be sent to the House of Commons to acquaint that House accordingly.—(*Honourable Senator Stanbury*).

Hon. Richard J. Stanbury: Honourable senators, I would like to preface my remarks about Bill C-84 by indicating my appreciation of the remarks which other senators have already made on the subject in this debate.

I fully appreciate Senator Kelly's concerns about terrorists and any flaws in our legislation which make it easier for terrorists to enter Canada. He has done us all a great service in chairing a special committee to consider the presence and impact of terrorists in Canada. I certainly respect his opinion and I think all of us agree with him that we do not want Canada to become a refuge for that kind of person. But I examined each of his horrible examples—the horrible examples which Senator Kelly mentioned in his speech the other day. I think it is significant that not one of the problems raised by those examples would have been cured by Bill C-84, whether it had been passed in its original form or whether it is now passed in its present form.

● (1500)

I think Senator Nurgitz put the position of the minister very well indeed. We are all delighted with the extent to which the minister understood and accepted the points the Senate made. The committee sympathized with his intent and made every effort to give him a workable bill. The problem is that the minister went part way and then choked up, perhaps on the basis of pride of authorship on the part of either his officials or himself, and when it came to completing the job by rectifying the constitutional and international weaknesses of the bill, which would have prevented the bill from becoming effective law, he failed to follow through.

Senator Grafstein has explained very well our obligations to try to get a piece of legislation which will stand up in the courts and will be effective to carry out the objectives of the minister. I sincerely believe that that can be done with a little more work, and at the end of my remarks I will be proposing that Senator Nurgitz' motion and the message from the other place be referred to committee for further consideration.

Bill C84 is a good example of what happens when a government allows itself to be caught up in the hysteria of a particular event, which event catches the headlines and fuels the prejudices of the body politic.

This bill was presented to Parliament in the summer of 1987 in response to the arrival by boat of 174 refugee claimants in Nova Scotia. The Minister of Employment and Immigration, the Honourable Benoît Bouchard, said that the passage of the bill was needed to enable Canada "to control organized abuse of our immigration laws, deter the smuggling into Canada that jeopardizes human lives, and respond to security concerns."

The bill was passed by the House of Commons and referred to the Senate in September 1987. Honourable senators referred the bill to the Standing Senate Committee on Legal and Constitutional Affairs for normal consideration.

However, in the meantime, this hastily drafted band-aid legislation had attracted the attention of a great many Canadians, who found both its spirit and its language odious in light of Canada's traditional role of leadership in developing international standards of conduct for treating the homeless and oppressed people of the world in a humanitarian way.

Over 400 individuals and organizations made representations to the committee. Thirty-seven witnesses made actual appearances. Their testimony was neither sentimental nor unlettered. It dealt with the hard facts of the law as it applied to this kind of legislation.

There were few witnesses who disagreed with the announced purposes of the legislation, but one after another declared not only that the law would be ineffective but that it would be struck down by Canadian courts as being contrary to the Canadian Charter of Rights and Freedoms and to our international commitments undertaken by our endorsement of the United Nations Convention relating to the status of refugees.

I have said that there was no disagreement with the objectives of the legislation as expressed by the minister. None of the members of the committee nor any witness wanted "organized abuse of our immigration laws" to be permitted. None of us wanted to encourage "the smuggling into Canada that jeopardizes human lives," and each one of us wanted our laws to "respond to security concerns." If Bill C-84 had been an effective instrument to deal with each of these concerns, then we would have had no difficulty in recommending its passage, without amendment, in our report to honourable senators.

But the term "abuse of our immigration laws" must surely be reserved for those who are not true refugees—those who attempt to obtain refugee status by fraudulent claims. Bill C-84 goes far beyond that group. Its harsh dealings apply to many people who are quite legitimately described as refugees under the international Convention. Their landing in Canada is not fraudulent and is not an abuse of our laws or of the provisions of the Convention.

Even if Bill C-84 became law, it would not "deter the smuggling into Canada that jeopardizes human lives." Human lives are jeopardized when you turn a ship around at sea, without knowledge as to who is on board, as to its destination, or whether the human cargo will ever reach a port of safety. Our witnesses and the committee both said that human lives are not jeopardized by bringing the ship into port, arresting the captain and the ship, and treating the human cargo in the very same way as they would be treated if they landed at an airport.

So the members of the committee decided that if they were going to give the minister an effective piece of legislation, which would fulfil the objectives which he himself had delineated, and the implementation of which would not be tied up in litigation in the courts for years, they would have to do some serious homework. With the help of the Canadian Bar Association, four constitutional experts, the United Nations High Commissioner for Refugees, experts on international law and civil liberties, as well as private citizens, the committee went through the legislation with great care to correct its weaknesses and to make it a law which would effectively fulfil the minister's objectives.

I must say that that task was accepted by all of the members of the committee, and each and every member of the committee made his or her contribution. When we completed our work we were proud of our effort, and, while we would never suggest that we had done a perfect job, we believed that we had indeed accomplished all that we could do to turn a sow's ear into a silk purse.

While the minister accepted some of our amendments—and some of the amendments he accepted were of great importance to the validity of the bill—he rejected others which were equally important. I am pleased by his acceptance and saddened by his rejection.

Many have been the criticisms of the Senate for over a century, and some of those criticisms have been well deserved. But always the non-partisan perceptive work of Senate committees has been respected and frequently reflected either in current amendments to or later improvement of pieces of legislation by responsible ministers. Here we have a situation where, in spite of the best efforts of all of the members of the standing committee to make a constructive report, and in spite of the adoption of that report by the Senate as a whole, the minister has chosen to return the bill still in a highly litigious state. In its present form it will leave the Canadian public uncertain as to its interpretation and, indeed, may eventually cause it to be struck down.

Our courts have made it very clear that, as Mr. Justice Dickson said in the Supreme Court of Canada in *Hunter v. Southam*, "It is the legislator's responsibility to enact legislation that embodies appropriate safeguards to comply with the Constitution's requirements." The committee accepts that view of our responsibility and of the responsibility of both the House of Commons and the Senate. It is from that point of view that we must examine the minister's response to the Senate's report on Bill C-84, released by the minister on January 26, 1988. For that reason it is important that the Standing Senate Committee on Legal and Constitutional Affairs have an opportunity to deal with that response and to make further recommendations.

Perhaps I should spend a few minutes discussing some of the matters which I feel should be reconsidered by the committee. Senate amendment No. 1 seemed rather simple. The purposes of the bill, as outlined in the proposed legislation as it came before us, included "to deter the smuggling of persons into Canada." The committee noted that the word "smuggling," properly used, referred to the movement of goods rather than of persons, and the committee recommended that that clause be replaced by what we regarded as its human equivalent, "to deter those who assist in the clandestine entry of persons into Canada." The minister has come back with the proposal to use "to deter the illegal entry of persons into Canada"—a quite different concept.

● (1510)

That may sound like semantic juggling to you, but there is a very important principle involved. The minister regards everyone who enters Canada without documents as an illegal migrant, regardless of whether he is entitled to be treated as a refugee under our international commitments. This stems from the government's policy of emphasizing refugee selection abroad, but it fails to take into consideration the evidence of many of the committee's witnesses and the position of the committee itself, that people who are legitimate refugees should not be treated as illegal migrants just because they have not been able to get documentation before they land. Some language must be found to resolve this dilemma or our legislation will be in conflict with our international commitments.

The minister accepted the second amendment proposed by the committee. It is a most important amendment in that it permits the person who is the subject of a security certificate to be present during the presentation of the government's case to the judge. Without this amendment the bill would have been clearly contrary to the Canadian Charter of Rights and Freedoms. We very much appreciate the minister's acceptance of this amendment.

The third amendment called for a regular review of the detention of the person who is the subject of a security certificate. The minister says that there is no need for such a review, because the bill provides for the review of the certificate within seven days of filing. Unfortunately, the bill only provides that the review of the certificate should begin within seven days. It might not end for months. Where is the need to detain people who pose no immediate danger to the Canadian public, and where will we put them all, anyway? What the committee recommended would remedy the arbitrary nature of the detention so that only those who pose a danger to the public would be detained or continue to be detained after review. The committee's proposed amendment would bring the provision into compliance with section 9 of the Charter and, again, avoid court challenges, which can only interfere with the effectiveness of the legislation.

The minister's acceptance of the next amendment is also quite important. It gives the Federal Court the right to review the reasonableness of the security certificate as well as the reasonableness of the original decision to issue the certificate.

The minister obviously misunderstood Senate amendment No. 4, because in his statement to the House he said, "The Senate wants us to grant the right to make a refugee claim to persons who have committed a serious crime or who pose a risk to the security of Canada." In fact, that is not what the Senate amendment says. Our amendment kept the exclusion of persons who have committed a serious crime in the bill, although it did remove the security risk exclusion. At the present time such people are allowed to make a claim and, if their claim is successful, then the decision on deportation is made. The problem is that Article 32 of the International Refugee Convention provides that refugees to be expelled should be allowed a reasonable period in which to seek legal admission into another country. There might well be a country willing to accept a Convention refugee under these circumstances, but a person being expelled without a determination that he or she is a Convention refugee has no case to put either to another country or to the United Nations High Commissioner for

Refugees. The commissioner's representatives advised the committee that they may assist Convention refugees in these cases, but only following determination of their status. A clarification of this misunderstanding may result in a satisfactory solution to the problem.

Now we come to an amendment which has been a major stumbling block in the way of accceptance of this legislation by the witnesses before the committee and, indeed, for many of the members of the committee themselves. The thought of a minister of the Canadian government turning about a ship at sea, without knowledge of who the passengers are, without any assurance that they will ever reach a port of any kind, let alone a port of safety, is surely unthinkable. The minister has gone a long way towards reassuring the members of the committee by agreeing that such an event would only take place upon the order of the minister himself, and he has further undertaken that a minister would only take such action if he could assure himself that there was a safe country willing to accept the human cargo and to provide them with due process of law to prove refugee status if so claimed. That is what is required in accordance with our international commitments, and, indeed, it was Canada which helped to persuade other nations to accept international standards for the treatment of refugees arriving by boat. But, unfortunately, this bill does not include any effective guarantees that the minister's undertakings would be carried out. It may well be that a guarantee might be included to return boats only to countries on the safe country list referred to in Bill C-55. The minister seems to accept that principle in general, but the legislation does not tie it down. It is most important that there be a guarantee of admissibility into the country of destination and an assurance of due process for refugee claimants.

The minister says that this power to turn ships about in mid-ocean "must be retained to send a clear message worldwide that Canada will no longer tolerate abuse of our refugee determination system." I think no member of the committee disagrees with the minister on the desirability of sending such a message. But to whom is this extreme measure sending the message? The owners and captain of the ship who organized the illegal activity and invited refugees to give them their last dollar to slip them ashore in some deserted cove under the most dangerous of conditions? Under this legislation they get away with a mild slap on the wrist—only the human obligation, if they accept it as such, of taking the people to some port where they can disembark. We have no assurance that they or their ship will be arrested or, indeed, that any punishment will ensue.

The people who board these ships are not likely to get any message. They obviously never understood that they were duped. The ship captain could do no more for them than any ordinary airline can do. Surely the message they will get is that they should have spent their money to come by air, to join the backlog of 40,000 refugee claimants who will live in Canada for three to five years before the government will declare another amnesty or succumb to the natural temptation to accept the fact that they have now been here so long that it is unfair to send them away. The message that the government and the people of Canada really want to send is that people arriving and claiming refugee status fraudulently will be quickly identified and deported. If the new procedures proposed in Bill C-55 can be made to work that way, then the Government of Canada will have sent the world the proper message. Then genuine refugees will be welcomed and nurtured and will become productive members of Canadian society, as all their predecessor refugees have over a great many years, and the image of Canada in the free world will remain consistent with its traditions as a country which wants and needs people from anywhere in the world who have had the courage and the persistence to defy their oppressors, to seek a new life for themselves and their children and their children's children in this, the greatest land on earth.

[Senator Stanbury.]

The minister has, again, accepted a very important Senate amendment by agreeing that prosecutions for aiding and abetting undocumented refugee claimants should only be instituted by or with the consent of the Attorney General of Canada. Unfortunately, there are two problems with the sections as they remain. One is that if a refugee claimant without documents is later declared a genuine refugee he may be forgiven the fact that he arrived without documents. However, the individual or group who assisted him in entering the country without documents continues to be guilty of an offence, whether or not the claimant is found to be a genuine refugee. That could be most important to honest-to-goodness humanitarian organizations which do not deal with fraudulent claimants.

The second problem arises from the fact that the minister undertakes that a person who violates the act in the cause of "rendering needed humanitarian assistance to refugees" will not be prosecuted. Unfortunately, no undertaking by a government official or minister is legally binding. People rendering "needed humanitarian assistance to refugees" can be prosecuted under Bill C-84. The Senate amendment is required as a safeguard, and is an accepted legal mechanism for limiting prosecutions. Such an amendment would not change the substance of the bill but would indeed reflect the minister's and the government's expressed intention.

● (1520)

The minister accepted the Senate amendment No. 8, which provides that a search warrant would only be issued where there are reasonable grounds to believe evidence will be found. That amendment brings that section of the act into conformity with the Charter, and, again, it is an extremely important amendment.

The minister has made an acceptable amendment as an alternative to Senate amendment No. 9, and that makes Senate amendment No. 10 unnecessary.

Senate amendment No. 11 proposes a limitation on the power of immigration officers or peace officers to break open doors, windows and locks in their search for vehicles or evidence. The minister feels that no limitation on those powers can be accepted.

The minister misunderstood the intent of Senate amendment No. 12. In his statement in the other place he said, "The

Senate also wants to limit the powers of search and seizure to daytime hours." The Senate really only said that the justice of the peace who authorizes a search warrant would have to authorize its execution at night. That is not the same as limiting the search to daytime hours, as the minister says. He is right that trans-border schemes would be conducted mainly at night, but in that case immigration officers already have an immediate right to seize without a warrant the vehicle and any evidence of contravention, according to section 103.01 of the Immigration Act. They do not need a warrant in that case, because it is only a seizure that we are talking about.

The minister accepted the substance of Senate amendment No. 13. The Senate's purpose was to call for regular reviews of the need for detention of individuals, and the minister accepted that principle. He also accepted the requirement that officials inform persons detained of their right to counsel and permit them to obtain such assistance. Again, those are most important amendments to bring this part of the bill into conformity with the Charter.

I do want to thank the minister for his expression of appreciation of the work of the Senate in reviewing the bill and for his generosity in accepting a number of amendments which will greatly improve and strengthen the bill. However, it is clear to me that the job is not yet finished. If the objectives which the minister has outlined, and with which we found general agreement, are to be accomplished, then some further fine tuning is obviously needed. The members of the Standing Senate Committee on Legal and Constitutional Affairs have worked together cooperatively and diligently so far, and I am confident that they will do so in the future if honourable senators deem it advisable to refer this matter again to that committee. I am confident that we will work as closely with the minister as he may wish, to fulfil our responsibilities to the Canadian people, to produce legislation which is constitutionally sound and in keeping with the generous traditions of our great country.

So, honourable senators, I have pleasure in moving:

> That the motion, together with the Message from the House of Commons on the same subject, dated 3rd February, 1988, be referred to the Standing Senate Committee on Legal and Constitutional Affairs for consideration and report.

Some Hon. Senators: Hear, hear!

MOTION AND MESSAGE FROM COMMONS REFERRED TO LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE

The Hon. the Acting Speaker: Honourable senators, it is moved by the Honourable Senator Stanbury, seconded by the Honourable Senator Perrault:

> That the motion, together with the Message from the House of Commons on the same subject, dated 3rd February, 1988, be referred to the Standing Senate Committee on Legal and Constitutional Affairs for consideration and report.

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

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, obviously we would much prefer to see the bill passed in its original shape and form, but if it is the majority wish that it go back to committee then certainly we will do nothing to obstruct that.

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

Hon. Senators: Agreed.

Motion agreed to.

CORPORATIONS AND LABOUR UNIONS RETURNS ACT

BILL TO AMEND—THIRD READING

Hon. C. William Doody (Deputy Leader of the Government), for Senator Balfour, moved the third reading of Bill C-91, to amend the Corporations and Labour Unions Returns Act.

Motion agreed to and bill read third time and passed.

FRUIT AND VEGETABLE CUSTOMS ORDERS VALIDATION BILL

THIRD READING

Hon. Efstathios William Barootes moved the third reading of Bill C-96, to validate certain customs duty orders relating to fresh fruits and vegetables.

The Hon. the Acting Speaker: Honourable senators, it is moved by the Honourable Senator Barootes, seconded by the Honourable Senator Corbin, that this bill be now read the third time.

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

Hon. H.A. Olson: Honourable senators, I would like to say a few words about some of the provisions contained in Bill C-96—or, perhaps to put it more accurately, not so much about the provisions of Bill C-96, because, as Senator Barootes has described, they are provisions to validate what is questioned with respect to certain customs orders that were made for a period from 1972 until the present time.

I have no problem with that; but I have an obligation to point out to the Senate, and particularly to the government, that what follows from the use of that delegated legislation, or subordinate statutes—there are many terms—is extremely important to a very important industry in Canada. That is, it gives authority to the Department of Agriculture and its officers to levy certain seasonal tariffs, from time to time, so that we can defend our producers against producers in the United States dumping the tail end of their crops into Canada at very low prices.

It is always that way. Whenever we get to the end of the harvest, producers in the United States try to get rid of those

tail ends, and, in many cases, they come to us at a time when our market is just beginning, and therefore our producers have to compete against what it is fair to call dumping—although it does not quite fit the interpretation of dumping in terms of being sold in Canada at a price lower than that at which it is sold in the United States. But it is certainly sold or offered in Canada at a price lower than the average of what was obtained when their marketing season was in full swing.

That is why it is extremely important. I know that Bill C-96 will now give the legal authority needed to validate all of those orders that were brought into question. However, I want Senator Barootes to understand that there are some other things happening, such as this treaty with the United States, which puts this practice—if I might call it that—in jeopardy. I hope that he will understand that he and his government will need to watch very carefully to make sure that they do not put a large sector of our agricultural industry out of business by pulling away those seasonal tariffs that are needed from time to time.

It is fairly reasonable to understand that we want two things: First, we want consumers to have the lowest possible price compatible with the producers' requirement all year long, and therefore there is a long period of time—sometimes as much as 35 or 40 weeks—when no seasonal tariff is required and the fruits and vegetables come into Canada without any duty. That has a purpose, and it is a good one. But there is also a period of weeks—I believe that sometimes it is up to 20—when there is a requirement that this dumping of the tail end of their harvest comes against a seasonal tariff to protect our own producers at the peak of their harvest season.

That is all I wanted to say. It is extremely important that this process be maintained on into the future or we will lose very important and large sectors of production in places such as southwestern Ontario, southern British Columbia and in some areas of the Atlantic provinces, not to mention the greenhouse industry which produces fruits and vegetables across the country. Therefore, there is ample justification for this position, and I hope that Senator Barootes will bear it in mind in the future when the government brings in further amendments to these customs duties in keeping with what is, or appears to be intended, in the Free Trade Agreement.

● (1530)

Senator Barootes: Honourable senators, I rise to try to reassure the Senate, and in particular Senator Olson, on this very legitimate and reasonable concern which is indeed valid. The point on the protection of our domestic industry during our harvest—which often comes at the tail end of, let us say, the American harvest—has, I am sure, been brought to the attention of all of us at some point in the past.

What is the relationship of this concern to the trade pact between Canada and the United States that may come into existence? I have looked into this matter in anticipation and, indeed, I think I can make three statements which may be reassuring. First, this bill, as Senator Olson has pointed out, relates only to remedial measures from 1972 to 1985 and the inappropriate application of these duties. Second, Bill C-96 has nothing to to do with the free trade pact. Third, and this is the most reassuring part, if a Canada-United States trade pact did come into being on January 1, 1989, it states within that pact, under article 702, that a continued protective period for seasonal customs duties will apply for the next 20 years. That will take us into the next century. The agreement also includes a formula for measures that may be applied on a national and regional basis here in Canada, and these measures even take into consideration certain pricing mechanisms which may be beneficial to us.

There is one aspect of the agreement that is not very much discussed and which I should like to bring to the attention of Senator Olson. Beginning January 1, 1988—that is, five or six weeks ago—a harmonization and standardization on the classification of goods has been undertaken with regard to all those goods crossing borders. This measure will be applicable to Canada and the United States, as well as other countries. Canada is a signatory to this measure. I think the points that I have raised provide very good reassurance.

Motion agreed to and bill read third time and passed.

SENATE AND HOUSE OF COMMONS ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming the debate on the motion of the Honourable Senator Murray, P.C., seconded by the Honourable Senator Roblin, P.C., for the second reading of the Bill C-83, An Act to amend the Senate and House of Commons Act.—(*Honourable Senator McElman*).

Hon. Charles McElman: Honourable senators, debate on a bill at second reading stage normally has to do with the principle of the bill, and the details are to be considered in committee. One has little problem in determining the purpose of Bill C-83. In some of its aspects it is little more than a money-grubbing raid on the public treasury in its purpose. However, purpose and principle are not necessarily interchangeable expressions when applied to this bill. As the Honourable the Leader of the Government in the Senate has stated, the purpose of the bill is to provide remuneration for members of the House of Commons who, in large number, have special responsibilities.

Funds additional to those already being paid to the House Leader of the New Democratic Party are to be provided, and the deputy whips of the government and the official opposition are already provided for in the existing legislation. This bill also provides for remuneration to the deputy whip of the NDP, under the provision for "a party that has a recognized membership of 12 or more persons in the House of Commons." This is new. New provisions have been introduced for remuneration to the Deputy House Leader of the Official Opposition and the Deputy House Leader of the NDP. The Deputy House Leader of the Government was recently elevated to the office of Minister of State, so he has been looked after.

New provisions are introduced for remuneration to the chairmen of standing committees, chairmen of special committees, those MPs who were on the panel of chairmen of legislative committees, and for the joint chairmen on the Common's side of any standing joint committees. To this point an argument can well be made in support of additional remuneration to those members of the House of Commons serving in those various capacities. I do not make the argument, but I can see that it can be made, convincingly or otherwise.

However, the bill moves on from the sublime to the ridiculous. It is actually proposed that each chairman of the national caucus of each of the three political parties now represented in the House of Commons be paid an annual allowance of $11,900. This is what I referred to at the outset of my remarks as a "money-grubbing raid on the public treasury." The chairman of a national caucus performs no official function in the House of Commons. He has no recognized duties or responsibilities or function of any nature in that chamber. Those I referred to earlier do have recognized, particular duties and responsibilities in the Commons. But I repeat, the chairman of a national caucus of a national party has none. The chairman of a national caucus is a person who is elected by the members of the parliamentary wing of his party to perform a party function, and I remind honourable senators that a national caucus is composed of members of both houses of Parliament, the Senate and the House of Commons. It is only to the members of that caucus that the chairman is answerable and responsible. The office is not an office of the House of Commons.

• (1540)

Honourable senators, the whole proposition of providing remuneration for chairmen of national caucuses is, in my view, ridiculous. Not to put too fine a point on it, this proposal would have moneys paid out of the budget of the House of Commons to national caucus chairmen. I wonder what the members of the House of Commons would do if the chairman of a national caucus happened to be a senator. I do not imagine they would be too excited about paying that senator additional moneys out of the House of Commons budget. I believe that illustrates rather clearly the lack of foresight given to and the slipshod drafting and hasty passage of that subclause of Bill C-83.

Some might say that the rules of a caucus would not permit a senator to become its chairman. Honourable senators, the rules of a caucus are not sacrosanct, and they are subject to change. I would remind you that currently the national caucus of the Liberal Party is composed of some 60 senators and 39 members of the House of Commons, so it is entirely possible that a senator could become chairman of the present Liberal national caucus. Come to think of it, it might be the devil of a good idea, and I do not say that entirely with tongue in cheek!

Senator Frith: Just in a devilish way!

Senator McElman: You said it!

Honourable senators, it is not normally our practice in the Senate to interfere with activities or proposals affecting only the House of Commons, as it is not normally the practice of the House of Commons to interfere in matters of concern only to the Senate. However, this is a matter of concern to, and affecting, both houses. In principle, it is not acceptable to place what I consider to be purely party officials on the payroll of Parliament. This provision should be struck out of Bill C-83, in my view.

Next, honourable senators, I believe it would be useful to consider this bill from a somewhat historical perspective. Traditionally, when amendments to or revisions of the laws which apply jointly to both houses of Parliament are proposed, advance informal consultation takes place between the leadership of the two houses. This is the normal, courteous and civilized approach and ensures that the legitimate interests of both houses are met in a cooperative, non-confrontational atmosphere.

As well, it has been traditional that every effort is made to ensure that the elements of equality and fairness in the treatment of the members of both houses are maintained. The term "equality and fairness" does not necessarily, in this situation, mean identical treatment. This traditional approach has been customary when consideration is being given to proposed changes to such acts as the Senate and House of Commons Act and the Members of Parliament Retiring Allowances Act.

Honourable senators, in my view there have been two notable exceptions to the practices of advance consultation between the two houses and of equality and fairness. The first had to do with the annual expense allowance for members of both houses. Some 20 years ago it was identical in both houses. However, it was considered that the direct constituency responsibilities of members of the House of Commons required that they have a larger expense allowance. I recall that Senator Croll and I were among those who fought mightily against the change, strictly on the basis of equality of treatment of the members of both houses. It was a battle that was destined to be lost from the outset, and I do not propose to fight it again today. In any event, it was decided that the expense allowance for senators would be established at exactly one-half of that provided for the members of the House of Commons. However, when the formula for annual increases in that amount was devised, an element of unfairness to senators was inadvertently created. It was decided that the actual annual increment would be rounded out at the nearest lower $100. Purely through mathematical computation, the annual expense allowance for senators is now $9,300 while that for members of the House of Commons is $19,400. This means that the annual expense allowance for senators is now $800 below the amount that it should be, in accordance with the original agreement. This anomaly could easily be rectified by a simple amendment, and in fairness this should be attended to when Bill C-83 goes to committee.

The second exception to equality and fairness occurred in 1981 under the former Liberal administration. Amendments were proposed in the House of Commons for revision of the Members of Parliament Retiring Allowances Act. There was an element of advance informal consultation. However, the

government moved the bill very hurriedly through the House of Commons, without providing equality for senators and their surviving spouses. The Senate was also urged to pass the bill forthwith, and a commitment was made that at an early date another bill would be introduced to amend the provisions of that act to have them apply to senators. Honourable senators, that commitment of the former government was not kept.

The result has been that members of the House of Commons enjoy incremental pension benefits at the rate of 5 per cent annually while the annual increment for senators is only 3 per cent. That means that a member of the House of Commons can achieve full pension benefits in 15 years while senators can do so only after 25 years. Because of the requirement in the Senate for retirement at 75 years, many senators cannot acquire maximum pension benefits under the existing formula. That has been grossly unfair to retiring senators over the past seven years and is equally or even more unfair to the surviving spouses of deceased senators, because it affects so greatly the pension rights to which they are entitled.

Honourable senators, I do not raise this subject in an effort to establish linkage with Bill C-83. I am very much opposed to the use of linkage as a pressure tactic in the consideration of legislation. I raise this sorry experience only to impress upon honourable senators that they should now remember the timely admonition: "Once bitten, twice shy." Also, when opportunity knocks—as it is now knocking with the passage in the other place of Bill C-83—we should not miss the opportunity that now rests with us to make changes not with respect to pensions but to this bill.

Honourable senators, we should remind ourselves that it is not very often that we in this house have the opportunity to make changes to the Senate and House of Commons Act. That situation arises only when such a bill comes forward from the other place. There are, of course, limitations on what amendments may be made by the Senate with respect to charges against the Treasury, but there are also ways and means of achieving amendments.

The Senate must decide what it wishes to do concerning the payment of additional remuneration to chairpersons of committees, particularly joint committees. The Senate should decide whether it wishes to provide a large expense allowance for senators who represent the far-flung regions of this great country, as has been done by the Commons for such representatives. I think at once of Senator Willie Adams, Senator Paul Lucier and Senator Charlie Watt, and I favour such action.

The Senate should provide for appropriate remuneration to its Speaker *pro tempore*. That can only be done through an amendment to this bill, and it is more than justifiable, particularly in light of the constant call to duty of the incumbent.

The Senate should propose an amendment to section 37 of the Senate and House of Commons Act. That is the section dealing with deductions for non-attendance. This provision was made when sessions of Parliament were of approximately one year's duration, and the provision for permitted paid absence up to 21 days per session was reasonable. That is not the case now. We have recently endured a session of almost three and one-half years, which meant that the annual permitted total of days absent was approximately six. We are now in the seventeenth month of the current session. I see no indication that successive governments will return to the former practice of confining each session to approximately one year in length. This section of the act applies to both houses, and it should now be amended.

I am sure that some honourable senators have concerns with respect to other aspects of Bill C-83 and the act that it seeks to amend. The bill should receive careful study and action in committee, and there is time. Bill C-83 was introduced in the Commons on June 30, 1987, with the understanding that it would be immediately sluiced through all stages there. The Senate was expected to do the same. Confusion struck when it was learned that some honourable senators were not prepared to give unanimous consent to such hurried passage here, on that last day when we were so rushed with legislation just before the summer recess.

The Commons, in its confusion, did not proceed with their plan. They backed off. However, the shallow and imperceptive media reported to the Canadian people that the bill had passed, and trumpetted the list of extra payments to scores of MPs as a *fait accompli*. The bill remained on the Commons order paper until October 16, 1987, when action—rather rapid action—was taken. In quick succession, the spokespersons for the Tories, the Liberals and the ever-pure Socialists, the NDP, rendered their support to the bill. It was whisked off to Committee of the Whole, then back to the House where it was given third reading without further comment.

Honourable senators, that whole process was concluded in a matter of minutes. No doubt one could be excused if one referred to this as an example of unseemly haste. There is no call for such haste in this chamber. Bill C-83 came to us for first reading on October 20 last. It lay fallow on our order paper until the 4th of this month, a period of three and a half months—

Senator MacEachen: No enthusiasm.

Senator McElman: —when the second reading was moved by the Leader of the Government in the Senate. So it is clearly not a matter of urgency here. There is plenty of time for debate and committee study. Let us do it well and let us do it thoroughly.

I suggest to you that Bill C-83 in its present form is unacceptable. From the standpoints of equality for members of both houses, fairness, common courtesy and parliamentary responsibility in creating charges against the Treasury, it is deficient. If it remains unchanged, it should be rejected—defeated by the Senate.

Permit me to close on two notes of attempted humour. First, at the very moment that the Leader of the Government in the Senate, Senator Murray, was speaking on second reading of Bill C-83 last Thursday the bells were ringing in the Commons. The reason: The Commons had lost its quorum. At

pages 12638 and 12639 of the House of Commons *Hansard* for February 4, 1988, you will note that not one Tory was present in the House and precious few Grits or Socialists were present. No doubt, all those committee chairpersons, in order to earn their anticipated additional pay, had called simultaneous meetings of their committees and denuded the House of Commons of its members.

Senator Doody: Strategic planning.

Senator McElman: The second bit of humour that I will attempt has to do with the proposed effective date for the amendments proposed in Bill C-83. The Commons proposes that this act be made retroactive to a day in 1987. The date that they propose is April 1, All Fools' Day. How appropriate!

Hon. Finlay MacDonald: Senator McElman, I would like to ask a question. I realize that you do not need any assistance from me, and I certainly do not want to alienate my colleagues, but, in those areas of this bill which are unacceptable, did you not forget one principle with respect to the old theory of bribery and corruption and what this payment to committees may do with respect to the influence of the Prime Minister, the choice of committees, and the independence of committee chairmen?

Senator Frith: A point well taken, and taken by exactly the right person.

Senator McElman: Honourable senators, I have heard that point discussed and I have no doubt that it will be further discussed in the course of this debate. Therefore, I leave it to those who are better qualified than I.

Hon. Jack Marshall: Honourable senators, I would like to ask a question of Senator McElman relating to joint chairmanship. When there is a joint committee of the Senate and the House of Commons and there are joint chairmen, does this mean that the joint chairman of the House of Commons would get paid and the joint chairman of the Senate would not get paid?

Senator McElman: Honourable senators, as the bill is now drawn, that would be the case. There is no provision in the bill whatsoever for consideration of anything, including remuneration, for any member of the Senate.

On motion of Senator Cottreau, for Senator Stewart, debate adjourned.

• (1600)

COPYRIGHT ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming the debate on the motion of the Honourable Senator Doyle, seconded by the Honourable Senator Doody, for the second reading of the Bill C-60, An Act to amend the Copyright Act and to amend other Acts in consequence thereof.—(*Honourable Senator Grafstein*).

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I understand that Senator Grafstein has yielded to Senator Marsden.

Hon. Lorna Marsden: Thank you, honourable senators. Senator Grafstein is unable to be here today, and we both have an interest in this legislation.

That the Canadian copyright legislation is in need of revision is not in question from our side of the chamber. As Senator Doyle pointed out in his delightful speech, there are a good many reasons why the 1924 copyright legislation needs to be further amended. We agree entirely that the rights of creators need protection and, in some cases, expansion. We recognize that the categories of creators to be protected by copyright have gone well beyond artists, scholars and the creators of what Senator Doyle calls articles, gimcracks and what-have-you, to software, recorded film and music, and other articles arising from a variety of new and rapidly expanding technologies.

However, this legislation is complicated. In the other place some excellent points were raised in briefs from experts representing a very wide number of groups, both creators and users; from lawyers who work in copyright law; and from many people whose economic fortunes will be changed or may be changed by this legislation. Because, as I will emphasize in a moment, this is only step one in a series of copyright changes and deals principally with creators' rights, users must wait for the other shoe to drop in a subsequent piece of legislation, which we have not yet seen, and which has the potential to allay, or perhaps enhance, the fears of users and, in some aspects, creators. There are echoes of tax reform here.

In his speech last Thursday, February 4, Senator Doyle indicated some of the problems with this bill. He mentioned sins of omission as well as sins of commission. For example, he commented on the possibility of copyright being used as a means of destruction rather than as a means of protection. The example he gave was of the movie industry in the U.S.A., where destruction of film does occur under copyright. The film industry and other cultural industries in Canada are in an era of explosive growth and need better protection. I am sure that the committee of the Senate will consider the interests of those in the movie, video, music and other related industries who have an interest in this bill, and when they do so Senator Grafstein will wish to have something to say on these matters, on which he is expert—as I am not.

We look forward to the hearings which the Senate committee will hold on this complicated bill. At the very least, it will be a rich and rapid education for senators in this vital part of Canadian life and culture.

But I hope it will be much more than that. It should be a process of serious and careful weighing in the balance which must exist between creators and users, an examination of a symbiotic relationship which is currently out of balance. In addition, I trust that the viewpoints aired in our committee will be better balanced as between one interest and another than was the case in the committee of the other place. There

are so many groups with interest in this bill, and their concerns are so diverse and subtle, that I cannot possibly put before you today the full range of concerns, and I will not try to do so. Let me simply raise a few examples.

One of the most contentious issues raised in the other place, and for which the opposition critic, Ms. Finestone, argued for an amendment, concerns the retroactive provisions of this bill. Retroactivity is always a matter of concern in legislation.

In her speech in the other place, which I commend to all senators for its comprehensiveness, clarity and reasonableness, Ms. Finestone quoted from a letter sent by the law firm Ogilvy, Renaud to the Minister of Communications and the Minister of Consumer and Corporate Affairs. They said:

> —the retroactivity created by Section 24 of the Bill is without precedent and unconscionable. Today, the law is clear that a course of action exists for infringement by the copying of a functional article and in many instances parties have instituted such proceedings before the Courts based on copyright. To abolish retroactively this cause of action would expose these persons to damages and costs for having relied on the law as it is today.

Honourable senators will want to take very seriously such concerns.

Those interested in education, such as the School Trustees Association of Canada, the Canadian Association of University Teachers, and the Association of Universities and Colleges of Canada, among others, have raised a number of profoundly disturbing questions. I wish to state quite categorically, and all honourable senators will know, that no one in the educational sector wishes to deny copyright benefits to creators, whether of print, software, or anything else, and there is a high degree of sensitivity to the problems of pirating and violation of copyright which may exist. But the desire to resolve these problems must be balanced against the concerns of scholars, teachers and researchers, and the educational institutions to prepare properly the coming generation of Canadians for this hi-tech world and to preserve properly the rights of scholars and researchers.

The committee will want to hear from the Association of Universities and Colleges of Canada on the issue of the fugitive literature for research purposes, a matter not covered by the solution proposed in this bill to manage copyright—that is, collectives.

There is distress, as well, about the ambiguities on single-copy access in libraries, or, indeed, in the copying machine in the Senators' Reading Room, under the "fair dealing" provisions which will be determined in the light of availability. Collectives do not resolve this problem. Reproductive collectives may be very useful in many aspects, but may also serve seriously to restrict inter-library loans. This matter is not an esoteric one, only a complicated one, which needs to be better resolved than it is in the bill before us.

The Post Graduate Students Association has been in touch with me to raise a matter which I know to be one of concern to many. This is the statute of limitations clause of this bill, which, in this bill, is set at three years—that is, there are three years available to complain about infringement of copyright. The average length of time required to obtain a PhD in some fields is well beyond that period. For Social Sciences and Humanities it is currently an average of six years, and the range is much greater. Students and their advisers work closely together, and rarely, but often enough for cases to be notorious, one or the other complains that the ideas have been published in advance of the thesis. Usually, since this is a very unequal relationship of power, it is the student who is the aggrieved party. The Graduate Students Association has pointed out that the British law on copyright has a six-year statute of limitations, and proposes the same here. That should be carefully examined.

Particular concerns arise in the matter of exhibition rights. The Canadian Museums Association and the Professional Art Dealers Association of Canada have raised a matter of grave consequence, because it appears that exhibition rights have not been well thought through in this legislation. The Minister of Culture and Communications of Ontario, the Honourable Lily Munro, said in a letter to the federal sponsoring ministers:

> We feel that the possible implications of these amendments (concerning exhibition rights) have not been fully assessed and may be too far reaching. Art Galleries and museums not only have a role in providing public access to creative works but also, in many cases, have education objectives to which they must adhere.

The minister goes on to state:

> Interpretation of collections is an essential part of the curatorial responsibility of such institutions and provides an educational experience for the viewer, particularly in an historical context. The introduction of an exhibition right, as stated in Bill C-60, would alter this historically established balance between creators and the institutions.

It appears that the Professional Art Dealers Association of Canada agrees with this matter, as do the museums.

Furthermore, as these bodies have pointed out, there are alternatives which would protect the economic interests of creators, which means are already used in Canada, and which can be achieved without legislative change; that is, the exhibition rights in clause 2 of this bill could be withdrawn for further consideration and creators still be financially compensated. Let me explain.

Senators will have noticed a recent press release from the Minister of Communications, one of the ministers responsible for this bill, announcing additional funding for the Public Lending Rights Commission's program for 1987-88. Through this means payments are made to authors registered with the PLRC. This is a popular, non-legislated means of helping creators. It works for authors and could work for those affected by exhibition rights. I refer senators to the speech of Ms. Finestone in which she listed a number of other important measures in the area of tax laws, for example, and which can be used to compensate creators and ensure their livelihood without the awkwardness created in Bill C-60 before us.

Collectives are proposed as a method for administering copyright, and are already established and working well in some fields, such as the music recording industry, and some regions, such as in the province of Quebec. In other jurisdictions, such as France and Britain, collectives are established under different circumstances from the ones proposed here. Collectives strike me as a good solution, but by no means a perfect solution. It is incumbent upon us to consider the exceptions to perfection—some of which I mentioned in my comments a minute ago. The Canadian Musical Reproduction Rights Agency is such a collective, which has been in operation for ten years licensing musical works to record companies, film and television producers on behalf of music publishers and composers. They are most willing and anxious to explain their operations to senators, and would, in my opinion, provide a good example of how collectives work.

• (1610)

However, there is a different point of view on some of these rights. The private broadcasters, represented by the Canadian Association of Broadcasters, have serious matters to raise. For example, new technology in their industry has dramatically changed the situation with respect to copyright. They ask for an exemption to the mechanical reproduction rights provision, or, alternatively, for ephemeral broadcasting rights. Ephemeral broadcasting rights sounds positively heavenly, but they turn out to mean taped broadcasts delayed for a variety of reasons such as time zones.

Senator Frith: Quite secular and not at all sacred!

Senator Marsden: Yes. The broadcasters have a number of serious concerns such as the matter of "fair use," for example. If someone being interviewed has music playing in the background, will that expose them to liability under this act? It appears that it may.

Broadcasters also point out that they are placed in double jeopardy by this bill, because one law requires them to keep logger tapes of their broadcasts for a certain number of days while this bill means that they will be violating copyright by doing so.

Let me repeat again that software creators have genuinely important concerns for protection, which are well known and often commented upon in the popular press. These concerns for protection must be addressed, as must the protection of many other creators.

Many of the concerns of users would be relieved if the second or any subsequent bills could come forward even in draft form. They have been promised. The Minister of Communications, when she introduced this legislation last May, promised that the users' rights bill would be ready in the fall of 1987. At the end of 1987 she promised it this spring. In his speech Senator Doyle referred to the fall as the likely time for the presentation of this legislation. In a compelling brief the Social Science Federation of Canada has pointed out the grave difficulties the delay in introducing the second bill raises, including the havoc which may possibly be created in many important national institutions, and urges us to "postpone passage of Bill C-60 until all interested parties have had an opportunity to consider amendments to the Copyright Act in their totality." I must say that I agree entirely with the Social Science Federation of Canada on this matter, and hope that the Senate committee will seriously consider this.

Having said that, I am also of the view that creators' rights are now, and have been for too long, in jeopardy through inadequate protection. It is my view that there is what would be called in industrial relations a "win-win" situation here. That is, people want creators' rights protected and creators want users' rights protected. This is not a parasitic but a symbiotic relationship, or it should be that. However, in many instances it has been parasitic for creators. It should be the purpose of this bill and its companion bill to create the balance of symbiosis, which would cause the sectors of our community and economy involved in and touched by this bill to grow and prosper.

For our part, we will be looking for that symbiotic relationship to be enhanced and improved in this bill. We look forward to hearing from any groups. Many of those who appeared in front of the committee in the other place have telephoned or written to say that events have changed and their views have developed as the bill was amended before we received it. This will not, therefore, be mere repetition of what has been heard before but a development of ideas which one hopes will be helpful to the government as well as to those affected by this bill in Canada and to Canadians more generally.

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, in the absence of Senator Doyle, I urge second reading of the bill.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Doody, for Senator Doyle, bill referred to the Standing Senate Committee on Banking, Trade and Commerce.

THE CONSTITUTION

FIRST MINISTERS' ACCORD AND AGREED TEXTS—
CONSIDERATION IN COMMITTEE OF THE WHOLE CONTINUED

On the Order:

> The Senate again in Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to.

The Senate was accordingly adjourned during pleasure and put into a Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to, the Honourable Gildas L. Molgat in the Chair.

The Chairman: Honourable senators, if the committee is ready to come to order, there are certain motions required as a result of the previous decisions of the Committee of the Whole

regarding the establishment of a Submissions Group. It was decided that the Submissions Group would be receiving its instructions from the Committee of the Whole as to who would be heard by the Submissions Group.

The Submissions Group intends to have its next sitting on Monday, February 29, 1988. As it is not likely that the Senate will be sitting before that, I asked whether the Committee of the Whole could meet today to give its instructions to the Submissions Group.

Senator Frith: Mr. Chairman, I move:

> That the following groups and individuals be heard by the Committee of the Whole on the Meech Lake Constitutional Accord, namely:

I should say, Mr. Chairman, that this motion is the result of consideration by the steering committee as to the number of persons who have asked to appear before the Committee of the Whole, some of whom might more appropriately appear before the Submissions Group. The motion first refers to the groups and individuals to be heard by the Committee of the Whole on the Meech Lake Constitutional Accord. They are the following:

Professor Ramsay Cook

Honourable H. Carl Goldenberg

Public Service Alliance of Canada

Honourable Donald J. Johnston, P.C., MP

Mr. I. Asper

Canadian Nurses Association

Mr. A.W. Johnson

Metis National Council

Right Honourable Pierre E. Trudeau, P.C.

Honourable Lowell Murray, P.C., Senator

I understand from you, Mr. Chairman, that these are the names that should be assigned to the Committee of the Whole, but it is not necessarily established that all of them will be appearing. However, if they appear, they will appear before the Committee of the Whole.

The Chairman: That is correct.

Senator Frith: And further:

> That the Honourable Robert Bourassa, Premier of the Province of Quebec, and the Honourable Gil Rémillard, Minister of International Relations and Minister Responsible for Canadian Intergovernmental Affairs (Province of Québec), be invited to appear before the Committee of the Whole;

● (1620)

> That the following groups and individuals be heard by the Submissions Group on the Meech Lake Constitutional Accord:
>
> *Alberta*
>
> Mr. George Ares, President, Association canadienne-française de l'Alberta
>
> Mr. Preston Manning, Reform Party of Canada

[The Hon. the Speaker.]

Indian Association of Alberta

Ms. Joyce Creene

British Columbia

Ms Renate Bublick, Chairman, Charter of Rights Coalition (Vancouver)

Ms. Coralie Fisher, Coordinator, Port Coquitlam Area Women's Centre

Ms. Julian Ridington, Executive of Disabled Women Network of British Columbia

Ms. Jane Shackell, President, B.C. Women's Liberal Commission

Arthur L. Charbonneau

Frances Gordon, West Coast LEAF Association

Janet Kee, West Coast LEAF Association

Manitoba

Ms. Louise Lamb

New Brunswick

M. Norbert Roy, Directeur général par intérim, La Société des Acadiens du Nouveau-Brunswick

Mr. S. B. Benton

Ontario

Mr. Timothy Danson

Ms. Suzanne Chartrand, National Association of Women and the Law

Ms. Sylvia Gold, Canadian Advisory Council on the Status of Women

Ms. Pearl Dobson, National Council of Women of Canada

Mr. Gary P. French

Mr. John T. Fullerton, Director, Sarnia-Lambton Federal Liberal Association

Ms. Sheena Hanley, Canadian Teachers Federation

Mr. Terrance M. Hunsley, Canadian Council on Social Development

Mr. Howard Levitt

Mr. W. Alfred Apps

National Federation of Nurses Union

Mr. Tony Hall, Department of Native Studies, University of Sudbury

Toronto Mayor's Committee on Race Relations

Mr. Charles Recollet, President, Ontario Metis and Non-Status Indian Association

Ontario Black Coalition for Employment Equity

Women's Legal Education and Action Fund

National Union of Provincial Government Employees

Mr. Randall Pearse, Ontario March of Dimes

Barrier Lake Native Council

Canadian Association of Social Workers

Mr. Joe Armstrong

Mr. Robert Baragar

Professor Theodore Geraets

Mr. Michael McDonald

Ms. Marylou Murray, NAC, Ottawa Office

Mr. Stewart Schackelton

Mr. Michael White

Mr. Paul Wintemute

Mr. Mark Crawford

Ms. Darlene Varaleau

Prince Edward Island

Ms. Heather Irving, Executive Director, P.E.I. Advisory Council on the Status of Women

Québec

Mr. Armour Forse, Freedom of Choice Movement

Mrs. Helen Koeppe, Quebec Federation of Home and School Association

Mr. Carol Zimmerman, President, Quebec for All

M. Victor Paul, L'Association Nationale des Canadiens

M. Henri Laberge, Centrale de l'enseignement du Québec

Rina Kampeas, Townshippers Association

Mr. W.I. Stockwell

Mr. J.B. Giroux

Nova Scotia

Mr. J. Mackay; and

That the Chairman, after the usual consultation, be authorized to submit the names of other groups or individuals to appear before the Submissions Group and the Committee of the Whole.

The Chairman: If any honourable senator does not have a copy of this list, would he or she please so indicate?

Senator Bielish: I do not have it.

Senator MacDonald (Halifax): Mr. Chairman, I wish to raise a matter for clarification.

The Chairman: If it is not on a point of order, I would point out that Senator Doody and Senator Phillips have their hands up on a point of order.

Senator Frith: Perhaps you, Mr. Chairman, could explain the last paragraph of the motion and any other matters which may arise.

Senator MacDonald (Halifax): Mr. Chairman, in answer to Senator Frith, you indicated that those first listed, starting with Professor Ramsay Cook and ending with Senator Murray, have not yet agreed to appear before the committee. The next paragraph in the motion suggests that several persons be invited to appear before the Committee of the Whole. Why should we not say that everyone should be invited to appear before the Committee of the Whole?

Senator Frith: I may have misled you on that point. These people all asked to appear or were invited to appear. I am simply saying that since that time it apparently has not been established exactly whether all of them are going to appear or on what dates they are going to appear.

What I am saying is that the motion is that they be heard, if they wish to be heard, rather than offering a guarantee that they are going to be heard.

Senator Doody: Mr. Chairman, I want to comment on the list as presented to us.

At the steering committee meeting this morning the majority of the senators present felt that this was the correct procedure to follow, and I have no quarrel with it; indeed, I agree that as many as possible should be heard by the Submissions Group to save time so that we can devote more time to other duties here in the chamber.

However, I did express the opinion in committee that all of those people whose names are included in the group to be invited to appear before the Committee of the Whole need not have been, and that many of them could have been heard in the other place. However, that opinion did not carry. The majority view carried, and that is the situation as we have it before us now.

Senator Phillips: I am rather intrigued by the manner in which this select list was made up. I am surprised to see the name of Mr. Asper, although I think I have heard tell of him. However, I then see the name of Mr. A.W. Johnson, and I am not sure I can distinguish between the Johnsons on the list.

I have one strenuous objection, Mr. Chairman, and that is that the mover of the motion, the Deputy Leader of the Liberal Party in the Senate, has selected Mr. Asper, a former leader of the Liberal Party in Manitoba, over the Acadian Society in New Brunswick. I find it insulting to Acadians of New Brunswick to be relegated or shunted off to the Submissions Group while the leader of the Liberal Party in Manitoba receives the full treatment. He is invited to appear on the floor of the Senate. The Acadians are not being allowed to come on to the floor of the Senate—they are shunted off to a committee room. I think that is an insult to the Acadians of New Brunswick.

Senator Argue: Move that it be changed!

Senator Phillips: I am surprised that the Deputy Leader of the Opposition would move a motion of this nature. I hope he will correct that and show the Acadians the respect they deserve.

Senator Argue: I understood from a conversation I had with Larry Brown, the Secretary Treasurer of the National Union of Provincial Government Employees, that he was slated to appear before the Senate. I do not see his name here. My question is: If he cared to make a submission, would he be able to make that submission even though his name does not appear on this list at the moment?

The Chairman: I stand to be corrected on this, but I believe that group was approached to see if they could appear on the available dates and the response was that they had a convention at that time and could not attend. They did, in fact, make a request.

Senator Argue: I do not see that name on the list.

The Chairman: I have just noticed that the name of that association appears on page 3. They will appear on February 29.

Senator Argue: That was my error.

Senator Marsden: While I understand the necessity for this procedure, I am very distressed to see that the Women's Legal Education and Action Fund, the National Council of Women of Canada, and the Canadian Advisory Council on the Status of Women are not to be heard in the Committee of the Whole.

They were not heard properly at the joint committee. There have been constitutional and other events since then that mean, it seems to me, that their testimony is going to be far more important to the development of this committee's thinking than we necessarily recognize. I am not opposing any of those who have been chosen, but I do notice that we have only three chances out of 13 to hear from people who are not white, able-bodied male. If the Public Service Alliance of Canada, the Canadian Nurses Association, and the Metis National Council are good enough to have the Committee of the Whole addressed by women, we will hear from women, but otherwise we will not hear from them at all, and I strenuously object to this.

Senator Frith: The interventions by Senator Phillips, the new champion of the Acadians—

Senator Phillips: That is an honour.

Senator Frith: —and Senator Marsden were both based on the assumption that there was something second rate about not appearing before the Committee of the Whole, and that anyone who did not appear before the Committee of the Whole was the subject of some "shunting" operation. That is just not so. There are different reasons for persons being heard by the Submissions Group, and they have nothing to do with being second rate, and it is not a "siding"—if I may use a noun that would follow the "shunting" verb used by Senator Phillips. The reasons vary. In some cases it is for the convenience of the people themselves. If it turns out that after this list has been adopted, as I hope it will be, some people find that it is more convenient for them, if we find it more convenient for the Senate itself, and if everyone would be happier with their appearing before the Committee of the Whole, they may. This is a working list. The reasons for the division are not all the same. In some cases, as, for example, was the case for the group referred to by Senator Argue, it was for the convenience of the group itself, and not for the convenience of the Senate.

In any event, I hope that honourable senators will not approach this matter as being some discriminatory motion. It is simply meant to harness the Submissions Group that the Senate agreed to set up. That is the reason for the motion.

• (1630)

Senator Doody: I just want to say, Mr. Chairman, that my intervention was not aimed at bringing people from the Submissions Group into the main body of the church, as it were. My hope was that more of the people on the first list would find it convenient to be heard by the Submissions Group. The intention is not that one list is superior or inferior to the other. This Submissions Group list was simply drawn up to provide more time in the Senate chamber for the Senate's work.

This is not a new position I am taking here. I am sure most senators are tired of listening to me, but I think that the Senate as a body should be devoted to the work of the chamber as a constituent house of Parliament, and that committee work should be done in committee rooms. Therefore, I feel that the more people are heard by the Submissions Group the more expeditiously and efficiently we can deal with the business of the Senate. To that end, I was hoping that people on the first list could be transferred to the second. Obviously that is not going to happen, so I am quite prepared to live with it as it is.

The Chairman: If I might make a comment at this point, one of the reasons for the last paragraph on page 4 was to permit that sort of juggling, because we do have a problem in terms of scheduling. When we have to put everything through the steering committee, sometimes we find it difficult, because we cannot get a quorum, as was the case today. There could indeed be some juggling done when we speak to various people who have asked to appear.

Senator Phillips: Mr. Chairman, on the list of groups being granted permission to appear on the Senate floor I find the Canadian Nurses Association, but on the list of those appearing before the Submissions Group I find the National Federation of Nurses Union. Since they are both national associations and both represent the same profession, could the mover of the motion tell us how he made the distinction between them?

Senator Frith: As I said earlier, the selection was not based upon whether an organization was national or regional. Perhaps in this case it was for the convenience of one of the groups. I am not familiar with each individual decision in terms of the selection, but I know that it was not meant to be done on any discriminatory basis. Perhaps one of the groups preferred to appear before a smaller committee. If Senator Phillips wishes to press this point, I will have to ask the chairman or the staff of the steering committee to look into it. I can answer him only on the basis of the general principle.

The point he has raised is, I think, a valid one. He has drawn to our attention the fact that of two national bodies representing the same profession one will appear before the Committee of the Whole and one before the Submissions Group. That has given me an opportunity to explain the general basis of the selection.

Senator Marsden: Mr. Chairman, one of the distinctions which could be ironed out is this: The great advantage of the Committee of the Whole process is that in our debates the next day the testimony is already printed. Anyone who has tried to get the testimony from committees of this chamber or from joint committees will know that much of it disappears into obscurity for weeks on end. Is it the intention to publish all of the presentations to the Submissions Group in *Debates of the Senate* the day after they appear?

The Chairman: I believe that those groups will be treated the same as groups appearing before any committee, and that there will be a verbatim report of the committee's proceedings.

Senator Marsden: I must say that in that way I do think this proves to be a disadvantage to those people who are closely following this procedure and to those groups who wish to make presentations to the Committee of the Whole and cannot. The rationale behind the placing of some groups on one list and others on another list is not at all clear to me, I must say. I would be happier if the steering committee came back to us with that rationale more fully explained. However good the intentions of the steering committee, I can assure honourable senators that it will be very badly received among women's groups in this country.

Senator Frith: If I may deal with that intervention, in my opinion, if we are going to try in Committee of the Whole to settle each individual case and come up with an impeccable list of criteria for selection, we will be here a long time getting it settled. I repeat what the chairman has said, that the reason for the last paragraph is to provide for changes through consultation with the chairman rather than in Committee of the Whole.

Senator Marsden: Does that mean that your advice is to lobby the chairman as hard as we can?

Senator Lucier: It works!

Senator Frith: My advice is to consider the comparative advantages of appearing before the Committee of the Whole—one of which is that outlined by Senator Marsden—and those of appearing before the Submissions Group. Those appearing before the Submissions Group will probably be assured of an earlier appearance, perhaps more time and perhaps better publicity. These things could be discussed with anyone who wants a change made, and that could then be taken up with the chairman.

Senator Bielish: My question, Mr. Chairman, is with regard to the second item under "Alberta," on the first page. It reads: "Mr. Preston Manning, Reform Party of Canada, Indian Association of Alberta." Is Mr. Manning from the Reform Party of Canada appearing together with the Indian Association of Alberta?

Senator Frith: That is a good question; I don't know the answer.

The Chairman: I believe that is a typographical error, senator, but I can verify that.

Senator Frith: Perhaps we should place the Indian Association of Alberta on another line.

The Chairman: Yes. Thank you, Senator Bielish, for bringing that to our attention. Is it agreed that we put the Indian Association of Alberta on a separate line?

Hon. Senators: Agreed.

(*Editor's note: Correction made.*)

Senator Robertson: Mr. Chairman, I should like to know if this is the final list of witnesses and whether it includes everyone who wrote and requested to be heard.

Senator Frith: As I understand it, this list includes everyone who has requested to be heard and has indicated they still want to be heard up to the present time, and that the only additions or changes that can be made will be made in accordance with the last paragraph.

Senator Robertson: Therefore, we are hearing everyone who asked to be heard.

The Chairman: That was the basis on which the list was made up. Those people who asked to be heard are on the list, with one exception—some had asked to be heard and they then notified us that they could not appear.

Is there any further discussion? Honourable senators, the question before the committee is the motion by the Honourable Senator Frith. I presume it is not necessary for me to read the motion—

Senator Frith: Dispense.

The Chairman: —regarding the presentations before the Committee of the Whole and the Submissions Group. The motion is seconded by Senator Cottreau. Are senators ready for the question? Those in favour?

Some Hon. Senators: Yea.

The Chairman: Against?

I declare the motion carried.

• (1640)

Is there a motion that the committee rise and report progress?

Senator Frith: Mr. Chairman, I move that the committee rise, report progress, and ask for leave to sit again.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Acting Speaker: Honourable senators, the sitting of the Senate is resumed.

REPORT OF COMMITTEE OF THE WHOLE

Hon. Gildas L. Molgat: Honourable senators, the Committee of the Whole, to which the Meech Lake Accord and texts subsequently agreed to were referred, reports progress and asks for leave to sit again.

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

Hon. Senators: Agreed.

The Hon. the Acting Speaker: Honourable senators, when shall this committee have leave to sit again?

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I move that the Committee of the Whole be given authority to sit again on Wednesday, March 2, 1988.

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

Hon. Senators: Agreed.

Motion agreed to.

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I believe Senator Molgat suggested that the Submissions Group would meet on February 29. Is it necessary to get permission for the Submissions Group to sit even though the Senate may not be sitting? I am merely asking the question.

Senator Frith: All standing committees have the right to sit even though the Senate may not be sitting. I am wondering whether in this case permission is needed.

Senator Doody: The Submissions Group clearly is not a standing committee.

Senator Molgat: I believe that the Submissions Group has the right to do so; but if there is any question, with leave of the Senate, I move:

> That the Submissions Group on the Meech Lake Constitutional Accord be authorized to sit on 29th February—

Senator Doody: —or at any time.

The Hon. the Acting Speaker: —or at any time it likes.

Senator Molgat: Yes. At any time the Senate is not sitting. So my motion is:

> That the Submissions Group on the Meech Lake Constitutional Accord be authorized to sit during adjournments of the Senate.

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

Hon. Senators: Agreed.

Motion agreed to.

BUSINESS OF THE SENATE

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, may I suggest that all remaining orders, inquiries and motions stand?

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

Hon. Senators: Agreed.

The Senate adjourned until Tuesday, March 1, 1988, at 2 p.m.

APPENDIX

(*See p. 2754*)

TEXT OF ADDRESS BY THE SPEAKER OF THE SENATE AT A RECEPTION HELD IN THE SPEAKER'S CHAMBERS ON WEDNESDAY, FEBRUARY 10, 1988 ON THE OCCASION OF THE RETIREMENT OF THE HONOURABLE SENATORS A. IRVINE BARROW AND JEAN LE MOYNE

Honourable colleagues,
Ladies and gentlemen,

Senator Barrow is favoured with so many fine qualities that I hardly know where to begin.

Should I tell you of his ability in financial matters? Should I speak about his success in the accountancy field, or about his generous support of volunteer work? Or should it be about his devotion to the democratic society?

Since we are gathered to say farewell to Senator Barrow, after his nearly fourteen years in our midst, and since I am most familiar with his performance as a member of the Senate, I will put the emphasis on the last aspect.

It is a truism that many people take democracy for granted and believe that it will last forever without any personal involvement in the machinery, in the rouage of political process. We are privileged in Canada to live in a pluralist society, and we owe this, in part, to the existence of our different political parties. And it is thanks to people like Senator Barrow that these parties are healthy and continue to offer us alternative points of view. Genuinely devoted to his political beliefs, yet philosophically active and open, he is a staunch believer in our way of life and he acts in accord with his principles.

For these and many other reasons, Senator Barrow is a man—a gentleman—who inspires confidence and respect. His bearing suggests that, with him, one is standing on firm ground. He never seems to be in a hurry because his homework is always done on time. Those of us who have served with him on the Internal Economy Committee have had reason to be grateful to him for his superb chairmanship of the Budgets Subcommittee—a task many would consider a thankless one.

And in the Chamber, when he addressed the Senate, we knew that each word was well chosen and accounted for. It would never have come to the mind of his colleagues to ask him to filibuster! We shall indeed miss his short and pertinent remarks that synthesized the questions, and his sharp mind which reminded everyone to avoid futilities. Often his presence alone, or his eloquent silence, had the effect of calling the Senate to order. With people like him, there is even less need for a Speaker!

On the federal scene, Senator Barrow's innate qualities and wide expertise and experience were recognized when he was appointed a director of the Bank of Canada and of the Industrial Development Bank. If you travel in his province, you will discover that Irvine Barrow is not a chartered accountant of Halifax only, but of all Nova Scotia. His clientele is spread all over, in important cities, in important companies—the well-off people, but don't count on him to give names. He is a knowledgeable accountant and a reliable and discreet man.

And, in the economic field, Senator Barrow was not simply an accountant. He was an entrepreneur and, like all real businessmen, he took risks. Whereas John Kenneth Galbraith described our times as "the world of uncertainties", our colleague was not afraid to take risks, becoming one of the pioneers of the then new and uncertain area of cablevision. Naturally, Senator Barrow not being a mindless adventurer, every aspect had been carefully studied, and the company was a tremendous success.

Finally, I would like to mention the countless professional and community associations to which he has devoted his time and efforts. He does not publicize it but I am sure that his contribution to their activities is crucial to their vitality and success, for he does nothing by half-measures.

Dear colleagues, ladies and gentlemen, as I am sure you will agree, our institution should seek to attain political neutrality! You have discovered that Irvine Barrow is constantly progressive, realistically conservative and spiritually liberal. These few words were meant to make you realize that he is the prototype of a senator!

Dear colleague, you know now why your departure will be so regretted. Best wishes in your new life.

(*Applause*)

Honourable colleagues,
Ladies and gentlemen:

As you can imagine, when I sat down to prepare this tribute to our colleague, Jean Le Moyne, I got out my dictionaries.

It is by no means an easy task to honour so active a senator on the occasion of his retirement, and for someone whose area of expertise is finance, it might well be considered foolhardy to risk a few comments about a man of letters.

I hesitated for a long time before jotting down some notes, because I knew that nothing I could say would do justice to this essayist, critic, writer, polemicist and political scientist. This man, who is capable of grasping the most profound theology, the most abstruse philosophy and the most futuristic principles of mechanology, was not afraid at the end of one career to move on to the political arena, which must sometimes have reminded him of the Tower of Babel.

To the astonishment of his Liberal colleagues, this septuagenarian, a political neophyte, took to his new responsibilities so well that he had scarcely been sworn in when he was elected caucus chairman. It was a revelation for everyone, and especially for Senator Le Moyne.

When I learned the news, I wondered if the Liberal senators had not secretly wanted to protect themselves from the sharp tongue of this champion of justice by confining him to the neutrality of the chairmanship. Had he had the right to speak, he would undoubtedly have reminded them of all the mistakes they had made during their too lengthy tenure.

Be that as it may, Senator Le Moyne participated faithfully in all the activities of this house. We all observed that he was capable of being an attentive, albeit often impatient, listener. We were also privileged to experience some of his sudden changes of mood, at which time he would amuse or enlighten spectators and make his absent targets tremble.

We will not soon forget his vivid comments in the course of a debate which could be qualified as theological, since it focussed on organized religion. Given his name, which in English means "the monk", we expected him to leap to the defence of Opus Dei. How wrong we were! It was like seeing Léon Bloy rebuking the moneychangers in the Temple, a temple whose pillars would have crumbled had Opus Dei found refuge therein. Others heard echoes of Bernanos' "Sous le Soleil de Satan". Even the philippics of Demosthenes seemed to pale in comparison with the tirades of our eminent senator.

But I must not leave you with the false impression that as a senator Jean Le Moyne excelled only in diatribes, although we gave him ample opportunity. Whenever the occasion warranted, he could exalt us with his eloquence. Who can forget his courageous, inspiring contribution to the debate on the film "The Kid Who Couldn't Miss"?

In a speech worthy of an academic, he recognized democracy's wisdom in taking the risk of allowing its cultural agencies freedom of action. His remarks were so steeped in the British tradition of fair play that his comments were reproduced in their entirety in the most recent issue of the journal of the Commonwealth Parliamentary Association.

Just recently, I wanted to tell our colleague how highly we thought of him. I told him that he deserved to have a school of philosophy named after him—a school that believed in demonstrating the truth rather than in expounding edifying theories. Since I was speaking to a philosopher and philologist, I raised myself up to his level and said, quite simply: "My dear Jean, thanks to you, the name Le Moyne has become the eponym of assertoric statements which eschew apodictic propositions." His reply was: "Finally, I understand you"!

My dear colleague, from what I have said you must surely realize how sorry we are to see you leave us so soon. However, we can take comfort from thinking that rarely has the Senate benefited from so great a contribution in so short a time.

We wish you an enjoyable and productive retirement.

(*Applause*)

THE SENATE

Tuesday, March 1, 1988

The Senate met at 2 p.m., the Honourable Rhéal Bélisle, Acting Speaker, in the Chair.

Prayers.

XV OLYMPIC WINTER GAMES

TRIBUTE TO PEOPLE OF CALGARY

Hon. Daniel Hays: Honourable senators, I rise at this time to say a few words to mark the end of the XV Olympic Winter Games that took place over the past two weeks in Calgary. I believe what occurred during the games was important for Canada and especially important for my home city of Calgary. When considering what I might say on this occasion, I thought I would not mention any names. As you all know, the games were hosted by the City of Calgary and by some 10,000 or more volunteers who did all the work that resulted in the success that all of us saw, including those who were able to visit the city of Calgary and those who watched the events on television. However, it has occurred to me that certain names should be mentioned, because they are symbolic of what the games were about, what we tried to achieve, and what we did achieve.

I think the most important person to mention is Robyn Perry, who was the 12-year-old girl who lit the Olympic flame at the beginning of the games. She is important because she is symbolic of the future, symbolic of what the Olympics are about, and symbolic of what we in Canada realize deep down but talk little about in terms of what is very important to us, and that is our future. Our future is people like Robyn Perry. Another name that should not go unmentioned is that of Frank King, chairman of the Organizing Committee. He is symbolic of the determination and hard work that went into having Calgary selected as the site of the XV Olympic Winter Games and for making them the success they were. Another name that should be mentioned, because of his involvement from the beginning, is that of the Mayor of Calgary, Mr. Ralph Klein. I think he is symbolic of the friendliness of Calgary and of the determination of its citizens to be good hosts, not only on the occasion of the Olympic Games but on all occasions.

It is difficult to express why the events were important. They were about respect for the individual, about friendship, about the energy of a people, about the energy of a community, about success, and about doing one's best—all of which describe what happened in Calgary during the two magic weeks just past. It was one of those events that are too good to last; it had to end. However, it is an event that will live in my memory and, I believe, in the memories of all those who were involved and all those who were spectators, whether they were actually in Calgary, in another part of Canada or in another part of the world. It was a special time. It was a time that we shall remember for the rest of our lives. It will be a reference point for me, and I am sure for others, in measuring what is success. As a result of the games, my community will benefit in a material way, but I think it will benefit most from the spiritual legacy of the games. Most of all, the experience was about celebration.

I merely wanted to share those thoughts with honourable senators. I find language an imperfect tool to convey something as important to us as the celebration of the XV Olympic Winter Games in Calgary these past two weeks.

Hon. Senators: Hear, hear!

LIBRARY OF PARLIAMENT

ANNUAL REPORT OF PARLIAMENTARY LIBRARIAN TABLED

The Hon. the Acting Speaker: Honourable senators, I have the honour to table the annual report of the Parliamentary Librarian for the 1986-87 fiscal year.

[*Translation*]

OFFICIAL LANGUAGES

THE ESTIMATES, 1988-89—PRIVY COUNCIL VOTE 15—REFERRAL TO JOINT COMMITTEE—MESSAGE FROM COMMONS

The Hon. the Acting Speaker informed the Senate that a message had been received from the House of Commons as follows:

HOUSE OF COMMONS
CANADA

Tuesday, February 23, 1988

Ordered,—That Privy Council Vote 15, for the fiscal year ending March 31, 1989 be referred to the Standing Joint Committee on Official Languages; and

That a Message be sent to the Senate to acquaint Their Honours thereof.

Attest

ROBERT MARLEAU
The Clerk of the House of Commons

[*English*]

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, on a point of order, perhaps someone at some stage—and not necessarily right now—could explain just how that reference can go directly to a joint committee without

going through the Senate. I know there is a reason for it, but I would like to see it on the record.

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have a like motion:

> That the Standing Joint Committee on Official Languages be authorized to examine the expenditures set out in Privy Council Vote 15 of the Estimates for the fiscal year ending the 3lst March, 1989; and
>
> That a message be sent to the House of Commons to acquaint that House accordingly.

Therefore, both houses make the same motion and jointly refer the vote.

Senator Frith: Yes, but that is not what this last message from the House of Commons says. They want to say that they, I take it, on the other side have referred it by motion.

Senator Doody: No, it has that effect, but the message is quite clear:

> That a message be sent to the House of Commons to acquaint that House accordingly.

It informs the House of Commons that we, the Senate, have referred to the Standing Joint Committee on Official Languages the expenditures set out in Privy Council Vote 15 of the Estimates. And the motion further states:

> That a message be sent to the House of Commons to acquaint that House accordingly.

Senator Frith: I just think it would be much more communicative if, instead of using the passive form of the verb, the writer of the notice used the active form and said:

> . . . to inform the Senate that the House of Commons has referred Privy Council Vote 15—

Senator Doody: I have no problem with that, honourable senators. We can check with the officers at the Table, but I assume that this has been a standard procedure. However, like most things, it is open to improvement.

The Hon. the Acting Speaker: Perhaps I could read the text that was received by the Clerk of the House of Commons, Mr. Robert Marleau:

> That Privy Council Vote 15, for the fiscal year ending March 31, 1989 be referred to the Standing Joint Committee on Official Languages; and
>
> That a Message be sent to the Senate to acquaint Their Honours thereof.

Senator Frith: I suggest that next time the message should state that the House of Commons has referred such-and-such a matter.

COMMITTEE OF SELECTION

SIXTH REPORT OF COMMITTEE PRESENTED AND ADOPTED

Hon. Orville H. Phillips, Chairman of the Committee of Selection, presented the following report:

Tuesday, March 1, 1988

The Committee of Selection has the honour to present its

SIXTH REPORT

Pursuant to Rule 66(1)(*b*), your Committee submits herewith the list of Senators nominated by it to serve on the Special Committee of the Senate on the role that preventative medicine and other preventative measures, together with the provision of a wider range of health services, can play in providing a more effective health care system:

The Honourable Senators Adams, Argue, Barootes, Bell, Bonnell, David, Gigantès, Hébert, Lucier, *MacEachen (or Frith), *Murray (or Doody), Sherwood, Tremblay and Turner. (12)

*ex officio members

Respectfully submitted,

ORVILLE H. PHILLIPS
Chairman

• (1410)

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

Senator Phillips: Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*f*), I move that this report be now adopted.

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

Hon. Senators: Agreed.

Motion agreed to and report adopted.

THE CONSTITUTION

FIRST MINISTERS' ACCORD AND AGREED TEXTS— CONSIDERATION IN COMMITTEE OF THE WHOLE CONTINUED— REPORT OF TASK FORCE PRESENTED

Leave having been given to bring forward the following order for Wednesday, March 2, 1988:

> The Senate again in Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to.

The Senate was accordingly adjourned during pleasure and put into a Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to, the Honourable Gildas L. Molgat in the Chair.

The Chairman: Honourable senators, I have the honour to present the first and final report of the Senate Task Force on the Meech Lake Constitutional Accord and on the Yukon and the Northwest Territories.

Honourable senators, it is not my intention at this time to deal with the substance of the report, except to say that the

conclusions and recommendations arrived at in the report are the result of intensive meetings held in the North that brought forth very deeply-held views.

The members of the committee listened to the presentations carefully, but the final conclusions and recommendations are those of the members of the committee, after having heard those presentations.

I want to express my particular thanks to the members of the committee. They were, undoubtedly, the most cooperative group with whom I have ever had the pleasure to work. They spent countless hours listening to presentations and working on the report.

I also want to thank all the members of the staff, thanks to whom this report was produced in-house. The committee budget came in substantially below that which was forecast, and for that I also thank the members of the staff.

I have one apology to make, because a senator has approached me on the subject. In order to accommodate the people of the North, we held meetings on weekends. I was told subsequently that the committee should not have held meetings on Sundays. If that offended anyone, then I apologize for that. It was an attempt to accommodate the people from those regions.

Honourable senators, if there is no discussion on the report at this time, shall the committee rise, report progress and ask for leave to sit again?

Senator Frith: Mr. Chairman, I move that the committee rise, that the chairman report progress and ask for leave to sit again.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Acting Speaker: Honourable senators, the sitting of the Senate is resumed.

REPORT OF COMMITTEE OF THE WHOLE

Hon. Gildas L. Molgat: Honourable senators, the Committee of the Whole, to which the Meech Lake Accord and texts subsequently agreed to were referred, reports progress and asks for leave to sit again.

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

Hon. Senators: Agreed.

The Hon. the Acting Speaker: Honourable senators, when shall this committee have leave to sit again?

Senator Molgat: Honourable senators, I move that the Committee of the Whole be given authority to sit again at the next sitting of the Senate.

Motion agreed to.

NEWFOUNDLAND

MATTERS OF FEDERAL AND PROVINCIAL SIGNIFICANCE—NOTICE OF INQUIRY

Hon. Gerald R. Ottenheimer: Honourable senators, I give notice that on Thursday next, March 3, 1988, I will call the attention of the Senate to matters of federal and provincial significance, with particular reference to the province of Newfoundland.

ASSOCIATION INTERNATIONALE DES PARLEMENTAIRES DE LANGUE FRANÇAISE

SIXTEENTH GENERAL ASSEMBLY, YAOUNDÉ. CAMEROON—NOTICE OF INQUIRY

Hon. Gildas L. Molgat: Honourable senators, I give notice that on Thursday next, March 3, I will call the attention of the Senate to the Sixteenth General Assembly of the International Association of French Speaking Parliamentarians, held at Yaoundé, Cameroon, from January 4 to 10, 1988.

REPORT OF CANADIAN SECTION TABLED

Senator Molgat: I propose to table the report of activities of the Canadian section at the Sixteenth General Assembly of the AIPLF held at Yaoundé, Cameroon, from January 4 to 10, 1988.

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

Hon. Senators: Agreed.

[*English*]

LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Nathan Nurgitz: Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*a*), I move:

> That the Standing Senate Committee on Legal and Constitutional Affairs have power to sit at 3.30 o'clock in the afternoon today, even though the Senate may then be sitting, and that rule 76(4) be suspended in relation thereto.

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

Hon. Senators: Agreed.

Motion agreed to.

THE ESTIMATES, 1988-89

REFERRED TO NATIONAL FINANCE COMMITTEE

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*e*), I move:

That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in the Estimates for the fiscal year ending 31st March, 1989, with the exception of Privy Council Vote 15 (Official Languages).

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

Hon. Senators: Agreed.

Motion agreed to.

OFFICIAL LANGUAGES

THE ESTIMATES, 1988-89—PRIVY COUNCIL VOTE 15 REFERRED TO JOINT COMMITTEE

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*e*), I move:

That the Standing Joint Committee on Official Languages be authorized to examine the expenditures set out in Privy Council Vote 15 of the Estimates for the fiscal year ending the 31st March, 1989; and

That a Message be sent to the House of Commons to acquaint that House accordingly.

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

Hon. Senators: Agreed.

Motion agreed to.

● (1420)

QUESTION PERIOD

[*English*]

ATLANTIC CANADA OPPORTUNITIES AGENCY

EXPENDITURE OF NEW MONEY

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, I should like to address a question to the Leader of the Government in the Senate on the Atlantic Canada Opportunites Agency.

We all recall that the Prime Minister announced the funding for the agency in June 1987 in St. John's, Newfoundland, indicating that the sum of more than $1 billion would be made available for the next five years. Today we read in the newspapers that the four Atlantic premiers are seeking a meeting with the Prime Minister to discuss the agency.

One of the allegations referred to in the article, presumably made by Premier Buchanan, is to the effect that no new money has been expended since the original announcement. Would the Leader of the Government tell us whether that allegation is correct?

[Senator Doody.]

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I announced on February 15 considerable expansion of the authorities that the agency would have to spend money by way of loans, loan guarantees, interest rate buy-downs, loan insurance, and so forth, for the purpose of assisting small- and medium-sized businesses in the Atlantic provinces and also for assisting non-commercial enterprises engaged in providing services to business enterprises. If the money has not been flowing, it will certainly be flowing very shortly.

As I indicated at the time, we have every reason to believe, on the basis of the applications that have been coming forward and the interest that has been shown by the business community in the Atlantic provinces, that we will have committed at least $100 million in a very short period of time.

Senator MacEachen: I infer from the minister's statement or reply that new authority has been established as of February 15 to facilitate or accelerate expenditures, but that up to that time apparently no new money was expended. It certainly appears that the optimism expressed by the Prime Minister in St. John's in June 1987, when he said that he had asked Don McPhail when the agency would be open for business and was given the answer "tomorrow morning," was unfounded, and that "tomorrow morning" did not come until February 1988. However, let us put that aside.

Senator Murray: Don't put that aside, I will come to it in a moment.

Senator MacEachen: Please do.

Senator Frith: Right now, not tomorrow.

Senator Murray: Honourable senators, the agency did open for business immediately. The honourable senator, I trust, will recall that the first step taken by the government and the Prime Minister was to transfer to the agency a number of the existing programs, including the IRDP, the Atlantic Enterprise Program, Enterprise Cape Breton, the Small Business Loans Act as it operates in the Atlantic provinces, and a number of other programs, programs which, I may say, had been found by the business community in the Atlantic provinces to be heavily bureaucratized and, indeed, strangling in red tape.

The Prime Minister instructed us to to cut the red tape, simplify the process, and decentralize the administration of those programs. We set about doing that immediately after June 6, and we have succeeded rather dramatically. Indeed, in the period since June 6, because of the decentralization and the delegation of authority which I announced some time after that, applications from the small- and medium-sized business communities in the Atlantic provinces have been coming in at approximately twice the previous rate and have been approved at approximately twice the previous rate. As of now—in fact, as of some time ago—under those existing programs applications for up to $250,000 can be handled by an officer in a provincial office without further reference to interdepartmental committees and the whole bureaucratic rigamarole that was involved up to that time; so we have had quite a success

story in simplifying and accelerating the activities under the old programs.

As of February 15 we have very much broadened the scope of those programs. We have made it possible for a wider range of assistance to be available to a much wider range of business and business-related activity. All of this is quite good news for the private sector in the Atlantic provinces and has been welcomed as such.

Senator MacEachen: Well, it is surprising that the premiers are so unhappy that, despite the success story, they are seeking a meeting with the Prime Minister to discuss what they describe as the strangulation of the Atlantic Canada Opportunities Agency. The minister talks about a success story, but he has confirmed that from June 1987 until mid-February 1988 no new money was expended under the Atlantic Canada Opportunities Agency. If that is success, I leave it to the minister's choice of words—

Senator Frith: —to imagine what failure might be!

Senator MacEachen: Failure may be around the corner.

I note one point that the minister made—namely, that this new era was to remove bureaucratic structures, as it were, of various kinds and would permit the region around Moncton to make decisions. Now we find Premier Buchanan saying that Ottawa still has a stranglehold on decision-making and that it was obvious from the recent tour that the minister made that Ottawa was still dominant, because the minister had been accompanied in all of his visits to premiers by Mr. Dalton Camp. Those are the allegations of Premier Buchanan. I would like the minister to tell me why Premier Buchanan is so incapable of identifying success and finds it more like failure.

Senator Murray: To deal with the last remark first, while my honourable friend was in London I spent most of the parliamentary recess in the Atlantic provinces meeting with the four premiers, chiefly to discuss the renewal of the ERDA process. The majority of the ERDA subagreements in that region expire at the end of March 1989, and we wanted to get a head start on that process. As I have said, I met with each of the Atlantic premiers. In the case of Premier Buchanan, he emerged with me from a meeting that had lasted several hours to pronounce himself completely satisfied—completely satisfied—with the work of the Atlantic Canada Opportunities Agency. I can only conclude, therefore, that the media reports on which the Leader of the Opposition is basing his comments are incomplete.

With regard to Mr. Dalton Camp, I do not think that he would accept, nor do any of us accept, the description of him as being an Ottawa person. He is a native of New Brunswick with wide experience in the Atlantic provinces.

Senator Frith: He just comes here to pick up his cheques!

Senator Murray: As senior adviser to the cabinet, he was and is one of the chief advocates of a new regional development policy, one that places the maximum amount of decision-making authority in the region. He and Professor Donald Savoie, of the University of Moncton, played a key role in the establishment of this agency. He attended all the ERDA meetings with me, because I asked that he be assigned to attend those meetings with me.

• (1430)

By the way, I do not get the impression that Premier Buchanan, or anybody else in that region, takes any objection to the presence of Mr. Camp at those meetings.

With regard to the question of new money, yes, as the Leader of the Opposition says, it is true that, of the $200 million allocated to the agency in the fiscal year that ends on March 31, none of it was spent between June and February. The honourable senator takes vigorous objection to this fact. Of course, that is his privilege; but I make no apologies whatever for the fact, and I believe there is a great deal of support in the region for the fact that it is much more important to do things right than to do them fast. I think we are all aware that in the past efforts to throw money around wildly have not really produced very much in terms of progress against the chronic problems of regional disparity that beset the Atlantic provinces.

Senator MacEachen: Honourable senators, I would like to put the correct quotation on the record so that I will not be accused of taking exception to the presence of Dalton Camp. The minister is free to secure help wherever he wishes, even from a political adviser. The quotation reads:

> —the presence of political adviser Dalton Camp during recent meetings Mr. Murray and Mr. McPhail held with each of the Maritime premiers suggested that Ottawa is calling the shots, Mr. Buchanan said.

That comment is to be linked with his earlier comments to the effect that the region was not involved in major decisions, and the presence of Mr. Camp was evidence to him that the political commissariat in Ottawa was calling the shots rather than Mr. McPhail in Moncton. Mr. Buchanan said all that, not I.

Senator Murray: Honourable senators, I appreciate the quotation that has been placed on the record by the Leader of the Opposition. In response I would say, first, that there has been unprecedented consultation from the beginning with the provinces on matters affecting the agency. Indeed, the advisory board to the agency that is now in place was appointed by me, after consultation with each of the premiers, and, in the case of three of the provinces, senior provincial public servants are members of the board. So the premiers and the governments of the Atlantic provinces are well plugged in to what is happening in the agency.

Second, with regard to the contention that Ottawa is calling the shots, there is no question but that we are dealing with an agency of the government that has a minister and a deputy minister—

Senator MacEachen: And a political adviser.

Senator Murray: —both of whom must be accountable to Parliament for the activities of the agency. We considered and rejected the option of setting up ACOA as an arms-length

crown corporation with a decision-making board of directors, such as is the case with Air Canada or Canadian National. The feeling was that what might be gained by the region in autonomy would be lost in terms of presence at the cabinet table and in the system. Therefore, we hit upon the solution contained in the legislation that my honourable friends will be considering in due course, the ACOA legislation, which is to have an agency with unprecedented authority, autonomy and resources while still maintaining the accountability of the minister to Parliament. We believe we obtained the best of several possible worlds, but that is a matter my friends can consider when the legislation comes before the Senate.

INTERNATIONAL WHALING

IMPOSITION OF SANCTIONS—GOVERNMENT POLICY

Hon. Jack Austin: Honourable senators, on February 10 last I asked the Leader of the Government in the Senate a question regarding the International Whaling Commission and its moratorium on whaling. Since I asked that question, which relates to Canada's support for measures taken by the United States against Japan if Japan undertook a breach of that moratorium, it has been announced that the U.S. Commerce Secretary, Mr. William Verity, has made a finding under U.S. domestic law that Japan has indeed launched an expedition to take 300 whales, and that this is in violation of the commercial whaling moratorium of the International Whaling Commission. The result of Mr. Verity's finding, as reported in the press, is that the U.S. will take sanctions against Japan and withdraw Japanese fishing rights in U.S. waters. In addition, under U.S. law, President Reagan has 60 days to decide whether he wishes to take any further retaliation against Japan.

Honourable senators, I would like to renew the question. Was Canada consulted by the United States in terms of making this finding and taking these measures, and does Canada intend to support these sanctions?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators I shall have to make inquiries.

FOREIGN AFFAIRS

SENEGAL—PRESIDENTIAL ELECTION—SAFETY OF OPPOSITION CANDIDATE—ATTENDANCE OF OBSERVERS—REACTION OF PROGRESSIVE CONSERVATIVE PARTY

Hon. Jerahmiel S. Grafstein: Honourable senators, last year, during the Francophone Commonwealth Conference, questions were raised here and elsewhere about the government's representations to the officials of Senegal with respect to the lack of democratic practices in that country. Last Sunday a presidential election was held there, and it appears that the leading candidate for the opposition, the head of the Democratic Party, Maître Wade, has either been detained or imprisoned—at least, his whereabouts is not generally known. Earlier Maître Wade had attended a meeting in Ottawa at which he raised his concerns about the democratic practices of the government of his country.

Will the Leader of the Government in the Senate, through the government, make representations to the Francophone Commonwealth about the safety and security of Maître Wade? Will the government make direct representations to the Government of Senegal to ensure that Maître Wade's security and wellbeing are protected, and, at the same time, inform us whether or not representatives of the government attended that election held last Sunday as observers to ensure that the western nations are informed of any undemocratic practices that might affect the due process in Senegal during the election?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I shall consult with my colleague, the Secretary of State for External Affairs, to see what information can be brought forward on the subject.

Hon. Lorna Marsden: Honourable senators, I would like to ask the Leader of the Government in the Senate a supplementary question on the same issue. I am sure the Leader of the Government in the Senate will know that the presidents of the three international bodies, the one to which his party belongs and the one to which my party belongs, asked the current President of Senegal, Mr. Diouf, if external observers could be sent to that election to ensure that democratic voting practices were followed, to which Mr. Diouf replied that he would not tolerate outside observers. I wonder if the Leader of the Government in the Senate, in addition to consulting with the Secretary of State for External Affairs, would consult with the president of his party to see what the party's reaction is through their international connections.

Senator Murray: Honourable senators, I shall cast a wide net so far as information is concerned. I must do so with the caveat that the Progressive Conservative Association of Canada is not part of my ministerial responsibilities.

Senator Frith: No loans for you!

ANSWER TO ORDER PAPER QUESTION
COMPTROLLER GENERAL

BUDGET 1978-79 THROUGH 1987-88

Question No. 41 on the Order Paper—**By Hon. Jack Marshall.**

26th January, 1988—What was the budget of the Comptroller General for the past ten years?

Reply by the President of the Treasury Board:

The approved reference levels (budget) for the Office of the Comptroller General for the period 1978-79 through 1987-88, are shown on the attached schedule.

See appendix, p. 2792.

• (1440)

PATENT ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Lorne M. Bonnell moved the second reading of Bill S-15, to amend the Patent Act.

He said: Honourable senators, in moving the second reading of Bill S-15, which is a very short bill, I should like to say that I thought it would be worthwhile to bring this bill before the Senate after I read a recent article in the *Globe and Mail* entitled: "Drug firms increase prices faster than inflation rate". Honourable senators, according to that story by Linda McQuaig:

> The prices of more than a thousand pharmaceutical drugs have risen faster than the consumer price index in the past six months. Many of these are brand-name drugs, whose manufacturers have given assurances that increases will not exceed the CPI.
>
> Lawrence Archer, a spokesman for the Ontario Health Ministry, said yesterday that 1,099 drugs are more than 5 per cent costlier on this month's price list than they were last July, while the CPI rose by 4.4 per cent. This number makes up almost half the total provincial formulary.
>
> In a few cases, drug prices rose by more than 100 per cent, and in one case the increase was 250 per cent, Mr. Archer said. He would not release the name of the drugs in question . . .
>
> The Pharmaceutical Manufacturers Association of Canada, which represents the large multinational drug companies, pledged that drug price increases would not outstrip increases in the CPI when it lobbied successfully last fall for increased patent protection for brand-name drugs . . .
>
> Jack Kay, chairman of the Canadian Drug Manufacturers Association, which represents the producers of low-cost generic drugs, said yesterday that some manufacturers are trying to get large price increases into place before the price review board comes into effect.
>
> Any price rollbacks that the board orders will not be retroactive, said Roy Atkinson, executive director of the board.

Honourable senators, with that as a background, and because of the fact that I saw that the government was taking no action, I thought that I should do something to protect the consumers of this country. Therefore, I introduced Bill S-15.

The purpose of Bill S-15 is to amend the Patent Act in such a manner as to increase the powers of the Patented Medicine Prices Review Board. It gives the board the power to deem prices to be excessive whenever they increase faster than the rate of inflation.

When the board determines that a drug is being sold at an excessive price, because the increase has exceeded the rate of inflation, it shall do one of two things: (1) remove market exclusivity from that drug and one other medicine of the patentee; or (2) order the patentee to reduce the price at which it is selling the drug to a price consistent with the increase in the rate of inflation.

Where the board determines that a medicine has been sold for a period of at least 12 months at a price that is excessive, because the increase has exceeded the increase in the cost of living, the board has three options at its disposal. It must: (1) remove market exclusivity from either or both of the drugs in question and one other patented medicine; (2) order that the price of the drug be reduced to a level consistent with the increase in the cost of living; or (3) limit future price increases to an amount that takes into account the overcharge for the 12-month period after the price was set.

Options (2) and (3) are available to the board if it decides not to use option (1). The third option is an attempt to retrieve some of the extra charges for future consumers of the drug.

If, for example, a patentee could increase his price by 6 per cent for a full year when the appropriate rate of inflation was only 5 per cent, a future price increase would be limited for a one-year period to the lesser of the increase in CPI less 1 per cent or the increase that the board would normally allow less 1 per cent.

Although this provision does nothing to assist individual drug purchasers to recoup any overcharges unless they consume a drug over a long period of time, it does enable provincial pharmacare programs and subscribers to private drug insurance programs to recoup any overpayments made in the past. This should act as a strong deterrent to drug companies against raising prices beyond CPI increases.

The board, therefore, must compute the difference between the increase in the price of a patented medicine and the increase in the cost of living on an annual basis for every drug. Any drug which was sold in Canada on June 27, 1986, shall have its price judged according to changes in the cost of living in June of every year. Any annual price increase that exceeds the rate of inflation shall be deemed excessive, even if it took place before the board was established. Any drug that was first sold in Canada after June 27, 1986, shall have its prices judged according to changes in the cost of living on the anniversary of the introduction of the drug into Canada. That is, a drug introduced in February 1987 will have its prices examined as of each February. Any increases over the rate of inflation shall be deemed to be excessive, even if they took place before the establishment of the board.

These two amendments require the board to examine every drug price on an annual basis and to take suitable action even when dealing with prices charged in the past. These amendments allow the board to look at prices as far back as June 1986, which is the effective date for many of the provisions of exclusivity of Bill C-22.

Most of the other amendments are consequential amendments and are made only to renumber sections in order to have those amendments included in the Patent Act.

Honourable senators, you might be of the opinion that the prices review board now has the power to use the CPI as a guide and will so use it. However, the factors which the board may take into consideration under the present Patent Act when determining whether or not the price of medicine is excessive are cited in subsection 41.15(5). They are as follows: (a) the price at which the patentee sold the medicine during the preceding five years; (b) the price of other medicines in the same therapeutic class during the preceding five years; (c) the price of other medicines in the same therapeutic class in other countries during the preceding five years; (d) the consumer price index. Those are the factors the board "may" take into consideration. Under my amendments, the board "shall" take into consideration the consumer price index.

Under the present act, if the board cannot make a decision on the basis of the above four factors, it may also look at the cost of making and marketing the medicine.

Honourable senators, some people may think that there is no need for this amendment. They may think that the board will be set up some time in March or April and that it will begin to look at the prices of different drugs. I have a price increase study that was completed by several pharmacists in this country. That study indicates that many drugs have substantially increased in price.

Let me give you some examples of increases: A drug called Tagamet has gone up 9.9 per cent. A drug called Stelabid No. 1 has gone up 16.55 per cent. A drug called Dyazide has gone up 9.98 per cent.

The drug company Merrell Dow has raised some its drug prices by as much as 50 per cent.

Senator Frith: Shame!

Senator Bonnell: The majority of that company's products were increased by more than 16 per cent.

The drug company Janssen has a very small list of products, none of which appears to have generic competition. Their price increases ranged from a low of 7.69 per cent to a high of 22.08 per cent in the last year. Let me give you some examples of that company's drug increases: Hismanal, 10 milligram tablets, has increased by 17.36 per cent; Innovar, 0.05 milligram per millilitre, has increased by 22.08 per cent.

A drug company called Sandoz markets a large number of products in Canada and faces very little, if any, generic competition. Their price increases ranged from a low of 15.73 per cent to a high of 35.93 per cent in one year once Bill C-22 was passed. Let me give you some examples of that company's drug increases: Calcium Sandoz syrup, which is a calcium product, has increased 33.49 per cent; Colchicine, which is a drug used for gout, has increased 35.33 per cent; Fiorinal capsules, which is used for headaches, has increased 22.1 per cent; and Mellaril, a tranquilizer, has increased 15.74 per cent.

Honourable senators, all those drug companies that raised their drug prices after the bill was passed had promised they would not raise those prices above the CPI. The Minister of Consumer and Corporate Affairs told us in the House of Commons that drug prices would not go up one cent.

However, there is one drug company, Merck Frosst, that was able to keep its pledge. In fact, it has had some reductions in its prices. If one company can do that, what has happened to all the other companies belonging to this great association that gave us this pledge? I have come to the conclusion that the association representing pharmaceutical drug companies is not a very cohesive organization and has no one who speaks for it. Therefore, a promise made by the president of the association means that only certain members of the association, such as Merck Frosst, are prepared to follow through with their pledge.

According to the study that I have, there is only one drug company that has followed through with the pledge. I believe it is necessary to ensure that the consumers of this country are protected and that the price review board is given some teeth. In June of 1986 the companies got their request for ten years' exclusivity; therefore, that should be the date from which the basic prices are set.

Those companies that increased their prices by 33 per cent or 35 per cent should be made to roll back. If they do not want to roll back, then they should lose their patent rights on those drugs. That would enable Canadian generic companies to expand and enable Canadian consumers to receive those drugs at a reasonable cost. We should not put this bill on the backs of the sick, the infirm, the aged, the crippled, the unemployed, the poor, the widows or the one-parent families of this country.

If enough pressure is put on the minister, he may do one of two things. He may stand up in the House of Commons and say that he cannot support the consumers any further, resign from his post and then be a supporter of the corporate people, or he may realize that, as Minister of Consumer and Corporate Affairs, he has to support the consumers and resign from the post of Minister of Consumer and Corporate Affairs. In a situation such as this he cannot support both groups. He either has to support the pharmaceutical drug companies, which are multinational companies based 85 per cent in the United States and 15 per cent in Europe and Japan, or he has to support the consumers.

Many millions of dollars are being taken out of our economy by these multinational companies, and that means that jobs are being lost in this country. There is also the fact that the Blue Cross premiums are increasing by 18 per cent; insurance plans are increasing by 18 to 20 per cent; provincial and federal taxes are increasing in order that the government can meet the costs of drug plans, hospitals, senior citizens and veterans who receive medication through the veterans' program. In order for the Government of Canada to pay a big price for those drugs, the taxes of Canadians have to go up. Where does that money go? It goes to the multinationals abroad. Our consumers lose and our labour force loses, because they lose jobs. Those people in the labour force who are negotiating contracts find that instead of getting another few cents per hour for their labours, they now have to pay more for their health care package because of the increase in drug costs. In order to get a health care package, they get a smaller raise.

This affects all groups of Canadians. This is a serious problem. I am not asking that Bill C-22 be rescinded. I am asking only that the price review board be given some authority to roll these prices back to the cost of living. The minister said that they would not go up one cent, but you can see what has happened. Bill C-22 has been law for one and one-half months, and look at what has happened.

Senator Frith: The companies said the same thing.

Senator Bonnell: The companies said that they would stay within the CPI, but, according to the price increase study, Merck Frosst is the only company that has done that. I would like to congratulate that company.

• (1500)

Honourable senators, these are not just my thoughts I am giving you. I have the minister's statement before me. He said that Bill C-22 was good for all Canadians. Now you see just how good it is!—with drug prices on one drug going up by 35 per cent and on another by 150 per cent—and in one month.

The minister further stated that Bill C-22 would not cause the prices of drugs to rise, but that it was possible that the prices of certain drugs might not come down as quickly under the current legislation. "Might not come down as quickly" is what the minister said. Imagine! "Might not come down!"

Senator Petten: Nor did they.

Senator Bonnell: We will also find that PMAC said that consumers would be fully protected through the review board. I contend that they are not fully protected through the review board, because the Leader of the Government in the Senate has admitted that the review board is not set up yet and will not be set up until some time in March or April. The executive director, Roy Atkinson, said that even when it is set up it will not be able to do anything about those prices that have already been raised. The witnesses from the generic drug companies said that the drug companies are jumping in ahead and raising the prices quickly before the review board could be set up. Even if they are set up, they only "may" use the CPI, they do not "have to" use the CPI. That is only one of the criteria. I say that they should have to use the CPI and we should make them use the CPI.

The United Church of Canada has stated that the potential employment promised by the pharmaceutical sector is outweighed by the financial burden that will be created by increased drug prices. The United Church of Canada has been concerned all along about the prices of drugs going up.

The Royal Canadian Legion said that drug prices would definitely increase if this drug bill passed. The Royal Canadian Legion was also right. It predicted exactly what has happened.

The Coalition of the Provinces for the Handicapped said that the Drug Prices Review Board might have no real effect on drug prices. I contend that that is true. They have no real effect, because they only "may" use those things, they do not "have to" use those criteria, and they cannot roll back the price of drugs, which has gone up already as high as 150 per cent on certain drugs.

The Consumers of Saskatchewan said that the bill would delay the introduction of low-cost generic products, leading to a rise in the cost of drugs. Again, the consumers were right; that is exactly what happened.

The registered nurses said that Bill C-22 would cause drug prices to rise. Well, the registered nurses were right as well.

The Ontario Health Association said that Bill C-22 would add significantly to hospital drug costs by delaying the effect of competitive pricing. They were right as well.

Health care services will suffer to compensate for the increase in the cost of drugs, according to the Canadian Nurses Association. Well, that is bound to happen. If provincial budgets are to be used up buying more expensive drugs, then something has to suffer. Hospital beds will have to be closed and hospital services or other medical care services will have to be cut back.

Honourable senators, I leave the bill with you and I ask for your support. Perhaps, if we send it to the House of Commons, they will accept it and give power to the Drug Prices Review Board.

Hon. Efstathios William Barootes: For clarification, will the honourable senator please answer a couple of questions?

Senator Bonnell: I will try.

Senator Barootes: Could you help us on this side, and myself in particular, by clarifying some of the figures you have given us? You spoke of the prices of drugs rising. I am not quite clear in my mind, Senator Bonnell, whether you were referring to manufacturers' prices, distributors' prices or retail prices. That is the first point.

Second, when you referred to the *Globe and Mail* article and someone from the Department of Health, were you referring to Canadian prices or Ontario prices? I want to point out that, contrary to the opinion of some people in this area, Canada does not stop at the borders of Ontario.

Finally, the third question that you might help me with, Senator Bonnell, is this: In the druggist survey that you mentioned, could you please tell us who conducted the survey and whether it was based on his retail prices or the prices he is paying to his distributor so that we can look into some of those statistics and inform ourselves about them?

Senator Bonnell: Honourable senators, as to the question about the *Globe and Mail* article, I cannot give an exact answer as to where they got their figures other than to repeat what Lawrence Archer, spokesman for the Ontario Health Industry, said. It does not state in the press release what prices he was using. However, I can tell you the prices I was using.

Senator Barootes: In other words, you do not know the level of prices.

Senator Bonnell: I do not know what level of prices Lawrence Archer of the Ontario Health Ministry was quoting. I was using a study of the impact of the drug price increases for January of 1988 carried out and compared by Andrew S.

Musial, B.Sc., Phm., and Jerry K. Taciuk, B.Sc., Phm. They compared the figures and the prices on the manufacturer's level from January 1, 1987, to January 1, 1988. They prepared a long list, and I just took a few examples. I could give you a long list of drugs. For example, I quoted a drug manufactured by Smith, Kleine & French, Stelabid No. 1 tablets, 100 tablets size. The price in January 1987 was $31.11 and in 1988 was $36.26, an increase of 16.55 per cent; Stelabid No. 2 went up 16.59 per cent; and Stelabid Ultra tablets went up 16.60 per cent.

Senator Barootes: All in lots of 100s?

Senator Bonnell: Those were all in lots of 100s. I can give you different lots if you so wish. I can give you Tagamet, whether you want it 200, 300, 400 or 600 milligrams, but in each case they have gone up from 10 to 16 per cent or so. In fact, I would be pleased to give you a photostatic copy of my records so that you can have these figures, which show, for example, Merell Dow's alertonic, a nice tonic which has a good quantity of alcohol in it. A 500 millilitre bottle on January 1, 1987, cost only $14.25; but on January 1, 1988, it cost $17.25. It has gone up 21.05 per cent. The 250-millilitre bottle cost $58.95 on January 7 and went up to $71.35 on January 1, 1988, an increase of 21.03 per cent.

That is what I am talking about. Drug after drug after drug has gone up, as represented by those figures. For example, Tace is a drug used in the treatment of carcinoma of the prostate; in January 1987 the price for 60 12-milligram capsules was $24.40 and in January 1988 that price had increased to $36.60. That is a 50 per cent increase in one year.

• (1510)

Honourable senators, I could go on and on, but I do not want to hold up the Senate, because I know you all have other things to do.

On motion of Senator David, debate adjourned.

WAR VETERANS ALLOWANCE

AMENDMENT OF ACT—DEBATE ADJOURNED

Hon. Jack Marshall rose pursuant to notice of Thursday, December 10, 1987:

> That he will call the attention of the Senate to the urgency of amending the War Veterans Allowance Act in order to remove the restriction that requires a Canadian veteran who served overseas in World War II and who chose to take up residence outside Canada to return to Canada for 365 days in order to become eligible to receive the allowances payable under the Act and other benefits available thereunder.

He said: Honourable senators, many years ago one of Canada's Prime Ministers reportedly uttered these words as a pause for thought: "There is not only a right thing to do, but—there is a right time to do it." This pause for thought, which I noted the other day, struck me as I pondered the justification for Parliament to treat with the utmost urgency my inquiry, which asks that an amendment be introduced to the War Veterans Allowance Act to remove the restriction that requires that a Canadian veteran who served in a theatre of war in War World I or World War II and who chose to take up residence outside Canada return to Canada for 365 days in order to become eligible to receive the allowances payable under the act and any other benefits available.

Honourable senators, this change in the veterans legislation, which I seek through my inquiry, is "the right thing to do," and right now is "the right time to do it!" As a matter of fact, it is long past the right time to do it. It must be glaringly obvious to all that there is not much time left, when one considers the average age of our veterans. The average age of those who served in World War II is 67 to 68; the average age of those who served in World War I is 88; and even the average age of Korean veterans is close to 58.

To put the subject of my inquiry into perspective, let me put on the record what the War Veterans Allowance Act states. The act provides for the payment of a monthly allowance to veterans and their dependants who meet service eligibility requirements and who, because of age or incapacity, are unable to work and have insufficient income for maintenance as determined by an income test. The monthly allowances now are as follows: The married rate is $1,127.46; the single rate is $773.67. A couple may earn casual earnings up to a total of $4,200 a year or $350 a month. A single person may earn casual earnings of up to $2,700 a year or $225 per month.

There are five service requirements, and, without listing all of them, the one we are most concerned with is that veterans of Canadian forces are eligible if they served in a theatre of war—and this applies to both World War I and World War II—or served in both wars and were honourably discharged from the last enlistment, or served in the United Kingdom during World War I. It says nothing about where they should live after the war, the subject of my inquiry.

It is worthwhile to note that service in a theatre of war during World War II—and this was changed to be more lenient—includes service while on duty beyond the three-mile territorial limit surrounding the continents of North and South America and the islands adjacent thereto, including Newfoundland, Bermuda and the West Indies. So we have broadened the base of eligibility in recent years.

It is also worth noting that Commonwealth or allied forces who were living in Canada at the time of joining the forces or who have lived in Canada for a total of ten years are eligible for War Veterans Allowance. I am referring to allied prisoners who fought with the allied forces. They are eligible for War Veterans Allowance, but our Canadians overseas are not eligible as long as they stay in the U.K. This highlights the ridiculous situation that exists, in that we cannot get a reciprocal agreement with our mother country for whom, and along with whom, we fought.

Even under the civilian requirements for eligibility under our War Pensions and Civilian Allowances Act, non-Canadians who served in Canadian merchant ships during both wars are eligible, along with members of the voluntary aid detach-

ment of the British Red Cross, Canadian Firefighters, welfare workers, nursing aids, ambulance or transport drivers, staff of overseas headquarters, nurses who served under the Canadian Red Cross or the St. John Ambulance Brigade, and members of the Newfoundland Overseas Forestry Unit of World War II.

Honourable senators, the pertinent section of the War Veterans Allowance Act is explained in a letter from the minister to Mr. Donald M. Smith, the Agent General of the Province of Nova Scotia, dated November 22, 1984—that is almost four years ago—in which he stated:

> Prior to 1960, the residency requirements of the War Veterans Allowance Act made it mandatory that Canadian veterans, who chose to remain in a foreign country, did so as a matter of choice and, as part of that choice, accepted the social security system, as it existed, in their new country. In 1960 the requirement was relaxed to the extent that the "one year clause" was introduced to make it possible for Canadian veterans, who had been living abroad, and who decided to return to Canada, to be eligible for War Veterans Allowance without too long a wait.

That was fine in 1960, but this is 28 years later and it certainly does not apply now—or certainly shouldn't apply now.

Mr. Donald Smith, the Agent General for the Province of Nova Scotia, is one of the leaders of the thrust to try to encourage us to recognize the few veterans who are left and who are not qualified for War Veterans Allowance. In a further letter to Mr. Smith the minister stated:

> Having said the above you can rest assured that both I and the officials in my Department are giving serious consideration to relaxing this requirement even further, and will be doing so, if it is at all possible bearing in mind the current economic climate.

Then, a few days later, on December 10, 1984, the minister wrote again to Mr. Donald Smith and said the following:

> In 1960, it had become evident that some veterans had strong reasons for wanting to leave Canada, e.g., to a warmer climate for health reasons. The one-year clause was introduced to protect such veterans and, in addition, specifically to ensure that only bona fide residents of Canada who went abroad would be allowed to receive War Veterans Allowance. . . .
>
> It is pertinent to this discussion that veterans who are long-term residents of other countries are eligible for and receive all the social benefits payable to other residents of the countries in which they have chosen to reside.

I cannot see why that is pertinent, when we take into consideration the social benefits in the U.K. which some of these veterans are receiving. They are nothing to brag about. That's for sure!

● (1530)

It is significant that other countries do not pay war veterans allowance or an equivalent benefit to their veterans who choose to reside in another country. It is a shame that the United Kingdom will not enter into a reciprocal agreement with Canada, because, as I mentioned before, we pay an allowance to allied veterans, many of whom are from England. After ten years' residence they can pick up their war veterans allowances and go back home if they so choose.

Honourable senators, I have raised this anomaly in the veterans legislation, the subject of my inquiry, for some years now both in the other place, when I served as veterans affairs critic in the years 1968 to 1978, and here in the Senate since that time. Evidently I have not brought it up often enough, and it is obvious that nobody is listening. I can tell senators, however, that I am reminded of it very often, and I have the files to prove it. Other parliamentarians, many of whom sit in this chamber, are reminded of it constantly. This matter is still brought to my attention by concerned citizens in the U.K., some of whom are veterans themselves who are not in need of government assistance but support those Canadian veterans and their spouses who cannot manage to live a decent existence because of this outmoded and outdated restriction. Strangely enough, the plea persistently comes from England, our mother country, for whom, and along with whom, we fought in two wars, even though many Canadian veterans who fall into this category chose to take up residence in other countries.

Honourable senators, I could mention a gentleman by the name of Percy Towgood, who is now retired and who was our welfare officer in Macdonald House in England. I could mention Percy Mercer, who is now the National Secretary of the Canadian-U.K. Association of Veterans. I have already mentioned Don Smith, the Agent General for Nova Scotia, and there is a lady by the name of Mrs. G.N. Sellers of the Canadian Women's Club, to whom are referred from the department some of the most deserving cases.

Honourable senators, I have a list of the number of veterans who are recipients of disability pensions and war veterans allowances or civilian war allowances living outside Canada, together with a list of the countries in which they live. The number of veterans is the cause of contention and controversy. These are the totals as of April 11, 1984, and they were given to me by the Honourable Bennett Campbell, who was then the Minister of Veterans Affairs. These numbers were taken from the answers I received to a question I placed on the order paper at that time, and I ask honourable senators to keep in mind that they include the recipients both of disability pensions and of war veterans allowances: United States, 6,423; United Kingdom, 1,891; Australia and New Zealand, 103; South Africa, 40; Europe, 110; and other countries, 127, for a total of 8,694. Unfortunately, I did not ask for a breakdown of both categories, but I presume that the numbers have decreased considerably in the past four years.

At the same time I asked for and received an answer to another question as to the number of applications received by DVA during the previous year, which would take us back to 1983. I asked, first, how many were willing and able to return to Canada to fulfil the 365 day residency requirement, and, second, how many had had to refuse to return to Canada as a

result of illness. The number of applications received was as follows, broken down by country: United States, 82; United Kingdom, 265; northwest Europe, 4; central Europe, 5; eastern Europe, 1; southern Europe, 41; others in Europe, 2; South Africa, 6; Australia, 4; New Zealand, 4; Mexico, 4; the West Indies, 2; Central America, 1; South America, 1; India and Pakistan, 1, for a total of 423. Of those 423, honourable senators, only 13 were willing or able to return to Canada to fulfil the residency requirements, and two cited health as their reason for not returning to Canada.

Looking at the statistics showing the number of veterans passing away each year, we guestimate that 25,000 veterans are dying on a global basis; so these numbers that I refer to are reduced by 10 to 20 per cent.

Honourable senators, I received that information in 1984. I then received a letter dated April 22, 1985, from the Minister of Veterans Affairs in which he said, in part:

> It has been estimated that the number of veterans living outside Canada is 27,523. The change requested—

that is, the change to make veterans eligible for the war veterans allowance without returning to Canada,

> —would add approximately 4,400 new recipients to this program resulting in an annual cost of about $33 million.

Honourable senators, I doubt that very much.

I also received a letter from Don Ferguson, Assistant Deputy Minister, Pensions, Health and Social Programs, Veterans Affairs, Canada, dated January 5, 1987. He provided me with a whole page of a formula used to calculate the numbers, to the best of their knowledge, of veterans who would qualify. They estimate that number to be 4,046. Then, on September 30, 1986, I received a letter from Percy Mercer, the National Secretary of the Canadian Veterans' Association of the United Kingdom, which, in reference to the Canadian Veterans Association, stated:

> When this Association was set up in 1948 there were about 20,000 Canadian veterans resident here. A very large number of these were WW1 men, most of whom have now passed on. Many of the WW2 men also have died and many have gone back to Canada. I would hazard a guess that there are not more than 3500 here now. But that number is not relevant to our case. All we are concerned with are the 450 or so veterans/widows who have not gone over to qualify and will not do so. The others that are here are either already in receipt of the War Veterans Allowance, or have war disability pensions, or works pensions etc, and these with the U.K. Social Security payments, put them outside the scope of the W.V.A. Act, and do not come into our reckoning. Our estimates were accepted by the DVA office at the High Commission here.

That, honourable senators, proves a few things. The number of veterans we are concerned with is not 4,400 and the cost will not be $33 million, as stated by the department.

Honourable senators, the last time I raised this issue in the Senate chamber was in November 1984 when I tabled the report of the Subcommittee on Veterans Affairs entitled "They Served—We Care", and I referred to our recommendation No. 5, which states:

> We recommend that the residence requirement of the War Veterans Allowance Act and the Civilian War Pensions and Allowances Act be amended to permit otherwise qualified persons to benefit from the legislation while residing outside Canada.

Just as I indicated at that time in 1984, so it is at this stage in time that most veterans find it difficult or, indeed, impossible to return to Canada to establish another residence in order to comply with the present legislation. Honourable senators, keep in mind that they would not apply for it at their age if they did not need it. Often these veterans are too poor, too old or too ill to be able to travel or to establish a new domicile in Canada for a year. I might also say that frequently they have families living in England, which also makes it financially and psychologically out of the question for them to return to Canada.

The question we must ask ourselves, honourable senators, is this: What are we proving by forcing the veterans to return to Canada at this late stage in their lives? We are simply creating more hardship for them, because the veterans, if entitled to the allowance, receive it almost immediately upon their return to Canada, if they are well enough to return, and continue to receive it while fulfilling the requirement to remain in Canada for a year.

So the veteran is faced with the added expense of living accommodation, food and other daily needs in two countries and is denied the companionship of his or her spouse, to no one's benefit but only to the inconvenience of the veteran.

● (1530)

Honourable senators, we should remember that the veteran is entitled to a pension or allowance as a right, because he served in a theatre of war in a far-off country when service was required. He is entitled to a pension or an allowance for that service and yet he was not awarded a pension or allowance, because he might not have planned to live in Canada when the war was over. I should also point out that when that Canadian veteran offered his service and the governments of the day told him what a wonderful citizen he was, nobody told him that if he lived after the war and expected to receive benefits for service, then he better be sure to come back to Canada or he wouldn't be deserving.

Honourable senators will probably get sick of hearing this from me, but many times I have read Prime Minister Sir Robert Borden's pledge to Canadians in 1917 at Vimy Ridge. He said:

> No man, whether he goes back or whether he remains in Flanders, will have just cause to reproach the government for having broken faith with the men who won and the men who died.

I cannot, however, find where he said to the veterans, when he made that pledge, that there was a condition to their service

and that, in order for Canada to show how grateful it was, they had to make sure that they returned to Canada to live.

Honourable senators, to continue, this is what the Canadian Legion has said to Parliament on a number of occasions about this anomaly in the act, as reflected in my inquiry, and I quote:

> We, the Legion, have asked on many an occasion for removal of the residence requirements for Canadians living outside Canada. However, no legislation has ever taken place on these appeals.
>
> Many veterans without Canadian military service have, since 1960, been able to draw the War Veterans Allowance in Canada and then return to their homeland or other countries and continue to receive the allowance. On the other hand, Canadian veterans—many of whom had lengthy and good service overseas—who took their discharge and remained in the U.K. are in a less favourable position. It is necessary for them to return to Canada, remain for at least one full year and be in receipt of the allowance before proceeding back to the U.K. Because of costs, illness, age and other commitments, few are financially able to do this.

Many widows of Canadian veterans are in a similar position. They have spent their entire lives outside Canada. They never came back and they have not seen Canada since. They know of no one in this country with whom they could live for the compulsory period, so it is not feasible for them to plan to come here in order to meet the requirements.

It is only fair to extend the legislation to provide eligibility for these Canadian servicemen and their widows without forcing them to come back to Canada for one year. This prerequisite really accomplishes nothing, except to incur expenses and create hardships for those involved. If the allowance can be paid to non-Canadians after a ten-year residency in Canada and be continued for life after departure, surely our own veterans living outside Canada should receive the same benefits without being compelled to return.

Honourable senators, on one of my visits overseas, as part of a government delegation to commemorate Canada's participation in battlefields of Europe, I was struck by an article in a London newspaper headed, "For many Commonwealth veterans old age is more of a fight than World War II." The article went on to say, in reference to these veterans:

> They survived the bullets and the bombs. Now they face an equally frightening prospect—growing old! Their fight for freedom has now become a struggle against illness and infirmity.

Injuries received during the war have left many veterans disabled in later life. Many live in poor countries, which lack even the basic facilities for their care. The British Commonwealth Ex-Service League desperately needs money to provide assistance where it is most urgently required—hospital treatment, shelter homes, subsistence grants for widows, and even wheelchairs. The advertisement went on to say:

> We do everything we can, but we can do so much more with your help.
>
> Please don't leave them to fight alone.

This advertisement was placed in the newspaper by the Prince Philip Appeal for Commonwealth Veterans. I have quoted this advertisement in many of my speeches to veterans across Canada, and pointed out that, thank God, we in Canada do not have to appeal for funds for destitute veterans, because we care and our government cares. Our veterans associations across this nation are devoted to helping our income-stressed veterans through poppy funds and in cooperation with governments who provide for emergencies, and our government provides disability pensions, War Veterans Allowance, treatment benefits, dental care, funeral and burial assistance through the Last Post Fund, along with a range of services which are the envy of the world. We provide ambulatory care, home adaptations, transportation, adult residential care, nursing home care, educational assistance, child care and even attendance allowance.

We have here in Canada our own Prince Philip Appeal Fund, which has a target for this year of $1 million to provide aid to Commonwealth veterans who live in the third world. I should mention here that Senator Derek Lewis serves on the committee sparked by the Dominion Command of the Royal Canadian Legion to raise those funds for the Prince Philip Appeal. There are other organizations prominent in Canada that care. I refer to the army, navy and air force, the Royal Commonwealth Society, the Monarchist League of Canada, the Council of Honourary Colonels of Canada, the National Citizens Coalition, to name a few. Yet, we leave a few thousand, maybe even fewer, veterans penalized by our restriction. While we have amended our legislation time and again to overcome anomalies in the act—in my 20 years here we have probably done so as many times—we stubbornly refuse to appeal the inhumane section in that act—an act we are so proud of—that denies a few Canadians a little comfort for the few years they have left. I refer to those veterans.

Let me say without hesitation that the government recently increased the fund known as Assistance to Needy Veterans Overseas from $60,000 to $100,000 per year. This fund provides each of the designated veterans or their dependants with the sum of £16 per month, £4 per week. In another gesture our government sent last Christmas gifts of £25 each to 264 needy veterans in England. However, I had no reason to rejoice about such contributions when I received from Percy Mercer, in August 1987, a list of 40-odd destitute Canadian veterans in the U.K. Percy Mercer is a Newfoundlander who is National Secretary of the Canadian Veterans Association of the United Kingdom, and he fights for these destitute veterans. I understand from the letterhead that the honorary president of this association is the High Commissioner for Canada. Let me relate the circumstances of two people on this list. One veteran is named Richard William Nelson. He is 95 years of age and is a widower. He receives £45 per week, which amounts to a little over $100 per week. This includes the assistance from the Needy Canadian Veterans Overseas Fund. He relies upon relatives and neighbours and home help two and a half hours per week to keep going in his home. This veteran reports that

all his living costs have to be carefully considered. He has nothing for anything other than necessities. It is understandable that his standard of living is very low and has been so for many years. So nobody can tell me that these veterans should be satisfied with the social systems of other countries.

● (1540)

The other individual is the widow of Captain John Millington, who received the Military Cross, Alice Edith Millington. Her total weekly income is also £47. Her income includes assistance from the Needy Canadian Veterans Overseas Fund, supplementary allowances, and she lives rent free. Mrs Millington is now very deaf and is only partially sighted. She is confined to her home and depends on her elderly son and occasional home help. She has been a widow for 66 years. Her husband had a distinguished war record in the Alberta Regiment. He was wounded in France on September 15, 1916, and was awarded the Military Cross on November 15, 1916. It seems that he received no compensation for his service

Certainly Captain Millington must have been eligible for a disability pension. According to the information I have, he served with the Alberta Regiment. I wonder whether we should go to the premier of that province and ask him to take some money out of the Heritage Fund in order to help this poor lady.

The other organization from which I hear is the Canadian Women's Club, the chairman of which is Mrs. G.N. Sellers. They also look after needy veterans. In her letter she says, in part:

> As Chairman of the Service Committee of the Canadian Women's Club I am concerned with the welfare of Canadian veterans living in the UK. When I spoke to you I put in a plea for these veterans who are not eligible for the Canadian Veterans Allowance.

Mrs. Sellers goes on to say:

> Cases are referred to the Canadian Women's Club by the Department of Veterans' Affairs . . .

It should be the other way round. She goes on to say that they have 71 names on their list of people who are destitute. She states further:

> You asked me to send you details of our 6 most needy cases so that they could be brought to the attention of the members of your Committee.

Here are just two cases from her list. First of all, a Miss Margaret E. Nuttall, who is a World War II veteran of the CWAC, which is the Canadian Women's Army Corps. Her situation is as follows:

> Lives alone. Has had a long line of illness over the years. Now heading for another breakdown. Serious cancer patient. Attempting to follow therapy and diet to combat the cancer, but this is expensive. Has many financial difficulties.

The other Canadian on this list is a World War II veteran, Thomas E. Smith. His situation is as follows:

> Increasing financial difficulties. Suffers from spondylitis, ulcers, heart trouble, emphysema, and an inoperable hernia. Recently seriously ill. Can barely walk. Needs inhaler constantly with him. An ailing daughter. His wife trying to cope on her own.

Honourable senators, I am nearing the end. I want to refer to another organization known as the Newfoundlanders (Overseas) Association. The chairman of that organization wrote me in 1978, saying:

> I would like to stress the importance I place upon the special plea that we make for those who, for various reasons, are unable to go and spend a year in Canada. Some are very ill indeed, and are forbidden by their doctors to travel. We have several widows, and one wife who has been deserted by her husband . . . She has failing eyesight and finds it extremely difficult to manage.

He mentioned another veteran living in Macclesfield, Cheshire, of whom he said:

> He has scarcely worked since he left the Royal Navy in 1946, due to nervous depression, but his wife Dorothy has worked as a cook in a local hospital and managed to look after Roy and rear two sons as well. This gallant lady has now reached the age of sixty—

That means she is now 70.

> —and therefore had to relinquish her job on 30th June.

Evidently, she qualified for the British Retirement Pension, which is approximately £38. Big deal!

In his letter the chairman of that organization went on further to say that this lady had planned to take her husband to Newfoundland for the year's residence, but recently received a letter from the people with whom she planned to reside in Newfoundland saying that they would be unable to accommodate her owing to problems of their own. He then went on to state:

> These are the sort of people for whom I beg the Government of Canada to make a special concession.

Honourable senators, as late as January 5, 1988, this is what the deputy minister said to Percy Mercer:

> At present, there are no changes contemplated to the legislation governing the payment of War Veterans Allowance outside Canada. However, I trust that the enhancements to the Assistance to Needy Canadian Veterans Overseas program will provide some immediate financial assistance to those Canadian veterans in the U.K. who are most in need. You may also rest assured that we shall continue to do whatever we can to ensure that our veterans in the U.K. receive the fairest and most equitable treatment possible.

That, honourable senators, is £4 per week.

Honourable senators, how do we resolve this problem? There are two ways. The first is that someone should go to Prime Minister Margaret Thatcher and tell her that we served them well, and that if we can give the allied veterans and the U.K. veterans who came over here entitlement to War Veter-

ans Allowance, which is now a good sum, and also free drugs, and allow them to work a bit for casual earnings, why can we not have a reciprocal agreement? The only answer I get from the Department of Veterans Affairs is that the matter is still in the formative stage. I think someone is trying to do something, but in a few years it will be too late.

Honourable senators, everyone I have spoken to here in Canada and in Parliament with respect to this matter agrees that the restrictions should be removed. However, no one seems to want to act. We brag about our veterans legislation, and rightly so. But, for the love of God, let us remove that blemish in our legislation and treat all veterans alike, not only those special veterans we brag about but those for whom we don't seem to care.

Hon. Lorne M. Bonnell: Honourable senators, I do not intend to speak on this matter today. However, I do wish to adjourn the debate. I want to say at this time that I congratulate Senator Marshall, who always has a good word to say on behalf of veterans, for the way in which he works to support them. I am sorry that he was not present in the Senate on December 15 of last year when I raised that very matter at the time Bill C-100 came before the Senate and was dealt with in one day. When I speak to this matter in the next few days, I shall say a few words to support Senator Marshall's cause.

Senator Marshall: I have spoken to Mr. Mercer and he intends to come to Canada in order to appear before our committee.

On motion of Senator Bonnell, debate adjourned.

The Senate adjourned until tomorrow at 2 p.m.

APPENDIX

(*See p. 2782*)

COMPTROLLER GENERAL

APPROVED REFERENCE LEVELS
(MAIN AND SUPPLEMENTARY ESTIMATES)

	1978-79	1979-80	1980-81	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88
Management Practices and Controls Program										
Person-Years	124	188	169	178	191	170	156	156	150	150
					(*thousands of dollars*)					
Salaries and Wages	3,939	5,690	6,048	7,055	9,084	8,885	8,643	8,969	9,318	9,581
Goods and Services	937	1,787	1,704	2,632	2,673	2,905	2,794	2,737	3,707	3,393
Grants	—	9	6	4	4	4	—	—	—	—
Total Program	**4,876**	**7,486**	**7,758**	**9,691**	**11,761**	**11,794**	**11,437**	**11,706**	**13,025**	**12,974**
Implementation Assistance Program										
Person-Years	—	—	140	139*	75**	65	45	—	—	—
					(*thousands of dollars*)					
Salaries and Wages	—	—	5,300	4,744	1,934	2,600	2,025	—	—	—
Professional and Special Services	—	—	2,000	4,306	6,230	3,900	1,975	—	—	—
Total Program	—	—	**7,300**	**9,050***	**8,164****	**6,500**	**4,000**	—	—	—
Total Depatment										
Person-Years	124	188	309	317	266	235	201	156	150	150
Thousands of Dollars	4,876	7,486	15,058	18,741	19,925	18,294	15,437	11,706	13,025	12,974

* Includes supplementary estimates of 44 person-years and $1,550,000.

** Includes supplementary estimates of 30 person-years and $763,500.

THE SENATE

Wednesday, March 2, 1988

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

Prayers.

QUESTION PERIOD

[English]

WESTERN ECONOMIC DIVERSIFICATION

DELIVERY SYSTEM FOR PROGRAM

Hon. H.A. Olson: Honourable senators, I should like to ask the Leader of the Government in the Senate one or two questions about the administration of the so-called western economic diversification program. The reason I ask about it now is that in the other place yesterday an explanation was given by the minister directly responsible, which I have read carefully. There is also the comment of the Minister of Transport, who is reported to have said yesterday outside the other house:

> One of the issues, of course, about program delivery, is who gets the credit for it.

That is a direct quotation of the Minister of Transport, who apparently speaks for the government on this program in the other house.

What I would like to try to ascertain from the minister, if he can help me, is whether or not the government intends to set up a system and structure capable of delivering the programs for the $1.1 billion or $1.2 billion, both in the Atlantic development initiative and the western diversification initiative. We were led to believe that this would be a kind of cooperative arrangement with the provinces where the facilities are already in place, many of them having been put in place by the provinces. This is a matter that many of the provincial premiers have already complained about, because they do not appear to be reaching agreements with the federal government to deliver these programs in their respective regions.

The first question I should like to ask is whether it is the intention of the federal government to set up another complete delivery system for these diversification programs.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, we will do what is necessary in that regard.

Let me say first of all that so far as the Western Economic Diversification Agency is concerned, I must confess that I have not read the remarks of Mr. McKnight to which the honourable senator referred. I will have to do that and perhaps consult him before replying on behalf of that agency.

So far as the Atlantic Canada Opportunities Agency is concerned, this question of credit—or visibility, as it is usually called—has been around for a good long time and successive federal governments have been properly concerned about whether the efforts of the federal taxpayer and the federal government in promoting the battle against regional disparity are properly acknowledged and recognized in the provinces concerned. I well remember discussions in the Standing Senate Committee on National Finance and elsewhere with the Honourable Pierre De Bané on this subject when he was Minister of DREE. In any case, as I say, the question of visibility has been with us for a long time and, of course, we are concerned about it.

So far as cooperative arrangements are concerned, I remind my honourable friend that there are and have been over the present five-year period about $1 billion in cooperative arrangements with the governments of the Atlantic provinces. This is the through ERDA sub-agreements.

The amount of duplication involved as between federal and provincial programs is really quite minimal, but in any case the $1 billion or so of new money that has been allocated to the Atlantic Canada Opportunities Agency for the next five years is in addition to the ERDA agreements and is intended for direct assistance to the small- and medium-sized business community in the Atlantic provinces—direct assistance from the federal government through ACOA to that small- and medium-sized business community.

Let me say that so far as new delivery systems are concerned, as I stated yesterday, in the past six months we have been approving applications from small- and medium-sized businesses in the Atlantic provinces at twice the previous rate, and we have done so without any necessity to add to the personnel requirements in that region. We are confident that with the new authorities we have the structures and will have the staff to provide the direct assistance contemplated under these new programs.

Senator Olson: Honourable senators, it is easy to double the rate. If you go from one to two, that is twice as much. It was down to such a low rate that there really was not much of a base to go on. In any event, I do not want to get into that argument.

Senator Murray: You do not want to get into it because I have the statistics right here and I can put them on the record.

Senator Olson: I want to make some inquiries so that I can find out where people who want to make use of this program should apply. Quite a number of people in western Canada would like to avail themselves of what is involved in this program. Do they make the application to some provincial

department and the administrative officers that are already in place all over the provinces or will some new structure be set up?

This is very interesting, because one of the things Mr. McKnight said in the other place yesterday was that he would be remiss if he did not pay tribute to those who helped design this program. This program has a great deal of similarity to the federal coordinating offices that were set up in each of the provinces. I just happened to be the minister responsible for that, so I know about it. However, he did not give any credit to the people who went through that exercise.

Senator Murray: We will send you flowers next week.

Senator Olson: At page 13275 of *House of Commons Debates* he calls them the "federal economic development coordinators." I am glad they are using at least that base of experience.

Senator Murray: He is on a nostalgia kick.

Senator Olson: If I were on a nostalgia kick, I would take up some of the quotations I heard from Senator Murray, when I sat on that side of the house, about all of the waste and duplication that was going on. Now he is putting everything back in place without giving credit to the people who went before.

It is a serious question as to where people ought to apply. Will the officers be out in the field, and will Edmonton be the head office? Will there be a sub-office, or something, in Vancouver, one in Saskatoon and one in Winnipeg? Or is that all? Is that the whole delivery system? Will people have to travel 700 or 800 miles from the extreme southern part of Alberta to Edmonton, for example, or will there be a more elaborate structure put in place? We need to know this information. The program has now been in place, in the case of the Atlantic development authority, since June. The Prime Minister announced that it would be in business the following day. In the case of western Canada, I believe the announcement of the program was made in August. We are now into March of the following year and people still do not even know where the offices are located or the terms and conditions under which they can make an application for some of this $1.1 billion that is supposed to be available for diversification.

Can the minister advise us of these things so that people in western Canada know where they should make their applications?

Senator Murray: Honourable senators, I can do that with regard to the Atlantic Canada Opportunities Agency. Indeed, we have an effective information program under way in the Atlantic provinces and elsewhere to acquaint people with the agency, what it offers, and where our numerous clientele might present themselves. We have been putting out pamphlets, we have under way a direct mail campaign and a newspaper advertising campaign. I am sure that all of this will be possible for the Western Economic Diversification Agency. I note that Bill C-113 is before the other place. It is a bill to establish the Department of Western Economic Diversification. It was in the course of that debate that my colleague, Mr. McKnight, spoke yesterday. My honourable friend can obtain all the information he is seeking either by waiting until that bill comes before the Senate, when the minister will appear before the appropriate committee, or—and I commend this route to him—by using the technique of pre-study, in which case we could bring the minister here at a much earlier date to answer questions.

[Senator Olson.]

Senator Olson: There is something that needs to be said about the matter of the time delay from August 1987 to March 1988. That is how much time passed between the announcement of the program and the time at which the government finally introduced the bill. If you read the debates you will find that the government announced the western diversification program in early August of last year. I am trying to get some information so that people can begin making applications. Is there an office in place in Edmonton? I understand that Bruce Rawson has been appointed at the deputy minister level to administer this program in western Canada. If the Leader of the Government thinks that I should be doing a lot of homework to find these answers, I suppose I could do that. I would remind him, however, that he did not do that when he was on this side of the chamber; he always asked me to do it for him. That is why I am asking him to do it now.

Senator Murray: Honourable senators, I am glad that my friend has mentioned the appointment of Mr. Bruce Rawson, whose appointment took place shortly after the announcement of the agency by the Prime Minister last August. Mr. Rawson has been in place and the agency has been up and going since that date. As with the Atlantic Canada Opportunities Agency, various existing programs, such as the IRDP, the responsibility for the ERDAs, and so forth, were transferred to the agency and to its minister, Mr. McKnight. The agency has been up and going since that date. Legislation is being brought in now. New programs are being designed and the agency is very much in action. As I say, if my friend is looking for the names, addresses and telephone numbers of contacts in the western diversification agency, I do not have them off the top of my head. I shall undertake to get that information for him, and, once again, I recommend to him the technique of pre-study so that he can have the minister appear before the committee at an early date to obtain all the information he needs about this agency.

• (1410)

Senator Frith: Nice try the second time!

EXTERNAL AFFAIRS

CANADIAN SIKH COMMUNITY—DISTRIBUTION AND PURPORT OF MINISTER'S LETTER

Hon. Peter Bosa: Honourable senators, I have a question for the Leader of the Government in the Senate. I have here a copy of a letter that was sent to Premier Peterson of Ontario, signed by the Secretary of State for External Affairs, the Right Honourable Joe Clark. I would like to read part of that letter into the record. It begins:

> I am writing to you concerning possible invitations to you or members of your government to attend functions organized by members of the Canadian Sikh community.

Later on it reads:

> There are ... three Sikh organizations which exist largely to advocate the creation of an independent Sikh state, known as "Khalistan." These three organizations are the Babbar Khalsa, the International Sikh Youth Federation ... and the World Sikh Organization. Some members of these organizations have also engaged in or promote violent activities aimed at Indian interests in Canada and elsewhere.

The first question I would like to ask the leader is: Why did the Secretary of State advise only the premiers of certain provinces and not members of the Senate and not members of the House of Commons? If this is a situation that merits the attention of legislators, then everyone should have been advised.

My second question is: Why would the Secretary of State tar with the same brush the entire Sikh community by saying, "Some members of these organizations"? In other words, everybody in the community is suspect, if these people are, indeed, engaged in violent activities.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, with respect to the first part of the question, I shall have to inquire to see whether a similar alert was sent to legislators at any time by the Department of External Affairs. Whether it was or was not, the honourable senator and other legislators can consider themselves advised of the publication of this letter to the provincial premiers. The reason the letter was sent is that the government does not, and should not, support individuals or organizations who advocate the use of violence. As my colleague has pointed out, some members of those organizations do advocate or promote the use of violence in the pursuit of their objective—their objective being the dismemberment of a country with which Canada has close and friendly relations. The presence of Canadian officials, elected or otherwise, at meetings of these organizations is a significant irritant, as my friend can understand, in our relationship with India.

Senator Bosa: Honourable senators, the honourable gentleman did not answer the question I asked him. When the Secretary of State refers to "some members of these organizations," in fact, the Secretary of State is painting with the same brush the entire community. I think this creates suspicions and a feeling of collective guilt, if I may use that expression. I do not think a minister, particularly the Secretary of State for External Affairs, should use such expressions in his correspondence, which tend to create this kind of situation.

Senator Murray: I appreciate the comments of the honourable senator, but the government and the minister stand by that statement. Some members of these organizations do, in fact, advocate the use of violence in attaining the objective of the establishment of this separate state, and, far from tarring all of the members, I thought the minister was careful to say that "some" of its members so advocate.

[*Translation*]

THE CONSTITUTION

FIRST MINISTERS' ACCORD AND AGREED TEXTS—SENATE TIMETABLE FOR COMPLETION OF DELIBERATIONS

Hon. Jacques Flynn: Honourable senators, I have a question for Senator Molgat, but he is like the Scarlet Pimpernel. One moment he is here, and the next moment he is gone!

Hon. Royce Frith (Deputy Leader of the Opposition): His colour is "red", Senator Flynn, it is not "scarlet"!

Senator Flynn: Yes, but it is not in his capacity as a "red" that I would have asked him the question, but in his capacity as chairman of the Committee of the Whole with a mandate to study the Meech Lake agreement.

Today we were reminded by newspapers that the six month period for the adoption of the resolution on that agreement in the House of Commons will expire on April 23, 1988. I understand that until then, at least till the end of this month, the Committee of the Whole sitting every Wednesday has witnesses to hear. Then there is the Easter period, which leaves very little time.

I would like to know exactly what agenda the Committee of the Whole has, and whether the chairman indicates that as long as the Committee of the Whole has not completed its work—I don't know how they want to do that, by tabling a report or not—the Senate cannot consider Senator Murray's motion to approve the Meech Lake constitutional agreement.

Senator Frith: Senator Murray's motion is not before us at this point.

Senator Flynn: It is on the Order Paper.

Senator Frith: Yes, but it has not been put forward.

Senator Flynn: It is on the Order Paper. I would like to know if we can consider that motion debatable before the Committee of the Whole has completed its work.

Senator Frith: If Senator Murray wants to put it forward, why not?

Senator Flynn: If Senator Frith feels he has authority to answer on behalf of Senator Molgat, I have no objection.

Senator Frith: This I do not have. Go ahead.

Hon. Gildas Molgat: Honourable senators, I am sorry I was not in my seat at the beginning of this question but I understand it was directed to me, Senator Flynn.

As far as I am concerned, I would feel that if Senator Murray is ready to put his motion forward, there is no problem to a debate starting and proceeding. I would assume it would not end before Senator Murray's appearance before the Committee of the Whole.

As he will recall, Senator Murray, the Committee—

Senator Flynn: After the—

Senator Molgat: The steering committee originally proposed that we invite Senator Murray right at the start of our discussion, last June. Since we could not find a date that could accommodate everybody, this was postponed on a number of occasions.

Just after the Christmas recess, I asked Senator Murray when he would be willing to appear, and he indicated he would prefer to wait until the end of the hearings.

I thought that would be in the first week of sitting after Easter, on April 12, I presume, if we come back on the Tuesday.

I hoped Senator Murray would be ready to appear before the committee at that time.

However, if he wishes to move his motion before that date, I do not mind.

Senator Flynn: If I understand correctly, you are saying that in your opinion the Senate should not take a final stand on Senator Murray's motion before the Committee of the Whole has completed its work?

Senator Molgat: Yes, I thought it would be wiser to hear all the witnesses.

So far, beside Senator Murray, the last witness would be Mr. Trudeau on March 30. He will be followed by Senator Murray. If the Senate is willing to hear Senator Murray on a Tuesday, let us say on April 12, if that was agreeable to everyone, we could then conclude the hearings. The Senate could then debate the matter for a week, if it decided to pass a resolution before April 23; we could vote on the matter, let us say, on Thursday, April 21.

Senator Flynn: Does that mean the Committee of the Whole will have a report to make to the Senate?

It is difficult for me to see when this report could be prepared. Besides, I fail to see how the Senate in Committee of the Whole could draft a report. We have the report of the Task Force that travelled to the Yukon and the Northwest Territories. That is one thing. We do not know what the chairman wants to do about it. I think it is all very complicated and that, in any event, the Senate must decide on this issue before the expiration, on April 23, of the six-month period after which anything we might say or do will not make any difference at all.

This would not even have the moral suasion value which the chairman of the Committee of the Whole and a few of the opponents of the Meech Lake Constitutional Accord undoubtedly have in mind.

Senator Frith: Honourable senators, just to set the record straight, if Senator Flynn will let me. Perhaps he did not want to put it exactly in such terms, but the Constitution does not stipulate that the Senate has to state its position before the end of the 180-day period.

Senator Flynn: I did not say that.

Senator Frith: No. Very well.

[Senator Flynn.]

I had the impression somebody said the Senate had to state its position before April 23. There is no such stipulation but, if we have not done so the House of Commons still has an opportunity to do something.

Senator Flynn: I was very careful. What I mean to say is that if we failed to take a position, that of course would be tantamount to giving a negative response. What I suggested is that I think it would not be a very honourable position for the Senate to do nothing, to lack the courage to say where it stands before the time limit arrives.

Senator Frith: It is not a question of courage.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Surely Senator Frith will agree with me that the important aspect is that each senator be given an opportunity to state his or her views on the Meech Lake Constitutional Accord before April 23.

Senator Frith: I agree that that is not necessary but desirable.

[*English*]

REFUGEES

THAILAND—TURNING BACK OF BOATS—SAFETY OF PASSENGERS—GOVERNMENT POLICY

Hon. Jerahmiel S. Grafstein: Honourable senators, recent reports indicate that the country of Thailand has been flooded with refugees. Certain press reports indicate that boatloads of people purporting to be refugees have been turned back, resulting in death by drowning on the high seas.

As a result of those reports, there have been further reports that western countries, including Canada, have made representations, directly or indirectly, to the Government of Thailand respecting the safety and security of those people that may be on such boats pointed towards the shores of Thailand in order to ensure that more tragic deaths do not occur.

Could the Leader of the Government in the Senate advise us what the government's position has been in connection with these matters and indicate what the government's general policy is?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I have no information on that matter today. I shall try to obtain the information from the appropriate minister.

WESTERN ECONOMIC DIVERSIFICATION

CRITERIA FOR PROGRAM SUPPORT

Hon. H.A. Olson: Honourable senators, I should like to ask the Leader of the Government in the Senate for some clarification, and, if need be, the leader can take the question as notice. The clarification I seek relates to questions I asked a few minutes ago. He said that for all practical purposes the western economic diversification administration has been up and running—I am sure those were his words—since August or September of last year. Could the leader tell us what the

criteria will be? If some correspondence in this regard has been printed and circulated, it did not get to my office.

I am asking this question, because in an explanation given by the minister responsible yesterday he had this to say:

> This is not an entitlement program. If we take a look at previous experiences, entitlement was part of it. This program is not entitlement; it is managed with flexibility and creativity. We will see what projects . . . should be supported.

What does that mean: "We will see what projects should be supported"? Are there to be no terms, conditions or criteria set out so that those who make application will know what programs ought to be supported?

The minister responsible went on to say:

> For example, there will be loan guarantees, credit and loan insurance, contributions, repayable contributions, and grants. All economic sectors will be eligible—

With very little imagination one can see what might happen to a program set out with those kinds of criteria. I am wondering if there is not some more precise way to manage the taxpayers' funds.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, once again, I can make inquiries of my colleague, Mr. McKnight. Once again, I commend to my honourable friend the technique of pre-study to bring the western diversification program legislation to this house so that he and other honourable senators can question the minister directly.

However, if I may reflect for a moment again on the experience of the Atlantic provinces, we had found that the entrepreneurs in that region felt that with the old and existing programs there were altogether too many criteria, that those incentive programs were strangling in red tape, that the criteria were devised in Ottawa, administered in Ottawa, and utterly insensitive to the needs of the region. These are the programs my honourable friend was responsible for and which he looks upon with such nostalgia today.

Therefore, what we have tried to do is put as much flexibility as possible into those programs so that the incentive programs are in a position to bring assistance to the widest possible range of business and business-related activity.

Senator Olson: Honourable senators, I find it strange, indeed, that the leader constantly gets up—and this is the third time he has done this—and says, "If we do a pre-study, we can bring the minister, and then we can find out what the programs are all about, what the terms, conditions, criteria, and so forth, will be."

• (1430)

A few minutes ago he said the programs were up and running months ago. Surely there should be some kind of specific or, at least, definite terms and conditions that need to be met in order to apply. That is all I am asking. Do the people of western Canada have to wait for me and my colleagues to call the minister before a committee in order to find out what is in the program? It seems to me that that is a reasonable question, and that people have the right to know. I wish the minister would quit playing these funny little games. If the program is up and running, surely the government must know what it will do; it does not require an interrogation by me, or anyone else, of the minister to find out.

Senator Murray: Honourable senators, my honourable friend has suggested that I should take the question as notice insofar as it relates to specific situations, and I have done that.

BANKING, TRADE AND COMMERCE

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Leave having been given to revert to Notices of Motions:

Hon. Ian Sinclair: Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*a*), I move:

> That the Standing Senate Committee on Banking, Trade and Commerce have power to sit while the Senate is sitting today, and that rule 76(4) be suspended in relation thereto.

By word of explanation, we have some witnesses from out of town who are to appear before us on our study of Bill C-60, and we would like to hear them shortly after four o'clock.

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

Hon. Senators: Agreed.

Motion agreed to.

THE CONSTITUTION

FIRST MINISTERS' ACCORD AND AGREED TEXTS— CONSIDERATION IN COMMITTEE OF THE WHOLE CONTINUED

On the Order:

> The Senate again in Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to.

The Senate was accordingly adjourned during pleasure and put into a Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to, the Honourable Gildas L. Molgat in the Chair.

The Chairman: Honourable senators, if the committee is prepared to come to order, we have two submissions this afternoon. The first witness is Mr. Izzy Asper, Q.C. I will ask Mr. Asper to join us.

Pursuant to Order adopted on June 18, 1987, Mr. Izzy Asper was escorted to a seat in the Senate chamber.

The Chairman: Honourable senators, I should like to welcome Mr. Asper. You have received a copy of his biography as well as a copy of his brief, so it will not be necessary for me to make an extensive introduction. I presume that my colleagues will, however, allow me to mention particularly that I am

pleased to see a fellow Manitoban, and, in this particular case, one who occupied the very seat I occupied for a period of time in Manitoba.

So, Mr. Asper, you have one hour at your disposal. Our normal procedure is to allow for 15 or 20 minutes of comments, followed by questions from senators. If you are ready to proceed, I will give you the floor.

Mr. Izzy Asper, Q.C.: Thank you, Mr. Chairman and honourable senators. I wish to express my appreciation to you for giving me the opportunity to be heard on the issue before you.

I want to make it clear that I am here as a private citizen, but one who has for over 30 years, whether as a lawyer, a journalist, a leader of a political party in Manitoba, or as a businessman and a councillor of the Canada West Foundation, spoken out on constitutional issues.

I have always urged that the Constitution-making process should not be closed until all the concerns and grievances of western Canadians and, indeed, of those of all lesser populated provinces are addressed and remedied concurrently with those of Quebec.

Our legitimate issues should not be left to simmer on the back burner. Yet the Meech Lake-Langevin agreement and amendment do just that. As a Canadian who feels at home in all parts of Canada, but who was born and lived his life in western Canada, I am here to tell you and urge upon you that that is unacceptable. It will simply dash the hopes of westerners and tell them to look elsewhere for justice.

Now, I should feel comfortable making these comments in this chamber because of my understanding of the hopes of the Fathers of Confederation when the Senate was established. It was to be a house of sober, second thought, where regional representation would counterbalance the representation-by-population concept of the House of Commons; where decisions would be made on the basis of what was just, equitable and in the best interests of all Canadians, without the temptations of political or partisan opportunism. Never more than on this issue is such a Senate needed to fulfill that promise.

It should be a matter of great regret for most thinking Canadians to reflect on the consequences of removing the Senate veto over constitutional amendment from the 1982 Constitution Act, because this body, which was established to protect the small, the weak and the minorities, is legally unable to veto the Meech amendment. That amendment profoundly, and virtually unalterably, discriminates against the very people that the Senate was established to protect.

Still, honourable senators, this body must play its role within that 1982 constraint. It can lend its prestige and credibility, through its report, to those who have pledged to resist this monumental mistake and prevent irreparable harm to this and yet unborn generations. A strong Senate recommendation for significant amendment, or withdrawal of what I call the "Meech madness," will provide leadership and endorsation of those who wish to write and speak out in favour of nation-building, as opposed to nation-freezing, if not nation-destroying.

I ask you to do just that—to light a beacon which will illuminate the flaws and fatalities that have polluted Meech Lake.

Some of you who attended will know that I made a written as well as an oral submission on this subject to the Special Joint Committee of the Senate and the House of Commons last summer. That committee reported, as you know, on September 9, 1987, but it did not satisfactorily address the arguments I raised. Since I have to regard this chamber as the final court of appeal, I have tabled with the Clerk that 50-page submission, and I adopt it again in these proceedings.

The Meech amendment has attracted valid criticism on a number of grounds. It is open to criticism, because (a) the process was anti-democratic; (b) the "distinct-society" clause denigrates fundamental rights; (c) the future of our northern development has been put into a straitjacket; (d) strong national government has been sacrificed by the opting-out provisions, the Supreme Court provisions and the Senate appointment formula; (e) the immigration and population-control arrangements are anethema to the development of western Canada; (f) the amending formula guarantees that we cannot break out of the straitjacket in the future; and (g) therefore, there is little likelihood that there ever will be a satisfactory western amendment.

● (1440)

While I am prepared to discuss all of these aspects with you, there are many other, more eloquent spokespersons on most of these aspects, and so I will concentrate in my oral presentations on those issues that most significantly affect my region and on which too few critics are commenting.

Overall, though, my paramount conclusion is that the Meech-Langevin agreement and the amendment are fatally flawed and should be set aside. Alternatively, all issues should be more thoroughly debated in public, in the media and in the legislatures and Parliament, without time constraints. These hearings should be extended and held across the country. Attempts should be made to eliminate the most unacceptable provisions of these documents; but, if the government is determined to proceed without significant amendment, then I urge that a national referendum be recommended on a "yes" or "no" basis and that the results in each province be agreed to be taken as that province's vote under the present amending formula. At the very least, I hope you will recommend a "free vote" throughout Canada on the amendment.

Concurrent with the process of having extended hearings, debate and, if necessary, referenda, I hope you will recommend that the First Ministers and the Prime Minister go back to the drawing board to negotiate the necessary amendments, as well as the addition and inclusion of those things that are missing, in order to redress western grievances, which are chiefly the lack of an economic bill of rights and a Triple-E Senate.

There must be linkage between the passage of the Meech Lake Accord—which I refer to as the "Quebec amendment"—and the adoption of what I call the "western amendment," namely, an economic bill of rights and a Triple-E Senate. I take it we all interpret Triple E to mean: having an equal number of members from each province, being elected, and having effective power. Linkage is essential, because without it there will never be an equitable western agreement.

In my written submission I complain about the entire process being followed here. We have a secret deal, made in a back room, under intense pressure, following which a reluctant federal government agrees, also under pressure, to hold brief hearings, but states that unless egregious or fundamental errors are discovered the amendment will be passed without changes. These hearings were held for only a few weeks, in the dog days of summer, and only in Ottawa, making it too costly and too time consuming for many Canadians to participate. To top it off, the committee was required to report to Parliament by September 14, making it impossible for all those who might otherwise have wished to be heard to be included in the proceedings. I understand that fewer than half of the people who asked to be heard were heard. The dessert came on September 9, 1987, when the joint committee did report, did find flaws, but recommended that Parliament pass it anyway.

This process brings into disrepute our Canadian democratic institutions. Those hearings have been characterized as a "sham" to mask the fact that the government did not want to allow public opinion to be aroused before Meech Lake was a done deed.

In contrast, we took five years after the Constitution Act, 1982—from 1982 to 1987—to find an accommodation with Quebec. There was no need to have that accommodation rammed through in five months. When the Canadian flag was introduced by Mr. Pearson, nearly six months of parliamentary debate was allowed. The flag was only the symbol of our sovereignty—the Constitution is the very substance of it, and it is, therefore, worthy of even more public consideration and parliamentary debate.

I have suggested in my paper that the immigration control clauses will surely lead to proportional provincial population growth only and will thus freeze each of the provinces at its present proportionate position in Canada. For Manitoba, a freeze at our current position of 4.85 per cent of the population, or thereabouts, means we will be consigned in perpetuity to political and economic insignificance, as will most other provinces, with no hope of breaking out of that vise. For us and provinces like us, this means a continuation of have-not status and the continuation of central Canadian domination and the colonialism that we have known for the last 120 years.

Western Canadians, or less-populated provinces, will be denied the opportunity to contribute to a greater Canada and will be forced to remain part of the hinterland to be known as "outer Canada."

At the same time, I also have grave concerns over the possibility that the whole thrust of the amendment is to grant sovereignty-association status to Quebec.

By combining the distinct society provisions with the present proportion of population guarantee, plus Supreme Court entitlements, Senate appointment powers and a constitutional amendment veto for Quebec, we give a chuckling René Lévesque almost everything he ever wanted—without any of the trauma!

But these amendments should also raise other, serious concerns for Quebecers. I refer to the words which would "centre francophones in Quebec," and I ask: Is this a form of ghettoization? Apartheid, Canadian-style? And is the provision allowing Quebec's proportion of Canada's population to rise by 5 per cent over its present proportion, "for certain demographic reasons," a veiled form of racism?

There are those who suggest that to adopt the various interpretations I have placed on the Meech Lake Accord is to see ghosts. I do not agree. This is self-evident on any reasonable reading of the agreement and the proposed changes to section 95.

But if I am wrong, and I would very much like to be wrong, then it is the fault of yet more ambiguous drafting. If I am under a misapprehension, then that can readily be cured by a statement to that effect by all the premiers and the Prime Minister and a clear-cut redrafting to say that the policies of Canada shall be used and shall be such that the population of this country will spread, as practically as possible, evenly from sea to sea so that political and economic power will be enjoyed equally across the nation. Silence on this point only confirms my worst fears and establishes that these documents were intended to mislead the public.

On the distinct society clauses and Quebec's ability to legislate to develop that distinctiveness, I am suggesting that they may be void for uncertainty because of the ambiguity thereof, but, nevertheless, they have frightening overtones on economic rights, minority rights, anglophone rights, ethnic rights, women's rights, and many other things yet unforeseen. Canadians, those Canadians who are now constitutionally "indistinct," are entitled to know exactly what all this means.

You have heard much on this already, and I am sure it is well recognized that a full definition is required and, as well, for certainty, the Charter of Rights must be declared to supersede all provisions of the Meech Lake amendments. In this case I suggest that "distinct" may be a euphemism for "separate."

Similarly, on the fact that Quebec civil code judges are required on the Supreme Court, I have to object that there is no requirement that each other province also be represented on that court.

I will not elaborate on the concerns over the opt-out-with-compensation concepts, as you are no doubt considering other submissions on this point.

As well, my submission protests against the new requirement of unanimity for constitutional amendment on several

issues. That simply means that there never will be any. The drafters have taken a snapshot of Canada, worshipped at the altar of the *status quo* and enshrined it, warts and all, into pragmatically unshakeable chains. We can thus bid farewell to constitutionally protected interprovincial free trade, a Triple-E Senate, individual right to property, interprovincial mobility of capital, and, in the very words of the preamble to the agreement, "equality of the provinces."

The amendment is simply a betrayal of those words, and it makes a hollow mockery of that pious preamble.

This body, supporting one of its earlier reports, should recommend that at the very least we should acknowledge the principle that the Senate should be elected by providing in the Meech Lake amendment that the new provincial nominees, rather than be appointed by the premier of the province, be elected by the people of the province concerned. If we cannot have Triple E, let us not substitute it with Triple P—Provincial Premiers' Patronage!

• (1450)

In my written submission to the joint committee I attached a detailed proposal for Triple-E Senate reform, in terms adopted by the Canada West Foundation. It, unlike the Meech Lake documents, is not cast in concrete, but forms the basis of a useful dialogue. I would be happy to discuss it with senators in the time we have available. I submit that its adoption, or something akin to it, will return us to nation-building and not nation-freezing in the ice of Meech Lake.

Mr. Chairman, westerners have been asked to "go along," because the window for bringing Quebec into the family will otherwise close. That simply is not true, but in any event we cannot do it. We, too, are anxious for Quebec to come into the family, but not if the price is for us to remain the orphans of Confederation. We also want in, not out; but if we can only be in as colonials then that is to fan the flames of extremism.

Western thinkers are openly asking what we have to do to get Canada's attention—elect a separatist provincial government? No, western Canadians cannot simply go along—the list of inequities is too long, the evidence too conclusive that the dice are loaded, the deck is stacked, the game is fixed, all against us and in favour of central Canada. We cannot forget our history of patiently waiting for Canada to do equity by us, only to be disappointed time and time again by federal governments. I refer senators to my written brief for a list of specific examples of the western indictment.

I conclude, Mr. Chairman and honourable senators, by saying that it is time for a gesture, a signal of renewed leadership from Quebec. It is therefore only appropriate, as Quebec again takes its place at the table, that it should lead in demanding that the western amendment be adopted concurrently so that we may all sit down at that table together and, at the same time, as genuine equals, just as the preamble to the Meech Lake agreement and the constitutional amendment say.

I thank you for your patience and await your questions.

[Mr. Asper.]

The Chairman: Thank you, Mr. Asper. We will now proceed to the question period. First on my list is Senator Gigantès, who will be followed by Senator Neiman.

Senator Gigantès: Welcome, and thank you, Mr. Asper. My questions will be brief. What do you mean by an economic bill of rights for the West?

Mr. Asper: It is not only for the West, senator, it is for Canada, but western spokespersons over the last several decades have felt most aggrieved by the lack of what I am referring to as an economic bill of rights. Interprovincial mobility, the free movement of people, was given to us only in the 1982 Constitution amendment. We still do not have interprovincial freedom of mobility of capital. We still do not have interprovincial free trade on goods. Provinces can and do discriminate against the goods manufactured in other provinces.

In my written submission I gave a number of examples of this sort of thing, and I can recall one of them. A number of years ago the Government of Quebec passed legislation to prevent the acquisition of a Quebec-based company by an Atlantic-based financial institution. Not long after that the Government of British Columbia passed legislation to prevent the acquisition of MacMillan Bloedel by Canadian Pacific, a Quebec-based company. That is a flaw in the economic structure of Canada that I would like to see corrected at the same time as we finish the task of nation-building.

Senator Gigantès: I thank you for that answer, which is most illuminating. You said the immigration clauses might freeze population proportions. I do not think there are any such clauses in the United States, but the northern tier of states bordering upon the western provinces have not developed in terms of population or economics as have some other parts of the United States. In fact, one of the arguments against free trade is that the U.S. northern tier is doing less well than the Canadian provinces to the north of it.

Is the fact that population growth is not at a rate that satisfies westerners due to constitutional factors or other factors such as may have prevailed in parts of the United States that have not seen the kind of population growth they would like to see?

Mr. Asper: Senator, there is an awful lot to your question, and I will try to break it into some of its parts. It is true that the American Constitution does not address population as part of nation-building, but because, in the United States, they have a bicameral system in which the upper house is equally representative of all the states, two senators per state, it means that North Dakota, for example, stands as an equal to New York and can bargain effectively on matters of economic development. It is something like a Catch 22 situation: population goes for opportunity; opportunity arises where the political power exists to create it; therefore, all essential political opportunity and economic opportunity in this country has been centred in Ontario and Quebec, because there has been no national policy to decentralize.

I am saying that in terms of nation-building we can learn both positives and negatives by watching the American experience. It is still dramatically better than ours. Whenever you see a rocket go up in Cape Kennedy you know that it has created jobs there. But that rocket was manufactured in California, where it also created jobs, and was monitored from Houston, creating jobs there. We do not have an example of economic federalism as good as that in this country. We have CF-18 outrages; we have the transfer of the overall base of Air Canada out of Winnipeg, taking thousands of economic opportunities out of Manitoba. We do not have economic federalism in Canada.

Senator Gigantès: I have one last question, sir. You spoke of Mr. Lévesque and said that he must be laughing. The one who seems to be doing the most laughing is Mr. Bourassa. What Mr. Lévesque got was opting out, with full compensation, of the gang of eight, of which he was one member. Mr. Bourassa has got opting out with full compensation plus the veto, which Mr. Lévesque had given up. How do you expect Mr. Bourassa to retreat from a political situation in which he is saying he has done more for Quebec than the separatists? He has given Quebec more power and independence than the separatist Premier Lévesque had asked for.

Mr. Asper: I agree with your observations, senator. In fact, I think it was Mr. Trudeau who quoted Mr. Bourassa as having said, "Gosh, I got more than I asked for—I got more than I wanted, but I couldn't say no." I think it is also illuminating to consider Mr. Parizeau's remarks of two or three days ago during his campaign for the leadership of the PQ in Quebec. He said that Meech Lake provides a very useful advance forward on which they can base the next move to separatism, to sovereignty, and that it is just wonderful.

That is why I concluded my remarks by stating that, in my view, it is time for a gesture. I think Premier Bourassa is the proper person to make that gesture. He can give something to the rest of Canada without losing the essence of the things he needs to make Quebec comfortable within the union. I talk about the Triple-E Senate; obviously, if Quebec and Ontario do not agree on it, it is not going to happen. It is a giving up of power. If there is not enough good will in this country, where someone who has won can give something back, then I think it is possible to refer to Meech Lake as having the potential to be nation-destroying.

● (1500)

The Chairman: Thank you, Senator Gigantès.

Honourable senators, before I call on the next questioners I should like to inform you that I have eight names on my list; so I shall have to cut the list off temporarily at least and ask that honourable senators try to be concise in their questions. The next questioner is Senator Neiman, followed by Senator MacDonald (Halifax).

Senator Neiman: Mr. Asper, we are glad to have you with us today and to hear another western perspective. I doubt that you have had an opportunity yet to read through the report of the task force on the Meech Lake Constitutional Accord and on the Yukon and Northwest Territories, which was tabled in this chamber yesterday. The report contains seven recommendations. I will not refer to all of them, but I would like to get your personal reaction to some of them, and, if you feel that the people of Manitoba might have a slightly different viewpoint, I would appreciate hearing from you on it.

Recommendation 4 is to the effect that the Meech Lake Accord

> be amended so that any change in the boundaries between the provinces and the territories would occur only with the consent of the territory concerned.

Do you think that that is an appropriate and fair recommendation?

Mr. Asper: Yes, I do. That opinion is probably fairly widely shared in Manitoba. There is at present a political stirring in Manitoba within Premier Pawley's particular party. This weekend his political party will face a convention. I would put the odds at nearly 50-50 that a resolution will carry which, when one reads it through, will send a message to the Pawley administration perhaps to withdraw from the accord or to demand significant amendments, including one for the protection of northern and native rights. I believe that as of a few days ago approximately 20 New Democratic constitutency organizations on the provincial side in Manitoba had passed and tabled resolutions for this week's convention to that effect, calling for amendment to the Meech Lake Accord for some of those reasons.

Senator Neiman: I see that you have a copy of the report. Recommendation 5 recommends that:

> —the attainment of provincial status by Yukon and the Northwest Territories be accomplished solely through negotiations with the federal government, subject only to the approval of the federal government and the particular territory concerned.

Do you think that that recommendation is a valid one?

Mr. Asper: I concur heartily with that recommendation, because it is a matter between the people of Canada and not the ten fiefdoms. The people of Canada, particularly the people of the North, and the federal government must retain the power to make that arrangement. I think I can say that this view is fairly widely shared in Manitoba. I think that responsible leadership in both the Liberal Party and the New Democratic Party has taken that position.

Senator Neiman: What is your opinion with respect to recommendation 7, which says that the proposed Constitution amendment which recognizes Quebec as a distinct society should also recognize that the aboriginal peoples of Canada constitute distinct societies?

Mr. Asper: I have a little trouble with that recommendation because of, as I indicated in my earlier comments, my views on the distinct society clause. Certainly if Quebec is to be a distinct society, then clearly our native and northern communities are also distinct societies. I have some problems with giving in to that wording at this point.

I would remind the Senate of November 1986. Senator Gigantès, this is perhaps why I believe that we can get the Quebec amendment and the Quebec accommodation that we all want. In November 1986 the Liberal Party held a national convention and concurrently at the same convention passed essentially the Quebec amendment, which was acceptable to Quebecers, and the recommendation for a Triple-E Senate as parts of its policy. I do not think we are faced with blackmail. We can make a deal concurrently with Quebec. The phrase "distinct society" is negotiable. Everything is negotiable, but I am not conceding it yet.

Senator MacDonald (Halifax): Mr. Asper, I congratulate you on your very thoughtful submission which, in your usual way, you presented with a great deal of passion. I have a couple of questions to ask you with regard to Senate reform. At page 14 of your brief you say:

> —at the very least we should acknowledge the principle that the Senate should be elected, by providing in the Meech amendment that the new provincial nominees, rather than be appointed by the premier of the province, be elected by the people of the province concerned.

What is in the Meech Lake Accord that suggests that the provinces will appoint senators?

Mr. Asper: The proposal that the Prime Minister will appoint senators only from lists submitted by provincial premiers makes it axiomatic that the selection of senators will be from a list of persons that is satisfactory to the particular province.

Senator MacDonald (Halifax): I would think that as a distinguished lawyer you would be more precise. You say, "appointed by the premier of the province." That is not the case.

Mr. Asper: That is *de facto* the case.

Senator MacDonald (Halifax): The provinces could submit 50 names and the Prime Minister, whose prerogative it is to make these appointments, could turn down all 50 names.

Mr. Asper: I do not want to split hairs or quibble over the wording, but the net effect is that senators will be selected by the provinces within a foreseeable period of time—appointed by the Prime Minister, but selected by the provinces.

Senator MacDonald (Halifax): Perhaps they could be nominated by the provinces. However, since you suggest that everything is negotiable, conversations could be taking place that involve no one in the list.

Mr. Asper: Everything is negotiable until this accord is passed. Then nothing is negotiable and unanimity is required.

Senator MacDonald (Halifax): Obviously, you have an enthusiasm for the so-called Triple-E proposal.

Mr. Asper: I said that I like it. It is negotiable because it is not etched in stone, as I said. The Senate has published a report outlining its version of Senate reform, which is a starting point for dialogue. However, I lean toward the Triple-E method as being the most effective method.

[Mr. Asper.]

Senator MacDonald (Halifax): Would you care to comment on Premier Getty's suggestion of some form of election that would have the effect of electing a nominee, who may or may not be acceptable to the Prime Minister who has the prerogative of making the appointment? I realize that you are not from his province, but are you of the same mind as Premier Getty on this matter?

Mr. Asper: I want to make sure that I understand the honourable senator. Today I said that, if the Senate of Canada is unwilling to take the position that I take, then, at the very least, the appointments should be made from a list of one name, that being the name of the person who has won a province-wide election. That would be the name that the premier would put forward. If that is what you were suggesting as the "Getty concept," then I support it.

Senator MacDonald (Halifax): Yes, very well. By a Triple-E proposal, do you mean something that involves a direct election and would give Prince Edward Island the same representation as Alberta, Ontario or Quebec? The proposal would give the Senate what it calls "effective powers," but what is not clear is what those powers would be. Therefore, the question that I put to you now, and it is an important question, is this: If new powers are to be given to the Senate, then they must be taken from somewhere else; do the people who are advocating a Triple-E Senate want to take those powers away from the House of Commons? If they do, who resolves a dispute between a Senate and a House of Commons with equal powers?

● (1510)

You also made a reference to ten fiefdoms. With respect to the so-called federal-provincial conferences, which were never originally envisaged but which recently seem to have become institutionalized or glorified, where do you see them going under the concept of an elected Senate? Do they disappear, or do they have a role to play? I am talking now of powers.

Mr. Asper: I do not think that federal-provincial conferences ought necessarily to be enshrined in the Constitution. However, I do not feel strongly about it. I think they are useful, but they should not be used as an instrument of national government. That is the function of the House of Commons and the Senate, and I am certainly not prepared to agree that somehow we should delegate a law-making capacity to a committee of premiers headed by a chairman of the board.

That is just my view of Confederation. However, on the written submission that I made to the joint Senate and House of Commons committee, which I have tabled here today, I did attach a fairly detailed concept of the Triple-E Senate, and, as I say, I am not sure that it would not take considerable constitutional debate to settle each point. For example, I believe that, after the Triple-E concept was instituted, the Senate should not have a suspensive veto; it should have an absolute veto. It should not—

Senator Frith: What was that again? I did not hear that.

Mr. Asper: The Senate should have an absolute veto and then, I say, I am prepared to negotiate the exceptions. These

would include such things, perhaps, as international treaties. However, in true federalism there is "rep. by pop." over here and "rep. by region" over there, and if they are in collision "rep. by region" must win. That is my view of Confederation.

The way in which you cure that—and that is why I have talked about the population clause—is that you say: "That is a little unbalanced," pointing to the usual situation involving Prince Edward Island. However, Alaska has a smaller population than Manitoba, and has two senators, and California has a greater population than all of Canada, but Alaska and California stand as equals. What I am saying is that if you do not like that, then order the country's immigration and economic development policy as I would recommend so that population will be spread equally so that "rep. by pop." will be fairer.

Senator MacDonald (Halifax): If we are then to follow a United States model respecting the Senate, should we also follow a United States model respecting the distribution of powers?

Mr. Asper: We are opening up a broad subject.

Senator MacDonald (Halifax): Does your proposal not take away powers from the premiers?

Mr. Asper: I do not think they are in conflict at all. I think the powers of the premiers are set out in the 1867 Constitution, and from time to time they must be amended and honed. However, to date we have not had too much trouble with the provinces. I suppose if we have had problems with the division of powers in Canada, it is because the world changed after 1867 and some national programs were required or considered necessary. That situation did encroach on provincial powers, and accommodations had to be made—and probably always will have to be made.

As a matter of fact, I sought to become a provincial premier for one principal reason: I wanted to be at the bargaining table in Victoria in 1971, because I thought the deal would be done then. Fortunately, it was not, and, unfortunately, I was not.

However, I believe the premier has a client called his province and he must represent that client vigorously, but within the context of powers that will change from time to time.

Senator MacDonald (Halifax): Mr. Chairman, I have one last question.

The Chairman: Perhaps it might be a very short one, senator.

Senator MacDonald (Halifax): Yes, Mr. Chairman.

Mr. Asper, I simply want to ask you if advocates of a Triple-E Senate want to take, for instance, resource jurisdiction away from the provinces?

Mr. Asper: No. I made a comment to Senator Neiman when we were discussing the North negotiating to join Confederation as equals. One of our concerns is that, if provincial consent is required, there will be a possible grab some day for the resources of the North, and they will be blackmailed into accepting conditions of entry into the union. That is why I approve of the Senate recommendation.

The Chairman: Thank you, Senator MacDonald.

Honourable senators, we are developing a time problem. We have 20 minutes left and I have six names on my first list plus one on my second list, if we manage to reach the second list, so I will ask honourable senators to keep their questions brief and concise in order to give a chance to everyone.

Honourable Senator Frith will be next, followed by Honourable Senator Everett.

Senator Frith: Mr. Chairman, I think I can help. I wanted to explore the Triple-E concept also. Senator MacDonald has done that and, although he did not ask all the questions I wanted to, I think I should pass and allow someone else to deal with another subject.

The Chairman: Thank you, Senator Frith. Senator Everett, followed by Senator Spivak.

Senator Everett: Mr. Asper, on page 13 of your brief you refer to the amendment of section 42 and you state that, as a result of that amendment, we can thus bid farewell to constitutionally protected interprovincial free trade, a Triple-E Senate, individual right to property, and interprovincial mobility of capital. Is it not true that the amendment to section 42 would refer only to institutions and would not be effective in preventing those changes, other than the change to the Triple-E Senate?

Mr. Asper: In my judgment, if we do not get a Triple-E Senate, there will not be the legislative drive—and note I am not saying constitutional drive—to enact in Parliament the economic bill of rights. In other words, the one, I hope, will lead to the other. If there is ever a Triple-E Senate, I believe there will be enough political negotiating capacity amongst the lesser populated areas to be able to persuade the Government of Canada, through the Senate, to sponsor that kind of amendment.

Senator Everett: So you are saying that the amendments that you contemplate here would arise only if there were a Triple-E Senate; is that correct? In other words, they would only be effective if there were a Triple-E Senate.

Mr. Asper: Yes, I suppose I am agreeing with you, because I am saying that, if we do not get the economic bill of rights now, in the absence of a Triple-E Senate, I do not think we will ever have a chance of getting it. There will not be the political power or political will in the Parliaments of Canada. Therefore, I am saying: Enact it now.

Senator Everett: My second point is that you make a number of references on page 9 of your submission to the problem of the distinct society. You say:

> Combining the Distinct Society provisions with the Present Proportion of Population guarantee, plus Supreme Court entitlements, Senate appointment powers, and Constitutional Amendment veto for Quebec, gives a chuckling Rene Levesque almost everything he ever wanted . . .

Then you go on to say, on page 11 at item 4:

> The Distinct Society clauses and Quebec's ability to legislate to develop that Distinctiveness, may be void for uncertainty . . .

Then, on page 12, you say:

> . . . the Charter of Rights must be declared to supersede all provisions of the Meech Amendments. In this case, I suggest that "Distinct" is a euphemism for "Separate".

As a lawyer, could you tell us what the effect of the term "distinct society" would be on the interpretation of the Constitution?

Mr. Asper: Senator Everett, if you are referring to the discussions that took place between some "constitutional" lawyers and members of the Senate and Commons joint committee, I thought they were less than helpful. When two people of basic intelligence take opposite views in interpreting legal statutes before they are passed or before an agreement is signed, for the sake of certainty why risk the interpretation being placed upon it by the courts where you thereafter cannot change it? So get it straight the first time.

My interpretation is that "distinct society" may likely supersede the Charter. There are a lot of people who agree with that legal position. However, it does not matter that someone disagrees. Correct it. What do you mean? Which is superior?

When that very simple and direct question was put, Premier Bourassa maintained that he thought distinct society overrode the Charter of Rights. If there is that kind of fundamental flaw in the drafting, for heaven's sake, fix it before you sign it.

The Chairman: Next on my list is Senator Spivak, followed by Senator Olson.

Senator Spivak: The ideas in your brief are certainly consistent with ideas that I, as a Manitoban, have heard you advocate over a number of years, and I compliment you on your brief. I would like to ask you a question in the area of equality rights, especially section 16, which you have not touched on very much.

As Senator Everett has said, on page 12 of your brief you say that "the Charter of Rights must be declared to supersede all provisions of the Meech amendments." Critics of the accord—particularly women's organizations, as has been mentioned quite often—have suggested that the Meech Lake Accord enters the field of equality rights selectively through section 16, that by recognizing aboriginal and multicultural rights in that section, and not others, it creates an inequality among the equality rights and, in effect, makes some equality rights more equal than others. The accord also makes these rights a structural element in Canadian federalism in a way that excludes gender from a comparable structural place.

You have suggested that the Charter of Rights must be declared to supersede all provisions of the Meech Lake amendments. As is evident, you are among the critics of the Meech Lake Accord. If you had the power to make any amendments, would you suggest that that is the way to fix that particular issue? Or would you prefer the way that some have suggested, which would be to add the question of equality rights in section 16? How do you view that whole issue?

Mr. Asper: It is a legitimate drafting and interpretation principle of law. It was referred to as *expressio unius est exclusio alterius*, which means that if you say something, then that specifically means something you do not say is not involved. I believe that we should err on the side of the general rather than the specific in statute drafting. Therefore, I begin by saying that this Charter of Rights supersedes every scrap of paper that follows. Period. I do not want to miss something by saying native rights, multicultural rights, or women's rights, because I would leave somebody out by inadvertence.

Senator Spivak: Do you believe that that would alleviate the concerns that many women's organizations have brought to bear? Is that your way of fixing that particular part?

Mr. Asper: I am not professing to still be an expert in drafting, but I think so. It should. On the other hand, I would be willing to listen very carefully to someone who felt uncomfortable.

The wonderful thing about a constitution is that it should make you feel good; it should make you feel proud; it should make you feel safe. If somebody does not feel safe, let us put words in that make him feel safe. I think that my general statement about the Charter superseding would cover it. However, if somebody made a reasoned argument that it was not enough, I would listen in order to err on the side of caution.

Senator Spivak: I am a little confused as to your position on the distinct society. On the one hand, you list all the horrible consequences that may result from the distinct society clause, and, on the other hand, you say that, if you had your druthers, you would concurrently negotiate the Triple-E Senate along with the distinct society. Is that a correct reading of what you say in this brief?

I would just make one comment. If that is that case, I would say to you, "Not so fast, Kowalski."

Mr. Asper: I don't think I said that. I hope I did not. Forget the word "distinct." What I did say was that the concerns of Quebec—which are legitimate concerns—can be met, as I mentioned earlier. The Liberal Party, with the support of Quebec and every other province, supported Triple E. The alleged anti-francophone sections of Manitoba, Saskatchewan and Alberta voted concurrently at the Liberal convention. They were able to come together. The word "distinct" is, to me, an unfortunate word to use. Perhaps the word "distinctive" would be appropriate, but we are splitting hairs again.

I did not mean to say that I would trade "distinct society" for Triple E. I believe that Triple E is non-negotiable.

The Chairman: The next speaker on my list is Senator Olson, followed by Senator Marsden.

Senator Olson: Mr. Asper, I would like an explanation of what you mean by the words "western amendment," because you have used those words several times. I realize that you are talking about a Triple-E Senate, and I believe that you

referred to freedom within the Commonwealth of Canada for the movement of trade contracts and capital and those sorts of things. I believe that you referred to it as an economic bill of rights. Is that all you mean by a western amendment, or is there something else that we need before we pass this group of amendments?

You seem to indicate that, if these amendments are passed, that will be the last time the Constitution will be amended.

Mr. Asper: Senator Olson, I did not mean to imply that. What I am saying is, if there is a Quebec *sine qua non*, the Quebec amendment, to me there is a western *sine qua non*. That does not suggest that that covers everything. I hope that we will be constitution-making for a while beyond this, but not in a straitjacket where unanimity is required for amendment.

In the economic bill of rights I did not list the components that one would expect to see. Let us take the example of the right of an individual to life and property. No civilized country that I know of has a modern constitution that does not talk about property rights. Our Constitution does not. I recall that in the House of Commons there was a considerable amount of debate, and at the end of that debate Prime Minister Trudeau said, "If you are prepared to give it expedited treatment, I will put in today 'property rights.' " He did not get the consent of the House of Commons and property rights are not in our Constitution.

Senator Olson: I expect the real reason for that is that they are within provincial jurisdiction.

Mr. Asper: The Prime Minister at the time had wording which would not offend provincial rights but which would protect property in our Constitution. It was the NDP who refused to give consent.

The Chairman: The next speaker on my list is Senator Marsden, followed by Senator Stewart (Antigonish-Guysborough).

Senator Marsden: Mr. Asper, we are pleased to have you appear before us today. We have heard with great interest what you have had to say about the content of the Meech Lake Accord. I especially note your concerns for the Charter.

• (1530)

I would like to ask you a different question, one which relates to the process. You advocate that, if all else fails, there should be a national referendum, a "yes" or "no" on the Meech Lake process.

But suppose you were successful and the Meech Lake amendment were to be opened up for discussion of the western amendment, of a Triple-E Senate; how do you think it should be done? Should the premiers retire once again behind closed doors? Would you have an open tele-line conference, as we have had in the past? Should it involve only the premiers? Should there be people's assemblies? What is the modern constitutional process in Canada?

Mr. Asper: Senator Marsden, if I had my choice, I would begin on the classic footing that constitutions are too important to be made by politicians only. Therefore, I would advocate a constituent assembly, which is what I argued for back in the 1960s and 1970s, so that those members of the public that have an interest—whether they are educators, academics, students, women, natives, minorities, multiculturals, or people who need a constitution to ensure their equal development opportunities within the country—are involved, and that includes Manitobans who are disadvantaged.

Those of you who are from Manitoba know that 10 per cent of Manitoba's population are of native extraction and live in the indignity of intolerable poverty. They have to be part of the constituent assembly. I do not say that out of emotion; I say that as a fact.

We have a francophone minority in Manitoba—as does Saskatchewan, as the Supreme Court of Canada mentioned the other day. They have had their rights trampled on. They should be part of the constituent assembly. One begins with that process, and, ultimately, it goes to the political level, but only after the politicians have listened, have dialogued, have debated and made their cases.

I certainly do not think it is the monopoly of the premiers to make constitutions. Why not the mayors?

Senator Marsden: One short question.

The Chairman: Please make it a very short one, because the time allocated is almost up.

Senator Marsden: Yes, I will, Mr. Chairman.

What did Premier Pawley ask for when he went to the Meech Lake and Langevin meetings, and what did he get?

Mr. Asper: I am not sure, because the doors were locked. I think he asked once to be excused, but they would not let him out until he agreed, or something.

Senator Marsden: In other words, we do not know what Mr. Pawley wanted or what Mr. Bourassa wanted.

Mr. Asper: We do not know what trades were made. We do not know what compromises were made. You are absolutely right.

As I said, I think this has polluted the process, because it has brought the democratic process into disrespect. The most important thing one can do in one's country is to make one's constitution, and it has brought that process into disrespect with back-room deals.

Senator Marsden: Thank you, Mr. Chairman.

The Chairman: Thank you, Senator Marsden. The last questioner will be Senator Stewart (Antigonish-Guysborough). I must ask you to be brief.

Senator Stewart (Antigonish-Guysborough): Thank you, Mr. Chairman.

As I understand it, all the provinces of Canada except the Atlantic provinces have at one time or another been enriched by Canada out of the Territories by either enlargement or the transfer of natural resources.

Mr. Asper: Yes.

Senator Stewart (Antigonish-Guysborough): That makes me interested in the fifth proposal in the report of the task force. That addresses the provision in the Meech Lake Accord that the establishment of new provinces is hereafter to be subject to veto by all the provinces.

I realize, of course, that you were not there behind those locked doors, but why is it that provincial governments would want the power in contemporary economic circumstances to veto the establishment of the Yukon, for example, as a new and distinct Canadian province? Why do they want this new power, which Nova Scotia, for example, did not have when Quebec and Ontario were enriched in 1912?

Mr. Asper: I cannot answer. I can only tell you that there has been a prospensity in constitutional negotiations since 1971 and before 1971 for the provinces to attempt continually to erode the central authority and to add power to the provincial side of the equation. I hope it is nothing worse than that.

But I must say that as I grow older I am becoming a little more cynical and less naive. I wonder how we would deal with the situation that currently exists between the Province of Quebec and the Province of Newfoundland and Labrador over power. I wonder what trading would go on and what price might be exacted for a provincial boundary change. That has nothing to do with it, but it has to do with economic blackmail. Perhaps Alberta would veto the Yukon unless it got downstream rights on a certain river, or whatever. I just do not want to turn Canada into a bickering, small-minded country, where local interests take precedence over the national interest.

The making of provinces, it seems to me, ought to be something between the people of Canada as a totality and the provinces, because those provinces, in my version, will have enormous power within Canada when there is a Triple-E Senate that would give the Yukon Territory, if it became a province, equality with Ontario. You have to weigh that carefully before you make that transaction, and, therefore, it should be done on behalf of the people.

Senator Stewart (Antigonish-Guysborough): Let me ask one brief question on the same matter. Do you think it is proper that a province, Nova Scotia, for example, will be able, by reason of an absolute veto, to exercise bargaining power when there is the need to establish some form of provincial administration, in what is now the Yukon Territory, either by making the Yukon a new province or by enlarging British Columbia to include the Yukon? Do you think it would be legitimate for us in Nova Scotia to say that we wanted our *quid pro quo* for the solution of what might be urgent administrative problems in the Yukon Territory?

Mr. Asper: No, I do not. That is why I oppose the provincial veto in Meech. I say that because I believe it can be used for improper or unworthy purposes, as you have described. At least, I would describe it that way.

I do not want to see that power go to any one province so that it can intervene in a national issue and have a veto.

Senator Stewart (Antigonish-Guysborough): Thank you, Mr. Chairman.

[Mr. Asper.]

The Chairman: Thank you, Senator Stewart.

We have come to the time allocated. I have three other senators on my list, Senators LeBlanc, Bosa and Haidasz. As a matter of fact, we have gone three minutes over the allocated time. Unless I am overruled, I will have to tell those three senators that we will not be able to entertain their questions.

Senator Bosa: Mr. Chairman, what prevents us from going on for another 10 or 15 minutes?

The Chairman: That is up to the committee.

Senator Bosa: I ask that, if the witness is willing to stay.

The Chairman: Is that the wish of the committee? We have other witnesses scheduled for four o'clock. I think in fairness to the other witnesses we should not go beyond four o'clock. If it is agreeable, we will go until four o'clock.

Senator Frith: Yes, that is agreeable.

The Chairman: All right. We will start with Senator LeBlanc, followed by Senator Bosa.

Senator LeBlanc (Beauséjour): Mr. Chairman, I will be very brief. I will skip one question, because I think it has been covered.

One silence, Mr. Asper, in your interesting document relates to spending power. I was surprised that, as a former provincial politician, you did not focus on that, because I think Manitoba is in a situation similar to that of the Atlantic provinces. How do you feel about anything that weakens the power of the federal government to redistribute wealth in the country?

• (1540)

Mr. Asper: I prefaced my words on that section by saying that, while I feel strongly about this, there are many other eloquent spokespersons. If you read my brief, which I tabled today, I do deal with it extensively. I am fearful of any weakening of the federal power; it has been eroded enough. I am also deeply concerned about the "opting out with compensation" aspects. Unless someone redefines it and drafts it differently from what appears in the Meech Lake Accord, I do not know what comparable programs are; I do not know what some court will say 15 or 50 years from now, but I do see significant opportunity for loopholes on the "opting out with compensation" material. I do not want to have to decide that; why don't we fix it?

The same thing applies to any weakening of the federal power, of the redistribution of the essential services and the support of the social structure of the country. I can see an effect where we have a federal government that cannot do very much and cannot remedy situations, and is constantly haranguing constitutionally with the provinces over whether a particular program falls within this and that framework. I think we have decentralized a fair bit in Canada already in terms of constitutional power; I do not think it is necessary to go any further.

The Chairman: Thank you, Senator LeBlanc. Next is Senator Bosa.

Senator Bosa: Mr. Asper, you have made an eloquent presentation in favour of rejecting the Meech Lake Accord. You have used expressions such as "economic blackmail," "the CF-18 outrages" and "bartering." Why did the premiers of all the western provinces in Canada not see the grievances that the West will experience, as you have presented them?

If I may put another question, since there was a lot of bartering here, did Newfoundland, who has a longstanding grievance with Quebec over the Churchill Falls Treaty, miss an opportunity to bargain, to review and to reopen that treaty?

Mr. Asper: That almost goes back to Senator Marsden's question. I agree with you. I find it astounding and absolutely an historically remarkable event that Meech Lake was signed. Premier Getty left Alberta holding a news conference, saying, "I shall not return without Triple E." What happened between there and the back room?

Why did they do it? That is why I say it goes back to Senator Marsden's comment about the closed-shop environment of the negotiations. Perhaps political considerations were given; perhaps hospitals were planned and military industries were offered. I do not know.

Senator Bosa: Frigates!

Mr. Asper: Frigates? Frigates, yes! Well, the frigates may backfire. They may sink.

The Chairman: Thank you, Senator Bosa. That concludes the list of questioners.

Mr. Asper, I want to thank you for preparing the brief in the first instance, and coming in person to share your views with us. It is much appreciated.

Some Hon. Senators: Hear, hear!

The Chairman: We will await the next witnesses.

Pursuant to Order adopted on June 18, 1987, Mrs. Ginette Rodger and Mr. Michel Simard were escorted to seats in the Senate chamber.

The Chairman: Our next witnesses are from the Canadian Nurses Association. We have with us Mrs. Ginette Rodger, Executive Director, and Mr. Michel Simard, Public and Government Relations Manager.

Mrs. Rodger, Mr. Simard, we have an hour at our disposal. We have received your brief and it has been distributed to all members of the committee. Is it your intention that both of you will speak, or will there be only one spokesperson?

Mrs. Ginette Rodger, Executive Director, Canadian Nurses Association: Mr. Chairman, it is my intention to make a presentation and highlight points in the brief, but I will not read the brief. Only I will be presenting. However, if necessary, Mr. Simard will also answer questions.

The Chairman: You may do one or the other. All right. As you know, you may use whichever of the official languages you prefer. That is entirely up to you.

You may proceed, then, and we will pose our questions following that.

[*Translation*]

Mrs. Rodger: Thank you, Mr. Chairman. We are very pleased to have another opportunity to explain our position on the Constitutional Accord. As you mentioned earlier, I have with me Mr. Michel Simard, our head of public and governmental affairs, and I am the Executive Director of the Canadian Nurses Association.

Some of our members said it was probably a waste of time to explain our position on the Constitutional Accord again, because there does not seem to be a political will to make any changes.

We came here, however, because we believe this is a good opportunity to share with you our concerns about section 106A, which is about spending powers under the Constitutional Accord.

We also feel it is extremely important for you as decision-makers—you can influence decisions and hence our future—to hear the concerns shared by half of Canada's health system, in other words, our nurses who serve the public twenty-four hours a day, 365 days a year.

Our concerns are not new. The day after the Meech Lake Constitutional Accord was signed, we asked for the text and studied it carefully. After going through the text once, we communicated our concerns to Messrs. Mulroney, Turner and Broadbent, to the Minister of National Health and Welfare and to the various health critics.

The most we got was an acknowledgment. We also contacted the media, unsuccessfully, however, to warn Canadians about the consequences of some of the changes proposed in the Accord, especially those dealing with spending powers.

The day before the final version was signed, we met with the Minister of National Health and Welfare, Mr. Epp, to discuss the Accord. After informal meetings with politicians from all three parties, at both federal and provincial levels, we were convinced that our concerns were genuine.

I would like to say that the Canadian Nurses Association covers eleven provinces and territories, and that the purpose of the association is to grant the right to practise nursing. Our main concern, therefore, is to protect the public. We represent nurses from all provinces and have over 100,000 members.

The CNA has expressed its views on our health care system on several occasions: in 1980, when Judge Hall reviewed our health system; before the Macdonald Commission; and also in 1984, when we were very involved in the debate on the Canada Health Act.

I say this because I want you to realize that our concerns do not arise from a sudden desire to take part in a political debate but are based on our experience and thorough knowledge of the Canadian health care system.

[*English*]

Mr. Chairman, we want to highlight, and comment on, the effort made by the Prime Minister and the ten premiers to reach an agreement to allow the province of Quebec full political partnership in Confederation. However, we would like

that to happen without endangering the Canadian health care system.

● (1550)

Clause 106A would allow the Government of Canada to provide reasonable compensation to provinces which chose not to participate in a national shared-cost program established federally so long as the province carried on a program compatible with the national objective. Our first concern related to that clause is with the definition of "compatible." Compatible may have different meanings. It may mean "not in a position to," or it may mean "conform to" or "similar to."

Our second concern relates to the definition of "national objective." As you know, interpretations of this may be very broad. You have had before you many texts of many representatives who have given different definitions of what the national objective would be. In fact, a representative of a provincial minister has given a different interpretation. If a national program were instituted in Canada to ensure primary health care services, which is, in fact, an objective of the World Health Organization which the Canadian government has subscribed to, that could mean that one province could develop clinics for mothers; another province could develop a store-front prevention program; and another province could develop a centre for the elderly. What would then happen in terms of ensuring universality and the national objective of ensuring that similar primary-health-care programs were available to all Canadians?

In other definitions others have suggested that, if a national objective were primary health care, the money for that objective could be put towards another national objective, such as the improvement of roads. You can imagine that the consequence of that would be to take some money earmarked for health and divert it to other programs.

We aired a different view of the national objective, and the response we received was to the effect that if we did not agree on the meaning of "national objective," then we could always go to court to have the matter settled. Resorting to the judicial system to resolve issues that are, at least at the moment, some kind of guarantee for Canadians is an inappropriate way to ensure that health services are available to all Canadians.

Our third concern relates to the opting-out consequences. The opting-out consequences endanger the universality of the health care system not only for future programs but for existing programs.

We all know that our present system of health care is very good. It has been identified by many other countries as a very successful program. We spend a relatively low proportion of our gross national product on health care and yet our outcomes are very positive. Our program is for all Canadians, regardless of their age, their disease or the thickness of their wallet.

We know that this system will need to be reformed in the future. In fact, if we do not start reinforcing the various parts of the system, it will be in danger of collapsing, because, first, there is financial pressure on the amount of the tax dollar that we will pay, and it will not be very elastic; second, the demographics of this country are of grave concern; third, advances in technology are having an impact on the taxpayer; and, fourth, there has been an increase of knowledge in all fields of health, all of which results in the need for reform, such as transferring some of the services to community-based services, and not guaranteeing only the most expensive part of the health care system, which is the hospital insurance and the cost of physicians.

If you do not already have universality in new programs and you cannot implement them, how will you transfer some of your actual services in new programs? You will then put portability in danger. Canadians will not be able to travel across the country and receive identical services. You will put in danger the universality of programs, accessibility, and so on. This is a very serious situation, Mr. Chairman.

We believe that provincial governments do not have the interest of the country as a whole at heart when they become involved in the development of health care. We believe that they have provincial interests at heart. As you know, before the 1950s each province developed its own health care system. They did not manage to provide care for all Canadians.

During the 1950s and 1960s, through a national effort, with strong national leadership it was possible to provide a health care system that has become the envy of many countries. We believe that, if we do not have a strong national presence, we will not be able to sustain the health care system.

You were all involved in the Canada Health Act, since you voted for it unanimously. You know very well that, if we had left the destiny of the health care system—specifically the definition of accessibility—to the provinces, extra billing and user fees would have removed accessibility for many Canadians. It was because of strong national legislation that it was possible to curtail this movement of the provinces. In fact, the provinces had three years to comply with the national legislation, which they did, and today, in acute care, you do not have user fees or extra billing.

I think, Mr. Chairman, that makes the point that strong national legislation in health care is important. You voted unanimously to protect the five principles of the Canada Health Act. Now, any vote on the accord, as it relates to clause 106A, would, in the medium and long term, endanger that health care system and the maintenance of the five principles. We would urge you, before you vote, to consider the concerns of nurses, who form part of the health care system, and the concerns of taxpayers. We want you to consider the public view of the health care system, which is that it is the number-one valued public service in this country.

We believe that the Government of Canada should ensure that the principles and standards of the national health care system are not lost through unilateral provincial action made possible—indeed, encouraged—by the accord.

Having said all this, we should, in all fairness, offer some suggestions in terms of what can be done if we support the

Meech Lake Accord in principle but wish to see clause 106A changed.

The first suggestion is that life would be much better if there were no opting out of shared-cost programs, but I believe no one will accept that. The second suggestion, therefore, is that we believe that a national program should not be based merely on a broad interpretation of a national objective but should involve specific standards relating to a specific program that the federal government wants to put in place. Our third suggestion is that you may want to consider exclusion of the health care system from clause 106A.

Thank you very much.

The Chairman: Thank you. I have on my list Senator Frith, followed by Senator Argue.

[*Translation*]

Mrs. Rodger, I wonder if I could ask you for some clarification. In your brief you say that you are a federation of 11 territorial and provincial associations. Since there are twelve in this country, could you tell us which one is not represented?

Mrs. Rodger: Mr. Chairman, at the end of 1985, l'*Ordre des infirmières et des infirmiers du Québec* left the national association.

Our position on the Canadian health care system was adopted unanimously in 1983, 1984 and 1985 when the *Ordre des infirmières et des infirmiers du Québec* was still part of the Association. In fact, we also have nurses from Quebec among our 100,000 members, even if the *Ordre* itself is not represented.

The Chairman: Thank you. I shall now yield the floor to Senator Frith, followed by Senator Argue.

Senator Frith: Mrs. Rodger, if I understand correctly, your concern is with the relationship between the Meech-Lake Accord and, I quote:

> the future of Canada's health care system.

Generally speaking, that is your concern?

Mrs. Rodger: That is correct.

Senator Frith: You realize that eventually we will have to make recommendations about adopting the Accord or suggest amendments, and it is our job to decide how the amendments, if any, are worded.

Do you think we can do some repairs, in other words make some changes, or would we have to delete altogether those aspects of the Accord that may be a threat to the future of Canada's health care system?

Mrs. Rodger: Mr. Chairman, it would be perfect if we could delete those sections of the Accord that may be a threat to our health system. While making our suggestions we are very much aware that there is a political will to sign the Accord with as few changes as possible. Politically speaking, it may not be very realistic of us to ask for these sections to be deleted altogether.

That is why we feel that as far as section 106A is concerned, if the political will I mentioned remains the same . . .

Senator Frith: Excuse me, what was the number?

Mrs. Rodger: Section 106A, which refers to spending powers.

Looking at this section, what we suggest as an alternative is that instead of saying: provided the province develops a program compatible with national objectives, we say that the program must be compatible with national objectives and also include such standards or criteria as the program must meet.

At the present time, the interpretation given by certain provincial spokesmen is that moneys earmarked for health care could be used to finance entirely different sectors. Similarly, funds earmarked for one health sector could be spent on another health sector, and it could then be said that generally speaking this would be compatible with national objectives.

That is why we think it may be easier to introduce an amendment prescribing further clarification in the form of standards and criteria, a little like the Canada Health Act is doing now. Where the Canada Health Act refers to comprehensiveness as one of the principles to be observed, it defines what comprehensiveness is. It says that the term covers care that is medically required and provided in certain circumstances, and so forth. Every province must abide by this principle.

Such an amendment might help the health system as a whole, and probably other systems as well. But as you know ours is a nursing association and our mandate relates specifically to health, not to the political aspect of the issue.

Senator Frith: In your opinion, does the word "compatible" have roughly the same meaning in both French and English? In English something may be "compatible" without being concordant or the opposite of something.

Can we improve the provisions with a concordant word which fully and specifically respects instead of using the word "compatible"?

Mrs. Rodger: It is certain that the expression "which specifically respects" is probably more accurate than "compatible", which might be interpreted as meaning "not being opposed to".

But we do not think that making this correction would settle the debate on the national objectives.

Senator Frith: So there!

Mrs. Rodger: The government may have several objectives at a given time. So to the extent that it is compatible with the national objectives—if there are several and the plural is used—that might mean an objective in an altogether different field.

I think it is important as well to tighten up the definition of "national objectives".

Senator Frith: Could we take another word instead of "objectives", for example?

Mrs. Rodger: We believe that "criteria" and "standards"are much more precise terms.

Senator Frith: "Standards" is certainly more precise than the word "objectives".

Mrs. Rodger: Yes, they relate to the national program.

Then there is much less leeway. We would not end up having health funds diverted to highway construction in Canada.

Senator Frith: Thank you.

● (1600)

[*English*]

The Chairman: Thank you, Senator Frith. Next on my list is Senator Argue, followed by Senator Marsden.

Senator Argue: I would like to ask the witness for clarification on how the national association deals, for example, with the nurses in Alberta, who I do not believe are part of a national union. Are they still members of your association and in what way do you speak for them?

Mrs. Rodger: The Canadian Nurses Association, as a registering body, deals, for the most part, with the protection of the public and the standards of practice. We develop exams for all student nurses so that they can become registered nurses, and then we develop standards. Our whole orientation relates to the practice of the profession. To be registered, all nurses must pass an exam and become members of their provincial organization, then the national and the international organization. The nurses' unions vary in each province in size and number, and their mandate is the protection of the nurse, which involves salaries and working conditions. In Alberta, for example, there were two different unions. Our association does not relate directly with the nurses' union, even though there is liaison and discussion between the two. In the recent Alberta strike, for example, the big concerns were: What are the consequences for nursing in Canada and what are the consequences, in general, of a strike like this on the health care system and the future of the profession? All of the nurses in Canada that are registered are then members of the Canadian Nurses Association.

Senator Argue: If the nurses association in Alberta felt that under the circumstances existing before the strike they were overworked and that the health care system was not as good as it should be, would you be apprised of that situation and would you have anything to say about it, or is that outside your jurisdiction?

Mrs. Rodger: The national association has the same relationship with the provincial associations as the federal government has with the provincial governments. We would intervene in a provincial situation if the provincial association wanted us to support it in that circumstance. What we do is provide a national standard in terms of what is expected for practice, and nurses use that to make sure that they evaluate their position in light of the standard and then take the necessary action to try to address issues or situations. It is from that point of view that we interface.

Senator Argue: I am sure that we were all interested in what you said about the health care system in terms of the value in keeping it universal, but there are other joint programs in Canada which, although they do not have a direct bearing on the health of Canadians, certainly have an important indirect bearing upon it. I have in mind such things as old age pensions, unemployment insurance—although that is basically a federal program—family allowance, and perhaps day care as a future issue. Do you feel that the proposed Meech Lake Accord has the same risks in store for these other shared or joint programs I have mentioned? Do you think the same risk applies to the favourable delivery of those programs as you say applies to the health care system? Do you think it will have a much broader effect on them than it will on health care, keeping in mind that health care is important?

Mrs. Rodger: I believe that is a broader issue than health care, but, as senators know from section 106A, the programs that are in existence are not affected by Meech Lake. It is not the programs as they exist now that will be endangered, unless the particular area they deal with needs reform. If, for example, we ever needed to reform the unemployment insurance program to establish guaranteed revenue, or whatever, the new program would be in danger.

It is our belief that the social programs we have in place are very much modelled on what we knew to exist in the fifties and the sixties. We have been living in the seventies, and the eighties are now challenging many of those values, because our resources are limited. They are forcing us to make new choices, to look at new alternatives. When one starts looking at new alternatives for shifting the old programs into new programs that are more appropriate to today's demands, one is talking of new legislation. So the whole possibility of shifting the old programs into new programs to meet the needs of Canadians in the future is endangered by section 106A. Of course, our mandate is to speak about health care.

● (1610)

Senator Argue: You made some reference, I believe, to the nurses association of Quebec not being at this time part of your association. Do you have any idea what their present stand is with regard to the Meech Lake Accord and do you think that they support in general the proposition that you have put before us today?

Mrs. Rodger: We have not discussed the Meech Lake Accord with the Order of Nurses, so I do not know their stance on it. The nurses from Quebec who are members of the Canadian Nurses Association do, as do the members in general, support the approach in the Meech Lake Accord. In fact, it was at the request of our associations that we wrote to the premiers of the provinces and to the Prime Minister to put forward our position on this subject. Therefore, even though we have not discussed with the Order of Nurses in Quebec their position on the Meech Lake Accord, I can say, as I mentioned before, that our position on the entire health care system is not a new one. It dates back to 1980. It was reiterated before the Macdonald Commission and before the committee studying established programs financing, to which we presented a brief on the transfer of payments with regard to the Canada Health Act. We are the only group of health

professionals to retain a unanimous position in relation to our concerns about the health care system. All the briefs presented to those committees were unanimously accepted by the OEQ as a member of the CNA. I would have to check events of recent years to see whether there has been any change in their beliefs.

The beliefs I am talking about are fundamental to nurses as professionals, and that is why we can present a united position when other health care groups cannot. Other groups may be torn between the provincial government, which pays their wages, and the federal government. Nurses have retained their stance throughout; namely, that universality is necessary to ensure health care to all the people of this country. This cannot be accomplished with a collection of ten provinces, but only with a united country.

Senator Argue: You have presented a strong brief and you have made a strong presentation. Is it your feeling that the amendments are so desirable that, even though you support some major aspects of the accord, you would prefer to have no accord? Would you prefer to have it go through as is, if your proposed amendments are refused, or are you so strongly in favour of your proposed amendments that you think that without them the Meech Lake Accord should not be put in place?

Mrs. Rodger: Mr. Chairman, it is our belief that, if the cost of the Meech Lake Accord is to dismantle the Canadian health care system, the price is too high. Is that clear?

Senator Frith: That is very clear.

Senator Marsden: I would like to thank the witnesses for bringing forward a very important point which we have not discussed in this committee before, that of the health care system. In your response to Senator Argue a few moments ago you talked about the inevitability of new programs in health care and the impossibilitiy of having universal health care programs under these arrangements. With respect to rights under the Charter and other aspects of the accord, we have heard considerable evidence that it was a deliberate decision on the part of some of the premiers to make, for example, the distinct society provision override the Charter of Rights, and so on. You have had discussions with ministers of health and premiers. Have you any reason to believe that section 106A is anything other than a deliberate attempt to move the country away from universal programs such as health care programs?

Mrs. Rodger: Mr. Chairman, it is difficult for us to say whether or not this is a deliberate attempt to move away from universality. Certainly it is a possible consequence. When we put to the health ministers the consequences of this measure on the health care system, once they had given us the party line, they indicated that they were very pensive as to the real consequences of the proposal. They would say that we were right to be worried. But, whether it is deliberate or not, it is not for us to judge the intent. I believe that people are now conscious of these consequences. The question is whether or not there is enough will to repair the accord before it is too late.

Senator Marsden: I would like to ask you as well if you are following closely the child-care discussions that are now under way between the provinces and the federal government and whether, even though the minister has said that this matter is not part of the Meech Lake agreement, you see the discussions as a pattern of what would occur if the Meech Lake Accord were ratified?

Mrs. Rodger: There is a lot of speculation on the effect of the Meech Lake Accord on various issues. You have mentioned child care; abortion is another. I believe that, even though there may not be a formal change to the Meech Lake Accord, we have been influenced by the spirit of the accord. Because of that people are very nervous about making decisions to bring in strong national programs when they know that around the corner they may be able to get out of them one way or another. I do not know for certain, but I believe that there is this attitude, even though the accord is not law yet.

[*English*]

Senator Gigantès: Thank you, Mr. Chairman. Good afternoon Madam and thank you for a very eloquent testimony. You suggested it would be possible for provinces to transfer funds from the health care system to other programs. Could you elaborate in the light of the Meech Lake Agreement?

Mrs. Rodger: First, concerning Section 106A's interpretation, the immediate explanation we had on national programs referred to the possibility of having a series of services that would be different or dissimilar from one province to the other.

I gave the following example: Say the Canadian Government decided to offer a primary health system, as it agreed to do with the World Health Organization, as a strategy to meet the future needs of the population, by ensuring blocks as for instance the whole series of home care for senior citizens; our interpretation of section 106A would be confirmed. A province could say: That is of no interest to us because we would rather use the money to develop clinics for mothers. Therefore, that province would not have home care for senior citizens, but would provide clinics for mothers by claiming that overall that health service meets national objectives.

Senator Gigantès: Compatible?

Mrs. Rodger: Yes, non-conflicting. That was one of the interpretations, which means that each of the services in the provinces would become different. Universality of services would no longer be assured because senior citizens in Prince Edward Island, for instance, would not necessarily enjoy the home services that would be provided in Ontario, say.

So there would be no universality and portability, and this would imperil in our national program the services provided to all Canadians.

Another interpretation did not come from us, but it put up more important red lights. For instance, representatives from the provinces publicly stated they could use health moneys to improve their roads.

Senator Gigantès: Do you have examples?

Mrs. Rodger: Yes, representatives from Quebec mentioned that on TV.

Senator Gigantès: Money provided by the federal government for health purposes.

Mrs. Rodger: Yes.

Senator Gigantès: And it was used to pave roads.

Mrs. Rodger: Not money which has been used, but which might—

Senator Gigantès: Which might be used.

Mrs. Rodger: Yes. This comes under clause 106 A, which states that it might be used for programs which are compatible with national objectives. Since the national objectives are so vaguely defined, there could be quite a lot of them.

Senator Gigantès: I see.

Mrs. Rodger: This means that the moneys received by provincial governments could be used for other programs inasmuch as these are compatible with national objectives.

Senator Gigantès: These moneys could be used for prisons or for anything else.

Mrs. Rodger: Yes.

Senator Gigantès: This is quite interesting!

Mrs. Rodger: Yes. These are some of the concerns we have, and, as you know, the national health care sets minimum criteria to provide hospital and medical care.

It is certain that not all services will be assured under a future health care system. Choices will have to be made in relation to available resources and whatever national services might be needed in view of demographic and other changes.

Senator Gigantès: Have you read recently the book published by the Fraser Institute in Vancouver, which is probably the most monetarist, the most rightist and the most deficit conscious of all the institutes that carry out economic studies? This report is entitled "Caring for Profits" and it says that, of all the health care systems in the world, the Canadian system is the only one to meet the contradictory requirements of consumer needs and the need to compress expenditures. It also quotes figures showing that the costs of the Canadian system have not increased as a proportion of the gross national product and points out that Canada is the only country where this is the case. Have you read this book?

Mrs. Rodger: I have not read the study published by the Fraser Institute, but we are very familiar with this way of thinking. We have carried out many studies with our own economists. I gave a lecture last summer at the Financial Post Conference on privatization of the Canadian health care system and on the future options, availability and quality of health care.

I can tell you that we now spend about 8.6 per cent of the gross national product to provide hospital care and medical services for all Canadians.

Our American neighbors spend over 10.6 per cent of their own gross national product to provide care to only part of their population, of which one third is uninsured.

[Mrs. Rodger.]

The position of the Canadian Nurses Association as concerns the financing of the health care system is this: We have asked the legislators not to put any more money than there already is into the health care system, and this is still our position. We ask them to maintain the same ratio between the gross national product and health care expenditures, but to put these resources to better use within the health care system.

We are now using parts of the system which are very costly. We are spending public funds on these services when we could be using other parts of the system which are more effective, provide better care for the public and are less costly. This is why our position on the Meech Lake Accord is so important because it is based on a reform using available resources. If you take away the possibility of changing and redirecting the program nationally, the die is cast. The system cannot sustain such pressure.

Senator Gigantès: As soon as there is an attempt to change the system, ways will be found to avoid it and people will be able to say that their expenditures are compatible with national objectives, even though they are not necessarily in the field of health care. This is what you are saying.

Mrs. Rodger: Exactly.

● (1620)

[*English*]

The Chairman: Thank you, Senator Gigantès. Next is Senator Stewart.

Senator Stewart (Antigonish-Guysborough): Thank you, Mr. Chairman. The witness is so clear, succinct and well-informed that I cannot resist the temptation to seek guidance on two points.

I understand that your proposal is that section 106A should be amended so as to provide for opting out if a province carries on a program or an initiative that conforms to standards and criteria established by the Government of Canada.

Senator Frith: Conforms?

Senator Stewart (Antigonish-Guysborough): This assumes that the Government of Canada has the right to establish the standards and criteria. I want to ask you if you are familiar with a 1984 dictum of the Honourable Terence Donahoe, now the Attorney General of Nova Scotia, that national purposes in an area of exclusive provincial jurisdiction—he was speaking of education—are to be defined not by the Parliament or the Government of Canada but by the provincial governments, to whom, under the Constitution of Canada, those matters are assigned. Is his position correct?

Mrs. Rodger: Mr. Chairman, if you wanted to explore the discussion or the debate on the constitutional powers between the federal government and the provincial governments, it would be totally out of my field, because I am not a constitutional lawyer. However, even though we do not become involved in an issue such as that without getting advice from all sides—economists, constitutional lawyers, or whatever—my lay understanding, or my understanding as a private Canadian citizen, is that, if you stand on the letter of the Constitution, the Government of Canada can only collect money and pay,

and the provinces can provide, administer and perform all of the services. That is standing on the letter.

The reality, though, in this country is very different from that. In fact, I had a discussion with a minister of health who took somewhat that same approach, of standing on the letter of the Constitution, with the provincial governments gaining power. However, he was not ready to go to the public and tell them that they did not have a national health care system, because the fact is that they do have a national health care system. It emerged from the blend and the experience of Canadian society that, in fact, the only way in which we could assure health care for this country was to band together and implement it.

In fact, the report of the Special Joint Committee of the Senate and the House of Commons says that, if we go back with section 106A whereby every province stands on its constitutional rights and does its own thing, we may end up with a chequerboard of social programs in Canada, and that should be encouraged. Mr. Chairman, we beg to differ with that. We believe that our constitutional experience as Canadians is different from that, because, in fact, we would not be serving the Canadian population if we merely stood on the letter of the law relating to a health care system.

I do not know if my colleague wishes to add anything.

Mr. Michel Simard, Public and Government Relations Manager, Canadian Nurses Association: I think there are as many political and judicial interpretations of this matter as we have visions of Canada in this country. Senator, you have just quoted the Attorney General of Nova Scotia. In fact, the Liberal Party of Quebec, in its document of 1985 entitled "Master our Future", quoted the Canadian Health Act as an example of something they wanted to deal with in a more proper, constitutional way.

I think it is a matter of fact that for years the provinces of this country have wanted to gain more power and that the federal government has been there as a body to share resources between poor and rich provinces.

Perhaps the only thing we must remember is that, once we get out of something at the federal level, it then becomes quite difficult to have a say in the matter. I personally think we should remember that Canadians as individuals want to have the same opportunities, the same approaches and the same programs throughout the country.

Senator Stewart (Antigonish-Guysborough): Mr. Chairman, that leads me to my next question. I take it that the Canadian Nurses Association is firmly of the view that the program or initiative should be one that would conform to standards and criteria established by either Parliament or the Government of Canada. We are dealing here with health care, a matter normally within provincial jurisdiction, but it has been said by these witnesses that what they are asserting in relation to health care would be equally true in other areas. That was said in response to Senator Argue's question. How is that view compatible, if I may use that term, with the proposal in this constitutional amendment that Quebec is to be treated as a distinct society within Canada?

Surely, if Quebec is a distinct society, that establishes a basic right for Quebec to have a health program and other comparable programs appropriate to the nature of that distinct society. Are you not, by implication, attacking the concept of Quebec as a distinct society?

Mrs. Rodger: Mr. Chairman, we were not attacking that concept, although perhaps we should be.

We do have a reality in this country. We have created a service and a level of health care for all Canadians which is minimal. This is the reality within the Constitution, and the reality of the Constitution has lived through the years.

As I understand it, the Constitution is a guarantee for Canadians to be protected against a majority government. The Constitution is to protect me, the citizen. When politicians start playing with the constitutional reality or the law of it, then my protection against a majority government is threatened. In this instance the Meech Lake Accord, by article 106A, is playing with the constitutional balance within this country, and even though I am not a constitutional expert or a lawyer I think that endangers the health care system of Canadians. That is the bottom line.

For example, one province might say that it has money, or it has this or that, and does not want to be a party to this, but would like to do its own thing; well, if that was the attitude of this country, there would be a large group of Canadians who would still not have access to health care today, or who would have access to a system, but there would be one system for the rich and one system for the poor.

I do not think Canadians want that, and Canadian nurses do not want that. We remember what it was like before the 1950s and we saw what that did to Canadians. We do not want that to happen again. If there is another part of the accord that might touch on that, you had better look at it. It is not our role, but you had better look at it, because it is serious. We will be paying for that down the road. It is not just something that will go through the books, because, when the health care system is out, we will be in asking for care. We had better think about this twice, because it is very serious for this country.

[*Translation*]

Senator LeBlanc (Beauséjour): Mrs. Rodger, I listened with a great deal of interest to what you had to say, and I was particularly moved by your concluding statement, because I am old enough to remember that in the fifties a person had to mortgage his house if he happened to need expensive treatment. It was a pleasure to hear you defending the health care system the way you did. In any case, we never doubted we had the support of Canada's nurses.

However, I do have two questions. The legislation introduced by Ms. Monique Bégin was universally accepted because the Canadian people wanted this legislation, as was shown in a Gallup poll. Do you think this kind of legislation will be possible once the Meech Lake Accord is adopted?

Mrs. Rodger: I will ask Mr. Simard to reply.

Mr. Simard: The answer I am about to give was in fact examined by the Joint Committee of the Senate and the House of Commons on this subject, and I would like to quote paragraph 34 at page 77 of the Committee's report:

[*English*]

> We are agreed that the phrase "the national objective" does not equate with national standards. Given the language of proposed section 95B(2), it would be impossible to equate objectives with standards. Nor can it be said that "the national objectives" can be equated with conditions or criteria, as exemplified by the *Canada Health Act*.

[*Translation*]

One could establish the general purpose of the Canada Health Act, but the criteria of universality, portability and public administration could not be included as such in a federal act.

Senator LeBlanc (Beauséjour): That may be a reflection on the value of this report. This particular quote aside, what was said in the report is not reflected in the recommendations and amendments. I find that very revealing. Well, at least we will have the Senate's report, which I hope will be more lucid.

To get back to the expression "compatibility", are you telling me that moneys earmarked for health programs could be used to build roads? We have seen, in the case of universities, that the provinces have withdrawn from joint programs. They continue to accept the federal contribution but have reduced their own, even in the richer provinces. Do you think we could justify spending moneys earmarked for health care on building airports that would be used by an air ambulance service?

Mrs. Rodger: Mr. Chairman, I think that interpretation is correct, but we did not suggest it. We heard what the signers of the Accord and the representatives had to say, and they gave these examples. At that point we became even more concerned than we already were. So, yes, it would seem that given the present wording that is a possibility, and I know that some of the signers of the Accord thought so.

People will say that if we cannot agree on the interpretation, when it comes to the crunch, we can go through the judicial process and ask the courts to settle the problem. Well, this is no way to guarantee health care for Canadians, if we have to go before the courts to find out whether a given term means this or that.

Senator LeBlanc (Beauséjour): Thank you for answering my question. I seem to recall that the courts seldom have judges who are familiar with health care and medical matters. Thank you, Mrs. Rodger.

The Chairman: Thank you Senator LeBlanc. We have come to the end of our first list of speakers. Since we have some time left, Senator Frith, who is first on the second list, may proceed with his question.

[*English*]

Senator Frith: There is a word that appears in section 106A that I have found most people skip over. I am looking at Professor Hogg's book entitled *Meech Lake Constitutional Accord Annotated*. He devotes a chapter to article 106A in which he talks about compatibility, but does not mention this word. It states, as you have pointed out:

● (1640)

> Section 106A requires reasonable compensation to be paid to a province that "carries on a program or initiative that is compatible with the national objectives".

I think it is a reasonable rule of interpretation, and nothing particularly esoteric, to assume that if you are using another word besides the word "program" you mean that word to have a different meaning from "program." That means that reasonable compensation could be paid to a province that carried on not just a program but an initiative.

What, in your experience in this field, could be termed an "initiative"? Something less than a program, I would assume, and, if so, what? For example, would it be just a statement of intent or something like that?

Mrs. Rodger: I know—and we have seen this over the years—that when departments of health decide which way they should go in terms of health care—and I am sure that this is true for other departments, although my experience is more with health care—they say, "We should be doing this new thing. We should be redirecting in this way."

In Montreal, because of some of the research that was undertaken, it was felt that nurses should be a point of entry into the health care system instead of doctors. Currently a person needs a doctor's signature to enter the health care system and a doctor's signature to get out of the health care system, unless that person dies, thereby getting himself out. There is a gate-keeper notion, with the physician being the gate keeper, and the law is structured around that concept. However, much of that research showed that nurses, because they are generalists, can care for a population at much less expense and still provide a broad, general type of service. The patient is referred to a physician only if there is need for diagnosis and treatment.

To institute a project like that a program would not be appropriate. So when they have difficulties with the notion of what is or is not possible to do, governments undertake demonstration projects and, in that spirit, try to determine what should be done for the future. But they are politically sensitive, and after a demonstration project has been lived with for three or four years, and the money runs out, everything is put back on the shelf, because, even though it may be the best way to provide a service, it is politically difficult to implement.

Those types of pilot projects or administration projects could come under the word "initiative." It could be interpreted in another way, but that is one way I know departments of health like to use as a means of implementing projects.

Senator Frith: If a provincial government asked for reasonable compensation under 106A, the federal government would then say, "Show us your program that is compatible with national objectives." The province would then say, "We do not have a program, but we still want compensation." The prov-

ince would then be asked what it was offering, and it would respond by saying, "We have an initiative." The federal government would ask what that was, and the province could simply say, "This is something we are thinking about undertaking."

How much less than a "program" do you think it would have to be in order to obtain compensation under 106A? Quite a lot less?

Mrs. Rodger: I do not know what the intent was with respect to differences, but local initiatives, or whatever, were supported by the Special Joint Committee of the Senate and the House of Commons. It said that local experimentation and initiatives should be encouraged.

Under the system as it exists there is a place for local initiative and experimentation. There is nothing that precludes that now, and I do not see why it should be precluded in the future. I think that is part of the nature of the system we have given ourselves; but when we put this down as an alternative to a program that is universal, that is where the trouble starts.

Senator Frith: And entitlement to compensation under 106A.

Mrs. Rodger: Yes, and entitlement to compensation under 106A.

Senator Frith: Thank you, Mr. Chairman.

The Chairman: I now call upon Senator Haidasz.

Senator Haidasz: Mr. Chairman, I will continue along the lines of the previous questions. Has the Canadian Nurses Association studied, for example, possible intiatives that would allow Canada to have in its national health system a nurse-practitioner initiative or system in order to lower the cost of health care services and make those services more universal?

Mrs. Rodger: Mr. Chairman, the whole notion of nurse-practitioner was the object of many economic studies undertaken in the 1970s. If that had been implemented, that would have saved a great deal of money. Something in the order of $800 million would have been saved if that model or a similar model had been implemented.

The Canadian Nurses Association has not been pushing for the nurse-practitioner concept, which is the situation in the United States, because that relates to an extension of medicine and to someone who helps with diagnosis and treatment. The health care system is now moving towards health for all in primary health care. We believe that a clinical nurse specialist with a Master's Degree is better prepared to take a broad approach and to act as the first line of entry to the health care system. In that regard the government has asked for demonstration projects. Well, we have been demonstrated to death. We have data to show that those alternatives are there, that they are scientifically valid in their results and impact on the population and on the cost of the health care system.

Demonstration projects only soothe the consciences of people who do not have the political will to do the right thing. We are saying that now we do not need any more demonstration projects, but what we need is reform of the health care system and reallocation of the resources. That is why we do not fall into that trap. I do not think you should fall into that trap, either. That is a cop out.

Senator Haidasz: Does the Canadian Nurses Association blame any government or any health body for blocking the introduction of the nurse-practitioners concept in the health care system?

Mrs. Rodger: It is not the approach of the Canadian Nurses Association to blame anyone for social changes. We do not take that approach. We have defined the changes that need to take place, and we push everywhere at the same time.

The Canada Health Act is a good example. We brought forward an amendment to the Canada Health Act. We had the support of the three parties. We did that on the common-sense basis of what was needed for the future. That was proposed by the Conservatives and was supported by the Liberals and the NDP. There was an agreement between the parties to that amendment.

Our approach is to try to push politicians to see the importance of such amendments, and we also push our colleagues, the physicians and others involved in the health care system, to sensitize them and get them to help us.

If you ask what the major blocks are to the implementation of the nurse-practitioner concept, I will say that for evolution to take place, as it should in any reform, the major block to be removed is Meech Lake.

Senator Haidasz: Then perhaps section 106A should be struck down.

Mrs. Rodger: Or amended in a way that is specific and that meets national criteria and standards as they relate to that program and as established by the federal government.

Senator Haidasz: With the necessity of unanimous provincial agreement, do you think it is practical or possible?

Mrs. Rodger: For the total accord?

Senator Haidasz: Yes.

Mrs. Rodger: I think that it may be difficult, but I do not think that you should give up because it is difficult. If you give up, the consequences will be much worse than the political turmoil you will create now.

Senator Stewart (Antigonish-Guysborough): Mrs. Rodger, you say—

● (1650)

The Chairman: I am sorry, but we have exceeded the time, Senator Stewart. Is it a brief question?

Senator Stewart (Antigonish-Guysborough): Yes, very brief. It follows upon the last response.

You say that we should not give up. Does that mean that you have not given up and that you are making this case, the case that you made here this afternoon, to the Premier of

Manitoba, for example, and the Premier of New Brunswick, for example?

Mrs. Rodger: In fact, Mr. Chairman, members of our association have already met with their premiers to brief them and support them in their opposition to some of the elements. Of course, the one that we are dealing with is health care. When I say, "We push everywhere," I mean it.

Senator Frith: Will you appear before any committees of legislatures too?

Mrs. Rodger: We have asked to appear everywhere nationally that there are committees. Provincially, the member associations are doing that. We believe that this whole issue of the consequences of 106A in the health care system is not understood by Canadians, because the whole process of Meech Lake has taken place quickly. Unless you are really alert to a system, then you do not realize the consequences. We think that if Canadians knew what you were doing they would be up in arms. By speaking more and more about it we hope that we will get the media—so far they have not been very cooperative, but we hope they will be—to air the problems and the consequences so that the public will start standing up about it. That is why we are here, and that is why our member associations are everywhere.

Senator Frith: Will you appear before the Ontario committee that is conducting hearings?

Mrs. Rodger: No, Mr. Chairman. The national association appears nationally, the provincial associations appear provincially. We are a federation.

Senator Frith: They will appear?

Mrs. Rodger: Yes.

The Chairman: Thank you very much.

[*Translation*]

Mrs. Rodger, Mr. Simard, I can only thank you for the brief you submitted earlier, and even more for the very lucid statement you gave us this afternoon.

Indeed the applause from my colleagues which interrupted your statement clearly indicates it was appreciated. I thank you very much.

Mrs. Rodger: Thank you, Mr. Chairman.

[*English*]

The Chairman: Honourable senators, this concludes our hearings for today.

Is there a motion that the committee rise and report progress?

Senator Frith: Mr. Chairman, I move that the committee rise, that the chairman report progress and ask for leave to sit again.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: Honourable senators, the sitting of the Senate is resumed.

REPORT OF COMMITTEE OF THE WHOLE

Hon. Gildas L. Molgat: Honourable senators, the Committee of the Whole, to which the Meech Lake Accord and texts subsequently agreed to were referred, reports progress and asks for leave to sit again.

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

Hon. Senators: Agreed.

The Hon. the Speaker: Honourable senators, when shall this committee have leave to sit again?

Senator Frith: Honourable senators, I move that the Committee of the Whole be given authority to sit again on Wednesday, March 9, 1988.

Motion agreed to.

BUSINESS OF THE SENATE

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I ask that all remaining orders, inquiries and motions stand.

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

Hon. Senators: Agreed.

The Senate adjourned until tomorrow at 2 p.m.

THE SENATE

Thursday, March 3, 1988

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

Prayers.

[*Translation*]

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

THIRTY-THIRD REPORT OF COMMITTEE PRESENTED

Hon. Royce Frith, deputy chairman of the Standing Committee on Internal Economy, Budgets and Administration presented the following report:

Thursday, March 3, 1988

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

THIRTY-THIRD REPORT

Your Committee is presently undertaking a review of the budgetary situation pertaining to Senate Committees.

Your Committee therefore recommends that, notwithstanding the *Procedural Guidelines for the Financial Operation of Senate Committees*, for any committee budget for the financial year 1988-89 submitted to and approved by the International Economy Committee, your Committee be authorized to release no more than 3/12 of those approved funds until the end of June 1988.

Respectfully submitted,

ROYCE FRITH
Deputy Chairman

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

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

[*English*]

STANDING RULES AND ORDERS

ORAL REPORT OF COMMITTEE

Hon. Gildas L. Molgat: Honourable senators, I should like to present a brief, informal report from the Standing Rules and Orders Committee. The committee wishes to make a recommendation to the Senate regarding the seating in the galleries for the proceedings in Committee of the Whole on Wednesday, March 30.

A number of inquiries on the matter have been received by several senators, by my office, and by the Gentleman Usher of the Black Rod. The committee examined that question this morning and suggests the following as the best solution. One pass for the North Gallery should be issued to each senator. Those seats would be reserved until 2:30 p.m., and if they were not occupied by that time others would be allowed to occupy them. The remainder of the seats in the galleries would be treated in the normal way; that is, on a first-come-first-served basis. Also, the possibility of televising the proceedings over the OASIS system should be discussed with the House of Commons broadcasting service to enable interested individuals to see and hear the proceedings in other parts of the building. Consideration should also be given to installing a screen in the Railway Committee Room in case there are not sufficient seats in our galleries.

Those are the proposals of the Rules Committee for that occasion.

THE ESTIMATES, 1987-88

SUPPLEMENTARY ESTIMATES (E) REFERRED TO NATIONAL FINANCE COMMITTEE

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*e*), I move:

That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in the Supplementary Estimates (E) for the fiscal year ending the 31st March, 1988 (Sessional Paper No. 332-718).

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

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, we support this motion, it being the usual motion, but can Senator Doody tell us the total amount of Supplementary Estimates (E) before we send them to committee, and whether there are only a few or many departments concerned? Some senators might want to have that drawn to their attention so that they can decide whether to attend the meetings of the Finance Committee if a particular item or the total amount interests them.

Senator Doody: Yes, honourable senators, I would be pleased to try to help. I received this document this morning, as other senators did, I am sure, and I have not yet had a chance to examine it in any detail. I think the total amount of the supplementary estimates is in excess of $1 billion. There are in excess of 50 headings here, ranging from the Department of Agriculture to the Western Diversification Office, with just about everything in between—Canadian Broadcasting Corporation; Governor General's Office; Parliament;

Secretary of State; Environment; Energy, Mines and Resources; Medical Research Council; National Archives, and so on. I am sure there will be ample opportunity for honourable senators who are interested to examine in detail any one of these headings or sub-headings when the the Standing Senate Committee on National Finance sits to examine these supplementary estimates. Witnesses will undoubtedly be called from the departments and from Treasury Board to explain the various items.

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

Hon. Senators: Agreed.

Motion agreed to.

BUSINESS OF THE SENATE

ADJOURNMENT

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*g*), I move:

> That when the Senate adjourns today, it do stand adjourned until Tuesday, 15th March, 1988, at two o'clock in the afternoon.

● (1410)

With your permission, I should like to say a few words on this adjournment motion.

The fact that the Senate itself will not be sitting as a body in no way diminishes the extent or scope of the committee meetings that will be held next week. I know that Senator van Roggen, the chairman of the Standing Senate Committee on Foreign Affairs, has meetings arranged for his committee to continue its study of the Free Trade Agreement.

The Standing Senate Committee on Legal and Constitutional Affairs will be meeting for two days on the Immigration Bills it has before it—Bill C-84 and Bill C-55. They are matters of ongoing importance, and we cannot deal with them here in the chamber until they have been dealt with in committee.

The Standing Senate Committee on Banking, Trade and Commerce has a full day's meeting arranged to deal with Bill C-60, the Copyright Bill. This is also a bill of great importance which has to be dealt with in committee before it comes here.

The Standing Senate Committee on Fisheries is on the road. It will be holding meetings out of town next week.

I should like to emphasize that the legislative agenda in the chamber is rather sparse at this time, because, quite frankly, legislation has not come to us from the other place. In its absence, it is appropriate that the Senate not sit next week and that we apply ourselves to committee work.

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

Hon. Senators: Agreed.

Motion agreed to.

[Senator Doody.]

[*Translation*]

THE HONOURABLE ARTHUR TREMBLAY

TRIBUTES ON RECEIPT OF ÉDOUARD-MONTPETIT MEDAL—TEXT OF ADDRESSES AT CEREMONY PRINTED AS APPENDIX

Hon. Jacques Flynn: Honourable senators, I would like to take a moment to draw your attention, and I feel I should, since so far there has been no report in *Hansard* and there will not be unless I draw your attention to the ceremony that took place yesterday in the Hall of the Senate, when our colleague, Senator Arthur Tremblay, received the Édouard-Montpetit Medal.

All those present on this occasion realized the significance of the honour bestowed on our colleague and at the same time the importance of the career that deserved this recognition. It may not be the right time to make this suggestion, but I thought that Senator Tremblay's speech on this occasion, and perhaps the other speeches, including yours, Your Honour, could be printed as an Appendix to the *Debates of the Senate*. The official nature of this ceremony was underscored by the reception given by the Speaker and the fact that all members of the Senate were asked to attend. I just would like to see the tribute paid by his colleagues to Senator Tremblay included in the official report.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, suffice it to say that our sentiments are indeed those expressed by Senator Flynn.

Personally, I remember when I was a member of the Laurendeau-Dunton Commission that Senator Tremblay's name was often mentioned in our discussions about the changes that had been proposed and that were being implemented in Quebec at the time.

I take great pleasure in saying, also on behalf of my colleagues in the Senate, that, as I said before, our sentiments are indeed those expressed by our colleague, Senator Flynn.

[*English*]

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

Hon. Senators: Agreed.

(*For text of addresses, see Appendix "A", p. 2820.*)

QUESTION PERIOD

[*English*]

NEW BRUNSWICK

STATUS OF LIEUTENANT GOVERNOR

Hon. Eymard G. Corbin: Honourable senators, I should like to ask the Leader of the Government in the Senate whether the Lieutenant Governor of New Brunswick has offered his resignation.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Not as far as I am aware, honourable senators.

CONSTITUTION ACT, 1867

BILL TO AMEND (QUALIFICATIONS OF SENATORS)—SECOND READING

On the Order:

Resuming the debate on the motion of the Honourable Senator Marchand, P.C., seconded by the Honourable Senator Robichaud, P.C., for the second reading of the Bill S-12, An Act to amend the Constitution Act, 1867 (Qualifications of Senators).—(*Honourable Senator Frith*).

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, this order stands in my name because I wanted to provide to senators—in particular, to our caucus—an opportunity to consider the ramifications of this bill. My own response to it is that the reason for it, as set out and explained by Senator Marchand, the sponsor of the bill, is well founded.

Senator Marchand has explained that the present constitutional provisions for the property qualifications of a proposed Canadian senator have unfair application to a native Indian senatorial candidate who owns no property outside a reservation. Senator Marchand explained that that is the motivation for the bill—the essential evil the bill is meant to cure.

In the course of the preparation of this bill his attention was directed to two other provisions in the Constitution that he felt had become somewhat archaic: the property qualifications for senators in general; and the requirement that a Quebec senator, to qualify for a particular division, must also have property in that division. Senator Marchand proposes that those two provisions also dealing with property qualifications of potential senators might well be eliminated from the Constitution, because, in his view, they have become obsolete.

It is my impression that all senators agree with the main purpose of the bill, which is to correct the unfairness of the property qualifications as they apply to senators nominated from our native population. There may be some reservations about the other two branches of the bill. So I think it would be appropriate to refer this bill to the Standing Senate Committee on Legal and Constitutional Affairs, where we could hear further evidence on the subject and senators could ask questions. We shall then know whether we are satisfied with all three provisions, particularly the two Senator Marchand has added beyond that which forms the main purpose of the bill.

[*Translation*]

Hon. Azellus Denis: Honourable senators, I suggest that the Committee on Legal and Constitutional Affairs invite a number of legal experts so that we could inquire about the constitutionality of this bill and find out whether we have the right to pass this kind of legislation.

Senator Frith: If the Senate will allow me, I just want to comment briefly on the point raised by Senator Denis.

According to one opinion, the amendments proposed in Bill S-12 are in order, as far as the Constitution is concerned, because the bill only amends the Constitution of Canada.

In any case, I feel that some clarification regarding this bill is in order.

Senator Denis: Honourable senators, the point is to find out whether the bill is constitutional or not.

● (1420)

[*English*]

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

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

The Senate adjourned until Tuesday, March 15, 1988, at 2 p.m.

APPENDIX "A"

(*See p. 2818*)

TEXT OF THE ADDRESS OF THE SPEAKER OF THE SENATE AT THE PRESENTATION OF THE ÉDOUARD-MONTPETIT MEDAL TO SENATOR ARTHUR TREMBLAY ON WEDNESDAY, MARCH 2, 1988

[*Translation*]

The Speaker: Your Excellency, honourable colleagues, ladies and gentlemen, on behalf of the Senate I am very pleased to welcome the members of the Édouard-Montpetit Foundation, all the more so because when one of our colleagues is honoured we usually attribute some of the merit to our institution. Such will not be the case today, however, because this is obviously recognition given to a strictly personal endeavour.

Still we are proud to join your Foundation to highlight this special occasion in the career of our colleague.

When Arthur Tremblay was appointed to the Senate he had already achieved success in the world of education at the highest levels of pedagogy, sociology and—more especially, as far as we are concerned—the realm of legislation. If I wanted to be more specific, I would add in federal-provincial arcana. The Senate therefore cannot claim to have made him even more famous. Rather, it is the other way around and I am pleased to admit that when he joined us the Senate was highly honoured.

Today your foundation is awarding Arthur Tremblay its grand prize for his exceptional contributions to so many of the fields opened up by that great innovator, Édouard Montpetit. Our colleague's intellectual activity did not slow down when he became a senator, and we are happy to have this opportunity to pay tribute to his whole-hearted collaboration in every area of our legislative work, whether social, economic, scientific or, most of all, constitutional. We can testify—and it is our great good fortune—that he bears this heavy load with ease.

Every time Arthur Tremblay takes the floor in the Senate all heads turn towards the professor, towards the academic, towards the professional of didactics who analyzes the question and who, with an eloquent voice and the expressive strength of his hands alternating to the right and to the left, shows you the two aspects of the problem and makes it easy for you to reach an enlightened decision.

Those of us who had the pleasure of attending the lectures of the great Édouard Montpetit have the impression that we are again listening to the great master who never raised his voice and who, to prove his point, would rely only on his own erudition. In his unfaltering delivery Senator Tremblay does not need to shout to make you understand reason. He explains his subject with supportive evidence in a way that challenges his listeners to dare raise an objection. Master of himself, master of his subject, master of his time, master par excellence, he does not need to seek virtuosity and, thanks to his intellectual empire, he gains our undivided attention.

In the shadow of Édouard Montpetit, a great many academics have sought to benefit from his name. Mere epigones they were. How refreshing it is this evening to salute, not necessarily one of his disciples but an authentic academic in the likeness of Édouard Montpetit. The Senate commends your Foundation for this official confirmation, and the Senate stands proud to have Arthur Tremblay as one of its own.

TEXT OF THE ADDRESS OF THE HONOURABLE ARTHUR TREMBLAY ON RECEIPT OF THE ÉDOUARD-MONTPETIT MEDAL

[*Translation*]

Honourable Arthur Tremblay: Ladies and Gentlemen, why should I not admit it right away, candidly and without false modesty? It is far from unpleasant to be awarded a medal as prestigious as the Édouard-Montpetit Foundation Medal and as the recipient of such an honour to be in the distinguished company of such people as Father Lévesque, Mrs. Lavoie-Roux and several others.

Not only is it not unpleasant, but it is even reassuring in a certain way to hear someone say that what you have tried to accomplish has had an impact on the development of your peers and that you have been able through your actions to be useful to those you had tried to serve.

Mr. President Legault, I am deeply touched that you and your Foundation colleagues have decided to award the Édouard-Montpetit medal to me. I thank you most sincerely. I thank also Mrs. Garcia and Mr. Pallascio.

We were taught in school that "The self is detestable". To talk about oneself is even more detestable. How can one avoid doing so however in circumstances such as these when one gets the very strong feeling that what people are praising you for would not have been possible and would not have occurred had it not been largely determined by the situations in which you found yourself and by those who placed you there?

Mr. Édouard Montpetit was certainly one of those leaders for several generations of young Canadians. I have never had the opportunity to meet him. But I feel as though I have always known him. He was already famous when I went to the Chicoutimi Seminary for the first time in the early 30's. Our teachers considered him, together with Abbé Groulx and a few others, as their mentor; he was also the mentor of our generation of students. For over 20 years at the "*Nouvelle École des Hautes Études Commerciales*", he taught economics at the university level. He was the first one to hold that chair. We can hardly realize today what a daring undertaking it was in 1910 to teach what he used to call "The science of wealth", at a time when Mgr Paquet and others used to proclaim that Providence had placed us on earth not to seek material goods but the true values of the soul and mind. He described later on the reactions which he had experienced in some quarters when he started teaching at HEC.

> It was real chaos on the inspired Hill. To get rich, he would say, what a dangerous doctrine! Had we not always contrasted the wealth of others with our intelligence? To practical disciplines, opposed the higher subjects of Classicism?"

At this point, I would like to quote a well known economist, Professor Albert Faucher. In the conclusion of a substantial paper published in 1966 by McGill University Press as part of a series of lectures entitled "French Canadian Thinkers of the Nineteeth and Twentieth Centuries", Professor Faucher had this to say:

> "Édouard Montpetit won during his lifetime the reputation of a great scholar, an ardent patriot, and a brillant writer and public speaker. His lifetime saw the heyday of clergy-ridden institutions in Quebec, and whatever Montpetit did in those days supports the view that he was the right man in the right place. To many of his students he was a friend and a guide, to all of them he reflected dignity and stood as a model of studiousness".

During the 1930s, the teachings of Montpetit and the existence of advanced business courses in universities were perhaps not as much of a novelty as 25 years before. For us students, they were part of the landscape of possible careers, a landscape with wider horizons than the traditional trilogy of priesthood, law and medicine. For us, at the time, they had a meaning which young people can hardly envision today, faced as they now are with a multitude of options. For us, it meant that, when the time came for our "vocation retreat", we would be able to reach outside the boundaries of the classic trilogy. Thus, in 1937, at the "selection of the ribbon" which then officially announced career choices, I pinned the advanced business courses ribbon on my uniform.

However, I was not absolutely certain of being able to reach my goal, as in 1937, the Saguenay region was still deep in the recession. The circumstances faced by many families made university studies extremely uncertain. Because of these conditions and of other events, my dream of an advanced business diploma was but a dream.

Then, in 1939, I was fortunate to meet Father Lévesque, who had just founded in Quebec City a new Social, Economic and Political Science School. For him, money was no problem or at least, one which was not impossible to overcome. The things that mattered were, first, motivation, a certain cast of mind, and a taste for adventure and risk, in other words, character traits which *sometimes* can be found among the well-off, but *most often* are found among those who have nothing to lose.

Thanks to Father Lévesque, material obstacles having been at least temporarily overcome through tenuous but acceptable arrangements, I found myself studying social sciences with the rest of the variegated set this new discipline attracted in its early days. The first groups of graduates were indeed a strange lot. It was a diversified lot because of its origins and background; it included people with surprisingly varied ideologies, but their proximity to each other left them completely undisturbed. Yet, this diversified set found its coherence and unity in a kind of common intuition that a new world was about to be born after the upheaval of the depression and that we had an opportunity to take part in the development of a new scheme of things.

I still believe today that those of my generation were indeed lucky to make our career choices at a time which may have been troubled and even dramatic because of the depression and the war, but which was a fascinating time in the history of

Quebec and Canada, a time when many things had to change or be rearranged to allow the people of Quebec, to which I am attached by the deepest fibers of my being, to find the means for active survival and self-development.

At a time when so many things had to be reconsidered in Confederation as a whole, I might say that one of the co-chairman of the Royal Commission on Relations Between the Dominion and the Provinces, le notaire Sirois, was our professor of constitutional law, and he saw no problem in discussing at length in our presence the report which was in the process of being prepared.

On those projects which offered so many opportunities, what amazes me now is that I had the constant luck of finding myself in the immediate entourage of initiators and pioneers who took me as an associate at crucial moments, most often at the time the project started.

Such was the case at a career turning point that happened during the spring of 1941. This happened within a student movement of nationalist inspiration, the "Bloc universitaire". We came to the idea that vocational guidance was essential to our national future.

> "Our small culture, as we wrote, has a human capital that is inferior to none for quality. The problem is to make full use of that capital by developing all its potential. This means first that each French-Canadian must be trained, educated, to the full development of his capacities; this means also, just as necessarily, that he must be oriented toward the social environment that is the most suited to his abilities".

Such was the idea, but it was only an idea. During the winter of 1940, we had no inkling of how to implement it. This led us to visit a Sulpician priest, Rev. Wilfrid Ethier, who had just established in Montreal the *Institut canadien d'orientation professionnelle*. One thing leading to another, I was invited by him to take part in the establishment of the *Institut Laval d'Orientation.*

Was it the presence of that institute within Laval University that determined the latter to create in 1943 a School of Pedagogy, thereby enlarging a course of studies that was already given at the Faculty of Literature? That is possible, if not probable. At any rate, I was to be given another chance to be associated with the director of the new school, one Rev. Alphonse-Marie Parent, who in the 60's chaired the Royal Commission of Inquiry on Education in the province of Quebec; the same man who ensured that the School of Pedagogy developed into the Faculty of Educational Sciences some twenty years after its inception.

The same kind of luck was to lead to another decisive meeting. During the hearings of the Royal Commission of Inquiry into Constitutional Issues headed by Mr. Justice Thomas Tremblay, from 1951 to 1956, and the numerous briefs that came out of those hearings, it so happened that Paul Gérin-Lajoie and I were called upon to work on the preparation of many of those briefs. A genuine mutual respect and a solid friendship came out of that cooperation, so that during the summer of 1960, when he became both Minister of Youth and Minister in charge of the Department of Education in the Lesage Government, he asked me to cooperate in the preparation of the 1961 legislation. That "Magna Carta of Education", as he referred to it, was the beginning of what was to become, thanks to the further work of the Parent Commission, an overall reform of the Quebec educational system.

A few years later, was opened the *Office de planification et de développement* under the direction of Mr. Marcel Masse, then Minister of State in the government of Mr. Jean-Jacques Bertrand. It was not a mere coincidence that at the same time at the federal level was set up the Department of Regional Economic Expansion initially headed by Jean Marchand. Both organizations were indeed called to co-operate to bring into line in Quebec the initiatives of both governments in the area of economic development. Once again, I was fortunate enough to be asked by the minister responsible to work in this new field where the federal-provincial dialogue was to have a role as significant as the setting up of instruments for a realistic planning of the Quebec Government initiatives.

Is it necessary for me to relate the process which from the OPDQ led me at the request of Premier Bourassa to the Department of Intergovernmental Affairs in the autumn of 1971? Suffice it to say that in the previous month of June, the constitutional conference of Victoria had failed. That failure was followed by a latency period of several years during which the resumption of talks on the patriation of the Constitution was out of question. However, in 1975, Prime Minister Trudeau took up the issue again. Now the Quebec premier and his colleagues from other provinces were quite in agreement to Canadianize the British North America Acts. They were hoping, however, to extend the operation to include amendments which they felt to be essential and necessary. Their federal vis-à-vis having agreed to those amendments on the condition that there be unanimous approval, the premiers undertook to obtain that required unanimity and succeeded on several significant points. The result being that the chairman of their conference, Premier Peter Lougheed, was in a position in October, 1976, to acquaint the Prime Minister of Canada with the consensus reached after protracted discussions. He met with refusal and Mr. Trudeau explained his decision in a long letter sent a few weeks later either in December of 1976 or January of 1977, if I am not mistaken.

In the meantime, a rather important change had occurred in Quebec: the Parti Québécois was in power following the election of November 15.

The matter remained in abeyance on the constitutional level until the election of a Progressive Conservative government in Ottawa. Following the initiative of Prime Minister Clark, a quite amazing thing happened, more amazing than anything that had happened to me before, something all the more unforseeable since I had retired from the Quebec Civil Service two years previously.

Explaining to me that since coming into office his government had taken toward the provinces a stand totally different from that of the former government, aimed at détente instead

of systematic confrontation, a stand which should however not prevent his government from developing its own project for renewal of the Canadian federation, Mr. Clark concluded by asking me if I would be prepared to come to the Senate and work on this project which should come out as a green paper. This is how I was again hired to work on the Constitutional project, this time as a non-elected Parliamentarian.

That project was to go through tribulations unexpected at the outset. As a result of developments you are aware of, the project was put aside, so to speak. And in this hiatus you know what happened. Prime Minister Trudeau did carry out his project of patriation of the Constitution, but he did achieve it in such a way that Quebec will be left out in the process. The situation thus created was clearly inadmissible and intolerable for Quebec and for the other partners in the Federation.

With the arrival of Prime Minister Brian Mulroney, the dialogue was initiated on new bases as he had promised during the electoral campaign. Quebec consented to the re-opening of the constitutional debate and Premier Lévesque himself made public in a comprehensive document the stand he would take in the future negotiations.

Of course, the re-election of Premier Bourassa modified the specific terms under which Quebec agreed to normalize its situation in the Canadian constitutional order. The will to initiate the required amendment process will only be stronger and more realistic as a result, on both sides.

Against all the skeptics' and pessimists' predictions, Mr. Mulroney and provincial Premiers managed the feat of getting a consensus on a proposed new Constitutional Accord. The draft has already been adopted by the Commons and several provincial legislative assemblies. The National Assembly of Quebec was the first to do so. I am convinced the other provinces will approve it within the time desired, at least with no undue delay, however morose some prophet of past history might feel.

The mortgage that weighed on the future having thus been removed, normalcy having returned in that regard, it will now be possible, as provided for in the Meech Lake Accord, to extend the work for the Canadian Federation renewal to its full dimensions and scope.

Ladies and Gentlemen, reviewing, as I just did, the undertakings in which I have been involved since the early 1940s, how could I not be stuck by the fact that, at all significant stages of my career, I have been invited to work on important projects by the very persons who were in charge and had the ultimate responsibility for the undertaking.

You will then understand that, since I have that opportunity today, I would like to pay tribute and express my deep appreciation to all those who, since the beginning, have called on me to contribute to a certain extent to the progress of the people of Quebec and of the Canadian people.

At least, that was my intention in sharing with you these memories.

Mr. Speaker, on behalf of my wife, our children, our grandchildren and other family members, on behalf of our friends among whom I find many who have also worked on the same projects, I thank you with all my heart for hosting this meeting. I am deeply grateful for this generous welcome and for your hospitality which I know, from personal and frequent experience, you customarily extend as part of your higher duties.

THE SENATE

Tuesday, March 15, 1988

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

Prayers.

[*Translation*]

THE HONOURABLE JEAN-MAURICE SIMARD

DECISION TO SIT IN SENATE AS INDEPENDENT PROGRESSIVE CONSERVATIVE

Hon. Jean-Maurice Simard: Honourable senators, I have a short statement to make at this time. It is the first opportunity that I have had to so since I made a decision some 12 days ago.

Moreover, I advised the Clerk of the Senate of my decision on March 7 last after having discussed the matter with the Senate Leader, Honourable Lowell Murray, as well as the Leader of my party, the Right Honourable Brian Mulroney.

My decision is as follows: From now on I will sit in this house as an Independent Progressive Conservative. The reason is that on March 2 last I accepted the invitation of the trustees of the only francophone newspaper in New Brunswick, *Le Matin*. I therefore accepted the position of president and general director.

I was about 16 or 17 years of age when my Independent Liberal member of Parliament invited me to visit the House of Commons and my involvement with politics has dated from that time. Very shortly afterwards, I decided to join the Progressive Conservative Party. It was then quite a challenge and quite an order for a francophone. We were told that francophones would be much more at ease within the Liberal Party.

Being a native of the Témiscouata in Quebec, I was not afraid of challenges and I was also a fan of the Honourable Jean-François Pouliot, former member of this house. I decided to take up that challenge.

This means that after some 40 years in the political arena, it is with much feeling and perhaps some misgivings that I have taken such a step. I think that I leave within my party and other political parties some friends whom I ask to continue to give me their support and their advice so that as president and executive director of *Le Matin* we will be in a better position to uphold the interests of the francophone community of New Brunswick which is the main objective of that provincial newspaper.

Therefore I will sit in the Senate as an Independent Progressive Conservative, and you can rest assured that I will attend the sittings of the Senate as often as possible. I know that from afar, with the assistance of the ministers and my colleagues in the Civil Service, I will moreover continue to be the spokesman for all francophone groups in New Brunswick who will entrust their problems and their suggestions to me and will ask me to look after their own issues.

Such is the statement that I wanted to make. Thank you.

[*English*]

NEWFOUNDLAND VETERANS

FORTY-FIFTH ANNIVERSARY OF MURMANSK CONVOYS—TRIBUTE BY RUSSIAN AMBASSADOR

Hon. Jack Marshall: Honourable senators, last week, on March 10, I was privileged to participate in a unique ceremony in Newfoundland to mark an historic event that recognized the service and valour of Newfoundland veterans.

The ceremony was hosted by the Government of Newfoundland and Labrador with, as special guest, His Excellency Alexei Rodionov, Russian Ambassador to Canada, who made a special visit to our province to pay tribute to 32 gallant Newfoundland veterans of the Royal Navy and Merchant Navy who manned the escort vessels in the convoys to Murmansk during the Second World War. The ambassador presented medallions to the veterans to commemorate the forty-fifth anniversary of the Murmansk convoys.

Of all the military operations carried out by the Allies in World War II, few were as vital to the final victory, or perhaps as unheralded, as the Murmansk convoys. When Hitler decided against the invasion of Britain, he turned the full fury of his military might against Russia. Nazi armies penetrated deep into Russian territory and the whole world was moved by the heroic Russian resistance.

The Western Allies needed time to prepare for the Second Front, but realized that it was vital, if victory were to be achieved, to support Russia materially as well as morally. This was accomplished by the massive transportation of war materiel, foodstuffs and other supplies, mainly by British convoys, to the ports of Murmansk and Archangel. This was undoubtedly the most dangerous convoy route in the world, for in addition to contending with Nazi U-boats the convoys had to face vicious Arctic weather, German aircraft and surface vessels. Many hundreds of Canadians manned the escort vessels during this torturous operation and many made the supreme sacrifice.

It was this combination of Russian and Allied heroism that prevented Hitler from occupying all of Russia. If this occupation had occurred the outcome of the Second World War would have been much different.

Honourable senators, I welcome this opportunity to place on the record another significant contribution by Canadian veterans, and specifically in this case by Newfoundland veterans, to Canada's war effort.

Hon. Senators: Hear, hear!

VISITORS IN GALLERY

Hon. Lorna Marsden: Honourable senators, I should like to draw the attention of the Senate to the presence in the gallery of Professor Ross Lambertson and a group of students from Camosun College in Victoria, British Columbia. They are here under the auspices of the Canadian Rights and Liberties Federation and have spent a week in Ottawa studying Parliament, with special reference to human rights issues.

I was able to speak to the students this morning and can say that this is a very impressive and interesting group.

I should also like to draw to the attention of the Senate the fact that these students raised the money to pay their own travel expenses.

Hon. Senators: Hear, hear!

OFFICIAL LANGUAGES

SUPPLEMENTARY ESTIMATES (E), 1987-88—PRIVY COUNCIL VOTE 15e—REFERRAL TO JOINT COMMITTEE—MESSAGE FROM COMMONS

The Hon. the Speaker informed the Senate that the following message had been received from the House of Commons:

HOUSE OF COMMONS
CANADA

Wednesday, March 2, 1988

ORDERED,—That Privy Council Vote 15e, for the fiscal year ending March 31, 1988, be referred to the Standing Joint Committee on Official Languages; and

That a Message be sent to the Senate to acquaint Their Honours thereof.

ATTEST

ROBERT MARLEAU
The Clerk of the House of Commons

[*Translation*]

EMERGENCY PREPAREDNESS BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-76, to provide for emergency preparedness and to make a related amendment to the National Defence Act.

Bill read first time.

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

On motion of Senator Doody, bill placed on the Orders of the Day for second reading on Thursday, March 17, 1988.

BORROWING AUTHORITY BILL, 1988-89

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-109, to provide borrowing authority.

Bill read first time.

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

On motion of Senator Doody, with leave of the Senate and notwithstanding rule 44(1)(*f*), bill placed on the Orders of the Day for second reading at the next sitting of the Senate.

● (1410)

[*English*]

FISHERIES

SIXTH REPORT OF COMMITTEE PRESENTED AND ADOPTED

Hon. Jack Marshall, Chairman of the Standing Senate Committee on Fisheries, presented the following report:

Tuesday, March 15, 1988

The Standing Senate Committee on Fisheries has the honour to present its

SIXTH REPORT

Your Committee, which was authorized by the Senate on October 28, 1986, to examine all aspects of the marketing of fish in Canada, and all implications thereof, respectfully requests that the date of presenting its final report be extended from 31 March, 1988, to no later than 31 March, 1989.

Respectfully submitted,

JACK MARSHALL
Chairman

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

Senator Marshall: With leave of the Senate and notwithstanding rule 45(1)(*f*), I move that this report be now adopted.

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

Hon. Senators: Agreed.

Motion agreed to and report adopted.

[*Translation*]

STANDING RULES AND ORDERS

FIFTH REPORT OF COMMITTEE PRESENTED

Hon. Gildas L. Molgat, Chairman of the Standing Senate Committee on Standing Rules and Orders, presented the following report:

Tuesday, March 15, 1988

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

FIFTH REPORT

Pursuant to Rule 67(1)(*f*) of the *Rules of the Senate of Canada*, your Committee considered the matter of access to the Chamber for a vote. On two occasions it was brought to your Committee's attention that Senators had entered the Chamber while a vote was in progress.

During its examination, your Committee was informed that the practice of locking the doors to the Chamber during a vote had been discontinued due, in part, to the objections of some Senators.

Your Committee, after studying the matter, has concluded that this practice, which is described in Appendix I to the *Rules of the Senate of Canada* on page 70 thereof, should be re-established.

To avoid any misunderstanding with respect to the time at which the doors of the Chamber are to be locked, your Committee further recommends that in future, when the Whips have entered the Chamber and have indicated to the Speaker that they are ready to proceed to the vote, the Speaker should say: "Let the doors of the Chamber be locked."

The doors will then be locked by the pages and the Speaker will call for the vote.

Respectfully submitted,

GILDAS MOLGAT
Chairman

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

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

SIXTH REPORT OF COMMITTEE PRESENTED

Hon. Gildas L. Molgat, Chairman of the Standing Committee on Standing Rules and Orders, presented the following report:

Tuesday, March 15, 1988

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

SIXTH REPORT

Pursuant to Rule 67(1)(*f*) of the *Rules of the Senate of Canada*, your Committee considered the procedure respecting the presentation of public petitions.

Your Committee notes that on a number of occasions during the current session, petitions and the names of the petitioners have been printed as appendices to the *Debates of the Senate* and to the *Minutes of the Proceedings of the Senate*, a procedure that is inconsistent with established Senate practice.

Your Committee, therefore, recommends that in future, all public petitions and the names of the petitioners not be printed in the *Debates of the Senate* or in the *Minutes of the Proceedings of the Senate*.

Your Committee further recommends that the explanatory text under the heading "Presentation of Petitions", in Appendix I to the *Rules of the Senate of Canada*, on page 57 thereof, be amended to reflect the above recommendation by deleting the third paragraph thereof and substituting the following:

"A Senator presenting a public petition makes a brief statement to inform the Senate of the content of the petition; the petition itself is not read. The text of the petition and the names of the petitioners attached thereto is not printed in the *Debates of the Senate* or the *Minutes of the Proceedings of the Senate*.

A Senator presenting a petition for a private bill reads the heading and sends the petition to the Table. No action is taken at this time because in practice one sitting intervenes between the presentation and the reading of a petition."

Respectfully submitted,

GILDAS MOLGAT
Chairman

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

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

THE ESTIMATES, 1987-88

REPORT OF NATIONAL FINANCE COMMITTEE PRESENTED AND PRINTED AS APPENDIX

Hon. Fernand-E. Leblanc: Honourable senators, I have the honour to present the eighteenth report of the Standing Committee on National Finance, concerning the examination of the expenditures set out in the Estimates for the fiscal year ending March 31, 1988.

I would ask that the report be printed as an appendix to the *Debates of the Senate* of this date and become part of the permanent records of this house.

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

Hon. Senators: Agreed.

(*For text of report, see appendix, p. 2836.*)

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

On motion of Senator Leblanc (Saurel), report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[*English*]

LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE TODAY

Hon. Joan Neiman: Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*a*), I move:

That the Standing Senate Committee on Legal and Constitutional Affairs have power to sit at three o'clock in the afternoon today even though the Senate may then be sitting, and that Rule 76(4) be suspended in relation thereto.

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

Hon. Senators: Agreed.

Motion agreed to.

● (1420)

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE TOMORROW

Hon. Joan Neiman: Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*a*), I move:

That the Standing Senate Committee on Legal and Constitutional Affairs have power to sit at four thirty o'clock in the afternoon tomorrow, Wednesday, 16th March, 1988, even though the Senate may then be sitting, and that Rule 76(4) be suspended in relation thereto.

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

Hon. Senators: Agreed.

Hon. Orville H. Phillips: Honourable senators, perhaps the honourable senator would explain why she is asking for leave for this committee to sit this afternoon and tomorrow afternoon. Tomorrow afternoon the Committee of the Whole will sit on the Meech Lake Accord. I am sure that she is aware of this fact and that certain senators place great emphasis on those hearings, and I would want all honourable senators to have the opportunity to be present for those discussions.

Senator Neiman: Honourable senators, the Standing Senate Committee on Legal and Constitutional Affairs is now considering two bills, Bill C-84 and Bill C-55. We have been sitting extra long hours in an attempt to complete our hearings with respect to these bills. I realize that tomorrow is somewhat unusual in that the Committee of the Whole Senate is hearing testimony on the Meech Lake Accord, and I regret that I am asking for leave for my committee to sit at that time, but it is the only day that one of our legal witnesses can appear. We have been trying to arrange for this particular witness to appear for three weeks in order to complete our hearings on Bill C-84. It is for that reason that I have asked for permission to sit tomorrow.

Motion agreed to.

OFFICIAL LANGUAGES

SUPPLEMENTARY ESTIMATES (E), 1987-88—PRIVY COUNCIL VOTE 15e REFERRED TO JOINT COMMITTEE

Hon. C. William Doody (Deputy Leader of the Government), with leave of the Senate and notwithstanding rule 45(1)(*e*), moved:

That Privy Council Vote 15e of the Supplementary Estimates (E) for the fiscal year ending the 31st March, 1988, be referred to the Standing Joint Committee on Official Languages; and

That a Message be sent to the House of Commons to acquaint that House accordingly.

Motion agreed to.

QUESTION PERIOD

[*English*]

REGIONAL INDUSTRIAL EXPANSION

ANNUAL REPORT OF DEPARTMENT—TRANSFER OF FUNCTIONS—RESPONSIBILITY FOR SUBSIDIARY AGREEMENTS—REQUEST FOR ORGANIZATIONAL CHART

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, recently I received, as I am sure did all honourable senators, a copy of the annual report of the Department of Regional Industrial Expansion. The minister, the Honourable Robert de Cotret, in submitting the report, stated that the report reflects the departmental structure as of March 31, 1987, which is prior to the changes in the organization brought about by the establishment of the Atlantic Canada Opportunities Agency.

I should like to ask a general question, and then a more specific one. I ask the general question in order to make the reading of this report somewhat more understandable.

What functions or structures that had previously been under the Department of Regional Industrial Expansion have now been transferred either to the Atlantic Canada Opportunities Agency, the Western Diversification Office or the new Department of Industry, Science and Technology? That is a general question which the minister may want to take as notice.

My second question relates to the province of Nova Scotia, which is referred to on page 27 of the report. The activities of DRIE are outlined under the heading "Industrial Development" and "Economic Co-ordination." Do I take it that these two functions—industrial development and economic coordination—are now totally under the responsibility of the Atlantic Canada Opportunities Agency, and does that agency administer the ERDA agreements, the GDA agreement and all subsidiary agreements? I am not clear on that, and I would like to find out exactly what remains and what has gone to the new agency.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable

senators, to take the second question first, the answer generally is in the affirmative. The Atlantic Canada Opportunities Agency administers just about all the ERDA agreements. I, as minister, have responsibility for all of the ERDA agreements and for what remains of the old GDA agreements in the Atlantic provinces. The Leader of the Opposition asks whether the activities of industrial development and economic coordination in the province of Nova Scotia, formerly assumed by DRIE, have now been entirely taken over by ACOA. The answer to that question is yes, with regard to economic coordination, and partly, with regard to industrial development.

The Leader of the Opposition will be aware of the fact that the Minister of DRIE remains responsible for the Cape Breton Development Corporation and for large sectoral projects in Nova Scotia, as elsewhere. Other than ERDA and GDA agreements that have been transferred from DRIE to ACOA, I should also mention the industrial incentives under IRDP, the Atlantic Enterprise Program, Enterprise Cape Breton, and the Small Businesses Loans Act as it operates in the Atlantic provinces. I believe that is quite an exhaustive list.

Senator MacEachen: I take it that the latter group of activities are now under the Atlantic Canada Opportunities Agency.

Senator Murray: Yes, they are under me, as minister responsible for ACOA. The arrangements that I am making are that they come under the umbrella of the agency.

Senator MacEachen: As I understand the minister, the ERDA and the GDA agreements are now under his administration.

• (1430)

Under the heading "Industrial Development" reference is made to a number of subsidiary agreements such as the Advanced Manufacturing Support Subsidiary Agreement, the Technology Transfer and Industrial Innovation Subsidiary Agreement, the Tourism Subsidiary Agreement and, indeed, the Sydney Steel Corporation Modernization Program Subsidiary Agreement.

Am I to take it that these remain with the Minister of DRIE, or do they also come under the responsibility of the Leader of the Government in the Senate?

Senator Murray: Honourable senators, the first two mentioned by the Leader of the Opposition, advanced manufacturing and technology and industrial innovation, formerly administered by DRIE, are now my responsibility. The tourism subagreement, which has, I think, about a year to go, remains with my colleague, the Minister of State for Small Business and Tourism; and the Sydney Steel Corporation agreement remains with the Minister of DRIE.

Senator MacEachen: Is there any rationale for this distribution of development activities? Does it arise from a friendly chat among ministers as to which agency would be most suited to their temperament?

Senator Frith: "One for you, one for me."

[Senator Murray.]

Senator Murray: Honourable senators, as I tried to explain a moment ago, the Minister of DRIE remains responsible for what might be called "industrial sector policy," and in that capacity he has retained responsibility for the Cape Breton Development Corporation, which, as the house knows, operates the coal mines in Cape Breton—

Senator Frith: That requires a very special temperament.

Senator Murray: —and for the subsidiary agreement on Sysco modernization. These are regarded as sectoral activities.

My responsibility, as Minister of ACOA, is in the field of economic development, particularly as it relates to small- and medium-sized business.

Senator MacEachen: Including tourism?

Senator Murray: We have a Minister of State for Tourism and the arrangement we have made with regard to those ERDA subagreements is that they will remain with him. Indeed, I think it is fair to say that the greater part of his activity as a federal minister takes place in the context of those federal-provincial agreements right across the country.

Senator MacEachen: I thank the minister for the information.

Has there already been circulated an organizational chart which would lead us through this somewhat confusing mess of agencies and authorities? I wonder if it is possible to have, let us say, an "idiot's guide," which might help us understand all of this.

Senator Frith: Byzantium made easy!

Senator Murray: As always, I shall do my best to accommodate the members of the opposition.

MULTINATIONAL CORPORATIONS

ELIMINATION OF MINORITY EQUITY INTERESTS—IMPACT OF ENHANCED CANADA-UNITED STATES TRADE

Hon. Ian Sinclair: Honourable senators, my question is for the Leader of the Government in the Senate.

Over a great many years there was a development of equity interests in the Canadian affiliates of multinational corporations. As I am sure honourable senators have noted, recently these are being extinguished in certain cases. I refer specifically to Nabisco, a very large multinational centred in the United States, and to Imperial Chemical—CIL, which is, of course, centred in the United Kingdom.

For many years people felt that it was necessary to have a Canadian presence and the Canadian point of view expressed in many of these companies. Has the government any policy in regard to the elimination of these minority equity interests in multinational corporations?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I shall ask for a report from my colleague, the Minister of Finance, on this matter.

Senator Sinclair: When the trade issue was being considered, groups were set up in the private sector to study various aspects of the impact of enhanced trade bilaterally with the United States and its impact on various sectors. Did one of those sectors deal with the question of multinational corporations and minority interests?

Senator Murray: Honourable senators, I think not. I think that among the SAGITs there was not one dealing specifically with the subject that the honourable senator raises, but I shall have to see whether that subject matter was part of the mandate of some other SAGIT.

Senator Sinclair: Honourable senators, the point that I am interested in, and I think other senators would be interested in also, is: Were the implications of an elimination of minority interests in multinational companies looked at in any way, because there seems to be some linkage between this and the possibility of an enhanced trading relationship with our American counterparts.

Senator Murray: Well, honourable senators, I shall make inquiries.

ENERGY

TAR SANDS PROCESSING PLANT, FORT McMURRAY, ALBERTA—STATUS

Hon. H.A. Olson: Honourable senators, I should like to ask the Leader of the Government if he could help us with some clarification of a great deal of speculation and anticipation in Alberta respecting an announcement about a major tar sands processing plant at or near Fort McMurray, Alberta.

There have been statements by the Minister of Energy in Alberta, Mr. Webber, for example, that it is imminent and that the federal government will announce its support and financial endorsation—whatever that means—for a plant that will create 15,000 new or additional jobs, mostly in Fort McMurray but in other parts of Alberta as well. Therefore, I ask whether he could help us to advise the people, so that they can make plans, as to whether this consideration of the plant is in an advanced stage now. If not, when can we expect an announcement from the federal government?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I shall ask my colleague, the Minister of Energy, Mines and Resources, what information, if any, he is in a position to convey to Parliament on that subject at this time.

NATIONAL DEFENCE

COMMITTEE STUDY OF CONCERNS OF MILITARY FAMILIES—STATUS OF REPORT AND NATURE OF RECOMMENDATIONS—REQUEST FOR ANSWER

Hon. Lorna Marsden: Honourable senators, I notified the office of the Leader of the Government in the Senate last week that I would ask once again the question that I have asked so many times before, namely, whether there is a report from the Minister of National Defence on his response to the study of the situation of spouses of members of the military. If there is no such response, when can we expect it?

Senator Frith: Hasn't there been a response? Shame!

Senator Marsden: The minister said about two months ago that we could have it in seven weeks.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I am informed that that matter is still in the hands of my colleague, the Minister of National Defence. The best I can do today is to say that its release will not be long delayed, and I am assured that it is only a matter of weeks away.

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have a number of delayed answers. I will follow the format that has been established in this place. I shall read the date and the name of the senator asking the question. If any honourable senator wishes me to read the answer, I will; otherwise, I will ask that they be printed as part of today's proceedings.

Honourable senators, I have delayed answers to the following questions.

REPRODUCTIVE TECHNOLOGY

REQUEST FOR APPOINTMENT OF ROYAL COMMISSION—GOVERNMENT ACTION

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have a delayed answer in response to a question raised in the Senate on December 15, 1987, by the Honourable Lorna Marsden, regarding Reproductive Technology—Request for Appointment of Royal Commission—Government Action.

(*The answer follows:*)

> The recommendation from a number of women's organizations and researchers in Canada, that the Government appoint a royal commission to study the social implications of new reproductive technologies, is currently under consideration by the Minister of National Health and Welfare. The issues raised by those making representations are complex and far-reaching and a recommendation to the government as to the appropriate response has not been made yet.

NATIONAL DEFENCE

CANADIAN ARMED FORCES—APPOINTMENT OF SENIOR OFFICERS—FEMALE REPRESENTATION

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I also have a delayed answer in

response to a question raised in the Senate on February 3, 1988, by the Honourable Lorna Marsden, regarding National Defence—Canadian Armed Forces—Appointment of Senior Officers—Female Representation.

(*The answer follows:*)

No women officers were included on the recently announced promotions to the General officer rank level.

INTERNATIONAL WHALING

IMPOSITION OF SANCTIONS—GOVERNMENT POLICY

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, this is in response to questions raised in the Senate on February 10 and March 1, 1988, by the Honourable Jack Austin, regarding International Whaling—Imposition of Sanctions—Government Policy.

(*The answer follows:*)

No, Canada was not consulted by the United States on this matter. The sanctions taken by the United States relate to its domestic legislation—the Packwood-Magnuson Act—as a measure against Japan's alleged violation of the International Whaling Commission (IWC) moratorium on whaling. It is a bilateral issue between the United States and Japan. Consultation was not required nor expected as Canada is not a member of the IWC—Canada withdrew from the IWC in 1982 following a review of its whaling policy. Canada continues to support international cooperation for the conservation of the world's whale stocks. This objective, however, does not require Canadian participation in IWC.

On the question of Canadian support for the U.S. sanctions, as a non-commercial whaling nation, the Government believes it would be inappropriate for Canada to judge the actions of whaling nations and the decisions of the IWC.

FOREIGN AFFAIRS

SENEGAL—PRESIDENTIAL ELECTION—SAFETY OF OPPOSITION CANDIDATE—ATTENDANCE OF OBSERVERS—REACTION OF PROGRESSIVE CONSERVATIVE PARTY

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have a delayed answer in response to a question raised in the Senate on March 1, 1988, by the Honourable Jerahmiel Grafstein, regarding Foreign Affairs—Senegal—Presidential Election—Safety of Opposition Candidate—Attendance of Observers—Reaction of Progressive Conservative Party.

(*The answer follows:*)

Presidential elections were held in Senegal on February 28. The official results are as follows:

a) Abdou Diouf—73.2%

b) Abdoulaye Wade—25.8%

c) Babacar Niang—0.75%

d) Landing Savene—0.25%

Legislative elections were also held on the same day, the official results are as follows:

a) Parti Socialiste (President Diouf)—71.34%

b) P.D.S. Party* (Maître Wade)—24.74%

c) LD/MPT Party*—1.41%

d) PLP Party*—1.18%

There are 17 political parties in Senegal and freedom of expression does exist. This situation in Senegal is quasi unique in Sub-Sahara Africa.

Observers generally agree that, with a few exceptions here and there, the elections unfolded in a fair, open, and democratic manner. Therefore, results can be accepted as legitimate.

Mr. Abdoulaye Wade, Leader of the P.D.S. Party, declared that he would form a parallel government if fraud was to modify the outcome of the elections. Soon after the results were unofficially announced, he said that he could not accept them because of widespread fraud *(une fraude généralisée)*.

Violent troubles erupted in popular quarters of Dakar City and on the university campus. To establish law and order, a state of emergency and a night curfew were imposed.

Soon afterwards, Mr. Wade was detained by police for interrogation. The government asserted it was to determine the extent of his involvement in those violent demonstrations. In other words, he was questioned to determine whether or not his actions related to those of demonstrations which compromised the State security.

Our Embassy in Dakar reports that the main leaders of the P.D.S., according to unconfirmed sources, have been arrested too.

N.B. Situation as of March 8th, 1988.

* P.D.S.—Parti démocratique sénégalais

LD/MPT—Ligue démocratique/Mouvement pour le parti du travail

PLP—Parti pour la libération du peuple

REFUGEES

THAILAND—TURNING BACK OF BOATS—SAFETY OF PASSENGERS—GOVERNMENT POLICY

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, this is in response to a question raised in the Senate on March 2, 1988, by the Honourable Jerahmiel Grafstein, regarding Refugees—Thailand—Turning Back of Boats—Safety of Passengers—Government Policy.

(*The answer follows:*)

Following reports early in February that several boats carrying vietnamese were pushed back to sea by Thai authorities, officials from the Canadian Embassy in Bangkok sought clarificatio[illegible] Royal Thai Govern-

ment, as well as from the local office of the UN High Commissioner for Refugees.

These inquiries revealed that three such incidents occurred. In one case, a boat was pushed back to sea but was allowed to land the following day with no evident injuries to passengers; in the second case, Thai authorities report that a boat was attacked by pirates who killed or wounded several people on board; and in a third case, Thai authorities acknowledged that a boat was towed back to international waters by order of Thai naval authorities. As a result of a Canadian initiative, officials from Canada and other interested countries visited the marine area where the push-offs occurred.

During discussions with Thai authorities and with others, the Canadian Government has expressed its deep regret at the loss of life that resulted from these incidents and conveyed its concerns to Thai officials for the safety of the passengers of such boats.

Canadian officials also reassured the Royal Thai Government of Canada's commitment to provide relief and resettlement assistance to countries of first asylum, such as Thailand, and to continue to work closely with them in seeking humane and durable solutions to the problem of Indochinese refugees.

The Canadian Government is equally concerned with what could be attempts by Thailand's neighbours to take advantage of its excellent reputation as a country of first asylum. The Government is investigating this aspect of the situation and, if necessary, will make appropriate representations.

[*Translation*]

PATENT ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order—

Resuming the debate on the motion of the Honourable Senator Bonnell, seconded by the Honourable Senator Petten, for the second reading of the Bill S-15, An Act to amend the Patent Act.

Hon. Paul David: Honourable senators, I listened to and read in the *Debates of the Senate* with all the attention you can imagine the remarks which Senator Bonnell made on March 1 concerning his Bill S-15.

He was prompted to introduce this bill after reading an article by Linda McQuaig which appeared in the January 22nd issue of the *Globe and Mail* entitled "Drug firms increase prices faster than inflation rate".

This article had already lead to a long series of questions from several Liberal senators to which Senator Murray, the Government Leader in the Senate, had replied clearly and wisely.

After quoting many excerpts from this article, Senator Bonnell stated:

• (1440)

[*English*]

With that as a background and because of the fact that I saw that the government was taking no action, I thought that I should do something to protect the consumers of this country. Therefore I introduced Bill S-15.

[*Translation*]

Since this *Globe and Mail* article was used as a preamble to this bill, I feel it would be useful to replace it in its context and then reply to the charge of alleged government inaction.

The day before this article appeared, Mr. Lawrence Archer, a spokesman for the Ontario Department of Health, revealed that—

[*English*]

1,099 drugs are more than 5 per cent costlier on this month's price list than they were last July.

[*Translation*]

The Ontario List referred to by Mr. Archer includes 2,473 drugs. So it is fair to conclude that 44 per cent increased more than 5 per cent, and to note that 56 per cent increased less than 5 per cent. That finding dedramatizes right away the problem.

We know that two associations share the drug market, the Pharmaceutical Manufacturers Association of Canada, which represents the innovative industry—patent drugs—and the Canadian Drug Manufacturers Association, which represents the generic industry, that of copied drugs. Both associations are involved in that list, but according to Senator Bonnell's comments, the innovative industry alone is being accused.

One report by Mr. Brian Bérubé, to which I added some information, published in *The Medical Post* of March 1st, 1988, shed some light on the background and the origins of the debate. In September 1987, the Ontario Department of Health asked drug manufacturers to submit by October 5, 1987—at that point Bill C-22 had not been enacted—prices applicable to the drug list to be published in January 1988. That list included drugs that are being reimbursed to social welfare recipients and senior citizens. The department indicated at that point that increases above the "health" component, being approximately 6 per cent of the annual consumer price index, would be subject to review and justification. In that list the Ontario Department of Health found that 1,099 drugs exceeded 5 per cent, of which some 200 exceeded 10 per cent. The Ontario government summoned representatives of both associations on January 18, and a few days later, without any further consultation, slapped a 5 per cent ceiling for increases.

A January 29 report by Peter Maser, a *Southam News* correspondent for Mediascan, supplied very interesting information:

[*English*]

Of the 1,099 drugs whose price increases exceeded 5 per cent, more than half, 55 per cent, were produced by

generic companies, the self-proclaimed good guys during the debate on C-22. In the same batch of 1,099, the prices of 188 rose by 10 per cent and over. Once again, 55 per cent of them were produced by generic companies.

[*Translation*]

That information flies in the face of Senator Bonnell's suggestion that innovative companies—

[*English*]

—which are multinational companies based 85 per cent in the United States and 15 per cent in Europe and Japan.

[*Translation*]

These countries alone appeared to be responsible for price increases in excess of the Consumer Price Index.

Since we are talking about increases in the CPI, I looked up statistics provided by StasCan. The year 1981 being our reference year, and thus 100, we see that the index for overall spending on health care and drugs has annually exceeded the CPI. In six years the CPI rose from 100 to 138.2, the index for health care spending from 100 to 152, and the drug index from 100 to 173.1. Contrary to the claims of opponents of the Patent Act, these figures illustrate how ineffective competition by generic drugs alone has been in stabilizing drug prices.

This is confirmed by the following figures: the drug index exceeded the CPI by five points in 1982, 8.4 in 1983, 3.9 in 1984, 4.3 in 1985, 3.1 in 1986 and 10.2 in 1987. More eloquent than any speech, these figures support the *raison d'être* of the Prices Review Board now included in the legislation on drug patents.

We saw the substantial increase for 1987 which, I imagine, Senator Bonnell would like to blame on the government's failure to act. Personally, I see it as a consequence of the lengthy obstruction by Liberal senators of Bill C-22.

Need I remind you that the bill was tabled in the House of Commons on November 7, 1986, and received Royal Assent a year later on November 19, 1987?

During those 12 months, the bill was referred by members of the House of Commons to a legislative committee and by the Senate to two separate committees. These committees heard over 300 witnesses, examined briefs by about fifty Canadian organizations and submitted several dozen amendments. Among the amendments accepted by the government, one which was proposed by the Senate which insisted on maintaining the Consumer Price Index as a trigger mechanism for the examination of drug prices by the Prices Review Board, whose chairman, Dr. Harry Eastman, and vice-chairman Dr. Robert Goyer, were appointed on December 8 last year. A secretariat has been set up, staff has been hired, and regulations have been drafted and will be published very shortly. In these circumstances, there is no reason at all to accuse the government of failing to act.

Less than four months after the Patent Act was enacted and following reports of a problem involving the Government of Ontario and the drug manufacturers, Senator Bonnell, without waiting for a ruling by the Prices Review Board, tabled Bill S-15 to amend that part of the Patent Act which concerns pharmaceutical products. To me such action is premature, hasty, irresponsible and unworthy of the Senate's reputation as a source of wisdom, reflection, maturity and perhaps even serenity.

Senator Bonnell's bill is simplistic in the extreme, since it restricts the role of the Prices Review Board to that of a computer. The bill may be summarized as follows: If since June 27, 1986, the price of a patented drug exceeds the Consumer Price Index, automatically the price is deemed be excessive and must be reduced accordingly. The same procedure is applicable to any drug first sold after that date, on the anniversary of the introduction of the drug into Canada. Should the company refuse, it will lose market exclusivity for one or several products. I find it hard to believe that a physician and parliamentarian with Senator Bonnell's reputation could make this kind of simplistic and unbending recommendation, considering the democratic society and complex environment in which we live. Reducing the role of the Prices Review Board to that of a school prefect or a court of justice without due process of law is something I find incredible and even shocking. In our Canadian context and considering the Charter of Rights and Freedoms, I think it is unfair and probably unconstitutional to impose sanctions on the accused without giving him a chance to explain and be heard. To deny the board discretionary power is an insult to the intelligence of its members.

To imagine a mathematical formula which could be equitable is sheer utopian nonsense. Simplicity is a human virtue which I admire. However, when it comes to the interpretation of social, political, economic, national and international affairs, reality is far from simple since it depends on so many complex and uncontrollable factors.

Since it allows only comparison with the general consumer price index to determine whether or not a drug price increase is excessive, Senator Bonnell's Bill S-15 is simply unrealistic and unacceptable. Of course I recognize that the possibility of excessive price increases exists. That is why I have always insisted on the role of the Drug Prices Review Board. Furthermore, a number of factors can fully justify an increase over and above that of the consumer price index, such as an increase in raw material costs, in transport costs, in exchange rates or inflation in the country of origin, in capital expenditures, in interest or mortgage rates. That is why the current legislation enables the board to undertake an overall study once the rate of price increase of a patented drug exceeds the consumer price index. Finally, I would add that the board even has the power under the current Act to launch a five year retroactive investigation on how the price of a patented drug has behaved, to declare the current price excessive and to impose whatever penalties are provided for under the Patent Act.

After presenting his bill, Senator Bonnell referred to a study by pharmacologists Andrew Musial and Jerry Taciuk to show strong drug price increases by five innovative companies, with one exception. This is what he stated:

• (1450)

[*English*]

All those drug companies that raised their drug prices after the Bill was passed had promised they would not raise those prices above the CPI.

[*Translation*]

Unfortunately, I was unable to obtain the original document, but I appreciate the courtesy of my honourable colleague in giving me a photocopy of the four pages from which he took this information. I simply to wish to point out that these increases occurred between January 1987 and January 1988 and that they did not take place only after passage of the Patent Act on November 19, 1987. Nothing in the pages I read shows that—

[*English*]

—all those drug companies raised their drug prices after the Bill was passed.

[*Translation*]

I wanted to correct that statement.

All the other arguments raised by Senator Bonnell in defence of his bill have already been used *ad nauseam* in this chamber and in the Senate committees, namely the need to protect the sick, the invalid, the old, the handicapped, the unemployed, the poor, the widows and widowers and single parent families, the lust for profit and the greed of the multinationals which make their money in Canada and the send it abroad, the increase in taxes and insurance premiums that will result from higher of drug prices, as well as all the other arguments used by many of the organizations which objected to the Patent Act.

Honourable senators, my colleagues and myself are just as sensitive as Senator Bonnell and his own colleagues to the needs of the people, especially the poor. This is why I shall be as persistent, not to say as stubborn, as Senator Bonnell in tracing the evolution and the impact of the Patent Act. I cannot accept the notion that this recent piece of legislation should be amended before we have waited long enough to be able to make a documented judgment on its impact. This legislation is only three months old, and the major mechanism it provides, monitoring, control and sanctions, is not yet operational. After all, this act is not written on stone, and it provides for an official review in four years and for another one in ten years. We shall monitor the situation closely while giving the act that time to prove its usefulness. It seems to me we have to exercise a modicum of wisdom and care, and to remain patient, verbally restrained and watchfully serene.

Honourable senators, in view of the circumstances, I suggest that Bill S-15 be withdrawn so that we may spend our time, energy and resources to consider new legislation instead of amending, after hearing the same arguments we heard for an entire year, before the same people and probably the same committee, an act which has just been promulgated and a prices review board which is now ready to do its job.

I thank you for your kind attention.

[*English*]

Hon. Ian Sinclair: I wonder if the honourable senator would permit a question.

Senator David: Certainly.

Senator Sinclair: You have said that the operating period was only our months. As I recollect, the bill's trigger date was some time in June of 1986.

Senator Thériault: June of 1986?

Senator Sinclair: Yes. That is more than four months.

Second, why do you feel that because the generic companies followed the lead, or concurrently took action along with the pharmaceutical companies under patent to raise their prices, that, in some way, justifies the action taken?

I should like to be clear on why you made those comments.

• (1500)

Senator David: Senator Sinclair, it seems to me that June of 1986 was the date by which the generic companies were no longer allowed to have generic products on the market. In other words, that was the date of protection set for innovative drugs. The law was passed and Royal Assent was given in this chamber in November 1987.

With respect to your second question, I did not quite understand it. However, what I tried to say is that, with respect to this price increase and the conflict with the Ontario government, we have studied an article which seems to me to be well documented, showing that 55 per cent of the increase on that list was due to generic drugs and not to innovative drugs. My point was, therefore, that this shows that both were responsible for the increase and not just one side, as seems to have been said in this place many times and also in the newspapers.

Senator Sinclair: I would say to the honourable senator that, as I understood it, it was the minister who made the commitment that drug prices would not increase more than the CPI. Second, it was the patent drug companies, the pharmaceuticals, who gave the commitment to the committee that that would be the maximum by which the drug prices would increase. Therefore, both the minister, Harvie Andre, on a number of occasions, and the pharmaceutical companies gave that commitment. However, I do not remember any commitment being made by the representatives of the generic companies when they appeared before our committee with respect to that issue.

Senator David: It seems to me that it would have been very difficult to make these assumptions before the law was passed. To me, the interpretation of that would be that there would be no increase over the CPI once this law is passed. In other words, this was not a retroactive affirmation.

It is clear that this business which is being written about in newspapers is really a problem between the Government of Ontario and the drug producers. I have not heard of any other provinces where that problem exists. Also, the list is a very special list; it is a list for which the Government of Ontario has

the entire responsibility. Perhaps what we are doing here is mixing too many issues. However, as I said in my speech if the Drug Prices Review Board had been created six months earlier, perhaps such an event would not have taken place.

Senator Sinclair: Honourable senators, as I recollect it, someone on behalf of the Drug Prices Review Board said that they would not be looking at prices retroactively. Yet, here we are seeing price increases of something over 7 per cent in one case, according to Senator David's figures. My recollection may be wrong with respect to the statistics you gave, but, in any event, 2 per cent on the hundreds of millions of dollars that we spend in these areas is a very tidy sum, and if the Drug Prices Review Board is not authorized to look at prices retrospectively and yet give protection retroactively, I think that is where the problem arises, both in Ontario and elsewhere. I may be wrong; I just do not understand it.

Senator David: Honourable senators, I do not think this is a question; it is a command. It is true that drugs are costly, but we seem to forget that 95 per cent of health costs are caused not by drugs but by everything else. Therefore, I agree with Senator Sinclair; millions are millions, although nowadays there seems to be confusion between "millions" and "billions." However, in the area of health costs the big expenses are those items within that 95 per cent that we very seldom speak of.

On motion of Senator Cogger, debate adjourned.

FEDERAL GOVERNMENT AND CROWN CORPORATIONS

SELECTION PROCESS FOR PROCUREMENT OF SERVICES AND TENDERING OF CONTRACTS—NOTICE OF INQUIRY—POINT OF ORDER

On Inquiry No. 1:

By the Honourable Senator De Bané, P.C.:

5th November, 1986—That he will call the attention of the Senate to the need for the Federal Government and Crown Corporations to establish a system of procurement of goods and professional services and the tendering of contracts based not only on efficiency, but also on fairness, in order to enhance the economic development of all regions of Canada.

Hon. Eymard G. Corbin: Honourable senators, with respect to Inquiry No. 1, on a point of order, I would suggest that we strike that inquiry from the order paper. The senator who introduced this inquiry has yet to present it to the Senate. The item now reads:

> That he will call the attention of the Senate to the need for the Federal Government and Crown Corporations to establish a system of procurement of goods and professional services and the tendering of contracts based not only on efficiency, but also on fairness, in order to enhance the economic development of all regions of Canada.

Honourable senators, that notice of inquiry has been on the order paper for more than 16 months. It has yet to be presented. I think it is a farce to have this item called up every day that the Senate is sitting and to have nothing done about it. I think it is an abuse of our goodwill and of our patience.

If the honourable senator who gave notice of this inquiry is still interested in the topic, once it is stricken from the order paper, he has an opportunity every day that the Senate sits to re-introduce his inquiry. However, to have that inquiry sit there just to have one's name appear on the order paper is, to me, unacceptable. I have been sitting here day after day, week after week, and month after month listening to this item being called and nothing being done about it. I think it is an abuse of the goodwill of the Senate, and I suggest that we strike it off.

[*Translation*]

Hon. Pierre De Bané: Honourable senators, if somebody wasted this Chamber's time, it is the senator who just spoke, because I don't remember having taken up any time to discuss that motion.

Senator Corbin: Honourable senators, I did not quite understand what Senator De Bané said or implied but I could maybe ask him directly.

Does he intend to talk about that motion which he said 16 months ago he wanted to oppose? Does he intend to submit it for debate once and for all?

Senator De Bané: Honourable senators, I notice that my honourable colleague, after making allegations, is now asking questions. I wish he had started asking questions before making allegations.

That motion was introduced when the issue of purchasing CF-18 aircrafts came up. Since then there has been an agreement with the United States which also affects to a certain extent some public procurement. I did not think it appropriate to undertake that debate in those circumstances.

It is for that reason that I intend for now to postpone a suggestion to my colleagues to discuss that motion.

Senator Corbin: Honourable senators, I certainly respect freedom of expression. However, when I rose on a point of order, I looked in the direction of Senator De Bané and either my eyesight got worse or he was hidden behind Senator Marchand, but I did not see him in this chamber. Otherwise, I would have asked him directly and I would not have started with an address meant as a suggestion to my honourable colleagues.

● (1510)

[*English*]

TAX REFORM

DEADLINE FOR PRESENTATION OF BANKING, TRADE AND COMMERCE COMMITTEE REPORT EXTENDED

Hon. Ian Sinclair, pursuant to notice of Tuesday, February 9, 1988, moved:

> That, notwithstanding the Order of the Senate adopted on Tuesday, 26th May, 1987, the Standing Senate Committee on Banking, Trade and Commerce, which was authorized to study tax reform in Canada, be empowered

to present its report no later than Wednesday, 21st December, 1988.

He said: Honourable senators may be aware that the Minister of Finance has indicated on a number of occasions that he prefers, in the second stage of tax reform, to put in place a multistage sales tax and to coordinate this with the provincial sales tax at the retail level. The committee has decided that until such time as that takes place, and we can see what action will be taken, there is not much use in getting involved immediately in another study. Honourable senators, that is the reason for this motion.

Motion agreed to.

The Senate adjourned until tomorrow at 2 p.m.

APPENDIX

(*See p. 2826*)

THE ESTIMATES, 1987-88

REPORT OF NATIONAL FINANCE COMMITTEE

TUESDAY, March 15, 1988

The Standing Senate Committee on National Finance has the honour to present its

EIGHTEENTH REPORT

Your Committee to which the expenditures proposed by the Estimates for this fiscal year ending 31 March 1988 were referred, examined the said Estimates and presents, in obedience to the Order of Reference of 10 March 1987, its final report as follows:

The Standing Senate Committee on National Finance has periodically raised questions regarding the concept of comprehensive auditing. Last fall it was the Committee's decision to review this matter by inviting the following witnesses:

Professor Sharon Sutherland
Carleton University

Mr. G. Cowperthwaite and Mr. J.P. Boisclair
Canadian Comprehensive Auditing Foundation

Mr. B. Caine and Mr. J. Kelly
Canadian Institute of Chartered Accountants

Mr. K. Dye
Auditor General of Canada

Mr. A. MacDonald
Comptroller General of Canada

The purpose of these hearings was to understand the complexities of comprehensive auditing and, if possible, to draw conclusions and recommendations for both the practitioners and the users of this process.

This report is divided into four sections. The first section describes the purpose of comprehensive auditing; the second describes the areas the Committee examined; the third focusses on issues of special importance that surfaced and includes the conclusions and recommendations; and the fourth summarizes the Committee's findings.

I THE PURPOSE OF COMPREHENSIVE AUDITING

In the simplest terms, comprehensive auditing is concerned with accountability. Legislatures provide authority to governments to collect revenues and to make expenditures. In so doing, legislatures have a responsibility to oversee the administration of the acquisition and use of public resources. This means that governments are accountable to their legislatures which in turn are accountable to their electorate.

To fulfil this responsibility, legislatures require a regular accounting from their governments of the collection and the use of these public resources. Comprehensive auditing is a broad spectrum procedure for providing legislatures with assessments of administrative procedures and practices, as well as providing opinions on the credibility of management reports. To accomplish this, practitioners of comprehensive auditing engage in three tasks:

1) attesting to the financial statements of the government;
2) auditing for compliance with legislative authorities; and,
3) auditing for value-for-money.

The first two, financial attesting and legislative compliance are normal, traditional, and accepted activities of any legislative auditor. Mr. Kenneth Dye, the Auditor General of Canada in his opening remarks, recounted to the Committee that since 1878, auditors general in Canada have been reporting to the House of Commons on the legality of expenditures and the arithmetic of the public accounts. He also pointed out that these same legislative auditors have periodically reported on instances of waste, extravagance, or unproductive use of public resources. It was in the 1970's, based upon the recommendations of the Report of the Independent Review Committee on the Office of the Auditor General (Wilson Report), that a consensus was reached that value-for-money auditing should be made a formal responsibility of the Auditor General of Canada. This was incorporated into the *Auditor General Act in 1977*.

The generally accepted elements of value-for-money auditing are economy, efficiency and effectiveness. In the reports of the Canadian Institute

of Chartered Accountants (CICA), *Value-for-Money Auditing Standards*, these three elements are defined as follows:

- "Economy" refers to the *acquisition* of the appropriate quality and quantity of financial, human and physical resources at the appropriate times and at the lowest cost.

- "Efficiency" refers to the productive *use* of financial, human and physical resources --- i.e. maximizing output for any given set of resource inputs, or minimizing inputs for any given quantity and quality of service provided.

- "Effectiveness" refers to the *achievement* of the objectives or other intended effects of a program, an operation or an activity.

The authority of the Auditor General to review government spending in the context of the above three tasks, along with financial attesting and legislative compliance, are spelled out in section 7(2) of the *Auditor General Act, 1977*. This section gives the Auditor General responsibility to report on economy and efficiency, but limits his role on effectiveness, to reporting on instances where satisfactory procedures are not in place to demonstrate it. (Sections 5, 6, 7 and 8, which define the Auditor General's responsibilities, are reprinted in the appendix of this report.)

II ISSUES EXAMINED

In gaining an appreciation of the complexities of comprehensive auditing, and in particular, value-for-money auditing, the Committee focussed on three general issues.

The first of these was the burden of reponsibility for keeping Parliament informed about the effectiveness, efficiency and economy in government. There is a clear understanding that with respect to the financial accounts of government, it is management's responsibility to maintain the books in accordance with accepted accounting standards.

The role of the legislative auditor is to examine the books and to report annually as to whether management has presented fairly the accounts of the enterprise. This is the same kind of statement that appears with every annual report of every public or private enterprise in Canada.

There is also a clear understanding that with respect to legislative compliance, it is the legislative auditor who reports to his legislature that the enterprise operates within the laws of the land and within any specific legislation that applies to that enterprise. For example within the Government of Canada, the *Financial Administration Act* sets down a number of requirements for the receipt and disbursement of public money. While public servants are expected to comply with this *Act*, it is the Auditor General who is required to report upon any breach of the law.

But with respect to value-for-money reporting, there are no such understanding. In the private sector, the final check on the economy, efficiency and effectiveness of the enterprise is profitability. Auditors are not called upon to comment publicly on anything that might affect this profitability. That is not to say that boards of directors or their audit committees do not call upon their outside auditors to comment on anything untoward, but this is normally done in confidence, and is not part of the usual obligations of the auditors. For the federal government, the fact that the Auditor General has the authority to report on value-for-money does not alleviate management's responsibility from also reporting. This general area of the relative responsibilities of both the legislative auditor and of management was the first issue discussed at these hearings.

The second general issue on the Committee's agenda was whether current information on value-for-money is presented in the most appropriate vehicle. All parliamentarians and most watchers of government are familiar with the annual reports of the Auditor General. These reports are poured over by some members of the press as well as by opposition critics in Parliament in the hope of finding examples of uneconomic, inefficient or ineffective use of public money.

But there are however, other sources of information on value-for-money. Such sources include reports of parliamentary committees, testimonies before these committees by ministers and public servants, annual reports of programs and ministries, and the Part III's of the Estimates. The usefulness and appropriateness of these formed the second issue for discussion.

The third general issue was the limits to the responsibilities of the Auditor General of Canada in value-for-money auditing. While the *Auditor General Act, 1977* clearly gives him responsibility to report to House of Commons on value-for-money, and hopefully one day to all of Parliament, there is common agreement that this does not include a review of the merits of policy. But, there is no common agreement as to where the setting of policy ends and the administration of it, begins.

III AREAS OF SPECIAL IMPORTANCE

The examination of the three general issues described in the previous section illuminated five areas of special importance. Each of these areas are described in this section with the Committee's conclusion and recommendations.

Defining Effectiveness

In the *Value-for-Money Auditing Standards* the CICA, provides a narrow definition of effectiveness which stresses the extent to which a program achieves its goals and other intended effects (this is quoted earlier in this text). But Mr. Cowperthwaite and Mr. Boisclair of the Canadian Comprehensive Auditing Foundation (CCAF) stressed that effectiveness, broadly defined, should be about performance in general, and as such, is much more pervasive than simply the attainment of program goals. The CCAF summary report *Effectiveness* indicates that this is only one among a number of critical factors such as economy and efficiency that are essential to a meaningful understanding of broad-based effectiveness. However Canadian legislation and practice defines effectiveness narrowly and tends to make sharp distinctions between economy and efficiency on the one hand, and effectiveness on the other. The Part III's of the Estimates illustrate this distinction. For example, in the Part III for Environment Canada, the Park Canada service refers to its criteria for measuring effectiveness as the protection of Canada's heritage and the presentation of it to the public. (See Environment Canada's *Estimates* 1987-88, Part III (p. 4-21)). Five pages later there is a totally separate section on program performance and resource justification.

The Committee prefers this broad-based definition of effectiveness and believes that it makes little sense to separate resource justification and program performance from effectiveness. Yet members expressed understanding for the difficulty in trying to define the attributes of effectiveness. It cannot be limited to measuring solely the extent to which a program meets its objectives. Nor can effectiveness be measured independent of costs and productivity. Evaluators, whether they are accountants, social scientists, engineers or other kinds of professionals will have to bear in mind the "softness" of any meaningful definition of effectiveness. Those who look for neat pigeon holes in which to categorize effectiveness will always be open to the criticism of incompleteness and inadequacy.

In this previous discussion illustrating the difficulty in defining broad-based effectiveness, we have focussed on the practitioners. The clients of these practitioners within government are deputy ministers, and in some cases, ministers. The Auditor General sees his client as the House of Commons. But whether the client is government or Parliament, it is different from the stakeholder --- the recipient of the benefits of the program or activities. When defining criteria for effectiveness, the perceptions of the stakeholder may be different from those of the client. While there is no doubt that those who establish criteria for measuring effectiveness do not intentionally avoid the pressing concerns of the stakeholder, the results, however, may be the same. In the Ontario Royal Commission Report *Equality in Employment*, the commissioner, Judge Rosalie Abella, stated that:

> "It is sometimes exceptionally difficult to determine whether or not someone intends to discriminate [...]
>
> The impact of behaviour is the essence of "systemic discrimination". It suggests that the inexorable, cumulative effect on individuals or groups, of behaviour that has an arbitrarily negative impact on them, is more significant than whether the behaviour flows from insensitivity or intentional discrimination." (p. 9)

In measuring effectiveness, this unintentional avoidance of the concerns of the stakeholders may lead to misleading results, or in some cases, significantly perverse conclusions. To overcome this potential problem, particularly in programs that do not cater to recipients with middle-class values, or as Judge Abella observed, "white able-bodied males' perceptions of everybody else", some committee members felt that the element of equity should be considered when establishing criteria for economy, efficiency and effectiveness. The Committee realized in proposing this that the life of evaluators and auditors will not be made easy, but these evaluators must recognize that value-for-money auditing is not a precise science and that it requires subjective decision-making.

Responsibility for Reporting on Value-for-Money

All the witnesses who appeared before the Committee agreed that government managers have the principle responsibility to report on value-for-money which is synonomous with broad-based effectiveness. Consistent with this was the view that the ideal role of the Auditor General should be to provide opinions about the fairness of this reporting. In effect, the same process used for financial disclosure should be used for value-for-money reporting. The Committee was in full agreement with this basic principle but recognized that putting it into practice was more difficult because of many kinds of problems. For example, limiting the Auditor General to attesting to the reports of management is too constraining. There may be cases which he or Parliament feel should be investigated and this mandate should not prevent him from doing so. But these should be the exception rather than the rule. Also some programs or activities lend themselves to reporting on value-for-money; these include programs with specific clients, like the Printing Bureau of Supply and Services. Others like the establishing and maintaining of embassies abroad function of External Affairs is not so easily evaluated. Activities which cut across the responsibilities of many government departments are also difficult to establish evaluation criteria and to evaluate. Some, like the employment equity activity have a centrally located responsibility centre like Treasury Board. But others activities, like fostering high quality research in Canada is being delivered by many departments, often with competing objectives. Mr. Macdonald, the acting Comptroller General summarized this:

> "When you have a government department that is more like the conventional private sector model of a production process, you are more likely to find the kinds of indicators and performance measures that facilitate a more precise definition. However, as you move into the area of competing objectives and shaping and influencing, --- which are legitimate roles of government --- it becomes significantly more difficult."

The prevailing view in the Committee is that management is responsible for reporting on value-for-money. It is also the prevailing view that the Part III's of the Estimates are the most appropriate vehicle for reporting on the results of these evaluations. In spite of this the Committee was well aware that this would leave gaps in activities which are horizontal and cut across departmental lines leaving no one responsible. Such instances where there is no obvious client should be pointed out by the Auditor General.

If there is no obvious client, the Comptroller General might have to be that person. This is not in keeping with the usual function of the Office of the Comptroller General of Canada which operates as an arm of Treasury Board. Those functions for the most part, are advisory particularly in providing policy guidance to departments and agencies on financial management, in developing related methodologies and in assisting departments in interpreting and complying with these policies.

While the Part III's are already used to report on value-for-money, the Committee wishes to stress that this reporting is inconsistent. For improvements to take place the initiative must come from Parliament rather than from the bureaucracy. Mr. Macdonald stated "if you go to a committee four years in a row and no one asks a question about the Part III, it is difficult to convince a minister or deputy minister to improve it." In this regard, the Committee is very pleased to learn that the Auditor General is engaged in a government-wide audit of the Part III's including a review of the performance related information. When the Auditor General tables this report, the Committee intends to invite him to speak to it.

Finally, the Committee wishes to note that it is aware that this principle of management reporting on broad-based effectiveness and auditors attesting to the fairness of these reports is the ideal, but long-term goal. In reality, the Committee believes that while achieving this is some way off, it nevertheless should remain the optimal target. Constant pressure from the Comptroller General, the Auditor General, and from committees of Parliament can speed up the process.

Mandate of the Auditor General of Canada

We have already discussed elsewhere in this report the responsibilities of the Auditor General as defined in the *Auditor General Act, 1977*. While this *Act* says nothing about the policy role of the Auditor General, there is a clear understanding that his office does not judge the merits of policy. Mr. Dye was categorical that auditing government policy is the responsibility and perogative of Parliament only.

This avoidance of policy issues by any federal legislative auditor is much more explicit with respect to Crown corporations. Section 147 of the *Financial Administration Act* specifies:

> "Nothing in this Part (Part XII) or the regulations shall be construed as authorizing the auditor or examiner of a Crown corporation to express any opinion on the merits of matters of policy, including the merits of:
>
> (a) the objects or purposes for which the corporation is incorporated, or the restrictions on the businesses or activities that it may carry on, as set out in its charter;
> (b) the objectives of the corporations; and
> (c) any business or policy decision of the corporation or of the Government of Canada."

The problem is not that the Auditor General should avoid policy issues, but where does policy end and administration begin. Members of the Committee took up this matter with every witness. The most frequently used example was the constitutional requirement for maintaining a transportation link between Prince Edward Island and the mainland. It was acknowledged that the policy is to maintain a transportation link, but whether the various means for providing the link can be compared in terms of value-for-money was questioned. Deciding which of the alternatives provides the best value-for-money, ferry, bridge or tunnel, causes many policy issues to come into play in addition to the policy of providing the transportation link. These include concerns for employment, regional development, tourism, environment, fishing and others. In light of policies in these various areas, the most economic may not be the best. It may be that Cabinet will have to chose the type of link and leave to the auditors the role of ensuring that whichever means is chosen, the link will be constructed with due regard for value-for-money.

Professor Sharon Sutherland from Carleton University drew an even finer distinction in defining the limits of policy for audit purposes. She stated:

> "I find most alarming the statement that the auditor will give the government decision-makers assurance that advice coming up to decision-makers adequately addressed effectiveness guidelines which, however, are not specified. This brings the auditor right smack into the middle of the advice stream. Despite the assurance that this kind of audit cannot tread on policy concerns, this kind of audit is a monitoring of the advice that goes into the making of policy; it is an upstream monitoring. So all the assurances about keeping out of policy

are not meaningful. This kind of role of seeing whether the device that has gone up to decision makers is good advice belongs to the Treasury Board Secretariat and the central agencies of government." (*Proceedings of the Standing Committee on National Finance, January 28, 1988, p. 21:19*)

This matter of the legitimacy of the role of the Auditor General in auditing the quality of advice going to Cabinet is the kind of issue which finds the Auditor General and the government on opposite sides of the Petrofina case currently before the Supreme Court of Canada.

In the end, members of the Committee and witnesses were in full agreement that deciding upon the limits of policy considerations can often be a very grey area. The Committee recognized that even if the Auditor General's ideal role is largely confined to attesting to the fairness of management representations on value-for-money, his role will continue to grow during the foreseeable future because of the unclear limits to the area of his responsibilities.

This possibility places him in an increasingly sensitive and complex position and most particularly as the decision as to what he is to report upon is his exclusive jurisdiction.

The Committee acknowledged that the Auditor General has a panel of senior advisers made up of senior members of accounting and management consulting firms in Canada and it is their role to advise him on whatever issues he choses to bring before them. The Committee notes, however, that all these members are accountants or management consultants and that because broad-based effectiveness auditing requires a much wider expertise, outstanding Canadians knowledgeable of the complexities of policy, regardless of their background, should be sought for their wisdom.

The Auditor General and his staff in conjunction with program managers also have a significant responsibility in specifying the criteria to be used in undertaking value-for-money audits or attesting to their fairness. The *Financial Administration Act* is again useful in guiding how these criteria should be established. Section 143(3) and (4) indicates that the criteria to be applied must be submitted to the board of directors or to its audit committee for approval. In the event of a disagreement, it is the minister or a parent Crown corporation that arbitrates this matter.

Alternatively, the CICA *Value-For-Money Auditing Standards* indicate that an auditor should use management established criteria, if he is in agreement. If he believes that management's criteria are not suitable and he cannot resolve any differences of opinion, the auditor should select his own suitable criteria or limit the scope of the examination to those areas in which agreement can be reached.

The CICA's document and the *Financial Administration Act* place a different emphasis on the prime responsibility for establishing criteria for evaluations. The Committee raises this point because again it illustrates the sensitivity and subjectivity involved in value-for-money audits. It is a further example of this delicacy of the role of the Auditor General of Canada and the need for the best advice possible in fulfilling the role.

Relationship between Value-for-Money and Legislative Compliance

Last fall, the committee examined the $80 million overexpenditure of the Department of Regional and Industrial Expansion (DRIE). Two observations concluded these hearings:

1) DRIE should improve its forecasting, budgeting and reporting, but that this should have been required of them years ago when it was first observed that DRIE's forecasts significantly exceeded its expenditure. It is the Committee's view that excessive lapses, that are not a result of due economy and efficiency, are as bad as overruns.

2) The Government of Canada should recognize that when programs are established to provide multi-year grants or contributions with uncertain timing as to when invoices would be received and pay outs made, it is impossible to avoid variable lapses and overruns and that the Payable at Year End policy is well designed to deal with them. (*Proceedings of the Standing Committee on National Finance, October 22, 1987, p. 17.12.*)

Because DRIE was working with many small clients who had uncertain timing in presenting their requests for money, the effectiveness of the program may not be consistent with annual appropriations and year-end lapses. This does not excuse a department for slipshod accounting, budgeting and forecasting, but it does constrain the ability of the department from pressing the objectives of the program to the fullest.

When the auditors who examined this overexpenditure reported, none of them commented on the possible incompatibility of the legislative requirement of annual budgeting and the program effectiveness influenced by uncertain timing for pay-outs. When the Comptroller General, Mr. Macdonald was asked whether it was compliance or effectiveness which took precedence, he indicated that while the answer is complex, in the end compliance must come first. Senators could understand this, but were nonetheless surprised that this issue had never been addressed directly in reports of Auditor General. The Committee wishes to remind the Auditor General, Comptroller General and Treasury Board that the possible incompatibility of legislative compliance and value-for-money may surface from time to time, particularly when program recipients do not follow established and regular annual patterns that governments are required to follow. It may be that the

Auditor General should watch carefully for these potential conflicts and consider the circumstances such conflicts cause for program managers.

Periodic Reporting

In the previous section, the Committee commented on the possible incompatibility of a system of annual appropriations with some programs having uncertain, multi-year commitments. There are further complications related to program timing: government managers are already commited to a five-year cyclical review of all programs and activities of the government. While there is no requirement for management to report publicly on the results of these evaluations, it is becoming increasingly accepted that the annual reporting through the Part III's are a very appropriate reporting vehicle but this is an annual reporting process. In addition the Auditor General also is required by Section 7(1) of his *Act* to report annually on his comprehensive audit findings.

In the Committee's view, there is too much emphasis on annual reporting. While it is necessary for the Auditor General to examine and report annually on the financial accounting of the government, there is no practical need for him to report on the effectiveness of government programs and activities on the same annual basis. But for him to do otherwise might be difficult. Section 8 of his Act does allow him to make special reports on pressing matters that should not be deferred to his annual report. While value-for-money reporting may not have the same urgency, its shift to a periodic, non-annual basis, may reduce the clogging of the system and allow the Auditor General to report on the value-for-money activities of a program or activity on a more timely basis.

IV SUMMARY OF FINDINGS

In this final section, the Committee simply wishes to summarize the salient points raised under the five areas of special importance:

1. Defining Effectiveness

- effectiveness broadly defined, should be about performance in general and should mean much more than simply the extent to which program objectives are being met;
- federal legislation and practice defines effectiveness narrowly and tends to make sharp distinctions between economy and efficiency on the one hand, and effectiveness on the other;
- when defining the criteria for measuring broad-based effectiveness, the perceptions of the client (government and Parliament) may be different from those of the stakeholder (the program recipient);
- the unintentional avoidance of the concerns of the stakeholder may lead to misleading and possibly perverse conclusions about the effectiveness of programs;
- value-for-money and broad-based effectiveness are synomous terms.

2. Responsibility for Reporting on Value-for-Money

- management should be the primary agent responsible to report to Parliament on value-for-money for its programs and activities;
- not all programs and activities easily lend themselves to value-for-money auditing and reporting;
- the Part III's of the Estimates are the most appropriate vehicle for management to report on value-for-money, but currently this reporting is inconsistent across departments.

3. Mandate of the Auditor General of Canada

- the ideal role of the Auditor General in value-for-money reporting should be to attest to the fairness of management reports, but his mandate should not prevent him from occasionally undertaking examinations of specific cases which he or Parliament feel should be reviewed;
- there is a clear understanding by the Auditor General of Canada that he does not review the merits of policy, but where policy ends and administration begins is a very grey area;
- selecting the criteria for value-for-money auditing is a sensitive area and can lead to conflicts between managers and auditors.

4. Relationship between Value-for-Money and Legislative Compliance

- when governments establish programs with objectives that foster multi-year financial commitments, but with uncertain timing, those objectives may not be consistent with a system of annual appropriations; in short achieving effectiveness may not be consistent with legislative compliance; and finally

5. Periodic Reporting

- reports by the Auditor General on value-for-money could be more timely if they were not required annually reporting.

In concluding this report, the Committee wishes to point out that it was not its intention to make strong

recommendations to government or Parliament with respect to the current practices of comprehensive auditing. Rather the purpose was to expose the enormity and sensitivity of comprehensive auditing to its users and the responsibility this places on its practitioners.

Respectfully submitted,

FERNAND-E. LEBLANC

Chairman

APPENDIX

Auditor General Act Sections 5 - 8

5. The Auditor General is the auditor of the accounts of Canada, including those relating to the Consolidated Revenue Fund and as such shall make such examinations and inquiries as he considers necessary to enable him to report as required by this Act.

6. The Auditor General shall examine the several financial statements required by section 55 of the *Financial Administration Act* to be included in the Public Accounts, and any other statement that the President of the Treasury Board or the Minister of Finance may present for audit and shall express his opinion as to whether they present fairly information in accordance with stated accounting policies of the federal government and on a basis consistent with that of the preceding year together with any reservations he may have.

7. (1) The Auditor General shall report annually to the House of Commons

(a) on the work of his office; and,

(b) on whether, in carrying on the work of his office, he received all the information and explanations he required.

(2) Each report of the Auditor General under subsection (1) shall call attention to anything that he considers to be of significance and of a nature that should be brought to the attention of the House of Commons, including any cases in which he has observed that

(a) accounts have not been faithfully and properly maintained or public money has not been fully accounted for or paid, where so required by law, into the Consolidated Revenue Fund;

(b) essential records have not been maintained or the rules and procedures applied have been insufficient to safeguard and control public property, to secure an effective check on the assessment, collection and proper allocation of the revenue and to ensure that expenditures have been made only as authorized;

(c) money has been expended other than for purposes for which it was appropriated by Parliament;

(d) money has been expended without due regard to economy or efficiency; or

(e) satisfactory procedures have not been established to measure and report the effectiveness of programs, where such procedures could appropriately and reasonably be implemented.

(3) Each annual report by the Auditor General to the House of Commons shall be submitted to the Speaker of the House of Commons on or before the 31st day of December in the year to which the report relates and the speaker of the House of Commons shall lay each such report before the House of Commons forthwith after receipt thereof by him or, if that House is not then sitting, on the first day next thereafter that the House of Commons is sitting.

8. (1) The Auditor General may make a special report to the House of Commons on any matter of pressing importance or urgency that, in his opinion, should not be deferred until the presentation of his annual report.

(2) Each special report of the Auditor General to the House of Commons made under subsection (1) or 20(2) shall be submitted to the Speaker of the House of Commons and shall be laid before the House of Commons by the Speaker of the House of Commons forthwith after receipt thereof by him, or if that House is not then sitting, on the first day next thereafter that the House of Commons is sitting.

THE SENATE

Wednesday, March 16, 1988

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

Prayers.

ENERGY AND NATURAL RESOURCES

EXTENSION OF DEADLINE FOR PRESENTATION OF FINAL REPORT—NOTICE OF MOTION

Hon. Earl A. Hastings: Honourable senators, I give notice that tomorrow, Thursday, March 17, 1988, I will move:

> That, notwithstanding the Order of the Senate adopted on Wednesday, 1st April 1987, the Standing Senate Committee on Energy and Natural Resources, which was authorized to examine the production and use of natural gas in Canada with particular reference to natural gas deregulation, be empowered to present its report no later than Wednesday, 21st December 1988.

Hon. C. William Doody (Deputy Leader of the Government): I am afraid I missed the last part of the honourable gentleman's notice of motion. I am sure it is an excellent motion and will do wonderful things for the world in general and for Canada in particular, but I wonder if he could again tell us exactly what the motion states.

Senator Hastings: I thank the Deputy Leader of the Government for his kind words.

The Standing Senate Committee on Energy and Natural Resources is at present empowered by the Senate to examine the use of natural gas in Canada and to report by April 1. The purpose of the motion is to extend the reporting date to December 21.

Senator Doody: So, it is an extension.

Senator Hastings: Yes.

Hon. Orville H. Phillips: Honourable senators, it is a rather long extension. I can see a one- or two-month extension, but why eight or nine months?

Senator Hastings: It was the view of the members of the committee that the commitee would need that extra time to complete the report. It will likely be completed over the summer, and possibly by the end of September, but it was decided to ask for a reporting date in December to be on the safe side.

Senator Guay: The Fisheries Committee asked for an extension of one year yesterday.

Senator Phillips: There was a reason given for that.

QUESTION PERIOD

[*English*]

REGIONAL INDUSTRIAL EXPANSION

DEVELOPMENT OF COAL MINE IN PICTOU COUNTY, NOVA SCOTIA—FINANCIAL ASSISTANCE—ATTITUDE OF CAPE BRETON DEVELOPMENT CORPORATION

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, I want to follow up on a line of questioning I began yesterday with the Leader of the Government with respect to the Atlantic Canada Opportunities Agency and raise a concrete case that has apparently developed in Nova Scotia. I have in mind the report that there is now under consideration a request for financial assistance to develop the new coal mine in Pictou County. I wonder, if there is indeed such a request, whether the Atlantic Canada Opportunities Agency has been involved, and, if not, whether the request is being considered by the Department of Regional Industrial Expansion or any other department or agency of the government at the present time.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, as of yesterday the matter in question was still being considered at the official level in the DRIE offices of the region. The recommendation will be made to my colleague, the Minister of DRIE, because the eligible costs of the proposed mine are over the $20 million amount and would therefore be above the maximum considered by the agencies for which I have responsibility.

Senator MacEachen: Can the minister give us any further information about the applicant for this assistance and the amount of the proposed assistance? Is this application supported by the provincial government?

Senator Murray: Speaking from memory, the applicant company is called Westray. I think it is clear that the Government of Nova Scotia favours the opening of and the exploitation of the coal resources in Pictou County. As I understand it, the proposal is to use the output of such a mine to supply a proposed new or expanded power station to be located in the Pictou County area.

Senator MacEachen: Did the minister mention the amount of the proposed assistance?

Senator Murray: I am sorry, honourable senators, but speaking from memory I cannot really put a figure on it. I can attempt to find out, however. There is an application in at the official level and it will be before my colleague, Mr. de Cotret, shortly.

Senator MacEachen: I thank the minister for his information and the knowledge that in a situation of this kind the

agency will not be responsible either for the funding or for the application itself. Presumably, that arises from the view expressed by the government leader yesterday that the Minister of DRIE is responsible for sector development. Or is another criterion now the level of funding?

Senator Murray: Honourable senators, the applications for assistance in respect of which the eligible costs are more than $20 million are still the responsibility of my colleague, Mr. de Cotret. As I indicated yesterday, the principal orientation of the Atlantic Canada Opportunities Agency is to small- and medium-sized business enterprises in the region.

Senator MacEachen: Therefore, even with the passage of the legislation that is now before the other place, the authority for this type of decision will be entirely within DRIE because of the point made that it is beyond the scope of this agency, which is restricted to medium- and small-sized businesses?

Senator Murray: It would be Mr. de Cotret's signature that would be required on such an application in order to approve it.

Senator MacEachen: Would Mr. MacPhail, for example, as head of the agency in the Atlantic provinces, be involved at all in the discussion? Is there some form of field coordination? Can the minister also tell me what attitude the Cape Breton Development Corporation is taking towards the opening of a new mine in Pictou, which, it is alleged, will reduce the work force on Cape Breton Island? Will the government, as a whole, be responsible for reconciling what is bound to be a competing or a conflicting situation, or will the Minister of DRIE himself decide the outcome of the application?

Senator Murray: Honourable senators, the allegation that such a coal mine would reduce employment in the industry in Cape Breton is hotly contested, as the Leader of the Opposition knows, by the Government of Nova Scotia, who contend that existing and proposed power development in the eastern Nova Scotia and Cape Breton area provide more than adequate markets for Cape Breton coal. However, this is a matter which my colleague, Mr. de Cotret, and the rest of us who are members of the government and have some responsibility for the region will want to consider very carefully.

As to the involvement of Mr. MacPhail and the agency, I can tell the honourable senator that from the very beginning we have been kept informed as to the development of this proposal. Indeed, the original proposal was made to us in an informal way. Because the eligible costs were over $20 million, we indicated at that time that the applicant should take his business to DRIE.

Senator MacEachen: I have one final question. Have the president and the board of directors of the Cape Breton Development Corporation expressed a view to the government as to what impact, in their estimation, a new mine in Pictou County would have on the work force on Cape Breton Island?

Senator Murray: Honourable senators, I had a brief but, I think, thorough discussion on this matter some considerable time ago with Dr. MacNeil, the chairman and acting president of the Cape Breton Development Corporation, who expressed her concerns to me at that time. I am aware that she also met with my colleague, Mr. de Cotret, on the same subject.

Other than that, the most recent information I have comes from a report that appeared in the newspapers purporting to be views of the board of directors of the Cape Breton Development Corporation on this proposal, in which they opposed the development of a coal mine in Pictou County.

Senator MacEachen: Is the minister confirming that report?

Senator Murray: I have not done so, frankly.

Senator MacEachen: Would the minister be good enough to tell us at some point whether, indeed, the Cape Breton Development Corporation has opposed the opening of the new mine? I think it is relevant in light of the fact that the minister has introduced the view of the Nova Scotia government, which is highly favourable to the development in Pictou County. It would be useful to have the views of the Cape Breton Development Corporation on the impact that that development would have on the area for which it is directly responsible.

Senator Murray: To complete the record, I should point out to the house, as Senator MacEachen probably knows, that the Leader of the Opposition and his colleagues in the Nova Scotia legislature have also pronounced themselves in favour of this Pictou County development. Having said that, I will inquire of my colleague, Mr. de Cotret, about the views of the Cape Breton Development Corporation on this matter and whether they have been submitted to him in a formal manner, as indicated in the media reports last week.

FOREIGN AFFAIRS

SENEGAL—PRESIDENTIAL ELECTION—SAFETY OF OPPOSITION CANDIDATE—ATTENDANCE OF OBSERVERS—REACTION OF PROGRESSIVE CONSERVATIVE PARTY

Hon. Jerahmiel S. Grafstein: Yesterday Senator Doody responded to a question I raised in the Senate on March 1, 1988, respecting the safety and the whereabouts of Maître Wade, the Leader of the opposition party in Senegal.

In the response to my question the Senate was advised that freedom of expression exists in Senegal, and that Mr. Wade did in fact respresent the leading opposition party in the last election. However, he is now detained or arrested, along with all the leaders of his party. It is difficult to see how democratic practices are continuing in Senegal at a time when the leaders of the opposition party are now detained by the government.

I am concerned about the safety of Maître Wade. I ask the Leader of the Government in the Senate if he would seek to have representations made by the Government of Canada to the Government of Senegal to ensure the safety of Mr. Wade and his political colleagues; and if, in fact, he is detained, that he be released quickly and, at the same time, be given an opportunity to respond in a fair and open trial to these charges. This is a very serious matter. In response to our question it appears that the government has suggested that observers—whoever these observers were—seemed to indicate

that the election was fair, open and conducted in a democratic manner. It is difficult to see how that could have been the case if immediately after the election the properly elected opposition was detained and put in jail so that there was no major opposition in Senegal.

We are concerned for the safety of Maître Wade, based on the information that we have, and we would appreciate anything that the government could do to ensure his safety and that of his colleagues.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, the note I have on the situation in Senegal is in French. If my honourable friend will permit me, I will read it.

[*Translation*]

> The Leader of the major opposition party, as well as the Leader of the Party of Independence and Workers have just been officially charged with breaching the internal security of the state under the provisions of the existing Criminal Code. They will appear before the State Security Court. The examining magistrate will once more hear the accused, this time in the presence of their counsel. The date of the beginning of the trial has not yet been announced. According to the Senegalese press, about 20 lawyers, both Senegalese and foreign, have already come together to defend the accused.

[*English*]

My notes from my colleague, the Secretary of State for External Affairs, conclude by saying:

[*Translation*]

> Senegal is one of the few countries in Africa to practice democracy as we know it. President Diouf has often said that this virtually unique experience in Africa remains fragile.

Mr. Clark states that he is fully confident that present political unrest in Senegal will gradually subside as the rules of democracy prevail.

[*English*]

Hon. Lorna Marsden: Honourable senators, I have a supplementary question on the same issue.

The part of the question that I added to Senator Grafstein's concerns the reaction of the Progressive Conservative Party of Canada, which, through its representation internationally, had asked to be an observer during those elections along with the presidents of Socialists International and Liberal International. I had asked what the response of the PC Party was to being refused that request, and what their reaction is now.

It seems to me that this is highly significant, since the Secretary of State for External Affairs is engaged in a critique of our allies. Here is another of our allies, as you have just pointed out, that seems to have some deep political trouble. It would be interesting to hear his commentary on this case as well.

Senator Murray: Honourable senators, I have just conveyed to the house the statements on the situation in Senegal, authorized by my colleague, Mr. Clark.

As to the views of the Progressive Conservative Party of Canada, I must take the position that I am not responsible to answer for those matters in the house. I would encourage my friend to inquire of the national president of that association, the Honourable William Jarvis.

● (1420)

Senator Grafstein: Honourable senators, I have a final supplementary. We remain concerned about the safety of Maître Wade, and I hope that the Leader of the Government in the Senate will take the opportunity to speak to his colleague, the Secretary of State for External Affairs, and ask if he could make direct representations. Representations from Canada might be instrumental in ensuring the safety of Mr. Wade and his colleagues and fair treatment in the circumstances. I hope that the Leader of the Government in the Senate would use his good offices in that way in order to maintain democratic rights in an area that we are all concerned about.

Senator Murray: Honourable senators, I am not expert on this matter and certainly cannot speak from firsthand experience of Senegal, but I have just told the Senate that there are some 20 lawyers—not only Senegalese lawyers but foreign lawyers—who are involved in the defence of this man and of his associates who are accused. I would have thought that my honourable friend would consider the presence of 20 lawyers in a country that is a democracy and does respect the rule of law was, on the face of it, a sufficient guarantee of the safety of the accused person. Also, it might be counterproductive if the Government of Canada were to take it upon itself to make representations as to this man's safety under the circumstances that I have just stated. However, I will convey my honourable friend's representations to Mr. Clark.

[*Translation*]

Hon. Eymard G. Corbin: On the same issue, honourable senators, it might not be necessary to point out that Mr. Abdoulaye Wade is a member of the International Association of French Speaking Parliamentarians and that Canada will have this year the honour of having Honourable Martial Asselin as international president of the International Association of French Speaking Parliamentarians. Senator Murray, the Government Leader in the Senate, has just told us that some 20 lawyers are involved in the defence of Abdoulaye Wade. It might be useful to add another lawyer in the person of Honourable Martial Asselin and, together with the Secretary of State for External Affairs, to give their support in a spirit of world parliamentarianism to help Mr. Wade whom I have met on several occasions. Clearly, since Senator Murray has just recognized the true nature of democracy in Senegal, I, for one, am convinced that if we ask Senator Asselin, in his capacity as a Canadian parliamentarian and president of this

international organization, to take action, this could have happy results.

Senator Murray: Honourable senators, it is the privilege of the International Association of French Speaking Parliamentarians to make representations to its Canadian president, Senator Asselin, but not the responsibility of the Government.

[*English*]

ENERGY

TAR SANDS PROCESSING PLANT, FORT McMURRAY, ALBERTA—STATUS

Hon. H.A. Olson: Honourable senators, yesterday the Leader of the Government in the Senate was kind enough to say that he would make inquiries to find out whether or not the government has under active consideration the endorsement of a major new tar sands processing plant near Fort McMurray.

However, stories have been appearing in a number of newspapers in Alberta with respect to the federal government's favourable consideration of this project. I wonder whether the Leader of the Government in the Senate can tell us today whether or not those stories can be substantiated.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I can only say that our negotiations with the project sponsors are continuing. Any project will be considered in the context of the government's policy on megaprojects, which is, first, that the project is of national or regional economic importance, second, that the risks and rewards as between project sponsors and participating governments are fair and equitable, third, that any special assistance negotiated with project sponsors will be provided outside the tax system and subject to prevailing tax rules, and, fourth, that the Government of Canada will receive an acceptable return consistent with the government's contribution to the project. The government believes this is a sensitive and fiscally responsible approach to these projects.

Senator Olson: Honourable senators, after taking into account all those criteria, I ask the minister, is the government about to endorse the program? Many people have a direct interest in whether or not the project is going to go ahead. They want to participate and will be making investments. The project is estimated to cost somewhere between $4 billion and $6 billion and will involve a wide spectrum of engineering firms and construction firms. It so happens that the kind of professional people and other labour required to do this job are available now.

I am not being critical of the project at all, but these people have spread a number of stories lately. In fact, the Minister of Energy for Alberta, Mr. Webber, is reported to have said that it has reached a certain stage. I believe he has also said something to the effect that now is a good time to press for the project because of the anticipated election, but I discount that information. I expect that his government will do the responsible thing, based on the criteria which the minister has just outlined. However, the project is vitally important to the people who have an opportunity to raise the employment level by as much as 15,000 jobs at various times in the course of the construction. Is the project coming soon, or is it in the initial stages? Perhaps the honourable senator could let us know what stage it is at now.

[Senator Corbin.]

Senator Murray: Honourable senators, I can do no more than tell my friend that the negotiations are serious and that they are continuing.

Senator Olson: Honourable senators, that is really not a very good answer. The honourable senator knows that there are no members on the other side of the aisle in the house to ask these questions directly of the Minister of Energy or the minister who is responsible.

Senator Flynn: Why do you say that?

Senator Olson: There are no members from Alberta on the opposition side of the House. They are all Progressive Conservative members. You can read *Hansard* day after day and you will find that no questions are asked of the ministers responsible about such matters.

Senator Flynn: That is because they know the answers.

Senator Olson: If they know the answers, they are not making the information available to the people who—

Senator Flynn: Why don't you know the answers?

Senator Olson: I read the papers from Alberta and the information is not there. I think that in fairness the minister ought to be a little more forthcoming with information, because, as I said, a number of stories are circulating. I am sure that even Senator Flynn understands that point.

Senator Flynn: That is one thing I do understand.

Senator Olson: There have been a number of stories. One is to the effect that negotiations are in the advanced stage and that an announcement is imminent. I am merely asking if that is in fact so. The minister has not said very much to advance the matter.

Is the minister not going to reply? Is that all?

Senator Murray: That is all for today.

• (1430)

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have delayed answers to two questions, both asked by Senator Olson on March 2, regarding Western Economic Diversification. I ask that they be printed as part of today's proceedings.

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

Hon. Senators: Agreed.

WESTERN ECONOMIC DIVERSIFICATION

CRITERIA FOR PROGRAM SUPPORT

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, the first delayed answer I have is in response to a question raised in the Senate on March 2, 1988, by the Honourable H.A. Olson, regarding Western Economic Diversification—Criteria for Program Support.

(*The answer follows:*)

A short two page letter describing the proposed application is all that's needed to apply for Western Diversification assistance. Once the application has been reviewed to determine the project's eligibility, more detailed information will be requested.

A document entitled "Western Diversification Fund: Application Steps" has been available for some time through Western Diversification offices. Included therein are guidelines on and explanations of:

- proposal submissions
- information required in project descriptions
- analysis criteria
- legal offers
- acceptance of offers
- public announcements
- project implementation and follow-up.

It should be emphasized that methods of assistance under the Western Diversification Fund will be kept as flexible as possible. Types and levels of assistance offered will vary with the circumstances of the project, including the applicant's own contribution and needs, and the project's overall contribution to the diversification of the West's economy.

Also included in the publication are the addresses where applications can be submitted and inquiries made in Vancouver, Winnipeg, Saskatoon and Edmonton.

DELIVERY SYSTEM FOR PROGRAM

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, the second delayed answer is in response to a question raised in the Senate on March 2, 1988, by the Honourable H.A. Olson, regarding Western Economic Diversification—Delivery System for Program.

(*The answer follows:*)

So far as co-operative arrangements are concerned, these are continuing under the Western Diversification mandate. Both levels of government are cognizant of the cost of duplication and exert considerable efforts in maintaining communication to avoid it.

In the 1988-89 Main Estimates for the Department, $19,900,000 is identified for Western Diversification participation with the western provinces under Economic and Regional Development Agreements.

The $1.2 billion for five years' operation of the Western Diversification Fund (WDF) is over and above ERDA sub-agreement funding. A large number of WDF funded projects are expected to involve provincial funding as well.

BORROWING AUTHORITY BILL, 1988-89

SECOND READING

Hon. C. William Doody (Deputy Leader of the Government) moved the second reading of Bill C-109, to provide borrowing authority.

He said: Honourable senators, this bill now before us will permit the government to borrow an additional $25.3 billion in the 1988-89 fiscal year. As Senator Frith always pointed out to us when he was on this side of the house, the passage of this bill will not cost the government or the people of Canada one cent. There is no borrowing involved in this bill; it simply provides authority to borrow.

Senator Frith: I persuaded you, did I?

Senator Doody: I agreed with Senator Frith then and I agree with him now.

Senator Frith: Did you really then?

Senator Doody: I thought I did. It seemed to me to make perfect sense!

In general, the government requires parliamentary authority to borrow new money. The notable exception is temporary loans with a maturity of less than six months when there are insufficient funds to meet disbursements under section 39 of the Financial Administration Act. With the exception of these special section 39 loans, new parliamentary authority is not required to roll over existing debt.

The deficit is projected to be $28.9 billion in the 1988-89 fiscal year compared to $38.3 billion in the 1984-85 fiscal year. However, the amount I mentioned is not equal to the borrowing requirements of the government for two reasons.

First, the government has access to $6.6 billion in non-budgetary sources of funds such as contributions to the public service superannuation accounts. The projected financial requirements, after taking non-budgetary items into account, are $22.3 billion.

Second, foreign exchange operations will affect the government's borrowing requirements. When the government acts to moderate a rise in the Canadian dollar, Canadian dollars are sold to buy U.S. dollars, and those Canadian dollars must be borrowed while the acquired U.S. dollars are added to our foreign exchange reserves.

The borrowing authority of $25.3 billion sought for the 1988-89 fiscal year is equal to the projected financial requirements of $22.3 billion plus a $3 billion reserve to provide flexibility to meet contingencies such as fluctuations in the level of Canada's international reserves.

Honourable senators, the bill before us, in subclause 2(2), requests a borrowing authority in the amount of $25.3 billion. This amount, as I said, is equal to the $22.3 billion in financial

requirements plus a $3 billion non-lapsing reserve to cover contingencies.

Subclause 2(2) states that all unused borrowing authority granted by the Borrowing Authority Act, 1988-89, to the extent that the unused authority exceeds $3 billion, will be cancelled on March 31, 1989. This subclause preserves the government's non-lapsing reserve to be carried forward into the next fiscal year and also ensures that $3 billion is the maximum amount to be carried forward.

Clause 3 states that any borrowing authority granted last year by the Borrowing Authority Act, 1987-88 will be cancelled on March 31, 1988, or on the date that the new bill comes into force, whichever is later. Thus, this clause prevents the non-lapsing reserve granted for earlier years from accumulating, but ensures that cancellation takes place at a time that is not disruptive to the implementation of the regular debt program.

Clause 4, honourable senators, ensures that if a new bill is passed after March 31, 1988, and part of the non-lapsing reserve granted for 1987-88 is used, this amount will be deducted from the authority granted for 1988-89 and thus the total amount of borrowing authority available for the new fiscal year is not increased.

Honourable senators, I understand that the Standing Senate Committee on National Finance has arranged to meet with the minister and officials tomorrow. If it is the will of the Senate to give this borrowing authority bill second reading today, it would indeed facilitate the committee's plans and the borrowing program of the government.

I understand that senators are aware that the Estimates have been tabled and are available. I also understand that the spending plans and the financial program of the government are also available. I am sure these matters and questions relating to them can be handled with the cooperation of the committee when it meets. As I say, that is scheduled to happen tomorrow morning.

Hon. John B. Stewart: Honourable senators, Bill C-109, the Borrowing Authority Bill, 1988-89, is formally in good order. The Minister of Finance delivered his budget on February 10, 1988—no objection can be raised that this bill is anticipating the budget. The Main Estimates were presented to the House of Commons by the Deputy Prime Minister on February 23, 1988; again no one can suggest that this request for borrowing authority is anticipating the government's request for supply for the forthcoming fiscal year. So the bill is in good order constitutionally.

It is in good order in another way in that it does not deal with more than one fiscal year; it deals specifically with the fiscal year that will begin on April 1, 1988. It does contain a non-lapsing reserve. There was a time a few years ago when non-lapsing reserves were attacked regularly; but I guess—

Senator Frith: Who attacked it? What was his name?

Senator Stewart: —that kind of criticism is no longer regarded as valid. It is realized on both sides of the house that this is a convenient way to provide a reserve and to provide what one might call a borrowing authority bridgehead into the next fiscal year. So I say that the bill seems to be straightforward and in good order.

One might lament that in a period of very strong international economic expansion it has not been possible to reduce to an even greater extent the amount for which borrowing authority is sought. But that is a debate which can take place on another item. So my proposal, honourable senators, is in line with that made by Senator Doody, namely, that we give the bill second reading now and send it to the Standing Senate Committee on National Finance where any questions concerning the detail of this request for authority to borrow can be asked and answered.

Senator Frith: Hear, hear!

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Doody, bill referred to the Standing Senate Committee on National Finance.

STANDING RULES AND ORDERS

FIFTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the Fifth Report of the Standing Committee on Standing Rules and Orders (voting procedure) presented in the Senate on Tuesday, March 15, 1988.

• (1440)

Hon. Gildas L. Molgat: Honourable senators will recall that this matter of voting procedure was before the Senate recently. It involved a vote being called in the Senate and certain senators being denied entry to the chamber. Those senators were attempting to enter the chamber through the back doors and there was an objection raised within the chamber as to their right to enter and vote. The matter was then referred to the Rules Committee.

The committee has looked into the matter in great detail and has decided that we should go back to not what is termed as a "rule" but to a procedure which is described on page 70 of Appendix 1 of the Rules of the Senate of Canada, where it states:

> The division bells are rung, and when all available senators are present, the doors of the Chamber are locked.

So there is an established procedure to lock the doors, but that procedure, in fact, has not been followed. The reason is that on a previous occasion a certain honourable senator arrived, found the doors locked and objected strenuously.

Senator Frith: He was very hard on the door on that occasion!

Senator Molgat: That is right. There was a slight problem.

On consideration, the committee felt that the original procedure was the correct one to follow, but the question arose as to who shall determine when the doors shall be locked and who shall lock them.

The recommendation of the committee is that henceforth we shall follow the procedure that is now followed; that is, the two whips will remain in the outer chamber, and when they are agreed that all honourable senators who are available to vote and wish to vote are in the chamber they will enter the chamber, bow to the Speaker, and return to their seats. After the whips have returned to their seats, the Speaker will then call out in a loud and clear voice, "Let the doors of the chamber be locked!" At that point the two back doors and the front door will be locked. Presumably, there would be no argument by anyone on the outside that they had not been given substantial notice, and the matter would be resolved for ever and a day.

Hon. Jacques Flynn: I do not rise to request that the rule be changed at all; as a matter of fact, I agree with it. But I think the two whips should go to the reading room in order to inform senators who may be in that room that the vote is going to take place.

Hon. Orville H. Phillips: Honourable senators, I should point out to Senator Flynn that when the division bells ring honourable senators are being called to the Senate chamber, not to the smoking room or the reading room.

Hon. William J. Petten: Honourable senators, if I may add a word. On the occasion Senator Flynn has referred to there was a very interesting program on television. While honourable senators were advised that the bells were about to stop ringing, it was my impression, rightly or wrongly, that they waited another couple of minutes to see what was taking place on television, and when they arrived at the doors to the chamber they found them locked.

Senator Molgat: Honourable senators, I think the discussion we have had will clarify the situation. In any event, if the report of the committee is adopted, henceforth that will be the rule and we shall ask the Speaker to take on that duty on a signal from the whips.

While I am on my feet, I should like to report on another matter affecting the ringing of the bells. This was referred specifically to the committee and related to the commencement of the sitting at 2 p.m. each day. Honourable senators will recall that Senator Molson, in particular, raised the matter. Not being in one of the two parties, and sitting as an Independent, he likely is not given the reasons for delays in beginning a sitting. Nevertheless, the Rules Committee looked into the matter very carefully—in fact, exhaustively, I might say—and came to the conclusion that there was no easy solution. A number of proposals were made, such as having the bells ring at five minutes to two as notice, and then cease at 2 o'clock. Another recommendation was that the bells start ringing at exactly 2 o'clock and that the Speaker enter the chamber at that time. However, it was also mentioned that the Speaker might have to sit in the chamber until a quorum had assembled.

Finally, the conclusion was reached that there should be no formal recommendation, no change in the rules, no specific procedure established; simply to continue to ring the bells at 2 o'clock, but to ask all honourable senators to assemble as quickly as possible after 2 o'clock to avoid delay in beginning the sitting.

It was felt that establishing a new rule would be much more complicated than continuing the current practice. So all honourable senators are requested to follow the procedure by practice rather than by rule.

I move the adoption of the report.

Hon. Duff Roblin: Honourable senators, I should like to obtain the views of my honourable friend on the length of time the bells ring. What concerns me is that the bells go on ringing, not for just five minutes but for ten minutes and even longer, and no one seems to be on hand to say, "We have had enough of this. Let the bells stop ringing and let us proceed!"

If we follow the suggestion that has just been made—and I suppose we will—I wonder if it is practical to say, "And, furthermore, that the bells shall ring for only five minutes." Then, unless there is an exception that might be authorized by the Speaker or someone else in authority, the bells ring for only five minutes and then cease, and that is when all honourable senators are expected to be present. Otherwise, senators will wait until the bells stop ringing and will then come rushing into the chamber. Ringing the bells for a lengthy period of time, to my mind, is counterproductive.

Motion agreed to and report adopted.

STANDING RULES AND ORDERS

SIXTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the Sixth Report of the Standing Committee on Standing Rules and Orders (public petitions) presented in the Senate on Tuesday, March 15, 1988.

Hon. Gildas L. Molgat: Honourable senators, the matter that we deal with in the Sixth Report has to do with the presentation of petitions to the Senate. Again, this matter was raised by honourable senators and referred to the Rules Committee.

I refer honourable senators again not to rules but to the practice of the Senate, and in particular to page 67 of Appendix 1 of the Rules of the Senate of Canada.

The problem that arose, and which the committee considered, was the request made by certain senators that the text of the petition itself and the list of names be included in *Senate Debates* and in the *Minutes of the Proceedings of the Senate*. It was determined that this was a costly procedure and, further, that it was an awkward procedure in that it meant a tremendous amount of extra work for the staff and on at least one occasion delayed the publication of *Senate Debates* the following day.

The committee considered this very carefully. The committee considered the practice that is currently followed in the other place and recommends that henceforth names not be printed and that the petition itself not be printed.

Senators must at all times be able to present petitions from citizens, but in order to handle this in a practical manner it is the recommendation of the committee that the senator so doing be asked to state briefly what the petition is about and how many signatures are on it, if he or she so wishes. But in future there will not be any printing, as such, of those names. This recommendation separates the procedures to be followed for those petitions in the form of requests from a large number of citizens from the procedures relating to petitions for private bills.

● (1450)

Honourable senators, I move the adoption of the report.

Hon. Martial Asselin: I should like to know if such a petition will be tabled after its presentation.

Senator Molgat: Yes, the intention is that the petition will be tabled and will form part of the records of the Senate, but it will not be printed in the *Minutes* or in the *Debates*.

Hon. Finlay MacDonald: Will it be mandatory to provide the number of signatories to the petition?

Senator Molgat: No, honourable senators, if the senator presenting a petition does not wish to say, for example, "I have 7,000 names from Prince Edward Island," it is not necessary for him to do so; it will be satisfactory just to present the petition. If he wants to provide the number of signatories, however, that is something else.

Senator Frith: It would be something to have 7,000 names from Prince Edward Island, at any rate.

Motion agreed to and report adopted.

THE CONSTITUTION

FIRST MINISTERS' ACCORD AND AGREED TEXTS— CONSIDERATION IN COMMITTEE OF THE WHOLE CONTINUED

On the Order:

> The Senate again in Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to.

The Senate was accordingly adjourned during pleasure and put into a Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to, the Honourable Gildas L. Molgat in the Chair.

The Chairman: Honourable senators, if the committee is prepared to come to order I will ask our first witness to join us.

Pursuant to Order adopted on June 18, 1987, Professor Albert W. Johnson was escorted to a seat in the Senate chamber.

The Chairman: Honourable senators, I should like to welcome our first witness this afternoon, Professor Albert Johnson, who, I believe, is well known to most senators from his long involvement in the public service, both at the provincial and federal levels, and in the CBC. I think that no further details are required from me in introducing him.

Professor Johnson, we have an hour at our disposal. Our preference is to allow for a 15- or 20-minute presentation, to be followed by questions from senators. Unfortunately, I must adhere to our time limit, because other witnesses are to appear after you. Please proceed.

Professor Albert W. Johnson, Department of Political Science, University of Toronto: Thank you, Mr. Chairman.

Honourable senators, it is really a great honour for me to appear before this forum—indeed, to appear on the floor of the Senate. I think the last time I was on the floor of any legislative body was in the other place during reviews of the Estimates. I used to whisper in ministers' ears what I hoped were the correct answers.

Honourable senators, I will start on the Meech Lake Accord with its starting point; namely, the ultimate purpose of increasing the bonds of nationhood between Quebec and the rest of Canada. I can only assume that when one says "Quebec" one is talking about the people of Quebec, and that when one says "Canada" one is talking about the people of Canada. I would have expected and hoped that in the Meech Lake Accord there would have been provisions that recognized this, the ultimate bond of nationhood. Unfortunately, there are not.

The Meech Lake Accord has to do with governments; it has little to do with citizens. The question, therefore, that must be raised is whether the changed arrangements will contribute to the increasing bonds of nationhood felt by the people of Quebec and by the people of the whole of Canada. My answer is that I am afraid they will not, and my reasons will follow.

I refer, first, to the bonds of nationhood in question. I think that one of the important bonds of nationhood is the shared right of Canadians to certain common public services such as Medicare, unemployment insurance, and so on. Meech Lake seriously weakens the power of Parliament to establish such new national public services. Second, one of the bonds of nationhood is the recognition of, esteem for and concern with the well-being of the national institutions of the country. Meech Lake, in my judgment, weakens the national institutions in favour of the provincial governments, and, in the course of doing so, I fear that in the future it may weaken the respect and esteem of which I speak.

If I may, I will speak briefly about national programs. I do not need to remind anyone in this chamber that virtually all of the social advances in this country were accomplished either by a constitutional amendment or by shared-cost programs. Unemployment insurance was brought about through a constitutional amendment. Although, with respect to old age security, there was some question whether an amendment to the Constitution was required—perhaps the spending power could have been used—nevertheless, there was an amendment to the Constitution in 1951 that made old age security possible. There were other amendments in respect of the Canada Pension Plan and disability allowances. We all know that hospital-

ization and Medicare are the products of shared-cost programs. Old age pensions, indeed, were virtually the original subject of shared-cost programs. Disabled persons allowances, blind persons allowances and unemployment assistance all led to the Canada Assistance Plan and are all shared-cost programs. I like recalling that, indeed, the TransCanada highway was the consequence of a shared-cost program. The Meech Lake Accord weakens both the formula for amending the Constitution and the spending power by providing, in essence, that provincial governments may in certain circumstances opt out of the constitutional amendment concerned or the federal-provincial shared-cost programs concerned, and may do so with full compensation. We all know that this has been called "special status" for some years within and by governments and legislative bodies in the province of Quebec. Now this "special status" is extended to every province.

With regard to the spending power, I have to start out by saying that there is one. I read some of the things my academic colleagues say, and they lead one to believe that there is not such a thing, or it is questionable that it exists. One need only refer to the 1937 decision of the Judicial Committee of the Privy Council. I will not read it to honourable members, because that would be redundant. This decision makes clear that there is a spending power. One need only recall that there has never been a challenge in the courts by any provincial government concerning the existence of spending power. There is, of course, a case before the courts now—the Winterhaven Stables case—which was decided in the Alberta Court of Queen's Bench in favour of the spending power. That case is now under appeal. There is also the medical case.

As a generalization, we in Canada have behaved as if there was spending power, and we have recognized its origins in the interpretations of the Constitution. The Meech Lake Accord weakens that. Meech Lake says, in effect, that any province can opt out of a new shared-cost program provided that that province has or operates or initiates a program which is compatible with the national objectives of the national program.

It is important to recognize the difference between these words and the vocabulary of shared-cost arrangements. In the vocabulary of shared-cost arrangements—I refer particularly to Medicare—it was deliberately decided that certain principles would be established in the legislation of this Parliament, and that the government would then share the costs of the programs operated by provinces which accorded with those principles. I repeat, the word "principles" was chosen very deliberately. It meant criteria, and these criteria are conformed to. One need only think of the Canada Health Act to recognize that this was a deliberate and conscious act.

Now Meech Lake says "compatible with national objectives." One is forced to wonder why there is the choice of the word "objectives" and the apparent discarding of the vocabulary of shared-cost programs and spending power, which are governed by the same principles. I think the change weakens it. An objective is the object of an action.

One also has to ask about the word "compatible." It is true that in the English language the word "compatible" has two meanings: capable of existing alongside something else or, in the alternative, concordant or consistent with or congruous. The French word "compatable" has only the first meaning.

So a province may opt out of a new shared-cost program provided it has something which is capable of living alongside the end object of the program. I say that weakens it. The amending power, similarly, accords, in this case, to the dissenting provinces, those provinces which dissent from an amendment which the required number of provinces have approved. This would authorize the Parliament of Canada to undertake a national program which it would not otherwise be authorized to do. Under Meech Lake the province which continues to dissent is entitled to compensation. Meech Lake extends the original formula of 1982, which had to do with education and culture. Thus, in my judgment, national programs have been weakened.

National institutions have similarly been weakened. Essentially, Meech Lake means to me that elected institutions of the national government will be limited or constrained in the exercise of their powers by the empowerment of the provinces—provincial governments or their delegates—to interpose their views at strategic points in the federal decision-making process. This is accomplished in three steps.

Step one is to constitutionalize federal-provincial conferences. We know that conferences of First Ministers already have a substantial influence, at least as long as television cameras are present at the conferences. One need only ask an elected member of the other House and he or she will tell you that the powers of the First Ministers' conferences are substantial. However, under Meech Lake they would be "legitimized." The elected members of this Parliament of Canada would see their powers further diminish.

I cannot help but say parenthetically that it also introduces a new notion concerning responsible government. Here is a body which cannot be described as a responsible body in any sense of the word, that is, responsible in the kind of fiscal and electoral sense for national matters, and, yet, that non-responsible body is being enshrined in the Constitution.

Step two is to transform the Senate into a house of provincial delegates. The premiers, as we all know, will nominate and, therefore, in the final analysis, choose senators. In the process of doing this the Meech Lake Accord legitimizes the idea of an appointed Senate. It also legitimizes the plenary powers.

I think I draw not too long a bow when I say that I can well imagine the possibility of a premier saying, in a federal-provincial conference, "Prime Minister, if you don't really like this point of view, there is always the possibility of having it reconsidered in the Senate—the house of provincial delegates." That changes the dynamics of federal-provincial relations, in my view.

With regard to step three, the accord alters the Constitution in such a way that future changes in respect of the Senate will require the unanimous approval of all premiers.

If you will bear with me, I would like to speak as a Saskatchewanian. I am a Saskatchewanian. From my first political consciousness I knew that we were powerless. Saskatchewan has 14 seats out of 282 in the House of Commons, and our representation in the Senate, proportionately, is not that much better. I was raised with the western mythology, "Hate the East, hate the banks, hate Toronto, hate elevator companies, hate the CPR." I could go through that lexicon. I have become troubled with it over the years, because it still is there. It is no weaker than it was.

I say to myself that I must search for a way of healing this sore in the body politic of the nation. To do that one can only erect either a counter-mythology or one must look to the roots of the mythology. The roots of the mythology, in my judgment, clearly lie in powerlessness.

● (1510)

The only way I can conceive of for remedying this powerlessness is to have an elected Senate, and a Senate which provides to the smaller provinces, all eight of us, some reasonable representation with full power in this Parliament. There is no point in anyone saying to me, as it has been said to me in some of the academic forums on the subject of the Meech Lake Accord, "But, after all, you believe in representation by population." My answer is, "Look, if I believed in representation by population in Canada I would not have a federal system at all." This provision of Meech Lake is a pronouncement to me as a Saskatchewanian that we will remain powerless through my generation, my children's generation, and goodness knows how long from there. That weakens the bond of nationhood.

The fair question, I suppose, is what I would do about Meech Lake. I have not advised the government for a long time, and maybe I have become rusty on responsible advice, but there are two views that I would like to conclude by expressing.

First, I wonder whether it would not be a good idea for the amending formula in the Constitution to be altered so as to provide that, before the First Ministers meet in respect of any amendment to the Constitution, the legislative bodies of this country would have their committee hearings concerning the proposals that would be considered at the meeting of the First Ministers. What would be wrong with saying in the Constitution that the legislative bodies of this country would hear from the people of Canada before the First Ministers met? The First Ministers would still have the full right to meet *in camera*—I have not come to believe that all government can be conducted in public—but the First Ministers would be informed by not only the legislative bodies but also by the people who were heard by the legislative bodies.

My second thought is that it might not be too preposterous to suggest that the fathers of Meech Lake meet once more after having received the reports of these legislative committees, if necessary, to do nothing more than respond to the simple question as to why they remain opposed to some of the principal issues or questions which have been raised in committees like yours.

My third suggestion—and I think this will not surprise you—is that along with the search for some answer to the question of bonds of nationhood in respect of Quebec one should also seek some answer to the question of bonds of nationhood in respect of the other regions of the country. I believe profoundly that Meech Lake should not go forward unless it provides now for Senate reform and provides for a reasonable representation of the people in this country who feel powerlessness for reasons other than that of being in a minority position in terms of language and culture.

For what it is worth, those are my thoughts concerning the possibilities and Meech Lake.

The Chairman: Thank you very much, Mr. Johnson. I have a number of names on my list of senators who wish to pursue the matter further with you.

First on my list is Senator MacEachen, followed by Senator Barootes.

Senator MacEachen: Thank you, Mr. Chairman. I thank Mr. Johnson for his presentation and for his willingness to appear before us in his present capacity as a professor, which gives him even greater liberty than he has had in his many past manifestations or professions.

I am interested particularly in discussing the spending power provisions. I do so because, when I made a few comments in the Senate following the announcement of the Meech Lake Accord, I did not have much time to examine the results of the federal-provincial conference, but one of the things I said, on quick notice, was that I could not see how, if Meech Lake were in effect, we would have Medicare. That was not because of the careful analysis that I now see that you have made but was a rather quick, intuitive reaction to what had been put forward under the spending power.

I certainly remember that a number of important provinces were violently opposed to Medicare. Certainly the Province of Alberta was opposed, as was the Province of Ontario. My own Province of Nova Scotia was quite unsympathetic, in the early stages, to going along with Medicare. It was, in fact, implemented in a controversial atmosphere. It appeared to me that if there had been an ability on the part of certain provinces to opt out of that program that is what quite a number of provinces would have done, and we would not have Medicare as we have today. But I want to talk about the terms "objective" and "compatible."

You have given different definitions for the word "objective," and the principle as found in the dictionary—and I have no complaint about that; I think it is perfectly clear that there is a difference. But under Meech Lake would it not be possible for a government to state its national objectives in the legislation in much the same way that the principles were stated by the federal legislation? For example, one of the objectives could be universality, and it could be put in the form of those

principles which we now regard as absolutely basic to the national Medicare system. I would like to know whether you think that would be possible.

I then come to the word "compatible." I know that you have found great difficulty in the application of that word, because it gives considerable latitude to the provinces in the type of plans or initiatives that they might put into place, which are "compatible with the national objectives."

Let us take Medicare again. If the Meech Lake Accord had been in effect when Medicare was introduced, it would appear to me that if the Province of Ontario, for example, could have qualified under the opting-out and compensation provision, it could then have put in place a program that would not necessarily have been universal in its application nor, indeed, comprehensive in its coverage. However, such a program or initiative that was lacking in comprehensiveness or in universality would still have been consistent with the national objective under the Meech Lake Accord, because it would be regarded, possibly, as a first step.

• (1520)

I would like you to tell me whether you still regard as fatal the word "objective"—rather than "principle"—if the objectives were put in the legislation. I make these comments in order to elicit further reaction from the witness on the evidence he has already given.

Professor Johnson: Honourable senators, first of all, I observe that the choice seems to have been deliberate, and therefore presumably the word "objective" means something different from "principle". Of course, it would lie within the powers of Parliament to identify whatever objectives they wished. However, if those objectives became as precise as principles, then, of course, it would equally lie within the powers of any province or groups of provinces to challenge the validity of that legislation and the validity of those "objectives."

I put it to you that, in my judgment, we Canadians learned a lot during the setting up of the Canada Health Act. When we were working on Medicare we thought that the concepts of universality and comprehensiveness were really quite clear. It turned out that they were not all that clear; they did not seem to cover extra-billing, and therefore additional legislation was required in order to make that aspect clear. That example, it seems to me, illustrates the importance of talking about what you mean in a constitution, and not merely talking about principles.

Mr. Chairman, perhaps I could add one thing. I was Deputy Minister of Finance for Saskatchewan for 12 years, as honourable senators know, and I can tell you that nothing gave me more pleasure than to receive an untied cheque. You would use all sorts of ingenuity to move those funds around—in what was a little bit like a shell game—in order to do those sorts of things that the government of the day wanted done. That memory haunts me, and I say to myself that an arrangement that encourages that kind of initiative—in other words, how you can get around something rather than how you can live in accord with it—is hazardous.

Senator MacEachen: Mr. Chairman, I want to ask Mr. Johnson whether he believes that, under the Meech Lake Accord and with respect to a national objective such as medical care for the people of Canada, it would not have been possible for the provinces to have developed certain plans and proposals in each province that would permit them to qualify for compensation, but that these plans might be quite different and lacking in uniformity. I wonder if that is Mr. Johnson's main point.

Professor Johnson: I believe that to be the case, and that is my main point, yes, senator.

Senator MacEachen: One other question, Mr. Chairman. When Mr. Johnson appeared before the joint committee, he was told that a number of other eminent Canadians had reached conclusions different from those he had reached on the spending power. In fact, one of the members of the committee said that they had just heard from Mr. Pickersgill and, prior to that, from Mr. Stanfield, Mr. Gordon Robertson and from other academics. According to this same member of the joint committee, all of those persons had taken a different view.

My question, Mr. Chairman, is not aimed at putting Mr. Johnson in confrontation with anyone else, but I would like to ask whether he has examined the testimony that was mentioned, and, if so, whether he has found within that testimony any arguments that would reduce his concerns on this matter.

Professor Johnson: Senator, I have examined the testimony given and I am not reassured by that testimony. Frankly, I do not believe that the argument that has been presented holds up. In my view, to examine the history of shared-cost programs is to see very clearly that, unless Parliament speaks with a certain clarity as to its purposes, its principles and its objectives, and makes arrangements which will be respected—and, indeed, would have to be respected—the national program, as it affects the individual citizen, is not there.

For example, in 1957 the St. Laurent government introduced hospital insurance with a requirement that seven provinces, representing a majority of the Canadian people, would have to agree with that plan before it came into effect. What happened was that a new government, the Diefenbaker government, came into power and removed that requirement, and hospital insurance became universal across the country almost immediately. It may well have come in any event; I cannot argue what might have happened. However, I come to a different conclusion.

The Chairman: Thank you very much, Senator MacEachen.

Honourable senators, I have seven names on my list and we have roughly 25 minutes left available to us for this witness. Therefore, I will have to ask honourable senators to keep themselves within that time limit if they would.

By the way, if you are wondering how I operate the timings, I take note of the time when the questioning starts for each senator and so try to apportion it fairly on that basis.

My next questioner is Senator Barootes, who will be followed by Senator LeBlanc (Beauséjour).

Senator Barootes: Thank you, Mr. Chairman, and welcome, Professor Johnson. I would like to preface my remarks with two observations, which may not be too apparent. Although you worry about the representation of Saskatchewan in the Senate, Mr. Johnson, I would point out to you that we are doing pretty well in this part of the session, because there are three Saskatchewan senators in the room at the present time, and when I count around I think we have achieved our parity in that respect.

The second observation I would make is that Mr. Johnson speaks with some feeling about Medicare. I well remember him sitting in a room in Saskatoon, towards the end of our period of strife, re-writing the legislation. You were one of three people in that room battling with the re-writing of that legislation, and I am sure that you feel a very keen affinity to it.

My question has to do with the statements you made in the first two or three pages of your brief with regard to the Meech Lake Accord weakening the capacity of Parliament to introduce national programs or national objectives, particularly in the area of shared rights. I am not sure, and perhaps you can elaborate for me, exactly how the Meech Lake Accord can prevent the federal government from accomplishing such objectives, particularly when one thinks about the statements made by Senator MacEachen with regard to how a federal government can dragoon a provincial government into something or ensure that they do not object too strongly to a program by stuffing their mouths with gold. Would you care to comment on how you see the accord preventing the furtherance of social objectives or national social programs?

• (1530)

Professor Johnson: A good example can be found right now in childcare. As a citizen, I am looking for a set of rights in the program which I can carry right across my country, which means provincial plans that accord to a reasonable extent with one another. I find myself wondering just how one will go about describing the kind of childcare that will be supported by the Parliament of Canada. I do not need to ask the obvious questions. The same thing could be true with respect to home services for disabled people and elderly people. I think that the provision of these services will be one of the requirements of our society and our economy. Can we provide such services in the absence of a clear use of the spending power? I think not. I fear not.

Senator Barootes: Presuming that the program were introduced by the federal government, and that they set the conditions under which such a program would be nationally supported, do you still see a difficulty?

Professor Johnson: If the provincial governments unanimously accepted the kinds of conditions or principles I think you and I have in mind—I think we are talking about the same sort of thing—

Senator Barootes: Yes.

Professor Johnson: —then, of course, no. But achieving unanimity has not always been easy in the past.

Senator Barootes: Who should be the arbiter in such a situation?

Professor Johnson: If, in the final analysis, the Parliament of Canada is taxing the people of Canada for the purpose of establishing a national program, it should make the judgment in its legislation.

Senator Barootes: Then, should not the federal government possess, as you have described, the power to say that the program being introduced in, for example, Ontario or Saskatchewan is not—I believe you used the word "compatible," or does not meet the national objectives and therefore certification for and assistance in that program will be withheld?

Professor Johnson: That is the situation now.

Senator Barootes: And it should continue as it has been in the past and ever shall be, as they say in the Good Book. If that is so, do you not then see a good reason for continuing the kind of federal-provincial, almost institutionalized, conferences that we have been holding, which is where these differences can be ironed out? Does it not serve a very useful purpose to have these conferences?

Professor Johnson: Yes, indeed. I hope I did not leave the impression from anything that I said that I am hostile to the notion of federal-provincial consultation, far from it. I have spent a large part of my life in the field of federal-provincial relations and remain deeply committed to it. However, I think it is important to distinguish between consultations that assist and contribute to decisions being taken by the Parliament of Canada and those that assist and contribute to decisions being taken by the governments in the legislative assemblies of the provinces, while arguing, on the other hand, that somehow the process of consultation ought to be a process of decision-making. I do not believe that this Parliament can be relieved of its power in the federal-provincial arena.

Senator Barootes: From your experience in that field—and you hold primacy in the area of intergovernmental consultation—would you agree that consultations and preceding meetings at the lower level, leading to either a First Ministers' conference or a ministerial conference, can lead to the kind of decision-making that you espouse and that you feel is not available?

Professor Johnson: I think they can, yes. However, I think they are subject to the depth of differences between First Ministers. If you say that a certain number of premiers, for example, will have a veto effectively one way or another over a national program, and if there are deep differences, you invite that process. Once you say, "Look here, you can opt out and receive compensation anyway," then there is no need to compose or to reconcile or to bring together the views that you have as a premier and the national interest that is expressed by the Prime Minister and by the Parliament of Canada.

Senator Barootes: But the Meech Lake Accord does not in any way rule out the federal government's refusing to assist in

such programs if they feel they do not meet the objectives or principles that they have set down.

Professor Johnson: If you weaken sufficiently the objectives you put in the legislation, then you increase the ability of ingenious deputy provincial treasurers and ministers to develop plans which are minimal, but which are sufficiently in accord with the federal views, and thus you lose the national scope.

Senator Barootes: As we so frequently did in Saskatchewan with federal funds when you were the Deputy Minister of the Treasury.

Thank you, Mr. Chairman.

The Chairman: Senator Barootes, he did refer to "ingenious."

Senator LeBlanc (Beauséjour): Mr. Chairman, I want to express my great pleasure at seeing Professor Johnson this afternoon, because, in my view, he is the first witness to really address the issue of spending power. If he thinks that Saskatchewan was a powerless province, he should have grown up in the Atlantic provinces. I shall ask my questions from the Atlantic point of view. What do you see as the impact of the opting-out provision on the future of less wealthy provinces? Do you see a negative impact of the opting-out provision?

Professor Johnson: In terms of the programs that exist, I would say that there would be a negative effect. That is to say, the Atlantic provinces, in particular, receive many of the existing shared-cost programs at a percentage rate above 50 per cent, if we can say that 50 per cent is the norm. I must say that with the introduction of a comprehensive equalization formula, and as long as that formula remains comprehensive and assures every province a national average per capita in provincial revenue, then I think the hazard is diminished. However, it still remains part of the general approach that has been used in the past, which is the system of shared-cost arrangements, supplemented or complemented, as a generalization, by additional compensation to those provinces who would find it more difficult to raise their taxes to finance their share.

● (1540)

Senator LeBlanc (Beauséjour): I address my next question to you, Professor Johnson, not in your role as an expert adviser to governments but as a political scientist, which is the title you carry this afternoon.

Do you have any explanation as to why the premiers of the Atlantic provinces would have accepted the Meech Lake Accord, especially as it relates to the area of spending power?

Professor Johnson: I am sure, honourable senators, that all premiers wrestled with the question of how the differences over the Constitution could be composed. By that I mean how the differences between Quebec and the other provinces could be composed. In the absence of an opportunity to look at the people consequences of a particular course of action, I think the normal goodwill of Canadians would have caused them to say, "Maybe it will work." It seems to me that this illustrates why it is so important that legislative bodies should be able to consider issues and to hear public opinions on issues before constitutional decisions are taken by First Ministers. In the way the conference was held, decisions were, necessarily, taken in the absence of a sense of how the people of Canada would be affected by or how they feel about the measures.

The Chairman: Thank you very much, Senator LeBlanc. I remind my colleagues that we have ten minutes remaining and I have four names on my list. Senator Marsden will be next, followed by Senator Stewart.

Senator Marsden: I will be very brief, Mr. Chairman, although I cannot resist saying to Professor Johnson that Mr. Vander Zalm's Speech From the Throne last night illustrates perfectly your first point about the failure to reduce the structure of alienation.

I would like to ask you to say a bit more about what seems to me to be a quite ingenious solution—and the first time we have heard these ideas at these hearings—as to how the process might be changed in the future. As I understand it, you have suggested that there would be legislative committee meetings before First Ministers' conferences on constitutional issues.

Professor Johnson: Yes.

Senator Marsden: Are you suggesting that those legislative committees would then bring a matter to a vote in a provincial legislature and, on the basis of that, the premier would go forward, or the premier would have heard from the people through the hearings, without reference to the legislature?

Professor Johnson: I should have been clearer about that. My view is that the legislative committees would be informed of the constitutional issue to be discussed at a First Ministers' conference and that they would be afforded the opportunity of holding hearings and writing reports. I had not contemplated votes. I had not thought of legislative committees taking governmental decisions, if I may put it that harshly. I had thought of them acting, for example, as this committee is acting and as standing committees of the House of Commons have acted in presenting their views and the views they have heard concerning the issues.

Senator Marsden: Are you suggesting that, having had the First Ministers' conference, the premiers and the Prime Minister would then go back to their respective legislative bodies, as they have done with respect to the Meech Lake Accord, to hold a vote and to have a ratification process—which is what we are doing here?

Professor Johnson: There would, indeed, be a ratification process. However, I am too much of a traditionalist to think other than that the First Ministers would still make the final judgments.

Senator Marsden: You are proposing a popular check on the power of the ministers to do what they just did to us at Meech Lake, but you are also proposing that, with respect to this agreement, the legislative hearings form the basis of another First Ministers' meeting before Meech Lake goes forward, is that correct?

Professor Johnson: Yes.

Senator Marsden: Suppose that were to happen, and the premiers and the Prime Minister were to agree on the kinds of changes that are being proposed by a number of people, would you then go back through the process of consultation again? How would you see it working in this round?

Professor Johnson: Again, I am a traditionalist. In the final analysis, I believe that the following would happen. The First Ministers, meeting again, would address this, hopefully, publicly and, hopefully, through a televised conference. Then I would hope that individual First Ministers would express their concerns or their support with, certainly, suggestions on central issues. The First Ministers would still meet, *in camera*, and they would come to a conclusion. That conclusion, quite clearly, would be subject to ratification. If there were to be a change, that change would be subject to the same process which you are now going through.

Senator Marsden: If I understand you correctly, this means that you reject the recommendation of the joint committee that there be a permanent parliamentary committee on constitutional reform, is that correct?

Professor Johnson: I think there can be such a thing as an obsession with constitutional matters.

Senator Stewart (Antigonish-Guysborough): I notice, Mr. Chairman, that Professor Johnson, although he now has the University of Toronto as his base, rejects the view, which was held by many in Canada West, that a Parliament of the new Dominion of Canada should be elected on the basis of representation by population, without any second chamber which would represent the other provinces. You have suggested that one technique of approaching the problem of, I believe you called it, "western alienation" would be to have the Senate of Canada elected. I will not raise questions concerning how many senators would be elected in each of the several provinces, but let me ask you this: Have you given any thought to the powers that the elected Senate would have vis-à-vis the House of Commons, elected, roughly, on the basis of representation by population, and, if so, would the powers of the Senate be different from what they now are?

Professor Johnson: I would start with the proposition that an elected Senate would have the same powers as the Senate has today.

I recognize that a double majority would be required. That is not particularly original. I also recognize, finally, that any government which has obtained a double majority is going to have to behave differently than would otherwise be the case.

Senator Stewart (Antigonish-Guysborough): Would you apply the principle of a double majority to all bills? One can argue that a government can carry on its executive functions, as long as it has money, without new substantive legislation. Would you go so far as to say that in order to get its appropriation bills passed a government would have to have a double majority? Or would you limit the double majority simply to legislation introducing new programs such as day-care and the like?

Professor Johnson: I want, Mr. Chairman and honourable senators, to establish first the proposition that Saskatchewan, like certain other provinces, would have a larger membership in the Senate. Having said that, I will respond to your question.

To respond to your question, I said that I would start with the proposition of the double majority. Having started with it, I would then do some very careful work as to its consequences—work that I do not pretend to have done and could not do on the spur of the moment—to achieve the kind of objective to which I think you are speaking. In short, I do believe that there would have to be some shaping and some limiting of the powers of one of the two houses—and clearly it would be the Senate—in order to ensure that the system would operate; and balancing this business of giving to the smaller provinces, on the one hand, a sense of representation in this body of Parliament and, on the other hand, limiting the powers of the body which they would think of most—namely, the Senate. This would require a great deal of shaping and modulating of the arrangements.

● (1550)

The Chairman: Next on my list is Senator Fairbairn, followed by Senator Buckwold.

Senator Fairbairn: Professor Johnson, I welcome you. At the beginning of your remarks you said that the Meech Lake Accord had to do with governments and not with citizens. You also spoke of the bonds of nationhood that should be strengthened by constitutions; and you spoke of powerlessness. My question concerns the northern territories. Briefly, they are not involved in this process at all; and, as a consequence of Meech Lake, each of the areas where one would try to address their grievances fall, in large part, within the new section 40, which requires unanimity between all of the provinces and the federal government for amendment. I am wondering why you did not specifically mention the North in your comments and whether you have any views to offer on that subject.

Professor Johnson: I did not mention that particular situation because, frankly, I am quite puzzled by it. If you relieve the unanimity requirements, then, of course, you relieve the problem—and that is the direction in which I would go. Frankly, I do have some difficulty in reaching the conclusion, simply and straightforwardly, that the determination of provincial status should be the prerogative of the people who are now living in the Territories and the Yukon. You are talking about national resources, about a part of nationhood which has national attributes—namely, attributes in all of the provinces. Therefore, to come to the point, I think there has to be a national dimension and a territorial dimension to the decisions; and, frankly, I am so puzzled by the matter that I decided not to address myself to it.

The Chairman: The next on my list is Senator Buckwold.

Senator Buckwold: Like my colleague, Senator Barootes, as a Saskatchewan, I wish to express my delight, Professor Johnson, in having you here. I might point out to my col-

leagues that Professor Johnson is a distinguished farm boy who made good, and we are very proud of him.

Time prevents me from going into any great detail, but there is one question which so far has not received much discussion. I refer to what you indicated as being a Senate basically appointed by the provinces. I think we all agree that they will be political appointments. I do not believe that Premier Devine will appoint an NDP supporter to sit here as his representative, or vice versa. However, those senators will be here until they are age 75, and they might be appointed at age 35 or 40. They will be representing a political point of view which, over a period of years—or even in a short time—may be the opposite of the political opinion of the government of that particular province. To me, this represents a very serious flaw in this provincially appointed body, which, under the present rules, will maintain its membership in the Senate for a very long time, generally until age 75.

Would you comment on what you think will be the effect of that, and perhaps offer some suggestions as to how, if the Meech Lake Accord goes forward, the danger that I see in the accord—as it relates to maintaining a flow of legislation that we would like to see without the conflicts which will be inevitable in the provinces themselves as a result of this sort of misrepresentation—can be avoided?

Professor Johnson: I can see two opposing forces at work. One would be the partisan issue that you raise—namely, that the composition of the Senate, in party terms, would be rather less predictable with the premiers making appointments rather than the Prime Minister. That may not be all bad. That is a judgment that politicians can make better than I can. The other possibility, however, is that the provincially appointed senators would develop, more or less quickly, a kind of provincial view, which, because of its origins, would have a certain allegiance to the provincial government, almost regardless of political stripe. One obviously is speculating, but it seems to me that that is a possibility, and would rival the hazards to which you refer; that the Senate would take positions based upon those which the premiers were taking, or at least take into account the positions of the premiers, at federal-provincial conferences. That is to say, they would begin to act like a house of provincial governments.

Senator Buckwold: Mr. Chairman, I will not get into a discussion of this matter because of the time, but I wanted to get that on the record.

The Chairman: Professor Johnson, before I thank you on behalf of the committee, I have one quick question for you. It is constantly being said that the accord cannot withstand any changes, that if any amendments are made it will fall apart. In your view, are the flaws in the accord sufficiently grave that there should be some amendments made at this time?

Professor Johnson: First, as I have already mentioned, I believe that the accord should not go forward until the reform of the Senate, in the directions I have mentioned, has been considered. I think that is on a parity with the concern that first brought the First Ministers together on the Meech Lake Accord.

Second, to try to answer categorically the question of whether the accord could withstand changes one first has to visualize a situation in which the dynamics are apparent. It is easy to say at a point in time that nothing will change my mind over the next five years, for example, about a particular issue; but the more that I am exposed to other people, other circumstances and ideas, the more, in my mind, it is likely to be changed. So I cannot answer your question, Mr. Chairman, except with a general observation—and, I guess, with another question. I wonder whether the First Ministers, after having received the reports of the legislative bodies, would not find themselves wondering whether perhaps some changes could indeed be made to the greater interest of the nation.

• (1600)

The Chairman: On behalf of the members of the Senate, I wish to thank you for taking the time to appear before us today and for sharing your views with us and for answering our questions. We appreciate that very much.

Professor Johnson: It was my pleasure, Mr. Chairman.

The Chairman: The next witnesses this afternoon are from the Métis National Council. We have with us Mr. Jim Sinclair, President, and Mr. Marc LeClair, Constitutional Coordinator.

Pursuant to Order adopted on June 18, 1987, Mr. Jim Sinclair and Mr. Marc LeClair were escorted to seats in the Senate chamber.

The Chairman: The Métis National Council was formed in 1983 to ensure distinct Métis representation at the 1983 First Ministers' Conference on Aboriginal Rights. Prior to 1983 the Native Council of Canada represented the Métis interests at the national level. This body, of which Mr. Sinclair is president, now represents the Métis interests specifically.

Mr. Sinclair, the normal procedure is to allow the witnesses to make a 15-or 20-minute introductory statement, followed by questions from members of the committee.

You have not submitted a brief. That is no criticism. We do not in any way insist on a brief. I am simply saying that so that my colleagues will not expect a brief to be placed before them.

Will you be the only spokesman, Mr. Sinclair?

Mr. Jim Sinclair, President, Métis National Council: Mr. LeClair may speak as well.

The Chairman: Then please proceed.

Mr. Sinclair: Mr. Chairman, thank you for inviting us to appear before the Committee of the Whole. I recognize many faces. We are pleased to be able to appear before the committee.

We have had so many problems over the past few months with meetings on the Meech Lake Constitutional Accord with the federal and provincial governments that we have not had much time to deal with the Constitution; we have had to struggle in order to maintain the position that we have had in

the past, a position that gave us some recognition. We have been trying to advance our cause, but we have been placed on hold. We are pleased that the Senate of Canada is holding these meetings in order to talk to Canadians and to obtain more information on the Constitutional Accord.

First of all, we were involved in a struggle in 1885 in the West, which we called "the resistance." The Métis lost that struggle and since that time have lived in a Third World atmosphere in that we have lived outside of Canadian society. We are in a different situation from the rest of the people of Canada. We are not asking for a constitutional change to make life better for us: we are asking for a constitutional change which will allow us to participate in Confederation. We think we have been left out of Confederation. The only institutions our people have had an opportunity to deal with are welfare institutions. Moneys have been spent on social programs that have contained us and that have contained our liberties rather than expanding our freedoms, particularly our freedom to govern ourselves. That is something we want to raise before the Senate today.

Self-government and the right to our land is very important to us. We are living in a country with a population of 25 million, in a country that is so big that one can travel for hours in an aircraft in the northern part of the country and not pass over a community, yet, we live in a land that is so tied up in terms of laws that the Métis people cannot make proper use of the land. Therefore, we have no control over our resources. Our people must have control of resources and land in order to exist economically in this country, and those rights have to be clearly spelled out and the governing powers have to be clearly spelled out.

I want to make it clear that we are not asking for separation from Canada or some sort of sovereignty arrangement, but we are seeking to negotiate the terms of our agreement with Canada. That is where we are now and where we have been for some time.

During the constitutional talks over the past five years we have tried to make that clear; that is, we want to be part of Confederation and make a deal so that we can participate in Canada and benefit from Canada's resources and carry the burden of being responsible for ourselves.

A few years ago there was a study done in Saskatchewan which determined that, as a result of an unemployment rate in the neighbourhood of 10 per cent or 12 per cent, there were many suicides, family breakdowns and problems with alcohol and drug abuse. If one were to study the suicide rate among the Métis, the problems related to alcohol and drug abuse and family breakdowns, one would see that the high rates in that regard are understandable, since we have unemployment rates of 90, 95 and 100 per cent in some communities. That is what affects our lives. Because of that we are looked upon by the public as people who are lazy and as people who belong in prisons. That is why a number of our people have struggled to obtain rights for our people in the Constitution.

We have no argument with the Meech Lake Accord. In our talks with the provinces and the federal government—and we have had a number of them over the years—we have said that we have no problem with the inclusion of Quebec in the Constitution. We note that Quebec has been given distinct society status, but we do not know how broad that term is. We have some thoughts on that. But, nevertheless, we feel that we have a right to make a deal with Canada, because we are Canada's first peoples, and that our deal should be recognized as well, and that a constitution that does not recognize the original peoples of this country is not worth the paper it is written on.

We have heard over the past few years about the goodwill of governments, and about how governments have goodwill towards recognizing our peoples' rights, recognizing the fact that we should have some form of government, but, at the same time, goodwill does not provide jobs, goodwill does not provide housing, goodwill does not give us the opportunity to govern ourselves. We have had serious problems with the goodwill approach. What we need are laws that clearly recognize our rights.

I am a firm believer that democracy looks good when one is out on the street, but democracy should consider how one is treated before the courts. When I appear in court for killing game out of season I am sent to prison because I have violated a law, yet, it is clear that the aboriginal peoples have the right to pursue their culture and kill game out of season for their livelihoods and for food. So this has caused serious problems in terms of the laws that affect us.

Immediately after the constitutional talks broke down, our core funding was taken away, which was in the neighbourhood of $600,000 a year. That was taken away without even giving notice or without giving any indication that they were going to cut our funding. They also forced us to sign agreements on education and other programs that clearly take away any powers that we might have built up, or any kind of clear-cut recognition of our peoples' rights.

● (1610)

We have had other serious problems in terms of employment and economic opportunities. We are worried about those. Again, instead of our feeling that the Constitution may promote a better atmosphere in Canada towards our people, it has created exactly the opposite effect, to the point where the Prime Minister is reluctant to call a meeting, to the point where the provincial governments do not want to talk to us, to the point where everyone is saying that we must wait until the Meech Lake Accord is clearly understood in terms of what it means and what it will do. Only then will we be able to have a meeting with Quebec and the rest of the provinces.

Honourable senators, we are left to live under a non-profit corporations act. Many of you people must know what that is—that is a corporation that cannot make a profit. That, again, is a reflection of the welfare mentality of this country. It means that we are shareholders of a corporation that really does not exist, yet, we belong to an organization. We are aboriginal people struggling for our rights. Our organization is

far different from a non-profit corporation. Just yesterday, in Saskatchewan, a court ruled that our association does not really exist—the judge had the right to suspend our organization without even facing our people. He suspended our organization and transferred it over to another company—a company not of aboriginal people—to take control. You would never tolerate it if someone tried to do that to you here in Ottawa. There are laws that regulate Parliament and laws that regulate provincial governments, but there are no laws for us except those that say we exist under a non-profit corporations act.

I had the opportunity to meet Mr. Trudeau last June in Montreal, before he came to speak before the parliamentary committee. We had a long discussion about the constitutional rights of aboriginal people. I have also had some meetings with western premiers, including Premier Vander Zalm, by the way. I met with Premier Getty of Alberta, who has moved in support of the transfer of lands and some powers back to the Métis, under the provincial constitution of that province. We feel there is nothing wrong with that, that it is a move towards recognizing these rights, but what we want to see is a national amendment that recognizes the rights of aboriginal people to self-government and to our lands. That is important to us, as is our role in Confederation in the future. We want to make those things very clear.

We are prepared to go back to the table immediately. We have a letter signed by the four aboriginal leaders which clearly spells out the fact that we want to have a meeting, based much on the Meech Lake Accord, at which we could talk to the Prime Minister and the premiers. We have our principles clearly spelled out: first, effective recognition of the aboriginal right to self-government and to land, including waters, sea, ice and title within Canada; second, a commitment to negotiate implementation agreements on the powers and jurisdictions of institutions of self-government; third, constitutional protection of agreements consistent with existing protection in the Constitution for aboriginal and treaty rights; fourth, provisions concerning federal, provincial and aboriginal responsibilities for financing and resourcing self-government; and, fifth, provisions for ongoing constitutional reform on matters directly affecting aboriginal peoples, including other outstanding items in the 1983 Constitutional Accord.

We have an agreement and we are prepared to meet with the Prime Minister and the premiers to resume the talks and to make a deal much like the Meech Lake Accord. What has been asked of us over the past five years is to go to the constitutional talks and have all of the "i's" dotted and the "t's" crossed before any agreement takes place. Senators know very well from their experience over the years that you are not going to get that out of a group of politicians—that is something that has to be worked out. I think we have to agree in principle. Then our people at the community level or the regional level—the ones who will directly benefit from any constitutional agreement—will have to work out, first, the parameters of the land that they want to acquire for themselves, then the type of governing structure they want to set up, followed by the institutions and resourcing they want on those lands, and, of course, to clearly identify their membership. Our job is not to come before senators and try to tell you that "this is good for those of us in Saskatchewan" or "this is good for those of us in Ontario." We are telling you that we want an amendment that recognizes the right to self-government and the right to lands. That opportunity, once it is in law, will provide a process by which to negotiate at the community level or at the local level those agreements which should be constitutionalized as time goes on. In some cases that may take two years; in other cases that may take five or ten years.

In a sense, honourable senators, we are asking you for an amendment that will bring the government back to the table to deal with our people and to recognize our rights. We can put that in specific writing, if you wish, but we want you to make sure that the Meech Lake Accord does not go through without our rights clearly entrenched in it. We have been left out in the cold, and I do not think we will have a way back into Canada for the next hundred years if it is not done now. I do not think the Constitution will be re-opened in the future, and it is imperative that this be done now.

Mr. Chairman, I think we will leave it at that and go to questions, if that is your wish.

The Chairman: Thank you, Mr. Sinclair. Mr. LeClair, do you wish to add anything at this point?

Mr. Marc LeClair, Constitutional Coordinator, Métis National Council: I have nothing to add at this point, Mr. Chairman, thank you.

The Chairman: My first questioner will be Senator Fairbairn, followed by Senator Neiman.

Senator Fairbairn: Welcome, gentlemen. You have listed to us some five points delineating the framework for future discussion, since your constitutional process not only broke down but then was left completely out of the Meech Lake Accord. Have you had any response from government on the five points which you have joined with other aboriginal leaders in proposing?

Mr. Sinclair: We have received a letter from the Prime Minister that tells us he is going to refer our letter to Mr. Hnatyshyn, the Minister of Justice, and states that they are prepared to set up some meetings at some time in the future. We wanted the meetings with respect to our five-point letter, which we sent to the Prime Minister, held a month or so ago, and they have not yet taken place.

Senator Fairbairn: Have you had any discussions at all with government people since the signing of the Meech Lake Accord in the Langevin Block?

Mr. Sinclair: We have had no formal discussions, but, as I have said, I have had meetings with some premiers in various parts of Canada. Some I had to buttonhole; others would not talk to me. I spoke to Premier Peterson, who, at one point, said that he would try to set up a meeting with Mr. Bourassa in an effort to get aboriginal constitutional rights on the agenda again and try to work out a deal. But that is as far as it went.

It seems to me that every time we try to corner the Prime Minister, he just does not want to deal with us.

Senator Fairbairn: One of the suggestions made to us in this chamber was that until the aboriginal people have reached the point where an agreement is almost guaranteed another round of constitutional meetings would almost not be worthwhile. I would like to hear your thoughts on that. Flowing from those, if you do not have a constitutional process, can you think of any other process that could be started to achieve your ends?

Mr. Sinclair: First, we feel that we would like informal meetings with governments in order to talk about these principles. Once we had an agreement we would need a formal meeting to ratify that agreement. That is similar to the Meech Lake Accord. We are prepared to sit down with government or governments and talk about our principles and how we feel an amendment could come about as a result of these principles.

It is very clear that we do not want five more years of bureaucrats scrutinizing our ideas and coming back with really nothing more than stalling tactics. Everyone in Canada, I am sure, is well aware of the plight of the aboriginal people, just as everyone was well aware of the plight of Quebecers. It is time that it was put in the forum where it belongs, which is a meeting where we can decide if it is worthwhile calling the premiers and the Prime Minister together in order to make an agreement.

I do not think we need any more bureaucratic meetings of the type we have had in the past. I would not agree to another five- or ten-year series of meetings. That is a waste of taxpayers' money. We need a meeting to talk about our five principles, or an offer from the government that we can discuss, in order that we can reach an accord or an amendment for our people.

Senator Fairbairn: I have one final question. Did I understand you correctly to say that your five principles are those which have been agreed to by your association and the other national aboriginal associations?

Mr. Sinclair: Yes, the other national organizations have agreed to them.

Senator Fairbairn: Thank you, Mr. Chairman.

The Chairman: Next on my list is Senator Neiman, followed by Senator MacEachen.

Senator Neiman: Mr. Sinclair, you are president of the Métis National Council. Are you satisfied that government recognizes the Métis National Council as a legal entity for purposes of entering into constitutional negotiations?

Mr. Sinclair: I am not really the president of the Métis National Council. It is a federation of organizations. Each president that is elected at the provincial level by the ballot box is then automatically on the Council. I have been constitutional spokesman over the past number of years for the Métis National Council. That has been my role.

I think that we are satisfied to a point. We feel that it is the vehicle we can use for our discussions. It has provided us with a limited kind of participation, of course, because we do not have the money to reach the people at the community level. However, I would not use that as an excuse. I think it has been fair. We have had the kind of input into the discussions that we have wanted, but we have not had the results. We have had public support, particularly in Saskatchewan. A number of city councils from a number of cities throughout the province, including Regina, have supported our right to land and self-government. We also had support from the churches, including the Pope. We thought we had enough support to get an amendment, but the premiers backed down for one reason or another and would not agree to an amendment.

I do not think it is so much the Métis National Council. We have substantially enough support to use our Council as a vehicle to obtain our rights. After that, we will have to decide what kind of structures will best serve our needs.

Mr. LeClair: One of the issues that the Macdonald royal commission had to grapple with is, if the governments of Canada recognize that aboriginal peoples have a right to self-government, how will we structure future relations with Parliament, the Senate and the legislatures? That is an issue that undoubtedly we will have to deal with.

As Mr. Sinclair has pointed out, the fifth item that we are prepared to agree to with the other national groups and with the premiers and the Prime Minister is a provision for ongoing constitutional reform which would look at how we would structure the relationship within federalism with this third order of government.

Senator Neiman: What organization were you referring to when you said that the courts had recently suspended or refused to recognize an organization and had given control to another organization?

Mr. Sinclair: We were referring to the Association of Métis and Non-Status Indians. There is a group of people in Canada who are aboriginal people, and I am one of those people, where the term "non-status Indian" has been used. To me, that is a derogatory term, because there should be no such thing as a non-status Indian.

When Canada's Constitution came into effect, there was to be no such thing as a non-status Indian. You were either Inuit, Indian or Métis. Apparently that has not solved the problem. Therefore, there is an argument in Saskatchewan about some of the so-called non-status Indians belonging to a Métis organization, of which I am the president. We say that Métis have the right to organize their own people through Canada's Constitution, but, again, our people are demanding—and putting the demands on me as their leader—that any changes in our organization must have the involvement of the membership at an annual meeting and must have a ballot box to decide on the leaders.

There are some people who do not like what is going on and have gone to the courts and, through a court action, have said that they want to be the leaders. When someone can take over a leadership through the courts, or can find a loophole in the system, it makes a mockery of our type of democracy. We want a democratic organization; we want democracy within

the aboriginal movement; we want to try to promote that. In a way, that sets us back, but it shows the kind of vulnerability that we, as a people, have when we have to live under a non-profit corporations act.

Senator Neiman: You mentioned another episode where you said that you were forced to sign agreements regarding education and some other matters. Who forced you, and what were the circumstances?

Mr. Sinclair: Perhaps the word "forced" is the wrong word, but let me put it this way. If we did not sign agreements that were watered down, that gave the government control, for example—

Senator Neiman: The federal government?

Mr. Sinclair: —the federal and provincial governments the kind of control they want, we would not get an agreement. We signed an agreement with the federal government not too long ago for an economic development structure, where we could provide moneys to our people for small business and joint ventures. The document that came out of the negotiations consisted of 900 pages of rules and regulations.

When you have 900 pages of rules and regulations, you are almost like a puppet; someone has to pull that string before you can sign. The governments are saying they are legally responsible for the purse strings, and that is true. The law says that the federal and the provincial governments are responsible for the purse strings. We have a legal right to spend money and be accountable to our people, because for any contract that I sign or for any money that I spend at the provincial level, even though I am democratically elected by our people, I have to account to our people, and, at the same time, I have to account to the government which has given us a contribution to run our organization.

We are answerable to our people through a democratic process, but the government pulls the strings in terms of what we do with that money. So our people's needs are not met. It is the government contracts that have to be met. We are not really a government, in a sense. We are only contracted to do a job or a service for the government, and that has to change.

Senator Neiman: I would agree that, obviously, that would have to change. At some point I would be interested in getting more information on those areas to see if we could examine them further in one of our Senate committees.

Thank you.

The Chairman: Thank you, Senator Neiman. The next senator on my list is Senator MacEachen, followed by Senator Adams.

Senator MacEachen: Mr. Chairman, Mr. Sinclair stated that he wanted an amendment, or he wanted changes made, before the Meech Lake Accord went through. I believe those were his words.

Have Mr. Sinclair and his group made representations to any of the provincial governments and provincial legislatures? As we all know, the Meech Lake resolution has to pass all the provincial legislatures—it is precisely the same resolution that we are dealing with—and an amendment in any of the legislatures certainly would precipitate a new discussion. It certainly would put the question on the table if any one of the provincial legislatures accepted an amendment along the lines proposed by the witness.

• (1630)

My question is whether such representations have been made to provincial legislatures, and, if so, with what success?

Mr. Sinclair: The breakdown of the talks last year resulted in some anger amongst the aboriginal people, and you can well understand that, I am sure. From my own experience, I felt that I would never get the opportunity again to speak to Canada through that kind of communication. We said what was on our mind. As a result of being in politics for 30 years, I had a feeling of what would happen. So it was no surprise to me. But what I did not understand is why a government would choose not to speak to us over the next year—not to talk to us or address the issues. The Saskatchewan government chose to do just that. It never chose to open the door to have discussions in terms of our views or feelings of what could happen in order to get this back on track.

As you said, as much as we had an argument with Premier Vander Zalm, I was able to have a two-hour meeting with him in Victoria at which he clearly went through the constitutional issues and offered some ideas and support in some areas. We had the same opportunity with Premier Don Getty and other premiers across Canada, but in Saskatchewan they would never sit down and talk to us. So we are talking again about a government that has already passed the Meech Lake Accord in the legislature in Saskatchewan. The only hope that we have left is Manitoba, but we are not aware of how much influence we would have there. However, an election has been called, and we may have some influence in Manitoba. We will be having some discussions around that later.

When it comes down to the actual elections—and I think you are well aware of it here—our organization can go along federally, because we are a small minority and the federal government does not fear us, because we cannot make a change in Canada's politicians. But, at the provincial level, we can have more effect on the provincial legislature. Therefore, by cutting off communications with us they can effectively slough us aside, and we can only talk through the media. We do not think the media is the place to discuss our everyday issues; they should be discussed across the table with governments. We should be looking for solutions, but we do not find that that is the case any longer.

The Chairman: Thank you, Senator MacEachen. Next is Senator Adams, followed by Senator Marsden.

Senator Adams: It is nice to see you again, Mr. Sinclair. The last time I saw you was on the TV at the First Ministers' conference meeting here in Ottawa. You spoke so well that I felt that we would sell something for the aboriginal people. It is nice to see you again here in the Senate chamber.

You mentioned that you have met with a few of the provincial premiers and a number of premiers at the First

Ministers' conference when you wanted a deal on self-government. At that time they did not understand—that was about two or three years ago—what self-government means, but they should be able to understand it a bit more now. It sounds now like you have not met with them since the Meech Lake Accord came out about a year ago. Has there been any response that they will meet with your organization?

Mr. Sinclair: To me, it goes back to a fundamental question. How many people really understand the Meech Lake Accord? Nevertheless, people will take a chance on it and are prepared to face the problems that will arise from it. Likewise, how many people really understand free trade? You are talking about free trade, an agreement to deal with the United States, when our people in northern Saskatchewan, where 20,000 aboriginal people live, cannot even sell their furs or produce to southern Saskatchewan. For example, in the freshwater fisheries, they have to go through Manitoba. We are talking about not even being able to sell stuff from northern Saskatchewan to southern Saskatchewan.

When you start talking about free trade and the Meech Lake Accord, who really understands it? That is why these hearings are taking place, because we do not have an understanding. The aboriginal government is in much the same line. If I am to ask an Indian chief in Ontario what self-government means to him and his people, he will have a different answer from what a Métis leader in northern Saskatchewan might have. But it will be based on the same principle: they want the right to land; they want the right to govern themselves; they want to have that right clearly spelled out in Canada's Constitution; they are asking for a third level of government. Make no bones about it; they are asking for something more than a provincial government; they are asking for something more than a municipal government; they are asking for the right to have some economic control over what happens in their community and the resources from their lands; and they are asking for a democratic process. That is something that anyone can understand.

Because there is so much diversity in Canada, I cannot take a deal that will be clearly spelled out in Ottawa and superimpose it across Canada. I think we can clearly come with an amendment that recognizes the right to self-government and the land, and people themselves can then decide how they want to put that structure into place and how it will suit their needs, with the provisions that it will meet the people's needs in the community that they live in. The Inuit are a good example. They do not want exactly what Saskatchewan has. The amendment must recognize the right to self-government and the right to the land. If that amendment were there now, the Lubicon people, for example, would not be fighting in Alberta about not being able to get an agreement, because where would they go? Will they go to the Minister of Indian Affairs? They should have an amendment in Canada's Constitution that can tie their idea of self-government to that amendment through a process. That is what I believe should be done in terms of an amendment for Canada's aboriginal people.

Senator Adams: I have one more question. I think you know this, Mr. Sinclair, but after the Meech Lake Accord was introduced in the House of Commons and the Senate, Senator Murray said that it did not matter what they did—even what the joint committee of the House of Commons and the Senate suggested—that what we do in the Senate we still do today. He said that it did not matter who suggested an amendment, because the decision is up to the government of the day.

Do you still believe that, or would you like to see an amendment to the Meech Lake Accord? Do you still feel that we have some chance to have an amendment or change to the Meech Lake Accord?

Mr. Sinclair: I think we can. I think the accord should be open for improvements. When they brought in anything, or when they had early meetings, it was to approve the accord, to make it more acceptable and fairer to Canadians. We are asking for no more than improvements to the accord. I do not know whether anyone here can tell me this, but if there is no recognition of the rights of aboriginal peoples in Canada's new Constitution, then when will it be there? How much longer do we have to wait? The time is right now.

• (1640)

Even your own former Prime Minister, Pierre Trudeau, said a few years ago that in a democratic country the majority does not have the right to trample on the rights of minorities. Mr. Chairman, I have kept that image in my mind over the years and, in coming here today, I am saying the same thing to you. In fact, I try to talk like that even to our own aboriginal groups back home, where, in some communities, there may be a mix; there may be a few people who are not Crees, who are not Métis, or who are not Dene, and I have stressed that in order to be fair the communities must practise that kind of fairness across the board. After all, we are asking for that same fairness to be applied to us by the rest of Canada, and we, in turn, must do the same thing in our own communities. Therefore, we have tried to live by that. I took that statement to heart some years ago, and that is the way I feel about this country. A democracy cannot work if the majority is trampling on the rights of minorities.

Senator Adams: Thank you very much, Mr. Chairman.

The Chairman: Thank you, Senator Adams. Next is Senator Marsden, followed by Senator Frith.

Senator Marsden: Mr. Chairman, I will be very brief. Mr. Sinclair, my question follows on the very last remark you made about democracy and the rights of minorities. You have told us quite a lot this afternoon about the process which you have been through and the future process you can see yourself going through. I would like to ask for your comment on what is going on in these discussions with respect to the Meech Lake Accord. Some people are worried about the rights of women; some people are worried about the rights of aboriginal people, and so on. I am sure you have heard all of those arguments.

At a hearing before the Ontario Select Committee a couple of weeks ago the witness was asked: "What is more important, the rights of women or the rights of aboriginal peoples?" Also,

in other parts of the country people are being asked to divide in the same way: "Are you a Quebecer or are you a woman, and where do your priorities lie?"

With respect to the question of democracy and the rights of minorities, can you comment on that process? Are you experiencing it, and how do you answer it?

Mr. Sinclair: Senator, to put it in a nutshell, when you are on the outside looking in, first of all, we want to be Canadians; we want to be part of this country. However, full participation in Canada as Canadians has not really been granted to us.

Let me say at the outset that I have some arguments with women's rights groups, and I will make no bones about it. I have spoken to them and I have spoken with others. However, during the discussions on the Constitution, and dealing with the rights of aboriginal women and the problems that they have had, the thing that worried me in particular about the aboriginal women's movement was that they focused on women's rights—which was fair, and they received a lot of support across Canada. However, our argument was that our rights are so imposed upon that we need to broaden that support to include the rights for all of our people, because, within our aboriginal movement, we do not only have women's rights; we have the rights of our children. For instance, our children are being taken out of our communities and sent to the United States for adoption, where their families never hear of them again. This was done despite the fact that that kind of activity was actually against the law at that time. We have had children taken out of their homes and put into schools where they were forced to learn another language that was foreign to them. As a matter of fact, there was a great deal of argument amongst our own people as to whether that kind of activity was right or wrong.

At the same time, senator, with respect to your question, my reply is that certainly there is room for improvement with respect to women's rights. Certainly women's rights should be protected in the Constitution. Certainly there should be equality; we support that; there is no doubt about it. However, I think, again, you must ask yourself: How far do we go? As these hearings proceed, senator, I am sure you will find out just how far people will go.

We are saying that aboriginal people want to be a part of Canada. At this point in time we are looking for an answer to a very basic, fundamental question, and that is: Are we to be allowed to negotiate our way into Canada's Constitution, or are we to be left outside, in our own land? Do you intend to spend billions of dollars on the prisons, on the welfare institutions and on all of these make-work projects that do nothing for our people, or are we to finally make a deal where we can participate fully in Canada's economy, whereby we start working and we start becoming productive within this society and stop being used as a pawn to be pushed back and forth between the federal and provincial governments, as has been the case in the past?

Mr. Chairman, that is another thing: we are not recognized by either government, in a sense. The provincial governments have said, "The Indians and the Métis are a federal responsibility." The federal government comes back and says, "The Métis and the non-status Indians are a provincial responsibility." Therefore, no one will accept responsibility for our people. Neither can we get any sort of joint action, since each government insists that we are the responsibility of the other. So here we are, sitting out in limbo, because no one wants to make the first move to recognize the rights of our people.

Senator Marsden: Thank you. My point was that those are not mutually exclusive categories. In other words, no one has to choose between being one thing or another, and I take it that you are agreeing with that point of view. Whether you are a Canadian concerned about aboriginal rights or a Canadian woman concerned about aboriginal rights, the point is that you do not have to be divided in this way.

Mr. LeClair: Mr. Sinclair was referring to the Métis women, and the Métis women would say, "We want to put forward these issues." Of course, we wanted to concentrate on the fundamental issue of self-government, so we said to them, "The Métis, whether men or women, have not been recognized as having any rights. Let us work together to see if we can find some room in the Constitution for the future." That is the way in which we approached the women's rights issues within the mandate.

Senator Marsden: Thank you, Mr. Chairman.

Mr. Sinclair: I just have one other point. Within our movement, at our annual assemblies and our local meetings, we do not have very much argument from our women, because our women actually control our meetings. In fact, there are more women at our meetings than there are men, and they are far more active.

Senator Frith: There is a certain amount of equality there!

Mr. Sinclair: When it comes to the issues, our women are far more vocal, and they tend to hold our organization together, whereas many of the men try to break it apart. The women hold it together, and they are the backbone of our organization, and I have often said that.

The Chairman: Honourable senators, I should remind you and our witnesses that I have three more questioners on the list here and I believe that we only have until five o'clock to hear from these witnesses. The next questioner will be Senator Frith.

Senator Frith: There is probably not enough time in which to discuss what I want to discuss, but I will try. Mr. Sinclair and Mr. LeClair, I am very glad that you are here today, because I welcome the opportunity to discuss with you your fundamental concerns. I believe there is still much too much discrimination practised in this country against the native people, including the Métis. However, I am interested to explore with you the extent to which that is legal discrimination as opposed to covert and unacknowleged discrimination. That is why I would like to get some idea about the right to self-government.

I am not so much concerned about the structures; I understand that aspect. As your colleague has said, if the right to self-government is clear, one can work out the structures. What I want to understand is what is involved in the right to self-government. Is that a right that I have and that you do not have, or will it be a right that you will have and that I will not have?

Mr. Sinclair: Senator, that is not the way in which we look at it. As I said, we feel that we have been left out of Confederation and that someone else is making decisions for us. However, if we had self-government, for example, I would not spend $1.5 million on a jail in La Loche, Saskatchewan, a community where 2,000 people are living, 500 of whom are unemployed. Secondly, I would not build a jail next to the liquor store, and then take the people from the liquor store to the jail.

• (1650)

Senator Frith: But then maybe I would not either. So what I want to understand—

Mr. Sinclair: I am saying that this is happening.

Senator Frith: I appreciate that you want the right to self-government and that you think that we should put it in the Constitution. This is an important issue in our country. But is it a right that you feel that I have that you do not have, based on racial difference?

Mr. Sinclair: Yes, it is.

Senator Frith: Or, if you get that right, will you then have some rights because of your race that I will not have because of mine? I do not understand how it works in terms of how that right is acquired. What individuals will be able to stand up and say, "I now have the right to self-government"—only natives, or Métis as well? Who will have that right, and on what basis will it be founded, on race or what?

Mr. Sinclair: It will be founded on the basis that we are aboriginal people recognized in Canada's Constitution. It will be based on the fact that we are aboriginal peoples.

Senator Frith: Which means race.

Mr. Sinclair: Yes. We have a culture, we did have a culture, and we did have a way to govern ourselves. We were born in this country and we have remained in this country. We have had someone else impose their rights on us. The people who have come to this country from other places have participated in forming the laws that govern this country. We are saying that we have not been part of that process. For example, when you build a dam in northern Saskatchewan or, for that matter, in any part of the northern country, that dam takes away from the fishing grounds and hunting grounds of our people and thereby affects the right of our people to make a living. The benefits of that dam do not come to us. We really have a problem here.

This is the attitude of the Government of Saskatchewan. It does not respect our rights, simply because we do not have the power to vote that government out of office. That government can win more votes in the province by taking a redneck approach than it can by taking the approach of working along with us. Premier Devine made it very clear to us when he said, "Look, I can win an election by attacking you rather than sitting down and offering to help you."

Senator Frith: So if the government moves the dam on to my farm, that affects my rights too, does it not?

Mr. Sinclair: Yes.

Senator Frith: I think I understand your answer. When the newcomers arrived in this country, they not only deprived native people of the system of government that was in existence but imposed their system on the native people. You feel that at that time you had the right to self-government and that you should have that right again.

Mr. Sinclair: That is right. I can go so far as to say that I can stand discrimination as long as I have an equal opportunity. I have no quarrel with discrimination. However, I do not like racism, especially when it is economic racism. That is exactly the position in which we find ourselves. For example, people who have been successful in business do not have government bureaucrats running their businesses. Successful people in business have to make decisions. On the other hand, the people who come and run our lives do not know the first thing about business. They may have a master's degree in social work. So that person should not be able to tell me how to run my business. In other words, the government wants to account for the money it gives us rather than helping us to get established and becoming economically viable. There is a danger in allowing us to become economically viable, because we will then have certain powers. We may want, for example, more of a say in Canada's economy, and some people just are not ready to accept that fact.

Senator Fairbairn: Earlier we were talking about provincial legislatures holding hearings on the Constitution. I believe that, in addition to Manitoba, Ontario has embarked on the process, and some, if not all, of the maritime provinces have yet to make their decisions in their legislatures. Will your association try to involve itself in the public hearings as they exist in this process?

Mr. Sinclair: First, our organization represents the Métis at the national level. The Métis are found in northwestern Ontario and west. We do not have any chapters east of western Ontario. In organizing ourselves we mapped out the areas where Métis people could be found. Of course, those areas go over the border into Montana and North Dakota, but our organization is based on the Métis in the western part of Canada. Most of the action surrounding the rights of Indian people or aboriginal people has taken place in western Canada. I am sure that you are aware that, as treaties were signed across Canada, the treaties signed in the eastern part of Canada were very vague and really offered no control. As you go farther west, the treaties get better and the people involved negotiated much better deals. That is why I feel that British Columbia has not signed any treaties, because the Indians were getting smarter as people moved farther west.

Senator Fairbairn: What is really behind my earlier question is, if you want to get a constitutional amendment you will need the approval of the premiers of those provinces.

Mr. Sinclair: Yes, we will.

Senator Fairbairn: Are you going to get down there and tell them your story?

Mr. Sinclair: We have been lobbying them. In the past we have received strong support from many of the premiers. Before the last constitutional talks, we did a count and we were only short one premier. It was really the three western provinces that were against an amendment, along with Premier Peckford, later on, who was angry about fish.

Senator Marchand: Mr. Chairman, I would like to welcome James and Marc to this meeting. I am sure that all those senators who are not here today will read the record with great interest. I would like to get your comments on the "distinct society" clause for Quebec, on what that clause means for our people in general, and perhaps those in Quebec as well.

Mr. Sinclair: I think the people of Canada should be worried about that clause. Where does it end? How far can you go? Will it bring sovereignty association to the fore and suddenly re-ignite that whole issue? If Quebec has the right to a distinct society, why does not British Columbia have the same right? Is it putting the people of Quebec above other people in Canada, or is it putting the people of Quebec below other people in Canada? There are two ways to look at it. People may think that Quebec is less equal and that it needs special rights, or they may think that these special rights make Quebec a little higher than the rest of Canada.

Our argument is not so much with the "distinct society" clause. We have rights because we are aboriginal people. This is our homeland, and it will always be our homeland. We do not want to move away from this land. You do not see anybody wanting to hijack a plane to get out of Canada. We live here and our struggle is in Canada. As I said, Canada contains only 25 million people, yet, it is the second largest country in the world. There is land for everybody and there are opportunities for everybody. I think that now is the time to get those spelled out to avoid arguments in the future.

● (1700)

With the inclusion of Quebec, mathematically, our chances should be better in terms of getting a deal, but I am beginning to doubt if our chances are going to be any better unless you people are successful in getting something back on the table for our people.

Senator Marchand: You referred to discussions between the premiers and the Prime Minister in a way which would indicate that perhaps there was some horse trading going on. I am sure you are well aware of what is contained in section 91.24. As you know, that section gives exclusive federal jurisdiction over Indians and Indian land. I am also sure you are aware of the implications of that. Did you get the impression at those last two meetings that Mr. Mulroney was trying to deal us away to the provinces?

Mr. Sinclair: Oh, yes, definitely. I think Mr. Mulroney was trying to slough off the responsibility for the Indians. I think it would be a sad day if the Indians gave up the right to deal directly with the federal government.

In terms of the Métis, we were prepared to deal with both federal and provincial governments in order to make a deal, because provinces own a lot of the land we want and there are some powers in the provinces that we would like to have transferred to us. Of course, there are also some powers in the federal government that we would like to have transferred to us. Something has to be given in order for us to have some self-government. There has to be something clearly in the Constitution that recognizes that third level of government.

The Chairman: Thank you, Senator Marchand. That concludes the questioning. Mr. Sinclair and Mr. LeClair, on behalf of the members of the committee, I want to thank you very much for coming here this afternoon and sharing your views with us on this vital subject for all Canadians.

Mr. Sinclair: We are glad to be able to speak to you, because you have certainly been making the headlines in the last little while. We hope that you will bring our issue into the light where people can stop and reconsider the issue of aboriginal peoples' rights and their place in the Constitution. I am sure many of you are dedicated to the rights of all Canadians and that you will certainly not pass us by.

I am glad to see many familiar people whom I know from back home in Saskatchewan, including Senator Buckwold and others, and some of our people from the North.

I am glad that you invited us, and we appreciate being here.

The Chairman: Thank you very much.

Hon. Senators: Hear, hear!

The Chairman: Our next witnesses, the last ones for this afternoon, are from the Women's Legal Education and Action Fund, known as LEAF. We have with us Ms. Lucie Lamarche, chair, and Ms. Beth Atcheson, past vice-chair.

They have supplied us with a brief, which has been distributed to all of the members of the committee.

Pursuant to Order adopted on June 18, 1987, Ms. Lucie Lamarche and Ms. Beth Atcheson were escorted to seats in the Senate chamber.

The Chairman: I welcome you to our committee. Will both or only one of you be speaking?

Ms. Beth Atcheson, Past Vice-Chair, Women's Legal Education and Action Fund: We will both be speaking, Mr. Chairman.

The Chairman: Normally we like to spend 15 or 20 minutes on the introductory statement and then have some time for questions. Would you please proceed.

Ms. Atcheson: Thank you, Mr. Chairman. Honourable senators, women in Canada, throughout this century, have played an important role in the development of our Constitution. We have both challenged it and been challenged by it.

Obviously, we are here today to speak about why our experience with the development of equality rights for women convinces us, and should convince you, that amendments to the Meech Lake Accord are essential.

We accept that the decision to hear almost all of the national women's groups in the Submissions Group was made in good faith, but it is, to us, symbolic of the place accorded women's points of view.

The debate on the accord, particularly, but not exclusively, at the federal level, has been, in part, a struggle about the right to be heard in the constitution-making process. We appreciate the opportunity to be heard before the Senate. In our view, the joint committee did not do justice to the presentations made by the five national women's organizations who appeared before it. Starting from the point that the women had fears and the men had opinions, the report of the committee essentially restated the points raised by us and, in doing so, shifted the terms of the debate. Senator Forsey has pointed this out, as have others who have analyzed the report.

I think most of you will be familiar with what LEAF does. Essentially, we are litigators and we litigate test cases. In our statement we describe what those are. They are cases involving a breaking of new ground. We are particularly interested in cases involving double or multiple disadvantage—the situation where women are discriminated against not only on the basis of sex but also on other grounds.

We have been in the superior, trial and appeal courts of every province and territory with the exception of two. We have intervenor status in five major equality cases before the Supreme Court of Canada. We bring to you today a perspective on litigation of the types of matters raised by the accord.

In dealing with our cases we use a wide consultation process. Equality cases raise complex issues. They are also controversial both within our own community and within society at large. They require a very sure vision about the meaning of equality, because, when you go before the court, you have to make a very precise argument.

We think that the First Ministers did not approach the equality considerations of the Meech Lake Accord in this way, and that that very much shows. Our First Ministers indulged in the conventional exercise of adjusting federal and provincial powers in order to achieve what the Honourable Senator Lowell Murray has called "equality of the provinces," not simply the entry of Quebec into our constitutional family, as is often stated.

Apart from the broader political debate as to whether the accord, over all, is desirable, the Constitution is no longer a matter of a distribution of decision-making power, nor is it the sole preserve of the First Ministers.

Perhaps we could just briefly look at the development of equality rights in the Charter, because that explains why we come to you today and why we speak as we do on these issues. Basically, the struggle for women's rights can be divided into three phases.

The first is what we call the formal legal equality phase. It involved a removal of explicit distinctions in common law or statute law between men and women—such things as granting women the right to vote, the right to hold public office, and the right to participate in the professions. Of course, the Persons Case, which is particularly relevant to the Senate, was one of those cases. In the Persons Case the Judicial Committee of the Privy Council decided that, indeed, women were persons and could sit in the Senate. That was a change on the face of our Constitution.

However, we all know that, once you achieve formal legal equality, the subsequent steps do not necessarily follow. You simply have to look at the place women currently hold in public life in terms of their under-representation to know that.

The second phase is the struggle for equal opportunity. You will all be familiar with the conventional anti-discrimination codes which exist at federal and provincial levels. They are directed against individual instances of discrimination and, generally, have failed to address deeply-rooted and pervasive factors in society, which result in a lack of equal opportunity for groups defined by certain characteristics.

The Canadian Bill of Rights is an example of that kind of statute. Of course, there were two famous women's cases decided by the Supreme Court of Canada under the Canadian Bill of Rights. One was the case of Jeanette Lavell, who was a status Indian who married a non-Indian and lost her status as an Indian under section 12(1)(*b*) of the Indian Act. When the Supreme Court of Canada considered that case, it said, "Well, equality of opportunity means equality in the administration of the law, not in the content of the law."

● (1710)

There was the case of Stella Bliss as recently as 1978. She had a child, had returned to the work force, had been fired, sought subsequent employment, could not find it, and applied for UIC benefits—and what happened? She did not qualify. She was told that she could qualify only for pregnancy benefits; but, in fact, she did not qualify for them, because the qualifying period for pregnancy benefits was longer than that required for ordinary benefits. The result was that she could not collect any UIC benefits. The court said, "She was not discriminated against because she was a woman, but because she was pregnant." The court also said, "This is a valid exercise of federal power and therefore there is no discrimination."

It is against that backdrop that we had a presentation of the first version of the Canadian Charter of Rights and Freedoms in 1980, and I believe you will see, from what I have said, that women understood that they had to seek amendments to that first version, because it looked a lot like the Canadian Bill of Rights.

As many of you know, we obtained amendments as a result of the special joint committee hearings in February 1981. Over 1,000 women made their way to Ottawa to launch an historic lobby for the further strengthening of the provisions of the

Charter governing gender equality, with the result that section 28 of the Charter was introduced.

With the coming into force of the Constitution Act, 1982, which included the Charter, we entered what we see as the third phase of reform—which is the struggle for substantive constitutional equality rights; and, of course, LEAF was founded at that time.

An understanding of why we take the approach to the Meech Lake Accord that we do can be reached only if you appreciate, as we do, the lessons of that history. We have sought reform for more than a century. Progress is achingly slow and tentative. Broadly stated, legal guarantees are the beginning, not the end. The guarantees must be tested against real life situations and found useful or wanting. Women are often multiply disadvantaged. For instance, in the case of Jeanette Lavell the discrimination was based on sex and race.

We cannot rely exclusively on political or judicial remedies. The accessibility and the dynamics of both change over time, and the two spheres are interactive, not isolated.

Even if you resist the thought that governments act unconstitutionally, consider the number of cases in our history when they have been found to have done just that.

It is an insult, unfounded and undeserved, to suggest that the women's organizations and the individual women who have questioned parts of the accord seek to undermine the rights of others, including those who live in Quebec. What we seek is clarity—for governments, for courts, for our own communities—in how rights, should they come into conflict, will be balanced. We sought nothing less in 1980-81, and that is why we are here today.

The Supreme Court of Canada has yet to interpret sections 15 and 28 of the Charter directly and fully. However we may view the performance of the Supreme Court of Canada in Charter cases today, the simple fact is that we do not know how the court will interpret sections 15 or 28, and how it will relate those sections to section 1, which is the limitations clause.

Mr. Chairman, Lucie will continue the statement to the Senate.

[*Translation*]

Ms. Lucie Lamarche, Chair, Government Liaison Committee, Women's Legal Education and Action Fund: Although it is past five o'clock, I have been asked to take on the somewhat unfamiliar and technical task of presenting the views of an organization that is litigating before the courts of this country, using the Charter of Rights and Freedoms.

We would like to start by putting these views into perspective, and we hope we will then have a chance to explain the technical reasons for our reticence and our claims. Whatever the political outcome of the debate on the Meech Lake Accord, the Accord itself will have force of law and will be interpreted by the courts. Nevertheless, the controversy around the recognition of equality rights raises questions that must be analyzed in the light of the political considerations involved in the negotiations on the Accord.

The Minister of State for Federal-Provincial Relations, Senator Lowell Murray, and a number of officials of the Department of Justice, have tried to convince us on political grounds that the Accord did not affect rights guaranteed under the Charter of Rights and Freedoms and did not restrict their scope. However, the fact is that so far, the same department has claimed the exact opposite before the courts, and we would like to refer here to the case of the Yukon which is now before the Supreme Court, together with the dossier of the Northwest Territories. The Government of Canada never agreed to discuss with the women of Canada the legal issues we have submitted. In this connection, we feel that the real legal issue is the following:

What is the meaning and the scope of instructions given to the courts and contained in section 2 of the Accord, when at least one of the parties uses section 2 in a debate that raises a question relating to equality rights? The fact is, as far as the legal profession is concerned, nobody knows. LEAF is concerned on the basis of its experience before the courts. It is a fact that the party that initiates constitutional litigation involving arguments relating to the Charter of Rights and Freedoms plays a decisive role in two respects: in identifying arguments and identifying remedies. The respondents and the intervenors (we now have intervenor status before the Supreme Court) must respect the case as submitted by the party initiating the case, the principal applicant.

Consequently, the government's position, regardless of political statements in this regard and especially with respect to the impact of section 2 on equality rights, will not necessarily be a determining factor. Furthermore, on the basis of its experience before the courts since section 15 of the Charter of Rights and Freedoms became effective, LEAF has been able to observe certain patterns which seem rather surprising. For instance, majority groups have been the main source of applicants initiating litigation on equality rights, and mainly on grounds not mentioned in section 15, in most cases.

Finally, women have had to go before the courts more often to safeguard existing rights than to claim new ones. May I say that to this day minority groups and women do not necessarily control the testimony or debate concerning disputes where equality arguments are raised, not any more than the government does before the courts. Given these circumstances and faced with such uncertainty, to what extent must we rely on the courts? Besides, asking women to leave the matter to the courts shows limited knowledge of or again contempt for the psychological, political and financial investment women will have to make to stand close guard over the meaning and the scope of section 2 of the accord. As a last comment on this point we might recall that the general statement contained in section 2 of the accord does not allow one to say that the problem is strictly limited to Quebec. Section 2 can indeed be invoked both within and without Quebec. In fact certain authors claim that section 2 has its own institutional value organization and that linguistic duality would have precedence over the distinct society concept.

I would not want to wear out my welcome, but I need a few additional minutes to report on a judicial analysis of the Charter of Rights and Freedoms and the Accord. Court rulings on the Charter of Rights and Freedoms are complex because the Charter of Rights and Freedoms is itself a complex document. The meaning and scope of the guarantees included must be sought on the basis of an over-all analysis of the interrelation of the various rights, and this analysis necessarily includes section 1. Adding new interpretative concepts to such a young and complex document which is barely beginning to be interpreted by the courts is, in our view, courting danger. In this respect it seems to us that the standard of debate imposed on women since the spring of 1987 has not been as it ought to be. The issue is whether some of the Lesage provisions affect women's equality rights. We use the word "affect" because that is the word which appears in Accord section 16 which protects certain rights mentioned therein. Why, as a community, did we and should we still have to show proof that the Accord flies in the face of the right to equality? And yet that is what the government has always expected from us. It seems to us that such a political stance harbours its own sexist biases.

Equality rights rely only on section 15 and 28 of the Charter for their protection. These rights being excluded from the additional protection given by section 16 to other rights, such as the rights of the aboriginal peoples and multiculturalism, it seems to us that this creates a hierarchy where women are the losers. For instance, a restricted use of certain analogies between decisions on the rights of the native peoples and multiculturalism and the litigation concerning equality rights is to be feared. On the other hand, this might lead to litigation related to equality rights being viewed as less important or commonplace. We are concerned here with how the judiciary will view the rights which do not benefit from the additional protection given by section 16.

We believe that it is fair to say that the interpretation provisions contained in section 2 of the Accord will be submitted to an examination of the fair and reasonable nature of a restriction in the exercise of a right guaranteed by the Charter in a free and democratic society. However, we have to analyze the situation thoroughly and consider also that the additional protection given to certain rights by section 16 of the Accord will also be incorporated in the analysis of section 1 of the Charter. Consequently, the rights which cannot be undermined by section 2 of the Accord will have, as concerns section 1 of the Charter, as superior interpretative status to that of certain other rights, and especially equality rights.

In its report, the joint committee of the Senate and the House of Commons maintains that this possibility is not alarming since, in any case, section 15 of the Charter is already being interpreted in the light of all the rights which are set forth and guaranteed in this section and since striving for balance between all the rights set forth in the Charter is a common constitutional matter. This reasoning denies the obvious material fact that equality rights will be even more diluted and difficult to achieve as they will have to compete with the many additional elements that will have to be weighed.

On the other hand, we cannot neglect the use that the governments themselves will perhaps be constrained to make of the provisions of the Accord since, as we have already said, they are not always the initiators of such litigation. For instance, we find the weight given by the court to the basic constitutional compromise contained in section 93 of the Constitution Act, 1867, in the case of the referral of Ontario Bill 30 quite revealing. To our mind, the final question is why we should have section 16 at all. No valid explanation has yet been provided. Why does section 16 deal only with the protection of the rights of the native peoples and of multiculturalism? Why not also equality rights?

In this regard, we would like to quote conclusion 33 of the report of the joint committee of the Senate and the House of Commons, which can be found on page 144 in the English version:

> Many of the constitutional experts who appeared before us testified that Section 16 is unnecessary. Certainly it generates more heat than light.

Senator Frith: Did you say "unnecessary"?

Ms. Lamarche: I am quoting from the fourth line of conclusion 33.

> Adding section 28 of the Charter to it would accomplish little because section 28 only guarantees equal application to men and women of rights and freedoms referred to elsewhere in the Charter.

This is the end of the quotation from clause 28. The recommendation goes on as follows:

> But reaching into section 15 of the Charter to add gender equality rights to the "protected list" while leaving all other Charter rights "unprotected" would be even more arbitrary. What about religious discrimination? Freedom of expression? Religious freedom? Racial discrimination?

It appears to us that the use by the committee of the term "even more arbitrary" reflects the essentially arbitrary character of clause 16.

I will now yield to my colleague Ms. Atcheson who will add a few comments on the spending power and the shared-cost programs, and then will gladly share our conclusions with you.

• (1720)

[*English*]

Ms. Atcheson: Thank you. We have a broad view of equality. In fact, that broad view has caused us to also take a look at the provisions in the Accord on national shared-cost programs.

The current shared-cost programs, of course, cover a wide range of social programs. These programs are of particular concern to Canadian women who, in many cases, are the primary users of those programs. They include health care, social assistance, pensions, post-secondary education, job education and training, legal aid, public housing, compensation to victims of violent crimes, and young offenders. The existence

of and access to these programs is of particular importance to those women who are doubly disadvantaged, as these women are the poorest in Canada and the most in need of these programs and services. Moreover, Canadians are very mobile. According to Statistics Canada, each year one in seven Canadians moves within the province, and one in twenty Canadians moves between provinces. LEAF has been involved in litigating entitlement to and access to these programs, and the types of cases we have taken on are detailed in the brief.

We have three concerns that relate to clause 7 of the Accord. First of all, the term "national shared-cost program" is not defined. Currently there are a variety of fiscal arrangements in which the federal government contributes money in whole or in part to finance programs in areas of exclusive provincial jurisdiction. Is it intended that all of these schemes will be covered by clause 7? What will be a new program? To what degree will an old program reworked become a new program?

Second, the term "national objectives" is not defined. While it connotes goals, it does not necessarily include the concept of standards. By comparison, the immigration provisions of clause 3 of the Accord set national standards and objectives. Missing from clause 7, therefore, are any minimum or basic requirements of the provincial program to ensure a nation-wide safety net. LEAF recommends that clause 7 be amended to include national standards and objectives which shall include the minimum criteria of: public administration on a non-profit basis, comprehensiveness, universality, portability, accessibility on uniform terms and conditions, and provision of information on the operation of the program.

Third, clause 7 provides that the provincial programs or initiatives be compatible with the national objectives. The term "compatible" may merely require that the provincial programs or initiatives not be inconsistent with or repugnant to the national program, thereby allowing lesser and varied standards. We join with the National Association of Women and the Law in requesting that clause 7 be amended to ensure universal coverage of high standards throughout Canada.

In short, our recommendation is that to accept the Accord in its current form is to condone the process by which it was developed and to launch Canadians on a constitutional pattern which threatens the integrity of equality rights in unpredictable ways. A "round" for one set of interests and then a "round" for another set of interests, and so on, will simply ensure that equality-seeking groups will spend their energies addressing shifting agendas set by others. In reality, protection of equality rights is not divisible into rounds.

If our commitment to equality rights in this country is genuine, then let us reflect that in the Accord. Let us, at the very least, add sections 15 and 28 of the Charter to section 16 of the Accord, and add the minimum criteria stated above to section 7 of the Accord. We request that the Senate make and actively pursue such amendments. We would be pleased to take questions.

[*Translation*]

The Chairman: Thank you, Ms. Lamarche and Ms. Atcheson. Listed here is Senator Frith, followed by Senator Marsden. Before inviting them to put questions, I would like to ask one myself.

Some women's groups or some French-speaking women in Quebec have a different attitude from certain women's groups outside Quebec. We have been told: Why are women outside Quebec so concerned with the situation in Quebec, when Quebec women are not? What are your comments on that?

Ms. Lamarche: We should be to blame if we could not comment on or answer that question. I would like first to emphasize anew that I know of no national associations in any way disagreeing with the concept of distinct society, and more so of distinct society than language duality.

First, I am using the term "concept" because I know how vague the literature is on what could be its specific content. Second, we are aware of and have opposed the position taken by some Quebec associations, especially the Fédération des femmes du Québec, which basically made two points: first, that the concept of distinct society on the cultural level would reflect a certain feminist culture. Second, that on the matter of equality rights, the distinct society concept is neutral. On behalf of my organization, LEAF, I would like first to comment on those two points before delving on the dichotomy Women inside Quebec vs. Women outside Quebec.

As to the feminist cultural component which should be specific to Quebec, we claim, and we are not alone in doing so, that if Quebec women have effectively benefitted before other Canadian women from what my friend Mrs. Atcheson called the formal expression of equality, from legislation which apparently were no longer sexist or biased, Canadian women, however, could not aspire, on the sole basis of the existence of a Quebec Charter of Rights and Freedoms, to more concrete and effective equality or, expressed in a negative way, to fewer damaging effects in terms of discrimination or inequality.

• (1730)

As to the neutral nature of the concept of a distinct society from the view point of the right to equality, we are looking at things from a legal angle, that is to say, that I do not know of any women's associations or even representatives of other Canadian interest groups which could decently believe that the Quebec Government would invoke *a priori*, for a legislative purpose or in a legal action that it would initiate on its own, the notion of a distinct society which would deny the right to equality, but we know for a fact because we are before the courts that the Government of Quebec would likely react to a dispute initiated by some interest group, in Quebec, since we are dealing with the notion of a distinct society. Based on legislation of which it would have imagined the objectives and implementation, it is not unlikely that in the end there would not be this possibility that the government or another interest group involved in a dispute tried—I repeat, tried—to oppose or rate this interpretative notion of a distinct society to motivate or justify the rationale of a restriction to a right such as the

right to equality. It should be understood, therefore, that if we are concerned, we are not concerned about the intention of the Quebec legislator, but about the very dynamic of a legal initiative in a dispute dealing with equality rights. I apologize if I was long in answering your question, but I tried in one shot to cover all its aspects. Now, let us deal with the dichotomy: Quebec women—women outside Quebec.

As you know, Mrs. Lysiane Gagnon is one of the women who have managed to express particularly well this view which, as they said, favoured and suited quite well women and feminists outside Quebec. As we indicated in our remarks, section 2 of the Accord does not cause any problem to the right of equality except for Quebec women. Some famous legal experts have claimed that the linguistic duality, because it is otherwise present in our constitutional structure, would prevail just the same in terms of organizing into a hierarchy or authority on the notion of a distinct society.

It should be understood, therefore, that on both parts, the interpretative notions introduced by section 2 of the Accord are notions which qualify this constitutionally enshrined right which is the right of equality, because we are not claiming a new right. The right to equality is something that we have acquired and Mrs. Atcheson has very well explained how. I do not know many Canadian women who are not aware of the hard battles which were fought to acquire the statement which is section 28 of the Charter.

We have already acquired these rights, and Canadian women generally—with respect to any of the interpretative statements in section 2 of the Accord—are concerned about the colouring. To my mind, that is a false antagonism and a dichotomy which have indeed served the government in our case.

It is false to say that women in Quebec must be opposed to women outside Quebec. What must be judicially questioned is the interpretative shading of section 2 of the Accord with respect to the already acquired right to equality.

The Chairman: Thank you. I will now proceed according to the list of senators who want to ask questions. First Senator Frith, then Senator Marsden.

Senator Frith: Thank you, Mr. Chairman.

I have two questions and, in a way, the chairman has asked the first one; anyway, I got the answer to that first question.

[*English*]

My second question deals with page 5 of your brief. I would like to give Ms. Atcheson an opportunity to explain something. At the bottom of page 5 it says:

> We cannot rely exclusively on political or judicial remedies: the accessibility and the dynamics of both change over time and the two spheres are interactive, not isolated.

Just to take the first part of that statement, "We cannot rely exclusively on political or judicial remedies," I take it by that you mean you also have to address legislative remedies.

• (1740)

A judicial remedy can be found for constitutional injustices, but what remedies are neither political nor judicial, except legislative? Is that why you are here, because you are wanting to address the legislative?

Ms. Atcheson: I would shelter legislative under small "p" political. If you take a look at what is currently happening with the aftermath of the Morgentaler decision, it very much shows there, and it shows in the debate around the Accord. During the early part of the debate the governments took the position, "We didn't intend to do anything. We tell you politically and we tell our legislatures that we did not intend to infringe any Charter rights, and we go further, in fact, and say to Canadians that this will not happen."

We cannot put our eggs in that political basket or in that legislative basket or simply on the face of the law, because at some point that law may go into court. Alternatively, we are not prepared to say, as the joint committee did, let us just let it go off to the courts.

Senator Frith: It means that we cannot rely exclusively on political or judicial remedies.

Ms. Atcheson: That is right.

Senator Frith: There are all sorts of other remedies such as military, and I wanted to be sure I understood what you meant. This implies you might be pushed beyond either political or judicial remedies, but that is not what you mean.

Ms. Atcheson: Well, one never knows, does one?

Senator Frith: What might you be pushed to, then, that would be neither political nor judicial?

Ms. Atcheson: In our organization we exist to do litigation. Anything beyond that would be outside our jurisdiction. We have to be careful about this, because, in large part, we are saying that we have to have a series of safety nets.

Senator Frith: Beyond the political or judicial ones? What, for example?

Ms. Atcheson: We are not saying that. We are saying that we essentially have two baskets here in the way that our laws are made and interpreted. They are made in the political sphere; they are interpreted in the judicial sphere. Those are the two spheres in which we are working. We cannot choose between one and the other. We cannot be content with the political statements, nor necessarily can we be content with having access to the judicial system.

Senator Frith: I understand. You are not suggesting something beyond political or judicial. You just cannot rely exclusively on one at a time.

Ms. Atcheson: That is correct.

Senator Marsden: I would like to come back to some of the issues that have been raised in questions previously this afternoon. Just before you appeared, we heard from the Métis National Council, whose rights and claims have been set against those of other groups. Both of you know that recently

in front of the Ontario Select Committee a group that was appearing as witnesses were asked, "What is more important, your rights as women or the rights of aboriginal people?" You are very familiar with the history of women's struggle to gain rights. You have described it in your brief.

Could you say more about the divide-and-conquer strategy that has poisoned the process of constitutional reform in 1981-82 and again in 1987-88?

The chairman's question earlier raises another of the divisions: Quebec women versus women outside of Quebec, which is a false dichotomy and is neither empirically nor ideologically correct.

Ms. Atcheson: From our point of view, we look at the way courts make decisions. The courts make decisions from a broad base of previously decided cases or precedents. Whether one case may have been an aboriginal case or one case an equality case, doctrines are picked up and moved about. The court is very conscious in interpreting equality rights. I believe that we will clearly see this when we see the first section 15 case come from the Supreme Court of Canada. The court is very conscious of finding a way to balance, because they know that they do not have the luxury of one doctrine for one group and one doctrine for another group. They have to find a way to allow all of those groups that have legal protection to enhance their rights.

The problem with the false dichotomy—and it comes up in a number of ways—is that, if you look at Quebec, for instance, we do have a national legal system. Our courts are going to be looking at cases from all across Canada and deciding any single case. If you look at the major section 16 case before the Supreme Court of Canada now, there are decisions from three provinces that have found their way to the Supreme Court of Canada and are now being looked at by the Supreme Court of Canada to answer critical questions under the Charter. In looking at our national legal system, our courts do not choose. We cannot choose when we argue, and, therefore, to look at the accord that way essentially denies the reality of our national legal system.

It is easy to say to all of these groups, who have very limited resources, that somehow it is our job to do the integrating, that it is our job to essentially hold the constitutional conferences where we find the ways to bring all of these issues together. In fact, there are networks, and these groups do communicate. But that is the government's job to do that and to find a way to integrate those interests.

Senator Marsden: And politically, of course, to make them look as though they have opposing interests when in fact they do not.

I believe you may have had the chance to look at earlier testimony from this committee. Last June the Honourable Jack Pickersgill appeared in front of us. In response to a question that I raised about Charter rights and concerns of women he dismissed the "fears" of women on the grounds that no legislature in this country had ever legislated against women's rights since women got the right to vote.

[*Translation*]

Ms. Lamarche: Senator, I find that question very interesting because a moment ago my colleague Ms. Atcheson explained that indeed we have crossed the threshold of the expression of formal equality.

I believe that since we secured the right to vote it would have been outrageous to introduce new laws to categorize the rights and benefits one might get out of such legislation on the basis of sex.

However, that is not the meaning of equality. Equality and the right to equality go beyond the antidiscriminatory norm and call for laws or practices which do not affect the right to substantial equality and not only the procedural appearance of equality.

Canada has definitely moved into the era of substantial equality, on one hand, and the era of the search for discriminatory effects, on the other. It goes without saying that the search for discriminatory effects must be maintained at all costs. To put it another way, anything which otherwise colours the right to equality may affect this research and has to be, by definition, hazardous.

● (1750)

[*English*]

Ms. Atcheson: If I may also respond to that, we have said that there are few cases in our legislation where there is a distinction in the actual words in the legislation between men and women. One of the last remaining examples were the name cases, the provincial statutes that essentially prescribed how children could be named relating to the mother and father. In fact, LEAF's early cases were challenges to those explicit distinctions on the face of the statute.

To take the position that Mr. Pickersgill has taken essentially denies about 15 years of scholarly and practical understanding of discrimination and equality. If you look at something like the Canadian Human Rights Act, the federal statute, it recognizes that there is such a thing as systemic discrimination, adverse impact, adverse effect. In fact, it is where a provision may not distinguish between men and women, blacks and whites, or new immigrants and Canadian citizens, but in its application, or even in the way that it is administered, it clearly impacts on one group more heavily than another to deny them something.

There have been studies done by organizations that were done at the time that section 15 was brought into law. Statutory audits were done to go through the statutes of Canada, Ontario, British Columbia and Manitoba, which pointed out case after case after case of discriminatory effect in legislation. With respect, I think that opinion is unfounded.

The Chairman: Thank you very much, Senator Marsden. The last person on my list is Senator Bosa. Senator Bosa, I must remind you of the clock. At six o'clock I have no choice under the rules other than to rise. Please be brief.

Senator Bosa: I appreciate the generosity of my colleagues in giving me two whole minutes to put my questions.

Senator Frith: Don't mention it!

Senator Bosa: I wonder if I understood the witnesses correctly when they stated that they want to see sections 15 and 28 of the Charter of Rights inserted in section 16 of the Accord, and if they are aware that the ethnocultural communities have grave reservations about this section. Notwithstanding the fact that section 27 is included in here, they do not feel that they have the same protection that they would have had prior to the introduction of this Accord.

Ms. Atcheson: We made our position clear, to say at the very least, that section 16 is a Pandora's box. We do not know why it is there. We have heard a number of reasons from the government about why it is there, though. It troubles all of the equality-seeking groups not only because the way it is currently worded it seems to suggest a hierarchy of rights, that some groups are more protected than others, but, more fundamentally, because it is difficult to predict what it actually means. What does "affect" actually mean, that these rights or clauses will not be "affected" by the Accord? It is not a standard with which we have any legal familiarity.

We would be pleased to sit down and discuss with the government all of the aspects around section 15, including the ones that you have raised. We have not been prepared to say, "Take it out," because to say "Take it out" arguably would take some protection away from groups that have it already. Our approach has been to say, "Augment it," or, alternatively, "Let's talk about a whole other approach to the drafting of the Accord, given what the government appears to want to achieve."

The Chairman: We have reached the time when I will have to either call the committee to rise or end the questioning.

I am sorry. There are no doubt many more questions that we could ask you. We thank you very much for coming to be with us today and sharing your views.

[*Translation*]

You have been a great help to our committee. On behalf of all my colleagues, I thank you.

[*English*]

Is there a motion that the committee rise and report progress?

Senator Frith: Mr. Chairman, I move that the committee rise, that the chairman report progress and ask for leave to sit again.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Acting Speaker: Honourable senators, the sitting of the Senate is resumed.

REPORT OF COMMITTEE OF THE WHOLE

Hon. Gildas L. Molgat: Honourable senators, the Committee of the Whole, to which the Meech Lake Accord and texts subsequently agreed to were referred, reports progress and asks for leave to sit again.

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

Hon. Senators: Agreed.

The Hon. the Acting Speaker: Honourable senators, when shall this committee have leave to sit again?

Senator Frith: Honourable senators, I move that the Committee of the Whole be given authority to sit again on Wednesday, March 23, 1988.

Motion agreed to.

BUSINESS OF THE SENATE

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I ask that all remaining orders, inquiries and motions stand.

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

Hon. Senators: Agreed.

The Senate adjourned until tomorrow at 2 p.m.

APPENDIX

(*See p. 2818*)

TEXT OF THE ADDRESS OF MR. JEAN-GUY LEGAULT, PRESIDENT OF THE EDOUARD-MONTPETIT FOUNDATION, AT THE PRESENTATION OF THE EDOUARD-MONTPETIT MEDAL TO SENATOR ARTHUR TREMBLAY ON WEDNESDAY, MARCH 2, 1988

March 2, 1988 will remain one of the most memorable days in the history of the Édouard-Montpetit Foundation. We are, at this very moment, writing an immortal page of history. And it is indeed an historic moment, this evening, when the Speaker of the Senate, Senator Guy Charbonneau, bids us welcome to the Senate of Canada.

The Foundation's Trustees are most grateful to the Speaker of the Senate for generously agreeing to preside over the presentation of the Montpetit Medal in the Senate's Red Chamber to Senator Arthur Tremblay, in the presence of members of the Senate, the House of Commons and other guests.

The Trustees are aware of the very important role played by the Senate since the Fathers of Confederation established this honourable chamber in 1867. Canada became what it is today because through the years senators and members of the House of Commons have worked with great dedication to help build this country with their fellow citizens.

We are delighted to have this opportunity today to take an active part in this award ceremony. By paying tribute to one of your number, honourable senators, we are honouring you as well, on both sides of this chamber.

A former Prime Minister of Canada, Sir John A. Macdonald, said in referring to the Senate: "It is indeed a Chamber of reflection". Much has been written about the Senate and Senate reform, but the conclusion is always that the Senate should continue to exist.

In 1920 the man whom His Eminence Cardinal Jean-Marie Rodrigue Villeneuve named as one of the five most important initiators of change in French Canada, established, at the request and with the blessing of Monsignor Georges Gauthier, a school of social, economic and political science for young French Canadians.

With the help of his contemporaries, this forerunner of the Quiet Revolution started the school which was to become part of the university later on. It was to provide a focus and stimulus for professionals in various fields, for journalism, diplomacy, and later on economics, social science, tourism, labour relations, and so forth.

Édouard Montpetit, a defender of women's rights who was ahead of his time, knew that French Canada needed an elite and that this elite must include men of action. It meant that the school had to open broader horizons and explore new avenues.

We remember that for thirty years, Édouard Montpetit was Secretary General of the University of Montreal. With tremendous dedication he made the University of Montreal known throughout the world. We are reminded of the words of tribute spoken by the President of *La Presse*, Mr. Roger D. Landry, on June 18, 1984, when he too received this important award, and I quote: "This mission was to convince the public that economics was important as a philosophy and as a science, a concept he carried with him throughout his life". Mr. Landry went on to say: "...he dedicated his life to this mission. And today we see the results in the status Quebec has achieved in the business world, in finance and economics. We see the importance of economics as a discipline in our institutions. A monument has been erected to his memory opposite the University of Montreal, but there is another monument, a living monument that today rises on the foundation he himself laid down."

He was often asked by the Canadian Government to represent Canada abroad by giving lectures on Canada at the Sorbonne, in Brussels and elsewhere.

A biography of Pierre Péladeau, President of Quebecor Inc., includes several pages where we read the speech made by M. Péladeau on December 1, 1985, upon receiving the Montpetit Medal, and I quote: "This is a great honour, because I have always admired him. As we all know, he was energetic and fearless, and today, his ideas are as modern and lucid as they were at the time. Édouard Montpetit had some rare and very accurate insights about his people, its situation in the world and how its economy should be directed ... Back from France and steeped in law and literate, he said that he came back to his country like a colonist. He felt it was imperative to examine its economy, but lacked the scientific infrastructure on which such investigations could be based. Nevertheless, he had the courage and indeed the temerity to establish the School of Social and Political Science, together with his collaborators".

Through his writings and his books, his lectures and his personal life, Édouard Montpetit sent us a message of hope by leading us along this path. He said proudly: "I have confidence in the destiny of my country." Since 1911, his major concern was international relations. He insisted to anyone who would listen that Canada's economic future would depend on its borders being sufficiently open to the movement of capital and goods. This great economist had a very progressive view of our future. In his book "*Sous le signe de l'Or*", Montpetit insisted: "First open the borders: allow for free movement of persons

and goods ... ", always of course in accordance with the laws of the country.

Already in 1941, Édouard Montpetit emphasized the importance of accepting the Canadian situation, and he believed in a Canada where our two cultures could develop together. He had always alerted young French Canadians to the problems that were important in this country.

His faith in the future has since been vindicated. On November 8, 1945, forty-four years ago, the Édouard Montpetit Foundation was established. Its purpose was to perpetuate the name of this great French Canadian and to promote the advancement of social sciences by granting scholarships and by creating the Édouard Montpetit Award which is given once a year to a deserving student selected by a jury. Finally, the Board of Directors, on recommendation of a jury, awards the Édouard Montpetit Medal of Excellence to individuals who have played a role in one of the fields pioneered by our founder.

As a posthumous tribute to our founder, Édouard Montpetit, let us recall the following words included in "*Présences*", a veritable song of the Earth: "Look at the world around us. Let yourself be impregnated by the essence of creatures and things. Become increasingly familiar with the realities of your country. You will learn to know what your country means. Once we know what our country means to us, we will begin to love that country. We will make our mark on its soil and sing its praises in our work. We will seek its challenges and distill the essence of a CANADIAN FRIENDSHIP that will keep and preserve our patriotism. Our culture is our strength. We will keep that culture and make it a national strength. Our language and our spirit will reflect that strength, both reflecting our culture as plants reflect the vigour of the earth."

TRIBUTE TO SENATOR ARTHUR TREMBLAY

It is with heart-felt emotion today that we trustees of the Édouard-Montpetit Foundation, in the Red Chamber of the Canadian Senate, want to pay tribute and express gratitude to the Honourable Senator Arthur Tremblay for the role he played in education in Quebec, and in the constitutional field in the Senate in Ottawa.

In a few minutes, as President of the Foundation I will have the distinguished honour to present the Édouard-Montpetit award of excellence to this outstanding academic, to this Canadian senator who has devoted his life to serve the Canadian and Quebec communities.

Senator, you belong to this very active generation of people who have given the best of themselves to serve this human community to which we all belong. Whether it was at Quebec City's Laval University with the Very Reverend Georges-Henri Lévesque and all the other brave soldiers who were then at the university; whether at the Department of Education of the belle province of Quebec; whether in Canada's Upper Chamber with all your Canadian Senate colleagues, you and your team mates led the good fight to build this great country, this great Canada.

In a few minutes you will be joining the prestigious group of Canadians who have been awarded the Édouard-Montpetit Medal: then Montreal Mayor Jean Drapeau, the Very Reverend Georges-Henri Lévesque, His Excellency D'Iberville Fortier, the late Justice André Montpetit, Pierre Péladeau, Roger-D. Landry, Mr. Justice Albert Mayrand, Pierre Laurin, Roger Charbonneau, the Honourable Thérèse Lavoie-Roux, Germaine Cornez, McGill's Paul-André Crépeau, Paul Lacoste, and the late Roger Duhamel.

With so many outstanding achievements to your credit—and the selfless support of your charming wife who has always been by your side, as she would be—you certainly deserve the Édouard-Montpetit Medal. Senator Tremblay, the leading role you played in all these fields eloquently attests to your qualifications.

Arthur Tremblay, member of the Senate, please accept this award of excellence for everything you have done in our homestead of Quebec and in this Canadian land, as well as this honorary degree in appreciation for what you have done for your fellow citizens and for the economic development of French Canadians.

Senator, your commitment, your dedication and your humanitarian spirit have always conveyed a message of pride, a message of love and hope to all your fellow Canadians and your fellow Quebecers. To you we say: *Ad multos annos*. May you have many more years of dedication and service to the people of Canada. You are following in the footsteps of Montpetit, the mentor of an entire generation.

(The text of the remarks of the Speaker of the Senate and of the Honourable Arthur Tremblay appears on pages 3820 and 2821 of *Debates of the Senate*, Thursday, March 3, 1988.)

THE SENATE

Thursday, March 17, 1988

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

Prayers.

[*Translation*]

THE HONOURABLE YVETTE ROUSSEAU

NOTICE OF DEATH

The Hon. the Speaker: Honourable senators, it is with deep regret that I have to inform the Senate of the death of our colleague, Senator Yvette Rousseau, who passed away this morning in Montreal's Saint-Luc Hospital.

In remembrance, I ask all honourable senators to stand and observe one minute of silence.

The members of the Senate then stood in silent tribute.

The Hon. the Speaker: Honourable senators, according to tradition, we shall adjourn immediately. Before doing so, I would like to give the following details: visitors may pay homage in Montreal, tomorrow, March 18, from 2 p.m. to 10 p.m. at Urgel Bourgie funeral home, 5650 Côtes des Neiges Road, then, on Saturday and Sunday, March 19 and 20, from 2 p.m. to 4 p.m. and from 7 p.m. to 9 p.m., and also on Monday, March 21, at 11 a.m., at the Coopérative de l'Estrie funeral home, 1011, Galt Street West, in Sherbrooke.

The funeral service will be held on Monday, March 21, at 2 p.m., in Sherbrooke's Cathedral.

Donations to the Yvette Rousseau Fund, University of Quebec in Montreal, 385 Sherbrooke Street East, Suite 850, H2X 1E3, care of Mr. Pierre Parent, Director General, would be appreciated by the family.

Senators will have an opportunity to pay tribute to Senator Rousseau on Tuesday next, March 22.

[*English*]

ADJOURNMENT

Leave having been given to proceed to Notices of Motions:

Hon. C. William Doody (Deputy Leader of the Government), with leave of the Senate and notwithstanding rule 45(1)(*g*), moved:

> That when the Senate adjourns today, it do stand adjourned until Tuesday next, 22nd March, 1988, at two o'clock in the afternoon.

Motion agreed to.

The Senate adjourned until Tuesday, March 22, 1988, at 2 p.m.

THE SENATE

Tuesday, March 22, 1988

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

Prayers.

[*Translation*]

THE LATE HONOURABLE YVETTE ROUSSEAU

TRIBUTES

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I want to take this opportunity to say a few words and pay tribute to the memory of our colleague Senator Yvette Rousseau.

First, for your benefit I might recall a few biographical notes. She was born in Quebec's Kamouraska County. She was married in 1935 and is the mother of eight children.

She was educated at the École normale of the Sisters of the Holy Rosary in Rimouski; in 1964 she received a degree in economics from the Labour College of Canada. She also took economics at the University of Sherbrooke.

She first worked as an elementary school teacher in 1934. In 1948 she returned to work to provide a source of income for the family after her husband became disabled as a result of illness. She took a new job in 1952 when her family moved to Coaticook.

After 1952 she became involved in the labour movement. In 1953 she was elected vice-president of the Confederation of National Trade Unions, the first woman elected as a labour executive, a position she held for five years.

Her activities took her outside the trade union field, and she took a liking to the various aspects of community life. From 1967 to 1972 she was in charge of customer education at Sherbrooke's regional union of the Caisses populaires Desjardins.

Senator Rousseau was deeply involved in women's issues. I should think that several of my colleagues will have more to say about that aspect of her life and of her career which was so important to her, to Canadian women generally, and to Canada as a whole.

During her life, Senator Rousseau received many distinguished awards. In 1955, she received the Bene-Merenti medal for her work in the labour movement.

In 1973, a prize bearing her name was established. The Prix Yvette Rousseau is a literary distinction awarded annually to women whose works focus on the family, individual rights and responsibilities, women at work and education. Senator Rousseau was honorary president.

Her belief in a united Canada was profound, witness the following passage from her maiden speech in the Senate on April 15, 1980. Before quoting from her speech, however, I would like to stress one aspect of her career which made a tremendous impression on me. I am referring to the "yes" or "no" question during the referendum on sovereignty-association. Some of us may recall that militants who supported the "yes" campaign said as a form of ridicule, that Quebec's "Yvettes" were in favour of the "no" option. The name "Yvette" was used as a put-down.

At a meeting advertised as the "Rallye des Yvette", Senator Rousseau stood up in front of a large crowd and said: "Yes, the "Yvettes" are in favour of the "no" option. My name is Yvette and I am for Canada and against the separation of Quebec." This was typical of her whole life and the way she could turn a negative situation into a positive one. Her role in this struggle for a united Canada reflected the lifelong support she gave this cause.

I would now like to quote from her first speech here in the Senate:

> I believe that Canada is not only a matter of federal or provincial programs or jurisdiction. I always believed that it is possible to unite the ten provinces and territories for the benefit of everyone and that the best way to do it was and will be, our federative system, until proven otherwise.
>
> Many years ago, when I was a young teacher in small rural schools of the lower St. Lawrence I was proud to teach and explain the motto of Canada, not only the meaning of the Latin words *A mari usque ad mare* but particularly that they mean more than the literal translation. I hope that the same things were taught in the schools of all other provinces and that today the real meaning of our motto is still explained to children even more forcefully.

Honourable senators, to get back to the subject of "yes" or "no"—

[*English*]

—if it had been up to us to decide whether or not Senator Rousseau should stay with us for many more years, and were the question asked, "Shall she leave us?", our answer would have been a resounding "No!" Yvette Rousseau played a very important role in Canadian life and certainly in the Senate. We are all very proud of her, and we shall truly miss her, as will our fellow Canadians.

[*Translation*]

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, it was with considerable emotion that we learned of the passing of our dear colleague Senator Yvette Rousseau.

As of the moment she was appointed to the Senate, Senator Rousseau gained the respect of each and every one of us.

During these many years, we had ample opportunity to appreciate her dedication and selflessness. She demonstrated these qualities at every step of her career. She was both a great Quebecer and a great Canadian. She was the living proof that it is possible to base a public career on essentially human qualities.

Senator Rousseau had exerted her influence in several areas of activities. Actively involved in the labour movement, she had first assumed the duties of Vice-President of the Canadian Federation of Textile Workers, and then those of Vice-President of the National Trade Unions. In 1953, she wrote a book on night work by women in factories. As Senator Frith pointed out earlier, Senator Rousseau was a founding member of the *Fédération des femmes du Québec* and President of the Quebec Council on the Status of Women and also a founding member of the Quebec University in Montreal.

She was a member of the Montreal Chamber of Commerce as well as a life member of the Sherbrooke branch of the "Société Saint-Jean-Baptiste".

We can all bear witness to the dedication and humanity of this great lady. Moreover, she knew how to present her ideas with conviction, but without dogmatism. I remember her interventions while we were sitting together on the Joint Committee on Official Languages and, more recently, during the proceedings of the Special Joint Committee of the Senate and the House of Commons on the Constitutional Agreement, 1987.

I think that we can state outright that Senator Yvette Rousseau assumed to perfection the role envisioned by the Fathers of Confederation for senators, that of lucid and clear-minded, yet faithful guardians of the will of the elected.

I had several opportunities to get to know Senator Rousseau better on parliamentary delegations to Europe. Her warm personality enriched those trips, both on a professional and on a human level. She was a worthy representative of her province, our country and this assembly.

I went to the funeral of our colleague yesterday in Sherbrooke with many senators, members of the House of Commons, Ministers and former Federal and Provincial Ministers, as well as many friends and colleagues of Senator Rousseau.

The large number of people at the funeral reflected both the respect people felt for her and her deep involvement in the community.

To all the members of her family, her many friends and her colleagues opposite, I would like to offer my deepest sympathy and that of the government.

Hon. L. Norbert Thériault: Honourable senators, I would like to join Senators Frith and Murray in paying homage to my colleague and friend Senator Yvette Rousseau. We both came to the Senate at the same time without knowing exactly what our role would be as senators.

She sometimes showed me by her example things that I was not always able to put into practice, such as the ability to listen and to understand.

As a parliamentarian, I went on many trips with Senator Rousseau. We often discussed the problems of the less fortunate and educated people whom she had come to know so well as a union worker and whom I had the opportunity to get to know because of my work.

She was a mother, in charge of raising eight children, and this in more ways than one as her husband was an invalid. As a result of many sacrifices, she was able to give an education to her eight children.

I remember most vividly a trip I went on with her to Palestine, Judea and Egypt, and especially the part when we hitchhiked on the West Bank to get a better idea of how the people lived there. We needed someone like Yvette Rousseau on that trip.

As she had eight children and I have 10 myself, we used to talk about our family problems and the successes and failures of our children. I had the privilege of attending her funeral yesterday and I would have gone even on foot. I had an opportunity to meet her four sons and four daughters, and I found in them all the best qualities of their mother.

On behalf of my colleagues, I would like to offer my most sincere condolences to the sons and daughters of Yvette Rousseau.

• (1410)

[*English*]

Hon. Martha P. Bielish: Honourable senators, I rise to pay tribute to the memory of our colleague, the late Senator Yvette Rousseau—a wife, a mother and a widow, who continued to work, to study, to teach and to lead on many fronts throughout her life. I got to know Senator Rousseau shortly after our arrival in the Senate, as both of us appeared on the first Selection Committee of the Governor General's Persons Case annual awards. I appreciated very much her depth of feeling and consideration for women who had made significant contributions without the opportunity for formal education in earlier times.

A representative of Les Cercles de Fermières of Quebec phoned to express that organization's sense of loss of a wonderful friend. I quote:

> We could always count on her advice on women's issues. It was a pleasure to have her as guest speaker at various functions.

Senator Rousseau authored a book on night work by women in factories. Les Cercles joined with several other women's organizations in Quebec to develop a competition to encourage women to express themselves in writing. It was named "Le prix Yvette Rousseau".

I quote Yolande Calvé of Maniwaki: "Yvette Rousseau's life was an example to women in Quebec."

May I reiterate that quotation and say that Yvette Rousseau's life as a senator is an example to the women in the Canadian Senate. I wish to offer my condolences and feelings of deepest sympathy to the members of her family. I know that we all feel a sense of loss.

Hon. Senators: Hear, hear!

Hon. Lorna Marsden: Honourable senators, I should like to join with colleagues in expressing sympathy to the family of Yvette Rousseau and the sense of loss that we all feel at her passing. She was a companion in the Senate and in many other causes; and, as others have said, she was a model for many women in Canada, especially women active in support of feminist causes.

Long before she became a member of the Senate she was widely known and admired among members of the union movement in Canada and among women activists. She had gained both respect and affection from so many of us because she had done all of the hard things herself. She had worked the night shifts; she had worked in the textile industry; she had taught; she had organized; and she had fought for all kinds of rights, particularly women's rights, and for universal social programs.

From early on in her life to the very end of her life she stuck by those causes, and her work was recognized by the many honours bestowed on her long before she became a member, a leader and president of a number of organizations, and a member of the Senate.

Her work on the advisory councils on the status of women, both in the province of Quebec and nationally, was another example of her leadership—a leadership which stood out because it was practised with such wisdom, such sensitivity and understanding of the issues, such restraint, and, at the same time, such great determination to make progress.

Senator Frith has referred to her role in the referendum battle. I will not repeat what he said, but I went to the "Yvette" rally in Montreal and saw that memorable evening, that incredible moment in Canadian history, and the important role she played in that, not only symbolically—partly because of her name and because of how well she was known—but also in the organization. It really was a memorable demonstration of the spirit of Quebec women, shared by all Canadian women; and, in many ways, she symbolized that sensitivity and feeling more than anyone else.

The women of Canada, and therefore all Canadians, have gained a great deal from her life and work; and, as a feminist, as a past President of the National Action Committee, as well as her junior colleague in the Senate, I would like to count myself among one of the great multitude of admirers who feel that we have lost a very great friend, a very great role model. We will miss her very much indeed.

Hon. Members: Hear, hear!

[*Translation*]

Hon. Arthur Tremblay: Honourable senators, it is not without emotion that again I extend the condolences I offered yesterday to the children and family of Senator Rousseau, and that I join my Senate colleagues who today are paying tribute to the memory of our colleague.

First I do so as Chairman of the Committee on Social Affairs, Science and Technology, for she was among our most assiduous and committed members. I do so for the committee members who met this morning and urged me to speak on their behalf this afternoon. Senator Rousseau of course took part in the consideration of bills which now and then had been referred to our committee. Warm-hearted and serenely determined as she was, her main preoccupation was to help draft the reports on child benefits which our committee tabled in the Senate. Again recently, barely a month and a half ago, she agreed to sit on the sub-committee established by the Senate to study issues related to day care.

I would also like to pay tribute to Senator Rousseau as a former colleague from Quebec in this house. On that matter, I think I can state that beyond and despite different political persuasions, we had common perceptions, genuine agreement in diagnosing this federation's problems. This did not always lead to the same conclusions when it came to choosing a specific option. But the possibility for dialogue was always there. An open, frank and forthright dialogue. A dialogue where we could share the question marks, sometimes the concerns as to the Quebecers' conditions and future.

In some circumstances, as those in the Joint Special Committee of the Senate and the House of Commons on the 1987 Constitutional Agreement, set up after to the so-called Meech Lake and Langevin agreements, in such circumstances it even happened that we put our signatures in the column of those who, at the conclusion of the committee's work, adopted the committee report. Not everyone on the committee did that, but on that occasion Senator Rousseau and myself and those who shared that view came to the conclusion that in the circumstances, the committee report was worthwhile and should be approved.

Clearly, because of her previous experiences within the family as a mother and in the fields of teaching, a profession we both shared, of union work and women's advancement, Senator Rousseau brought to the Senate a special contribution not only because of her lucid insights, but also and foremost because of her human quality, the genuine humanism that obviously coloured and deeply motivated all her actions.

That human quality, that humanism were not of an abstract or speculative nature—rather, they were rooted in everyday experience, an experience that required a lot of courage, and may I say without false shame a lot of generous love in order to go through the situations she was exposed to during her lifetime.

In that respect, I feel I am not out of place when referring in this house to what the eldest of her children recalled yesterday at her funeral mass. During the last moments when they could still talk to each other, that daughter told her mother: "Mommy, you loved us a lot". And the mother whispered: "Yes, all equally".

• (1420)

Admirable words that totally expressed what Mrs. Rousseau was in the bottom of her heart. Wonderful words that both shed light on and reflect the hope expressed in the liturgical formula: "Requiescat in pace". May she rest in peace, in the hope of resurrection and eternal bliss.

[*English*]

Hon. Joyce Fairbairn: Honourable senators, I too wish to remember a friend, Yvette Rousseau, who, as other senators have said, was also a mentor to me in this place. She was one of the first who, upon my arrival, came to see me to offer her support and her help, both in this place and in our caucus.

Other senators have outlined the outstanding and wide-ranging contribution Senator Rousseau has made in her life—in the women's movement, and in the union movement in Quebec. I too remember one of the highlights when she gave voice to the "No" side in the Quebec referendum with passion and conviction, and with that tremendous elegance which was her style.

Quebec was her province and her home; Canada was her country and her work place. It was not so long ago that she came to me and said, "I am doing a speaking tour in western Canada. What can I do for you? Would you like me to speak to some Franco-Albertans?" Of course, I agreed. She was wise and sensitive, a very great and grand woman who will be sincerely missed.

I offer my deepest sympathy and condolences to her family.

[*Translation*]

Hon. Gildas L. Molgat: Honourable senators, I also wish to join with my colleagues on this sad occasion. Sad is the occasion because we have lost a great Canadian.

The Senate has lost a devoted senator. It is deliberately that I use the French term "sénateur" because I well remember that when the time came to change the rules of this institution, Mrs. Rousseau mentioned to me that she preferred that term to the term "sénatrice". And the French version of our rules still refers to that title.

We have all lost a friend. I was fortunate enough, a little while after I arrived here, to convince her to be part of one parliamentary association over which I was presiding then, namely the Inter-Parliamentary Union. I was fortunate, since her help proved to be priceless. She was always on time, ready to work, well informed and devoted to the work of the institution. But we who work here do not always perceive the influence of a lady like Yvette Rousseau. When we travelled with her here in Canada as well as abroad we constantly met people that had had contacts with Yvette Rousseau.

I want to share with you what a group of women from my own province of Manitoba said on that occasion. That statement is all the more meaningful since Manitoba was neither her native province nor a region where she had special links, but it shows how deeply she had moved those women who wrote:

> A great lady has gone. She left us quietly, softly, with her usual discretion and nobility. A great lady has just passed away. But she left with us all her love for Canada, her concern for the humble, her determination against injustice, her dedication to her work, her Christian charity and her innate sense of responsibility.
>
> Yvette Boucher-Rousseau, this great lady, whose heart beat in unison with her country, leaves an imperishable memory with us, that of a woman with a keen sense of humour and the spirit of a fighter, a worthy daughter of her predecessors who made Canada a good place to live and a country of freedoms.
>
> Yvette Boucher-Rousseau never ceased her struggle to improve Canadian women's condition. This teacher who had given birth to eight children shared the life of women working in the textile industry, in order to better understand their problems and better grasp the difficulties and obstacles facing these exploited women. Outraged by their work conditions, she initiated a union, organized female workers and struggled fervently for the recognition of their rights.
>
> As first vice-president of the C.S.N., she kept fighting to achieve equality, not fortuitous equality but a responsible equality, one that brings results.
>
> To that effect, she insisted that women needed a very precious means: education. As she used to say, "Education is the key to success in society". Just like the prophet, she did not hesitate to travel extensively, bringing the truth to the remotest localities such as in Yukon, British Columbia, Manitoba and Saskatchewan.

She also wanted women to attain self-sufficiency. But she wanted them to be really and truly self-sufficient, as she had been. This is why she was so interested in day care.

Because of the way she saw Canada and because of her political intuition, she was able do do great things.

Because of her conscientious and perfectionnist nature, she aptly represented Canada wherever she was sent by the government. She gained respect and recognition for her keen knowledge of social issues.

A great woman is no more . . . but she has shown the way and we must build on what she has left behind.

She has left us a legacy of hope, love and determination.

● (1430)

[*English*]

THE LATE HONOURABLE RICHARD A. BELL, P.C., Q.C.

TRIBUTES

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, may I have a moment of your time to express the sadness that all of us who knew the Honourable Richard A. Bell feel at his passing this weekend?

Dick Bell was associated for more than half a century, in this city and in this country, with the work of the Conservative Party. While he was an eminent member of the bar of Ontario and a distinguished lawyer, many of us knew him best in the many political capacities he filled for many years here in Ottawa. He had been a ministerial assistant in the Bennett government of the 1930s. Later, he was a national organizer, national director, of the Conservative Party. A dynamic figure,

he helped to maintain the Conservative Party and to motivate Conservative supporters across the country through the years in opposition and especially during the war years. His was a very large talent for politics and public life and an even larger devotion to the traditions of his party, his province and his country.

In expressing my sympathy and that of the government to his family, we celebrate with them the tremendous contribution that he made, through the Conservative Party, to politics, to public life and to Canada—a contribution that has made it possible for later generations of Conservatives to serve in governments in Ottawa and at Queen's Park.

Hon. Senators: Hear, hear!

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators will understand if I emphasize other aspects of the important contribution Dick Bell made to Canada than those underlined by the Leader of the Government.

I remember Dick Bell well as a lawyer. He was, as Senator Murray has said, highly regarded in the profession and he played as eminent a role as a lawyer as we are told he played in the ranks of the Conservative Party. He was popular with his colleagues but, as was evidenced by his political success, he was also popular with his clients and his constituents. Lawyers seldom, if ever, top the popularity polls. Dick Bell had that combination of professional responsibility and skill that earned him a high reputation and affection among his colleagues and among the public.

He earned the respect his memory will enjoy for his role as a parliamentarian and as a Canadian citizen who made a great contribution to public life.

[*Translation*]

OFFICIAL LANGUAGES

REPORT OF COMMISSIONER TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table the annual report of the Commissioner of Official Languages for the calendar year 1987.

THE ESTIMATES, 1987-88

REPORT OF NATIONAL FINANCE COMMITTEE ON SUPPLEMENTARY ESTIMATES (E) PRESENTED, PRINTED AS APPENDIX AND ADOPTED

Hon. Fernand-E. Leblanc: Honourable senators, I have the honour to present the nineteenth report of the Standing Commitee on National Finance on its examination of the Supplementary Estimates (E) for the financial year ending March 31, 1988.

I ask that the report be printed as an appendix to the *Debates of the Senate* and the *Minutes of the Proceedings of the Senate* of this day and form part of the permanent records of this house.

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

[Senator Murray.]

Hon. Senators: Agreed.

(*For text of report, see appendix, p. 2891.*)

The Hon. the Speaker: When shall the report be taken into consideration, honourable senators?

Senator Leblanc (Saurel): Honourable senators, with leave of the Senate and notwithstanding rule 45(1), I move that the report be adopted now since senators will have an opportunity to discuss it when the appropriation bill based on Supplementary Estimates (E) will be tabled.

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

Hon. Senators: Agreed.

Motion agreed to and report adopted.

BORROWING AUTHORITY BILL, 1988-89

REPORT OF COMMITTEE

Hon. Fernand-E. Leblanc, Chairman of the Standing Senate Committee on National Finance, presented the following report:

Tuesday, March 22, 1988

The Standing Senate Committee on National Finance has the honour to present its

TWENTIETH REPORT

Your Committee, to which was referred the Bill C-109, An Act to provide borrowing authority, has, in obedience to the Order of Reference of Wednesday, March 16, 1987, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

FERNAND E. LEBLANC
Chairman

● (1440)

[*English*]

THIRD READING

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

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, with leave, now.

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

Hon. Senators: Agreed.

Motion agreed to and bill read third time and passed.

ROYAL ASSENT

NOTICE

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

RIDEAU HALL
OTTAWA

22 March 1988

Sir,

I have the honour to inform you that the Honourable Gerald Eric Le Dain, Puisne Judge of the Supreme Court of Canada, in his capacity as Deputy Governor General, will proceed to the Senate Chamber today, the 22nd day of March, 1988, at 4.45 p.m., for the purpose of giving Royal Assent to certain Bills.

Yours sincerely,
Léopold H. Amyot
Secretary to the Governor General

The Honourable
The Speaker of the Senate
Ottawa

[*Translation*]

STANDING RULES AND ORDERS

SEVENTH REPORT OF COMMITTEE PRESENTED

Hon. Gildas L. Molgat, Chairman of the Standing Committee on Standing Rules and Orders, presented the following report:

Tuesday, March 22, 1988

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

SEVENTH REPORT

Pursuant to Rule 67(1)(*f*) of the Rules of the Senate of Canada, your Committee recommends that Rule 106 of the Rules of the Senate of Canada be amended to read as follows:

"106. Seats shall be reserved without the Bar of the Senate Chamber for former members of the Senate and members of the House of Commons who may desire to hear the debates."

Respectfully submitted,

GILDAS MOLGAT
Chairman

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

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

EIGHTH REPORT OF COMMITTEE PRESENTED

Hon. Gildas L. Molgat, Chairman of the Standing Committee on Standing Rules and Orders, presented the following report:

Tuesday, March 22, 1988

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

EIGHTH REPORT

Pursuant to Rule 67(1)(*f*) of the Rules of the Senate of Canada, your Committee recommends that Rule 67(1) of the Rules of the Senate of Canada be amended by striking out paragraph (*d*) and substituting the following:

"(*d*) the Joint Committee for the Scrutiny of Regulations to which shall be appointed eight senators.".

Your Committee further recommends that a Message be sent to the House of Commons requesting that House to unite with this House for the purpose of changing the name of the present Standing Joint Committee on Regulatory Scrutiny to the Standing Joint Committee for the Scrutiny of Regulations.

Respectfully submitted,

GILDAS MOLGAT
Chairman

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

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

IMMIGRATION

DEPORTATION OF TURKISH NATIONALS—NOTICE OF INQUIRY

Hon. Jacques Hébert: Honourable senators, with leave of the Senate and notwithstanding rule 44(2), I give notice that later this day, I will call the attention of the Senate to the fate of 1,500 Turkish nationals threatened with deportation from Canada.

[*English*]

AGRICULTURE AND FORESTRY

DEADLINE FOR PRESENTATION OF COMMITTEE REPORT ON FARM FINANCE EXTENDED

Hon. Dan Hays: Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*e*), I move:

That, notwithstanding the order of the Senate adopted on Tuesday, 15th December, 1987, the Standing Senate Committee on Agriculture and Forestry, which was authorized to examine Farm Finance, be empowered to present its report no later than Thursday, April 28, 1988.

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

Hon. Senators: Agreed.

Motion agreed to.

BANKING, TRADE AND COMMERCE

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Ian Sinclair: Honourable senators, as some senators may know, a notice has been issued calling the next meeting of the Banking, Trade and Commerce Committee for 6 o'clock tomorrow, Wednesday, to consider the second draft of the committee's report. Unfortunately, there is a conflict. The National Finance Committee informs us that the Deputy Prime Minister is scheduled to appear before them at 6 o'clock tomorrow evening.

Accordingly, with leave of the Senate and notwithstanding rule 45(1)(*a*), I move:

> That the Standing Senate Committee on Banking, Trade and Commerce have power to sit at five o'clock in the afternoon tomorrow, Wednesday, 23rd March, 1988, even though the Senate may then be sitting, and that Rule 76(4) be suspended in relation thereto.

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

Hon. Senators: Agreed.

Motion agreed to.

LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Joan Neiman: Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*a*), I move:

> That the Standing Senate Committee on Legal and Constitutional Affairs have power to sit at three thirty o'clock in the afternoon today, even though the Senate may then be sitting, and that rule 76(4) be suspended in relation thereto.

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

Hon. Senators: Agreed.

Motion agreed to.

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

DEADLINE FOR PRESENTATION OF COMMITTEE'S FINAL REPORT ON DOCUMENT ENTITLED "A STUDY TEAM REPORT TO THE TASK FORCE ON PROGRAM REVIEW (NIELSEN TASK FORCE)—SERVICE TO THE PUBLIC—VETERANS" EXTENDED

Hon. Jack Marshall: Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*i*), I move:

> That the Standing Senate Committee on Social Affairs, Science and Technology which was authorized by the Senate to examine and report upon the document entitled: "A Study Team Report to the Task Force on Program Review (Nielsen Task Force)—Service to the Public—Veterans", dated May 1985, tabled in the Senate on 12th March, 1986, and also matters arising from the report as well as any subjects of interest to the present and future requirements of Canada's veterans, respectfully requests that the date of presenting its final report which was previously extended from 1st September, 1987, to no later than 31st March, 1988, be further extended to no later than 31st March, 1989.

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

Hon. Senators: Agreed.

Motion agreed to.

QUESTION PERIOD

[*English*]

AGRICULTURE

GRAIN—INITIAL PAYMENT FOR 1988 CROP YEAR

Hon. H.A. Olson: Honourable senators, I have a question for the Leader of the Government in the Senate. Can he advise when the government intends to announce the initial prices that will be paid by the Canadian Wheat Board for the 1988 crop? There is a long-standing practice whereby the government makes this announcement early in March, although last year it was not made until sometime later on in April. In any event, it is useful for farmers to have this information early in March so that they can make their seeding and other management plans accordingly.

Inasmuch as there has been a marked improvement in the price on the Chicago Board of Trade, which is also reflected in the international price structures, I am wondering if we could have that announcement soon from the government.

If the Leader of the Government in the Senate does not have that information with him today, perhaps he would make some inquiries with respect to it.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I shall ask for a report on that matter from my colleague responsible for the Canadian Wheat Board.

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have delayed answers to two questions, both asked by Senator Bonnell. The first is with respect to Toxic Mussels—Progress of Research; and the second is with respect to the Environment—Effect of Pollution from Sunken Vessel "Irving Whale". I ask that they be printed as part of today's proceedings.

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

Hon. Senators: Agreed.

FISHERIES

TOXIC MUSSELS—PROGRESS OF RESEARCH

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have a delayed answer in response to a question raised in the Senate on February 10, 1988, by the Honourable M. Lorne Bonnell, regarding Fisheries—Toxic Mussels—Progress of Research.

(*The answer follows:*)

A team of researchers from various federal departments including the National Research Council cooperated on the identification of the toxin, which was believed to have been the cause of the reported poisonings. The toxin was identified on December 18, 1987, as domoic acid, a natural toxin associated with a certain type of seaweed.

Since January 6, 1988, several areas have been reopened for harvesting of molluscs following the establishment of an expanded monitoring program, which is being maintained to provide continuous assurance of product quality from all cleared areas.

With respect to Prince Edward Island, the area within a straight line between East Point and Cape Bear, with the exception of the Cardigan River system, has been reopened for harvesting on February 16, 1988. This area represents most of eastern P.E.I.

Mussels, clams, oysters and quahogs now in the Canadian consumer market fully meet health and safety requirements.

THE ENVIRONMENT

PRINCE EDWARD ISLAND—EFFECT OF POLLUTION FROM SUNKEN VESSEL "IRVING WHALE"

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I also have a delayed answer in response to a question raised in the Senate on February 10, 1988 by the Honourable M. Lorne Bonnell, regarding The Environment—Prince Edward Island—Effect of Pollution From Sunken Vessel "Irving Whale".

(*The answer follows:*)

Since September 1970, the oil barge "Irving Whale" has been resting in 68.6 metres of water in the Gulf of St Lawrence, 55 kilometers northeast of East Point, P.E.I.

In 1977, detailed surveys indicated that approximately 2,500 tonnes of Bunker C oil remained on-board the vessel.

Surface surveys are carried out twice a year by the Canadian Coast Guard.

In 1985, Environment Canada, with the assistance of the Canadian Coast Guard and the Department of National Defence inspected the wreck using an unmanned submersible. The survey indicated that the barge remained intact with only minor leakage of oil.

On December 10, 1987, the latest surface survey conducted by the Canadian Coast Guard ship "Narwhal" found no trace of oil at the site. Another survey is planned for this spring.

At this time, no research is being done to assess the impact of oil escaping from the barge. The small amounts of oil observed are not anticipated to pose a threat to the marine environment.

ANSWER TO ORDER PAPER QUESTION

SECRETARY OF STATE

WOMEN'S PROGRAM BUDGET

Question No. 40 on the Order Paper—**By Hon. Lorna Marsden.**

10th December, 1987—With respect to the Women's Program of the Secretary of State (i) why will its budget be frozen at $12.9 million a year for the next five years; (ii) why would that budget not rise at least with the rate of inflation; and (iii) why is it considered that the 1986-87 budget of $12.9 million was sufficient to carry out the work of the Women's Program, which serves over fifty per cent of the population of Canada?

Reply by the Secretary of State of Canada:

(i) and (iii) Over the last 5 years, the budget of the Women's Program has increased 300 per cent from $4.2 million in 1983-84 to $12.9 million in 1987-88. There are other departments involved in providing financial assistance to organizations working on women's issues which fall within their mandates, including Health and Welfare, Justice, Solicitor General and Employment and Immigration. The Women's Program is not the sole funding source for all issues of concern to women.

(ii) With the renewal of the Women's Program, greater emphasis will be given to working cooperatively with mainstream institutions to integrate women's equality issues into their mandates. This should result in a greater contribution by these organizations to the achievement of equality for Canadian women. In addition, the government is committed in renewing the Women's Program to introducing multi-year operational funding. This practice will enable women's organizations to undertake long term planning and ensure greater stability.

EMERGENCY PREPAREDNESS BILL

SECOND READING—DEBATE ADJOURNED

Hon. William M. Kelly moved the second reading of Bill C-76, to provide for emergency preparedness and to make a related amendment to the National Defence Act.

He said: Honourable senators, the bill before us now, Bill C-76, is part of a package introduced by the government in response to some of the findings and recommendations of the so-called "Nielsen Task Force" on program review.

The package consists of Bill C-76 and Bill C-77. Bill C-76, the Emergency Preparedness Bill, is an organization bill

intended to give a statutory basis to the organization called Emergency Preparedness Canada or EPC.

Bill C-77, the Emergencies Act, is the other part of the package. It is designed to replace the War Measures Act and implements a commitment by this and the previous government to put in place a more appropriate, flexible and fully safeguarded system to respond to grave national emergencies.

I am grateful to say, honourable senators, that Bill C-76 is far more simple and straightforward than Bill C-77: In essence it seeks parliamentary confirmation of the status quo—the establishment and operation of Emergency Preparedness Canada.

EPC's job has been—and under this legislation will continue to be—the coordination of planning at the federal level and consultation with the provinces to develop and implement plans to respond to a host of potential civil emergencies in Canada.

Before getting into the substance of Bill C-76, allow me to recount a little of the background to Emergency Preparedness Canada and to this bill. Under the so-called "emergency doctrine", the federal government may take actions to meet an emergency in areas that would ordinarily come within the exclusive constitutional jurisdiction of the provinces. This doctrine has been upheld most recently by the Supreme Court of Canada in the anti-inflation reference.

It follows logically, therefore, that if the federal government is to respond quickly and effectively, it cannot simply react *ad hoc* to individual situations, but must have at the ready policies and mechanisms to deal with emergencies.

As early as 1948, largely in response to the perceived threat from nuclear weapons, a civil defence organization was set up within the Department of National Defence and remained within that department until 1951. In 1951 the organization was moved to National Health and Welfare.

In 1957, a second emergency planning organization, known as "Emergency Measures Canada" or "EMO", was set up in the Privy Council Office. Its essential role was to ensure continuity of government in the event of a nuclear attack. As you can see from the bill now before us, "continuity of government" remains a major task of the emergency preparedness establishment.

In 1959, a major reorganization took place whereby the civil defence organization in the Department of Health and Welfare was merged with emergency measures in the PCO and thus became the single focus for coordinating all civil aspects of defence policy.

In 1966, the EMO's mandate went through a subtle, but important, shift. Pursuant to a decision of the Pearson cabinet, EMO was given the added responsibility for coordinating the federal government's response to any peacetime disaster.

From 1968 to 1984 the function shifted back and forth between the Privy Council Office and the Department of National Defence. Since 1984, the minister responsible for EPC has been, as well, the Minister of National Defence. Since July 1, 1986 the organization has been known as "Emergency Preparedness Canada".

Since 1981, the role of EPC and the federal government's emergency planning in general has been set by an Order-in-Council known as the "Emergency Planning Order". The bill before us today is designed, among other things, to replace that order.

● (1500)

I must emphasize that all of the organizational and mandate changes since 1948 to which I have referred were undertaken pursuant to cabinet or prime ministerial fiat and not pursuant to any legislation. Bill C-76, then, is designed to give a legislative underpinning to the current structure and mandate of EPC.

Honourable senators, I want to stress that our review of this legislation is not just a rubber stamp—it is not just a *post facto* approval of the *status quo*. Bill C-76 is a significant initiative because it provides a statutory base to this important function.

By formally recognizing the structure and mandate of EPC, we will also be providing it with the much needed credibility and stature to work with and coordinate up to 11 federal departments and agencies which may be involved in an emergency response.

I would like to remind you briefly what EPC does. EPC is responsible for coordinating the Government of Canada's response to emergencies—including war, insurrection, natural and man-made disasters—and for encouraging uniform and effective standards of preparedness across the country.

This role obviously requires extensive consultations with provincial authorities, with the U.S. Federal Emergency Management Agency and with NATO, relating to the civil side of alliance preparedness.

In practical terms, EPC has a situation centre in Ottawa from which it monitors emergencies all over Canada. Unless the emergency falls within federal jurisdiction, the Government of Canada will intervene only in response to a provincial request for assistance.

When the federal government responds to an emergency, it does so through the appropriate operating department. For example, National Health and Welfare would be the lead federal department for an emergency involving contagion or widespread injuries and Transport Canada would be the lead federal department for an emergency involving trains, ships or aircraft.

EPC, in itself, has no operational response capability. It plans, trains, tests, monitors and coordinates. Responding is left to individual operating departments under the control and direction of their respective ministers.

In 1985, the Federal Task Force on Program Review, the Nielsen task force, reviewed the role and operations of EPC. The report concluded that EPC was currently unable to perform its designated roles effectively, principally because it lacked the appropriate statutory authority. I believe it is fair to say that the Subcommittee on National Defence, chaired by

Senator Lafond, reached roughly the same conclusions in its report tabled in May, 1983.

If passed by Parliament, Bill C-76 will simply take the current mandate of EPC, as defined by the emergency planning order, and give it a statutory base and bureaucratic clout. Because of that statutory base, EPC will finally have a mandate reviewed and granted by Parliament and, as a separate agency, EPC will provide a focus in the Estimates for the federal government's emergency preparedness policies and programs, including federal support for the provinces.

The list of functions that EPC carries out as part of its facilitating and coordinating role is set out in clause 5 of the bill. I believe these functions are largely self-explanatory and require no further comment from me at this time.

Honourable senators will not be surprised, I am sure, to know that one of the reasons I was pleased to be given the responsibility for this bill was that it relates to part of the study carried out by the Senate Special Committee on Terrorism and Public Safety. The report the committee tabled last year identified one area of concern that I think is germane to our review of Bill C-76.

Within the federal government there are a number of departments and agencies, each having some role or responsiblity with respect to counter-terrorism: the RCMP, CSIS, External Affairs, Defence, the Privy Council Office, the CSE, Transport Canada, Immigration and so on.

Many of these organizations have their own "crisis management centres" or "operations rooms", so that each can respond quickly and effectively to terrorist and other incidents and emergencies falling within their jurisdiction.

The plethora of departments and agencies having some role in counter-terrorism policies, planning and operations obviously requires a coordinating mechanism. In the counter-terrorism case, the coordinator is the Solicitor General and his department. But the department is just that—a coordinator. It has, itself, no operational role or response capabilities.

This distribution of responsibilities—I am tempted to call it a "fragmentation of responsibilities", because I think that term is more accurate—caused the committee concern for several reasons.

First, we thought that it potentially obscured accountability and responsibility for actions and results. Where does the buck stop? To quote my eloquent colleague and fellow committee member, Senator Finlay MacDonald, "Who's in charge when the Vigoro hits the ventilator?"

Senator Frith: When what hits the ventilator?

Senator Kelly: When the Vigoro hits the ventilator.

Senator Frith: He is famous for his euphemisms, Senator MacDonald is.

Senator Kelly: It was an *in camera* meeting; perhaps I should not have referred to that remark publicly.

Second, we thought the extended and rather complicated lines of communication and authority could impede quick and effective responses to emergencies, and third, we worried about the coordinating role of the Solicitor General's department. As a "junior" department with no operational role, does it really have the clout to ensure the system works?

From testimony before the committee and by reviewing some previous terrorist incidents, I believe the committee had good reason to question whether some of the operating departments really recognized the coordinating role the Solicitor General's department is supposed to play.

I believe that the same issues and concerns are applicable to Emergency Preparedness Canada and to the structure of our system to respond to emergencies. Who is in charge? Are the lines of authority clear and "linear" enough? Does EPC have the "clout", in bureaucratic terms, to ensure that the system works?

Looking at the structure exclusively from the perspective of counter-terrorism or emergency preparedness, I would prefer that the coordination function be housed in the cabinet office under the direct authority of the Prime Minister, reporting, perhaps, through the cabinet committee on security and intelligence.

Incidentally, from 1974 to 1984—in fact, including the period that Senator Pitfield was secretary to the cabinet—the emergency preparedness function was housed in the Privy Council Office and was known as the national emergency planning establishment, or Emergency Planning Canada.

Locating the function in the cabinet office was recommended by General Dare in his review of federal emergency planning and response in the aftermath to the October Crisis in 1970. As is now well known—and as our colleagues Senators Kenny, Pitfield and Fairbairn can attest—the federal government's response to the October Crisis was coordinated, if not run, out of the PMO and the PCO, with the almost constant involvement of Prime Minister Trudeau and his senior cabinet colleagues and officials.

I recognize, however, that the Canadian Prime Minister is already overburdened in terms of the duties thrust upon him. We must avoid, therefore, the temptation to load all that is important, or faddish, or whatever, on the shoulders of the Prime Minister. To be effective, our Prime Minister need not be directly involved in everything, as long as he has the power to intervene in anything that he chooses.

Any Prime Minister would involve himself in an emergency of the magnitude of the October Crisis. I think it unrealistic, however, to expect our Prime Minister to involve himself directly and centrally in every one of the 60 or so types of emergencies that EPC is designed to handle.

We all know the adage: "If it ain't broke, don't fix it."

From everything that I have reviewed, the emergency planning function does not appear to have suffered since its move from the Privy Council Office. The Nielsen task force report, the special examination undertaken by the Auditor General last year, the performance and response during the tornado in Edmonton, and so on, indicate that EPC is doing rather well in this current configuration.

I note, however, that the designation of the minister responsible for EPC is an *ad nominem* designation, meaning that EPC will not necessarily report to a particular minister, such as the Minister of National Defence. The designation of the minister responsible, under this act, will be a prerogative of the Prime Minister.

I hope, therefore, that this and subsequent governments will keep an open mind on the location of EPC and will monitor EPC's performance. If it begins to slip and if that slippage appears due to any of the concerns I have identified, I hope that the government of the day will give serious consideration to returning the EPC function to the cabinet office.

Honourable senators, let me conclude by recommending Bill C-76 for passage.

A statutory base is required to give EPC leverage within the federal bureaucracy and with the provinces for civil emergency planning and coordination. Especially in view of the importance of the function being performed, I do not believe it wise to allow the current informal and *ad hoc* arrangement to persist.

I hope that Bill C-76 will be approved quickly. As we all know, an election is in the offing. Legislation to formalize EPC's status and mandate has been in the works for nearly 20 years. Having come this far, I would hope that this legislation would be passed before an election and not be held over for a new Parliament to handle, and, perhaps, to lose among new and more politically pressing priorities.

John F. Kennedy was quoted as having said that, in pursuit of the national purpose—

> Too often a project is undertaken in the excitement of a crisis and then it begins to lose its appeal as the problems drag on and the bills pile up. But we must have the steadfastness to see every enterprise through.

I believe that Bill C-76 is an enterprise worth seeing through now. I characterize this bill as relatively routine but important legislation that responds to concerns expressed by this chamber and in other places for some time.

Honourable senators, I ask for the passage of Bill C-76.

● (1510)

On motion of Senator Hicks, debate adjourned.

[*Translation*]

THE ESTIMATES, 1987-88

CONSIDERATION OF REPORT OF NATIONAL FINANCE COMMITTEE—DEBATE ADJOURNED

The Senate proceeded to consideration of the Eighteenth Report of the Standing Senate Committee on National Finance (Final Report on the 1987-88 Main Estimates), presented in the Senate on March 15, 1988.

Hon. Fernand-E. Leblanc: Honourable senators, the National Finance Committee spent about a month studying the principle of comprehensive auditing within the federal government.

[Senator Kelly.]

Our goal was to assess the complexity of the matter and, if possible, to present findings and recommendations to auditors and users of government financial statements.

In brief, comprehensive auditing concerns government accountability. Parliament authorizes government to collect taxes and to make expenditures. In return, the government is accountable to Parliament for the use of these funds and Parliament, in turn, is accountable to the people of Canada.

To that effect, Parliament must receive from government, at regular intervals, a report on receipts and utilization of public funds. This report is subjected to a comprehensive audit consisting of three parts:

First, attesting of government financial statements;

Second, control of compliance with legislative authorities; and

Third, value-for-money auditing.

Financial attesting and legislative compliance have been normal and accepted activities of any legislative auditor since 1878 in this country. Auditors have periodically reported on instances of waste, extravagance or unproductive use of public resources, so that value-for-money auditing became the next step. In the 1970s, a consensus was reached that value-for-money auditing should be made a formal responsibility of the Auditor General of Canada. This was incorporated into the Auditor General Act in 1977.

The generally accepted elements of value-for-money auditing are economy, efficiency and effectiveness.

Although the Auditor General is given responsibility to report on economy and efficiency, his role on effectiveness is limited to reporting on instances where satisfactory procedures are not in place to demonstrate it.

In theory, comprehensive auditing is easy to define and its criteria are clear-cut. We expect the auditor to ensure that the government's accounts are in order and that the law of the land is respected. In practice, we are not always sure to what extent we want the auditor to audit on a value-for-money basis and to report on his findings in this respect.

In the private sector, the final check on the economy, efficiency and effectiveness of the enterprise is profitability. Boards of directors do not call upon auditors to comment publicly on anything that might affect the profitability of their business. At board meetings, however, they do ask their auditors to report this information.

In the public sector, there is no profitability objective and there are no basic criteria. If the government is inefficient, it does not go bankrupt. It asks Parliament for more money. Parliament, however, can depend on the auditor, whose responsibility it is to report on value-for-money.

The report I tabled on March 15, 1988, emphasizes five major points. I would now like to give a brief description of these points and summarize the committee's conclusions.

In the first place, we had to arrive at a definition of effectiveness. We based ourselves on the principle that effectiveness in the broader sense should involve performance in

general, and not only the degree of attainment of a program's goals. We discovered that in practice, and under the federal statutes, effectiveness is narrowly defined and there seems to be a clear distinction between economy and efficiency on the one hand, and effectiveness on the other.

We also learned that at the time of defining the criteria for assessing effectiveness in the broader sense, the perceptions of the client, usually government and Parliament, can vary significantly from those of the program's target persons or groups.

Unintentionally neglecting the interests of participants to a program can lead us to draw misleading and even erroneous conclusions on the program's effectiveness.

In the second place, we asked ourselves who was responsible for accounting for resource optimisation, and came to the conclusion that management should mainly be responsible for reporting to Parliament. We recognized however that all programs and activities do not easily lend themselves to that kind of audit and reporting. However, we recognized that Part III of the Estimates is the best place to provide the appropriate accounting information on that matter, but that presently this is not being done in a consistent way.

In the third place, we studied the terms of reference of the Auditor General of Canada. All witnesses feel that ideally, he should not report on resource optimization, but rather should limit himself to attesting to the accurateness of the reports submitted by management.

Further, it is clear, both for the committee and each and every one of the witnesses, including the Auditor General, that the latter's role is not to examine the appropriateness of policies. We however admit it is very difficult to draw the line between what is a policy decision and what is policy implementation.

Fourth, we considered the question of the link between value-for-money and legislative compliance. When governments establish programs with objectives that foster multi-year financial commitments, but with uncertain timing, those objectives may not be consistent with a system of annual appropriations; in short, achieving effectiveness may not be consistent with legislative compliance. That is precisely what we found out when we examined the overexpenditure of the Department of Regional Industrial Expansion in this year's Supplementary Estimates (B).

And finally, fifth, we wondered about the time the Auditor General's report comes out, and we concluded that reports by the Auditor General on value-for-money could be more timely if they were not required annual reporting.

Such are the conclusions the committee made in its report, which I urge honourable senators to endorse because it is of vital interest to everybody. It has to do with responsibility, the very concept underlying our role as parliamentarians. Before concluding I should like to indicate that, since Senator Marsden wants to take part in the debate, I will be pleased to adjourn the debate in her name.

On motion of Senator Leblanc, debate adjourned in the name of Senator Marsden.

● (1520)

[*English*]

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

THIRTY-THIRD REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the thirty-third report of the Standing Committee on Internal Economy, Budgets and Administration (financial operation of committees), presented in the Senate on March 3, 1988.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, this report has become annual and routine. It is the same as that agreed to for the last fiscal year. Its purpose is to allow the Internal Economy Committee to have a global idea of the budgetary requirements of Senate committees before recommending their approval to the Senate, and, in the meantime, to permit the various committees to have funds to operate until the end of June.

You will note on page 2012 of *Minutes of the Proceedings of the Senate* for March 3, 1988, that the substance of it is as follows:

> your Committee be authorized to release no more than 3/12—

That takes us from the end of March 1988 until the end of June.

> —of those approved funds until the end of June 1988.

Honourable senators, I move the adoption of the report.

Motion agreed to and report adopted.

[*Translation*]

IMMIGRATION

DEPORTATION OF TURKISH NATIONALS—DEBATE ADJOURNED

Hon. Jacques Hébert rose pursuant to notice of Tuesday, March 22, 1988:

> That he will call the attention of the Senate to the fate of 1,500 Turkish nationals threatened with deportation from Canada.

He said: Honourable senators, as I speak to you in the calm of this chamber, 1,500 Turkish nationals who came to Canada about 18 months ago are going through anguish and despair after learning that the Department of Immigration has decided to deport them.

These last few days, I have spent many hours listening to their story and speaking in French with their children who, in 18 months, have had time to learn my language. I have met with their employers, who are stunned at the prospect of being deprived of excellent workers, and with their landlords and neighbours who are deeply saddened at the thought of losing such reliable tenants and warm friends. I have also spoken with Mrs. Diane Bélanger, who is acting as counsel for 400 Turks threatened with deportation, a remarkable woman who is so devoted to the cause of her unfortunate clients that she

forgets to eat and sleep. Finally, I have spoken with Ismaïl Ozhan, a young man of 29, who was the first to receive the order to go to the Mirabel airport where the Canadian authorities were to put him on a plane for Istanbul Sunday evening. As you are aware, on the advice of Canadian friends who do not accept the brutal decision of the minister, he did not leave. With other Turks in the same situation, Ismaïl sought shelter in a small Catholic church in eastern Montreal with the consent of Archbishop Grégoire.

Ismaïl was physically and morally exhausted and I had to give him some reassurance. I told him: "Ismaïl, do not give up hope. Put your trust in Quebec and Canada. When Canadians have been told all the facts, they will rise as one to ask the government of their country to act with justice and compassion in the spirit of our Canadian traditions."

I spent several hours in this small church on Sherbrooke Street, and lived through some intense, deeply moving and on occasion most enthralling moments, such as when I saw Canadians of old stock come in to encourage the Turks with obvious conviction. Most important, I learned many things about their unfortunate story which I would like to share with you.

The 1,500 Turkish nationals who are to be sent back to Turkey in the near future are nearly all from the rural area of Denizli, 600 kilometers from Ankara. These were poor peasants and workers often unemployed in a country without any social security, and they were destitute. Those who worked earned at best $500 a year.

Suddenly, a rumour went around the whole region to the effect that Canada had an urgent need of 100,000 foreign workers, which was no surprise in a country which had sent many more than that to West Germany, for instance, and had thus contributed to the remarkable economic recovery of that country. Some of the Turkish newspapers, including such an important publication as *Hurriyet*, gave credence to that rumour which quickly captured the imagination of the poorest residents of Denizli. That was enough to arouse the greed of a number of travel agencies, including KLM and Sabena Airline representative Za-Na and Doktoroglu, which did everything to exacerbate the collective frenzy. In village cafes posters appeared praising the prosperity of Canada, an open country where Turkish people could go without visas, which was true . . . except that the agencies were careful not to indicate that to work here, they would require special visas. The airlines were offering cut-rate prices. In spite of everything, these prices were above the means of these poor people and represented several years of salary, especially because the men wanted to leave with their wives and children, without hope of ever returning. The families then had to sell everything they owned: A poor patch of land, a few farm appliances, the few pieces of jewellery which the women generally received when they got married. Some even borrowed money from loan sharks . . . on the premise that they could quickly repay their debts once settled in Canada.

This unbelievable story is absolutely authentic and something the Department of Immigration has known for a long time. It clearly demonstrates the good faith of these Turks who, when they arrived at Mirabel, were not lying when they told immigration officers that they were coming to Canada to work. When they realized that they had been fooled by these unscrupulous travel agencies, some 400 of the 2,000 Turks who had arrived in Montreal between September and December 1986 returned to Turkey because they had the means to do so. Absolutely penniless, the others had no other choice but to stay here, apply for refugee status and rely on the compassion for the disadvantaged of the earth which, until then, had always characterized Canada.

Because of a piece of immigration legislation which is outdated and inadequate, and also because of the administrative carelessness of the Department of Immigration, the minister waited 18 months before ruling that Ismaïl was not really a refugee and, therefore, would have to return to his country. If it had been made after two or three months, this decision would have been more bearable, even if Ismaïl and the other Turks had been returned to a distress greater than the one they thought they had left behind.

This is where unfairness starts. What happened to these 1,500 Turks over the past eighteen months? From the very first day, they were very well received by Quebecers. Because they are excellent workers, they wasted no time in finding jobs and their employers have nothing but praise for them. For the past eighteen months, we have taught them how to speak French, a language which their children already speak extremely well. Several got married, many to Quebec women, and some forty children are already the result of these marriages.

[*English*]

Every Canadian who has known them agrees that these Turks have made a real effort to become part of our society, that they are peaceful, honest and hard-working. They pay their taxes and contribute to our country's prosperity.

That is enough to explain the general consternation felt by many citizens when they learned that, in spite of all this, the Minister of Immigration was upholding his decision to send the Turks back to Turkey. It also explains the full support given to them by the Archbishop of Montreal, the Executive Committee of the City of Montreal, all agencies assisting refugees and immigrants, editorialists in *La Presse* and *Le Devoir*, and a multitude of citizens of all social classes. A committee to mediate on behalf of Turkish nationals threatened with expulsion has just been formed. This committee is a non-partisan committee of parliamentarians from all political parties, union leaders, businessmen, clergymen and such wide-ranging personalities as Professor Pierre Dansereau, J.-Z. Léon Patenaude, Pierre Bourgault and Jean-Louis Roux, to mention only the best-known among them.

These well-known public figures are determined to use every democratic means available to convince the Minister of Immigration to exercise his discretionary powers and invoke the "humanitarian grounds" provided for in the legislation so that the 1,500 Turks—and undoubtedly other foreign nationals in

the same situation—are granted immigrant status. Such a move would be all the more reasonable given that for the past several years, Canada has not even met the modest immigration quota set by the minister himself.

At present, the wave of support for the Turks is growing daily in Quebec, and the rest of Canada is starting to rally behind them. This support could turn into a tidal wave when all the facts are disclosed. Some of these findings are particularly disturbing. For example, the Immigration Department was not taken by surprise and has known from the outset the story that I have just related to you, a story that shows that the Turks are victims of people who exploit human suffering, that they had no intention of breaking Canadian laws, and that they would not have come to Canada had they been informed in time.

Why did the department not react properly in September 1986 when the first 233 Turks arrived at Mirabel? Some 580 more arrived in October, an additional 603 in November and more than 700 others in December. It was only in November 1986 that the minister thought it appropriate to send an investigator to Turkey with the purpose of finding the reasons for this extraordinary exodus. Furthermore, the minister waited until January 8, 1987 to announce that Turkish visitors to Canada would require a visa, a decision that put an immediate end to the situation.

Yet, as early as October 1986, an Employment and Immigration Commission report was available to him. Here is an excerpt from that report:

> A profile of the Turkish arrivals is as follows:
>
> —all were in possession of valid passports and all airline tickets were paid for in cash;
>
> —almost all were routed Istanbul-Brussels-Montreal;
>
> —excluding children, the average age of the arrivals is between 25 and 35 years of age; there is a mix of family units and single persons;
>
> —they have no destination or reception in Canada;
>
> —the occupations listed are those of farmers, carpenters and construction workers;
>
> —those who arrived on both Sabena Airlines and KLM Airlines bought all tickets through the Za-Na Travel Agency and Doktoroglu Travel Agency in Ismir;
>
> —all were from the Dénizli area in south-west Turkey;
>
> —all wished to come to Canada and remain permanently, a few initially indicated a desire to be considered as Convention refugees. (This will undoubtedly change once it becomes known that a refugee claim will entitle the claimant to seek and accept employment.)

[*Translation*]

The minister knew all that. However, he did not make any move before January 1987, when he required a visa. And he waited for 18 months to decide that Ismaïl and the others were not, according to his definition, real refugees, and that they had to leave the country.

He could have added that a number of those Turks have already been recognized by his department as real refugees in terms of the Geneva Convention, for example those of Kurdish origin—a persecuted minority—and others who were ill-treated by the Turkish police. Finally, how can the minister decide that the others are not refugees before they have been heard by the Immigration Appeal Board?

Perhaps the minister has the right to do this. But he also has the obligation to be fair and compassionate, and to adjust his definition to the spirit and the letter of the Geneva Convention, as expressed in paragraph E of the document drafted by the United Nations Conference of Plenipotentiaries, and I quote:

> The Conference expresses the hope that, in addition to its contractual dimension, the Convention Relating to the Status of Refugees will serve as an example and will encourage all States, inasmuch as possible, to extend to persons on their territory as refugees and not covered by the provisions of the Convention, the treatment provided for under the Convention.

In 1979, the United Nations High Commission for Refugees gave the following interpretation to this recommendation:

> It gives States an opportunity to solve problems arising with persons who do not fully meet the criteria in the definition of the term "refugee".

Finally, our own Immigration Act of 1976 recommends, and I quote:

> . . . to fulfil Canada's international obligations with respect to refugees and to uphold its humanitarian tradition with respect to the displaced and the persecuted.

If ever there was a case where humanitarian considerations should be in order, it is the one involving 1,500 Turkish citizens. It is under such considerations that over these past years the department has already allowed into Canada tens of thousands of illegal immigrants certainly not more deserving than the Turks. The previous government went even further by granting general amnesty to citizens from India and Haiti back in 1980 and 1981. And, I suggest, Canada is certainly not worse off today, quite the contrary.

So that is the course the minister should follow, even though he remains convinced that the majority of the 1,500 Turks are not "genuine" refugees and do not risk anything by returning to Turkey, except, of course, falling back into extreme poverty. However, how can the minister be so sure that there are no other risks involved? How does he know that, despite their assurances, Turkish authorities will not react negatively towards citizens who certainly caused them some embarrassment by declaring themselves political refugees, out of despair? As Ms. Diane Bélanger, counsel, rightly said:

> On many occasions, Turkey was accused by international human rights organizations for its apparent lack of respect for fundamental rights. One has only to look at

the report released in January 1986 by Amnesty International which says that torture is being practised in Turkey despite the fact that, as early as 1984, that organization asked the United Nations to hold an inquiry on flagrant, continuous and systematic violations of human rights in Turkey.

In this context is it not reasonable to assume that the safety of people who claimed refugee status in Canada would be in serious jeopardy should they be sent back to Turkey?

For all these reasons, we must beg the Minister of Immigration to use the powers he has under the law to allow the 1,500 Turkish citizens to remain in Canada on humanitarian grounds.

I conclude by quoting these thoughts Jean-Claude Leclerc expressed in his editorial in this morning's *Le Devoir*.

We could understand Ottawa's firm stand if foreigners were abusing the system and forcing their way in, and Canadians were fed up with them. But when, on the contrary, the whole population sympathizes with the victims and makes room for them, the Government has no other choice but to favour a prompt settling of the issue. We have reason to rejoice, in Quebec, in the area of immigration: we have just seen the start of an era of welcome.

Honourable senators, I hope no one will say I called the attention of the Senate to a situation that is neither urgent nor serious.

No one will deny the urgency of relieving 1,500 unfortunate people of the anguish of having their lives broken. No one will deny the seriousness of an action that will tarnish Canada's reputation in the eyes of the world. And I am convinced everyone is hopeful the Minister of Immigration will find an honourable solution that will earn him the respect and the gratitude of all Canadians. Thank you, honourable senators.

● (1540)

[*English*]

Hon. Hazen Argue: Honourable senators, I want to congratulate Senator Hébert on bringing this very important matter before the Senate. I assure him that I am fully supportive of what he has said and at this point I move the adjournment of the debate.

On motion of Senator Argue, debate adjourned.

ENERGY AND NATURAL RESOURCES

DEADLINE FOR PRESENTATION OF FINAL REPORT ON PRODUCTION AND USE OF NATURAL GAS IN CANADA EXTENDED

Hon. William J. Petten, for Senator Hastings, moved:

That, notwithstanding the Order of the Senate adopted on Wednesday, 1st April 1987, the Standing Senate Committee on Energy and Natural Resources, which was authorized to examine the production and use of natural gas in Canada with particular reference to natural gas deregulation, be empowered to present its report no later than Wednesday, 21st December 1988.

He said: Honourable senators, since he cannot be here, Senator Hastings asked me to move this motion standing in his name.

The Standing Senate Committee on Energy and Natural Resources agreed to ask the Senate for an extension in order to prepare its report.

Motion agreed to.

The Senate adjourned during pleasure.

At 4:45 p.m. the sitting of the Senate was resumed.

The Senate adjourned during pleasure.

ROYAL ASSENT

The Honourable Gerald Eric Le Dain, Puisne Judge of the Supreme Court of Canada, in his capacity as Deputy Governor General, having come and being seated at the foot of the Throne, and the House of Commons having been summoned, and being come with their Speaker, The Honourable the Deputy Governor General was pleased to give the Royal Assent to the following bills:

An Act to amend the Corporations and Labour Unions Returns Act (*Bill C-91, Chapter 4, 1988*).

An Act to validate certain customs duty orders relating to fresh fruits and vegetables (*Bill C-96, Chapter 5, 1988*).

An Act to amend the Currency Act (*Bill C-99, Chapter 6, 1988*).

An Act to provide borrowing authority (*Bill C-109, Chapter 7, 1988*).

The House of Commons withdrew.

The Honourable the Deputy Governor General was pleased to retire.

The sitting of the Senate was resumed.

The Senate adjourned until tomorrow at 2 p.m.

APPENDIX

(*See p. 2880*)

THE ESTIMATES, 1987-88

REPORT OF NATIONAL FINANCE COMMITTEE ON
SUPPLEMENTARY ESTIMATES (E)

TUESDAY, March 22, 1988

The Standing Senate Committee on National Finance has the honour to present its

NINETEENTH REPORT

Your Committee, to which Supplementary Estimates (E) laid before Parliament for the fiscal year ending March 31, 1988, were referred, in obedience to the Order of Reference of March 3, 1987, submits its report as follows:

The Committee heard evidence from the following witnesses:

From the Treasury Board:

Mr. A.J. Darling, Deputy Secretary, Program Branch;
Mr. Brent DeBartolo, Chief, Estimates Division.

This report is divided into two sections. The first describes these estimates while the second focuses on the format proposed for future supplementary estimates.

Supplementary Estimates (E)

The appendix to this report contains material prepared by Treasury Board at the request of the Committee. This material is classified under the following four section headings:

1. Summary of Expenditure Framework and Estimates for 1987-88;

2. Statutory Items Included in Supplementary Estimates (E), 1987-88;

3. Summary of Voted Items (greater than $5 million) included in Supplementary Estimates (E), 1987-88; and

4. List of One-dollar Votes included in Supplementary Estimates (E), 1987-88 and Additional Explanations.

Supplementary Estimates (E), totalling $1.6 billion is the second and final regular supplementary estimates for the 1987-88 year. The other three previous supplementary estimates covered specific items: Supplementary Estimates (A) and (D) dealt with the Special Canadian Grains

Program, and Supplementary Estimates (B) dealt with economic and regional development funding, including funding for the Western Diversification Office and the Atlantic Canada Opportunities Agency. A summary of the five supplementary estimates and the main estimates is provided in "The Summary of the Expenditure Framework" found in section one of the appendix.

Of the total $1.6 billion, $883.9 million is required for statutory purposes, while the remaining $706.6 million is being requested as new spending authority. The twenty-nine items which make up the $882.9 million for statutory programs are briefly described in section two of the appendix. With respect to non-statutory items, each of those having a value of greater than $5 million is described in section three of the appendix. The Committee was informed that there are forty-six one-dollar votes included in these estimates; twenty-eight authorize the transfer of funds from one vote to another; ten authorize the payment of grants; and eight are miscellaneous votes. These are described in section four.

These supplementary estimates bring the total estimates for the year to $116.8 billion, $116.7 of which is for budgetary purposes. Viewed another way, these estimates bring the total statutory estimates for the year to $74.1 billion or 63.4% of the total, and the voted estimates to $42.7 billion, or 36.6%.

New Format for Supplementary Estimates

These supplementary estimates are likely to be the last in the current format. A new format is expected in 1988-89 due in large part to the constant reminders by this Committee about the lack of clarity in supplementary estimates. The Committee has stated in past reports that the information contained in the estimates regarding the transfer of money from one vote to another was been inadequate. It has also indicated there are no summary tables for voted items or for statutory items. In the past, Treasury Board has responded to these criticisms by preparing additional detailed information expressly for the Committee; this material has been appended to the Committee's reports.

Beginning with the first supplementary estimates in 1988-89, a new format will be instituted and will include the following:

a) Conversion of side by side English/French presentation to the tumble format used in the main estimates;

b) Addition of the following tables/schedules summarizing the estimates;

i) Proposed Schedule to the Appropriation Bill. This will include:
- the items in the associated supply bill,
- the vote number, vote wording and amount of appropriation sought;

ii) A Table of Statutory Items in Supplementary Estimates. This will list:
- all statutory entries included in the supplementary estimates by Ministry and Department;

iii) A Table Summarizing Changes to Appropriations. This will include:
- all votes for the fiscal year,
- changes being proposed in the Estimates including transfers (into or out of the Vote) and new appropriations sought,
- a year-to-date estimates total for each vote;

c) Changes to the Program Display;
- identifying funds being transferred into the vote in question;
- identifying new appropriations being sought;
- providing information on total estimates for the year including funds being transferred into the vote.

The Committee was pleased with the proposed changes and felt that they would facilitate a better understanding of how government expenditures change throughout a fiscal year.

Finally, the Committee wishes to express its thanks to the Treasury Board Secretariat for its cooperation and willingness to consider new ideas. Whether the new format will meet the test of time remains to be seen; the important thing is that government is willing to listen and respond when changes are required.

Respectfully submitted,

FERNAND-E. LEBLANC
Chairman

APPENDIX I

SUMMARY OF EXPENDITURE FRAMEWORK AND ESTIMATES FOR 1987-88

Expenditure Framework at time of Main Estimates

Budgetary Main Estimates	$110.1 billion
Projected Total Budgetary Estimates	$114.0 billion
Projected Budgetary Expenditures (includes consolidation of accounts)	$122.5 billion

ESTIMATES TABLED TO DATE FOR 1987-88

	TO BE VOTED	STATUTORY (in thousands of dollars)	TOTAL
Main Estimates			
Budgetary	$37,826,901	$72,314,176	$110,141,077
Non-Budgetary	59,184	(128,545)	(69,361)
	$37,886,085	$72,185,631	$110,071,716
Supplementary Estimates (A)			
Budgetary	$700,000	-	$700,000
Non-Budgetary	-	-	-
	$700,000	-	$700,000
Supplementary Estimates (B)			
Budgetary	$583,110	-	$583,110
Non-Budgetary	110,000	-	110,000
	$693,110	-	$693,110
Supplementary Estimates (C)			
Budgetary	$1,871,808	$ 999,557	$2,871,365
Non-Budgetary	8,889	14,500	23,389
	$1,880,697	$1,014,057	$2,894,754
Supplementary Estimates (D)			
Budgetary	$803,903	-	$803,903
Non-Budgetary	-	-	-
	$803,903	-	$803,903

Supplementary Estimates (E)			
Budgetary	$729,079	$872,880	$1,601,959
Non-Budgetary	31,488	10,000	41,488
	$760,567	$882,880	$1,643,447
TOTAL ESTIMATES TABLES			
Budgetary	$42,514,801	$74,186,613	$116,701,414
Non-Budgetary	209,561	(104,045)	105,516
	$42,724,362	$74,082,568	$116,806,930

Present Expenditure Framework

Total Budgetary Estimates	$116.7 billion
Projected Budgetary Expenditures (includes consolidation of accounts)	$125.3 billion

APPENDIX II

STATUTORY ITEMS INCLUDED IN SUPPLEMENTARY ESTIMATES (E), 1987-88

Increases (to previous projections)

-	$745,000,000	Public Debt	Interest and Other Costs
-	$221,000,000	Fiscal Transfer Payments	Census Related Overpayment
-	$217,000,000	National Transportation Agency	Western Grain Transportation Act
-	$118,200,000	Social Services	Canada Assistance Plan
-	$61,000,000	Fiscal Transfer Payments	Public Utilities Income Tax Transfer
-	$51,000,000	Agri-Food	Payments for named commodities under the Agricultural Stabilization Act
-	$25,000,000	Consumer and Corporate Affairs	Payments to Provinces - Patent Act
-	$17,860,000	National Transportation Agency	Railway Act
-	$16,750,000	Financial and Economic Policies	Encashment of notes for IDA pursuant to prior year's Appropiration Acts
-	$12,000,000	Employment and Insurance	Government's Contribution in respect of Fishermen's Benefits
-	$9,500,000	Labour	Labour Adjustment Benefits Payments
-	$7,600,000	Commissioner Federal Judicial Affairs	Increases in judges' salaries as per Bill C-88

-	$7,100,000	Labour	Injury Compensation respecting Government Employees and Merchant Seaman
-	$5,500,000	Immigration	Immigration transportation loans
-	$4,500,000	Financial and Economic Policies	Payments to MIGA
-	$1,948,000	National Transportation Agency	Atlantic Region Freight Assistance Act
-	$672,000	Fiscal Transfer Payments	Youth Allowances Recovery
-	$50,000		Statutory Subsidies

Decreases (from previous projections)

-	$204,000,000	Health Insurance and Promotion	Health Insurance Contribution
-	$163,000,000	Fiscal Transfer Payments	Fiscal Equalization
-	$142,000,000	Employment and Insurance	Government's Contribution to the Unemployment Insurance Account
-	$79,000,000	Secretary of State	Reduced payments for Post-Secondary Education
-	$22,000,000	Income Security	Guaranteed Income Supplement Payment
-	$7,400,000	Energy	Decrease in payments to Newfoundland
-	$6,000,000	Income Security	Old Age Security payments
-	$6,000,000		Spouses Allowance payments
-	$4,300,000	Fiscal Transfer Payments	Personal Income Tax Revenue Guarantee
-	$3,000,000	Energy	Decrease in Payments to Interprovincial Pipeline Limited
-	$3,000,000		Reduced Revenue Payments to Nova Scotia

APPENDIX III

SUMMARY OF VOTED ITEMS ($$ or Greater)
Included in Supplementary Estimates (E), 1987-88

DEPARTMENT
PROGRAM

ITEM	GROSS	TRANSFER	NET APPROPRIATION	VOTE INCR
Agriculture Grains and Oilseeds - Canadian Wheat Board Pool Account Deficits for the 1986/87 Crop Year	$98,678,000	$14,532,200	$84,145,800	35
Atlantic Canada Oppurtunities Agency - Additional Operating costs	$7,000,000	$6,999,999	$1	1
- Loans pursuant to Cape Breton Loan Regulations	$5,000,000	-	$5,000,000	L10
Communications - Grant to the Art Gallery of Ontario	$8,000,000	-	$8,000,000	10
Canada Council - Increased support for the performing arts	$5,500,000	-	$5,500,000	25
Canadian Broadcasting Corporation - Additional Operating Costs	$5,851,000	-	$5,851,000	30
Canadian Film Development Corporation - Additional Operating Costs	$7,123,714	-	$7,123,714	45
Canada Post Corporation - Infrastructure Subsidy	$12,500,000	-	$12,500,000	10
Employment and Immigration Corporate and Special Services - Additional Operating costs	$8,566,000	$8,565,999	$1	5
Employment and Insurance - Canadian Jobs Strategy - Grants	$30,000,000	$29,999,999	$1	15
Immigration - Additional Operating Costs	$9,672,000	$9,671,999	$1	20
Petro-Canada International Assistance Corporation - Increased Payments to PCIAC	$6,900,000	-	$6,900,000	55
Environment Parks - Pacific Rim National Park	$8,000,000	-	$8,000,000	25
External Affairs Canadian Interests Abroad - Communication Action Plan	$14,000,000	$13,254,000	$746,000	1
- Additional Operating Costs	$6,672,000	-	$6,672,000	1
Finance Financial and Econimic Policies - IBRD non-budgetary cash	$26,368,000	-	$26,368,000	L11
Fisheries and Oceans - Salmonid Enhancement Program	$12,075,000	-	$12,075,000	1
- Small Craft Harbours revitalization	$19,480,000	-	$19,480,000	1
- Small Craft Harbours revitalisation	$12,000,000	-	$12,000,000	5
Indian Affairs and Northern Development Indian and Inuit Affairs - Increased Grant and Contribution Funding Requirements	$31,801,771	$31,688,616	$113,155	15

DEPARTMENT
PROGRAM

ITEM	GROSS	TRANSFER	NET APPROPRIATION	VOTE INCR
Western Diversification Office - Additionat Operation Costs	$5,569,000	$5,568,999	$1	50
Justice Administration of Justice - Contributions under the Young Offenders Act	$82,128,854	-	$82,128,854	5
National Defence Defence Services - Return of $200 million originally deferred in FY 1987-88	$155,000,000	-	$155,000,000	5
- Return of $200 million originally deferred in FY 1987-88	$45,000,000	-	$45,000,000	10
Customs and Excise - Additional Operating costs	$6,572,000	-	$6,572,000	1
Taxation - Additional Operating costs	$8,304,000	$875,000	$7,429,000	10
Public Works Services - Additional non-recoverable operating require-ments	$18,676,000	$18,675,999	$1	1
National Capital Commission - Credit for proceeds of sales of land by Public Works Canada	$7,475,000	-	$7,475,000	85
Regional Industrial Expansion - Forgiveness of financial obligations - Pecheries Canada Inc	$31,499,900	-	$31,499,900	11
Federal Business Development Bank - Payment for purposes of Section 20 of FBDB Act	$23,000,000	-	$23,000,000	51
Natural Sciences and Engineering Research Council - Scholarships and grants in aid of research	$6,843,500	-	$6,843,500	30
Royal Canadian Mounted Police Law Enforcement - Three Major Summits	$10,833,000	-	$10,833,000	25
- Protective Security	$7,550,000	-	$7,550,000	25
- Airport Security	$42,189,000	-	$42,189,000	25
Supply and Services - Increased postage, cheques and envelope costs	$8,000,000	-	$8,000,000	1
Transport - Additional Operating Costs	$12,009,000	$12,008,999	$1	1
- Special Assistance Program - Income support to grain producers	$23,121,900	$7,916,000	$15,205,900	10
Veterans Affairs - Increased cost of purchased health care services	$9,006,000	$9,005,999	$1	1

APPENDIX IV

LIST OF ONE DOLLAR VOTES INCLUDED IN SUPPLEMENTARY ESTIMATES (E), 1987-88

The 46 One Dollar Votes included in these Estimates are listed in Appendix I by ministry and agency along with the page number where each vote may be located in the Estimates.

These One Dollar Votes are grouped below into categories according to their prime purpose. The votes are also identified in Appendix I, according to these categories. The category for each vote has been designated by an "X". In those instances where a vote falls into more than one category, the prime category is designated by an "X" and other categories by an "*".

A. Twenty-eight votes which authorize the transfer of funds from one vote to another. (An explanation of the new requirement and the source of funds is provided in Supplementary Estimates.)

B. Ten votes which authorize the payment of grants. (An explanation of the new requirement and the source of funds is provided in Supplementary Estimates.)

C. Eight miscellaneous votes. (Additional explanations are provided in Appendix II.)

- one to report actual excess operating and income charges over revenues for the Canada Post Corporation;
- three to write-off certain debts due Her Majesty in Right of Canada - Employment and Immigration (2 votes) and Transport (one vote);
- one vote to increase the drawdown Authority by $150 million for the Public Works Revolving Fund;
- one vote to increase loan insurance for de Havilland - Regional Industrial Expansion;
- one vote which amends provisions of Transport Vote 30, 1987-88 to include improvements to port facilities at the port of Churchill; and
- one vote to amend the borrowing limits of Eldorado Nuclear Limited (Privatization and Regulatory Affairs).

Estimates Division
March 3, 1988

List of One Dollar Votes in Supplementary Estimates (E), 1987-88

Page	Department/Agency	Vote	Categories		
			A	B	C
10	Agriculture	1e	X		
12	Agriculture	15e		X	
14	Agriculture	20e	X		
18	Atlantic Canada Opportunities Agency	1e	X		
18	Atlantic Canada Opportunities Atency	5e		X	
28	Communications - National Museums of Canada	70e	X		
32	Consumer & Corporate Affairs - Canada Post Corporation	17e			X
36	Employment and Immigration	1e	X		
36	Employment and Immigration	5e	X		
36	Employment and Immigration	6e			X
38	Employment and Immigration	15e		X	
40	Employment and Immigration	20e	X		
40	Employment and Immigration	21e		*	X
46	Energy, Mines and Resources	25e	X		
58	External Affairs - Canadian International Development Agency	30e		X	
78	Indian Affairs and Northern Development	35e	*	X	
80	Indian Affairs and Northern Development - Western Diversification Office	50e	X		
80	Indian Affairs and Northern Development - Western Diversification Office	55e		X	
88	Justice - Supreme Court of Canada	40e		X	
100	National Health and Welfare	1e	*	X	
102	National Health and Welfare	5e	X		
102	National Health and Welfare	10e		X	
112	National Health and Welfare - Medical Research Council	65e	X		
122	Public Works	1e	X		
122	Public Works	2e			X
124	Public Works	10e	X		
126	Public Works	25e	X		
126	Public Works	35e	X		
126	Public Works	36e	X		
126	Public Works	40e	X		
128	Public Works	50e	X		
128	Public Works	55e	X		
132	Regional Industrial Expansion	1e			X
132	Regional Industrial Expansion	10e		X	
132	Regional Industrial Expansion	15e	X		
138	Science and Technology	1e	X		
154	Transport	1e	X		

154	Transport	11e	*	X
154	Transport	20e	X	
154	Transport	21e	X	
154	Transport	22e	X	
154	Transport	23e	X	
154	Transport	30e		X
166	Treasury Board - Privatization and Regulatory Affairs	L35e		X
168	Veterans Affairs	1e	X	
170	Veterans Affairs	25e	X	

Additional Explanation

Category C - Miscellaneous $1.00 Votes:

Consumer and Corporate Affairs - Canada Post Corporation

Vote 17e

To report the actual excess of operating and income charges over revenues for the Canada Post Corporation in the amount of $128,981,000 for the 12 month period ending March 31, 1987 in accordance with subsection 29(3) of the Canada Post Corporation Act.

Explanation

In accordance with section 29(1) of the Canada Post Corporation Act (CPC Act), the Minister of Finance during 1986-87 placed at the disposal of the Corporation sufficient monies to enable the Corporation to meet all its operating and income charges during the year. Section 29(3) of the CPC Act requires that the amount placed at the disposal of the Corporation is to be included, in the form of a deficit appropriation item, in the next Estimates laid before Parliament thereafter. Since the amount placed at the disposal of the Corporation has already been reported as expenditures of the Government in the 1986-87 fiscal year, it cannot be voted as an expenditure in 1987-88. Accordingly, in order to conform with the intent of the Act, a $1 voted item has been included in these Supplementaries to inform Parliament of the actual amount of the Corporation's deficit for 1986-87. The actual 1987-88 deficit will be reported as a $1 item in 1988-89 Supplementary Estimates, again in accordance with Section 29(3) of the Act.

Employment and Immigration

Vote 6e

Corporate and Special Services - Pursuant to Section 18 of the Financial Administration Act, to write-off debts due Her Majesty in Right of Canada

amounting in aggregate to $37,255.81 in regards to Government Annuities Accounts over-payments - To authorize the transfer of $37,255 from Employment and Immigration Vote 25, Appropriation Act No. 3, 1987-88 for purposes of this Vote.

Explanation

This involves the deletion of Annuities Accounts over-payments totalling $37,255.81 due the Crown. Funds are being transferred, via a $1 Vote transfer, from EIC Vote 25 (Immigration Program, Contributions) to this new Vote 6e.

Vote 21e

Immigration - Pursuant to Section 18 of the Financial Administration Act, to write-off 2,489 debts due Her Majesty in Right of Canada amounting in the aggregate to $280,024.32 in regards to transportation loans issued under Section 121 of the Immigration Act - To authorize the transfer of $280,024 from Employment and Immigration Vote 25, Appropriation Act No. 3, 1987-88 for the purposes of this Vote.

Explanation

This involves the deletion of 2,489 accounts due the Crown totalling $280,024.32 regarding immigration transportation loans. Funds are being transferred, via a $1 Vote transfer, from EIC Vote 25 (Immigration Program, Contributions) to this new Vote 21e.

Public Works

Vote 2e

Public Works Revolving Fund - In accordance with Section 33 of the Adjustment of Accounts Act, to increase from $300,000, 000 to $450,000,000 the amount by which the aggregate of expenditures made under Section 26 of that Act may exceed the revenues referred to in that section.

Explanation

Public Works provides real property services such as Architectural and Engineering, Property Management, Real Estate and Dredging to other government departments and agencies on a cost recovery basis. In 1988 PWC will be charging Market Rates for its services instead of only direct costs as is the current practice. This means that PWC will have to use its revolving fund to cover the $150M indirect costs it was previously appropriated. Also, the pass-through charges on the PWC revolving fund will increase by an additional $550M as a result of increased business and the inclusion of certain PWC items such as

maintenance of Crown properties and payments of leases which had not been passed-through the fund previously. The total revolving fund pass-through has increased by $700M (from $1.2B to $1.9B).

Regional Industrial Expansion

Vote 1e

Regional Industrial Expansion - Operating expenditures - To provide that the aggregate amount of insurance outstanding at any time in respect of the de Havilland DHC-7 and DHC-8 aircraft, for the purposes described in Industry, Trade and Commerce Vote 1a, subparagraph (ii) Appropriation Act No.1, 1980-81 does not exceed $625,000, 000 and $250,000,000 U.S.

Explanation

Loan Insurance (Guarantee) for the de Havilland DHC-7 and DHC-8 Aircraft

To increase the level of Ministerial authority to provide loan insurance to an applicant for the purchase or lease of de Havilland DASH 7 or DASH 8 aircraft. The loans are arranged through approved commercial lenders.

Through 1980-81 Supplementary Estimates A, Parliament authorized the Minister of RIE (ITC at that time) to insure loans to a total maximum of $130M associated with the lease or sale of DASH 7 aircraft. This authority has been increased several times and extended to include DASH 8 aircraft. These estimates seek to increase the authority for loans in Canadian funds from $400M to $625M. The authority in U.S. funds remains unchanged at $250M U.S. Government insurance covers a maximum of 90% of the loan amount, with de Havilland responsible for the remaining 10% .

Transport

Vote 11e

Transport - Pursuant to Section 18 of the Financial Administration Act, to write off from the Accounts of Canada certain debts due her majesty in Right of Canada in respect of Coast Ferries Ltd. - To authorize the transfer of $74,999 from Transport Vote 5, Appropriation Act No.3, 1987-88 for the purposes of this Vote.

Explanation

Transport Canada was authorized to collect $25,000 out of a $100,000 loan to Coast Ferries Ltd., out of an insurance settlement resulting from a fire destroyed asset. Authority is now sought under Section 18 of the F.A.A. to write-off the balance of $75,000 which is not considered recoverable.

Transport - Canada Ports Corporation

Vote 30e

Payment to the Canada Ports Corporation - To extend the purposes of Transport Vote 30, Appropriation Act No.3, 1987-88 to include improvements to port facilities at the port of Churchill, Manitoba.

Explanation

Certain works undertaken at Churchill were to have been completed during FY 1986-87, but were not, with the result that costs were incurred in 1987-88. Additional, the pace of work at Sept Iles will result in only a portion of the proposed work program these being completed, resulting in a potential lapse of funds.

Privatization and Regulatory Affairs - Eldorado Nuclear Limited

Vote L35e

Eldorado Nuclear Limited - To amend Energy, Mines and Resources Vote L107e, Appropriation Act No. 4, 1981-82:

(a) to authorize Eldorado Nuclear Limited to increase its total borrowing from $600,000,000 to an amount outstanding from time to time not exceeding $700,000,000 until December 31, 1992 in accordance with terms and conditions approved by the Minister of Finance; and

(b) to reduce Eldorado Nuclear Limited's borrowing authority under paragraph (a) above to a maximum amount outstanding from time to time of $600,000,000 from January 1, 1993 to December 31, 1993, of $500,000,000 from January 1, 1994 to December 31, 1994 and $400,000,000 thereafter.

Explanation

Eldorado's existing $600M borrowing authority will expire at the end of 1988, after which the company would not be able to make any new loans. Although the current plan is to merge Eldorado's assets with those of the Saskatchewan Mining Development Company (SMDC). Eldorado will continue to exist as a corporation and it will continue to need authority to borrow new money to pay-off the old loans pending the sale of shares in the new company. In addition, it remains possible that a merger will not be consummated.

THE SENATE

Wednesday, March 23, 1988

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

Prayers.

THE CONSTITUTION

FIRST MINISTERS' ACCORD AND AGREED TEXTS—COMMITTEE OF THE WHOLE—STILL PHOTOGRAPHY POOL AUTHORIZED TO RECORD MARCH 30 PROCEEDINGS

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*i*), I move:

> That a still photography pool be permitted to record proceedings of the Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to on Wednesday, March 30, 1988.

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

Hon. Senators: Agreed.

Senator Frith: Honourable senators, I will first state the reason for this motion.

Senator Murray: He wouldn't come unless . . .

Senator Frith: I will tell honourable senators why I pause. What I was first going to do was to apologize, as I apologized to Senator Doody, about one aspect of this, but then I thought, "Why apologize until I say what it is I am going to apologize for?" So, moving right back now to where I wanted to be, honourable senators will recall that the access given to camera coverage of the proceedings of the Committee of the Whole was given to two cameras to be located in the chamber to videotape the proceedings of the committee. That videotape was then going to be available to a news pool.

For Mr. Trudeau's appearance we have had some requests—and Senator Molgat will correct me if I am stating any facts incorrectly—not to change anything in the chamber but simply to permit the feed to go through OASIS on the television channel allocated to the Senate. One problem with that, of course, is that OASIS, itself, belongs to the House of Commons. However, there is a channel allocated to the Senate. From there, then, other people who might want to take the feed can do so, but must make their arrangements through OASIS. We want simply to get the feed to OASIS.

When these preparations were being developed, we were asked by some still photographers if they could be given similar access, because we appeared to be giving preferential treatment to the video over the still photographers. That is why I am asking that they be given access.

Now the apology. This matter was raised in our caucus this week. I had meant to raise the matter in advance with Senator Doody so that he could raise it in the government caucus also. I did not do that, and that is what I apologize for. So "those are the jokes, folks," as they say in other areas of show business.

Hon. William M. Kelly: Honourable senators, I would like to ask the Deputy Leader of the Opposition a question on this subject.

I have listened carefully to what Senator Frith had to say, but from his remarks I did not discover the purpose of this whole exercise. My understanding of the Committee of the Whole is that we, as senators, sit and listen to arguments on the matter being examined. I am trying to understand what value is added to our deliberations to have this particular activity recorded on tape, or whatever is being suggested.

Senator Frith: I would rather not redebate that. We have authorized the video cameras. There were reservations expressed by certain senators at the time of that debate. I cannot remember specifically whether or not Senator Kelly was one of those senators expressing reservations. We discussed and did finally pass a resolution permitting the access that I described in my earlier remarks today.

Today I am simply asking for an opportunity for still photographers to attend, as well as video cameras, all based on the assumption that such arrangements will not interfere with our proceedings, and will be subject to the same conditions that apply to the video cameras in our original resolution authorizing their presence here.

Senator Kelly: Honourable senators, I am still trying to understand what this additional dimension brings to this whole activity. Where did the suggestion that still cameras be included originate? I am trying to understand why we would do that.

Senator Frith: Were you here when I began speaking on this subject, or did you just arrive, Senator Kelly?

Senator Kelly: I believe I was here.

Senator Frith: I just wondered how far back we should rewind the tape.

Senator MacDonald: To the prayers.

Senator Frith: Senator MacDonald suggests that we do not need to go back any further than the prayers. That is today's prayers, I take it.

Is the question: What does the addition of still photography add to the permission already accorded by authorizing the presence of video cameras?

Senator Kelly: Yes.

Senator Frith: What it adds is still photography.

Hon. Michel Cogger: Honourable senators, I had the honour of presiding at the joint committee last summer in the absence of Senator Tremblay. A similar request was made to the joint committee. Perhaps, for the benefit of senators, I might point out the decision that was made at that time.

The decision on a similar question was that still photographers would be allowed in for a very short period of time prior to the beginning of the proceedings. They would then move away and let the proceedings follow their course.

Senator Frith: I take it the television cameras were allowed to stay throughout the whole proceeding but the still cameras were excluded.

Senator Cogger: The entire proceedings were televised, and the still photographers were removed as the proceedings began.

Senator Frith: I just want to understand. The television cameras were allowed to stay, but the still photographers were asked to leave.

Senator Cogger: That is right.

Senator Frith: I do not think that is fair, and that is why I am suggesting this motion.

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, that leads to the question that I would like to ask: How still is the still photographer? If he is going to stay still in a part of this chamber and take pictures, that is fine with me. However, if he is going to dart around the room like a little magpie and do his thing at various angles, that could be quite distracting and make the place look perhaps more circus-like than we want it to look.

I appreciate the desire of my honourable friends opposite to have this nostalgic trip back to Camelot. Nevertheless, in the interest of the decorum of the chamber, surely we should try to ensure that the still photographer is reasonably still.

Senator Frith: I think we are making real progress. Apparently we have the sympathetic understanding of Senator Doody. We have that on so many issues, and I am glad to know that this is one of them.

The other question is, again, as usual, a good question. I assume that they will be very still, indeed, but I do not know. I will ask Senator Molgat if he knows anything more about how still, as in "How still the night!" "Be still my heart!"—the still photographers will still be.

● (1410)

Hon. Gildas L. Molgat: Honourable senators, they are, indeed, very still. They do not move; they do not come on the floor of the Senate. It is really what is going on in the House of Commons now, but, as you know, the House of Commons has a different physical structure from ours. Behind the chamber there are curtains, with a seating place behind that. Still photographers are allowed in the House of Commons behind that curtain—I think there are either one or two; I am not sure of the exact number—and they are there during the course of the proceedings to take pictures. However, there are no flashes, there is no noise, and there are no extra lights. It is simply a question of having them there.

Here the intention would presumably be to have them sit in the Press Gallery—at the corners, or possibly in the other gallery. They would not be moving about.

Senator Doody: I notice that Senator Molgat has been using the plural all the time, and I think Senator Frith referred to "a pool." I thought a pool would be representative of a group of photographers, but that is not so; there is a whole pool of photographers coming in. Is that correct?

Senator Frith: Over to you, Senator Molgat.

Senator Molgat: No, it would not be an army.

Senator Doody: Not an army?

Senator Petten: A company!

Senator Molgat: For example, if an honourable senator from over here is speaking, it is difficult for a photographer sitting up in the gallery to get the picture, as is the case if one is sitting over on the other side. So it would be two or three, but no more than that.

As I understand it, the rules would be the same as they are for the television cameras, namely, that they only take pictures of the individual who is asking the question or answering the question. So it would not be panning.

Hon. Richard J. Doyle: I wonder if the possibility had been considered of consulting Senator Davey to see if the entire proceedings could not be moved to the National Press Centre, which perhaps is better equipped.

Senator Frith: Strangely, we did not think of that—

Senator Davey: That is not a bad idea!

Senator Frith: —but Senator Davey says that that is not a bad idea. Thanks for asking, senator.

Senator Flynn: Is this applicable only to next Wednesday's sitting?

Senator Doody: What about Thursday?

Senator Frith: That is all I am asking for, but if we want it for more I would be glad to change the motion.

Senator Petten: Make it Thursday!

Senator Flynn: Why do you ask for that particular day?

Senator Frith: Because that is what they asked for.

Senator Flynn: Who did?

Senator Frith: The still photographers.

Senator Molgat: I might point out that the request comes from the Press Gallery; the request and the phone call to me originated from the president of the Press Gallery.

Senator Doody: Will they need any help in finding the place?

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

Hon. Senators: Agreed.

Motion agreed to.

OFFICIAL LANGUAGES

REPORT OF COMMISSIONER REFERRED TO JOINT COMMITTEE

Hon. C. William Doody (Deputy Leader of the Government), with leave of the Senate and notwithstanding rule 45(1)(*e*), moved:

That the Annual Report of the Commissioner of Official Languages for the calendar year 1987, tabled in the Senate on 22nd March, 1988 (Sessional Paper No. 332-738A) be referred to the Standing Joint Committee on Official Languages; and

That a Message be sent to the House of Commons to acquaint that House accordingly.

Motion agreed to.

[*Translation*]

OFFICIAL LANGUAGES

REPORT OF COMMISSIONER—MESSAGE FROM COMMONS

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons as follows:

HOUSE OF COMMONS
CANADA

Tuesday, March 22, 1988

ORDERED,—That a Message be sent to the Senate to acquaint Their Honours that the report of the Commissioner of Official Languages for the year 1987 (Sessional Paper No. 332-1/301B) has been referred to the Standing Joint Committee on Official Languages.

ATTEST

ROBERT MARLEAU
Clerk of the House of Commons

[*English*]

EMERGENCY PREPAREDNESS BILL

SECOND READING

On the Order:

Resuming the debate on the motion of the Honourable Senator Kelly, seconded by the Honourable Senator Bielish, for the second reading of the Bill C-76, An Act to provide for emergency preparedness and to make a related amendment to the National Defence Act.—(*Honourable Senator Hicks*).

Hon. Henry D. Hicks: Honourable senators, yesterday afternoon Senator Kelly explained the import of the emergency preparedness bill, which is now before us. In my view, his explanation was altogether adequate and requires only a few supplementary comments from me.

[The Hon. the Speaker.]

I was also interested in Senator Kelly's historical summary of the antecedents of this bill and of Emergency Preparedness Canada and the various agencies that from 1948 to the present time have assumed responsibility for seeing that Canada is prepared for various types of emergencies.

Senator Kelly pointed out that this bill is primarily and largely designed to give statutory authority for a state of affairs which is already in existence, thus enhancing the status and the authority of Emergency Preparedness Canada and of its executive director. He did try to point out that it was not only the preservation of the status quo but that there were some special things that this bill did. However, the primary thrust of this bill was that by giving statutory authority for Emergency Preparedness Canada its prestige and authority would be enhanced and it would have its own budget in the Estimates, and so on.

Senator Kelly then referred to the fact that Bill C-76 required the executive director and Emergency Preparedness Canada to report to a minister. However, that minister was not likely to be the Prime Minister. He then went on to express some regrets or reservations of his own that the direction of Emergency Preparedness Canada would not continue to be under the direct control of the Prime Minister or be directed from the Privy Council Office. I am not sure that I agree with Senator Kelly on this point. If I may interject a personal note, I remember when, for a time, I was the head of a much smaller government in the province of Nova Scotia. I was constantly besieged by people who wanted to have direct authority to report to the premier and not to any other minister. I tried to point out to these people that, while they might think that this would give them a much better line into cabinet and into the executive making decisions, it did not always turn out to be that way. I pointed out that the premier of a province was often very busy, that if he had a good minister, in whom he had confidence, that minister might very well see that the specialized interests of the individual who wanted to report directly to the premier were dealt with effectively and quickly. So it does not seem to me to be much of a limitation that this bill does not require the EPC to report directly to the Prime Minister, or even to the Privy Council Office. Obviously, if there were a serious emergency in the country, no Prime Minister would want to remain aloof from it. He would want to be involved, and this proposed legislation puts no hurdles in the way of a Prime Minister wishing to become directly involved in what might result from an emergency situation.

• (1420)

It seems to me a good thing that in the past few years the minister responsible for Emergency Preparedness Canada has been the Minister of National Defence. I do not think that we could contemplate a really serious emergency in Canada without the Department of National Defence becoming involved. It seems to me that the direction of the Department of National Defence and the direction of the emergency preparedness office might very well be coordinated by the Minister of National Defence. I point out to the Senate that clause 10 of

this bill removes from the National Defence Act the statement that the Minister of National Defence performs the duties of "preparation for civil defence against enemy action." This responsibility has been taken away from the Minister of National Defence. Presumably, the preparation for civil defence against enemy action, along with some other emergencies referred to in Bill C-76, will come under the executive director of Emergency Preparedness Canada and the minister to whom that executive director reports. I do not think that this is necessarily a serious matter, but I repeat what I said before, that in a serious emergency it seems inevitable to me that the Minister of National Defence, and perhaps even the Canadian Armed Forces, would have to be involved. Therefore, I can see a reason why that minister should control both our armed forces and the emergency preparedness mechanism.

There is a companion piece of legislation to this bill, the Emergencies Act, which, I hope, will be enacted soon. This legislation takes the form of Bill C-77, which has not come to us as yet. There is a reference in Bill C-76 to the Emergencies Act. I refer to paragraph 5(1)(*g*), which reads:

> The functions of Emergency Preparedness Canada with respect to the development of civil emergency plans are
>
> (*g*) to establish arrangements with each province whereby any consultation with the lieutenant governor in council of the province required by the *Emergencies Act* with respect to a declaration of an emergency under that Act can be effectively carried out;

and the clause goes on from there.

Therefore, the passage of this bill definitely envisages the coming into force of the Emergencies Act, and I hope that that legislation, which I suspect may have some features with some more degree of controversy in them than Bill C-76, will come before us at an early date.

Honourable senators, with these minor reservations or observations, I concur with the second reading of this bill and intend to support it.

Hon. William M. Kelly: Honourable senators—

The Hon. the Speaker: Honourable senators, I wish to inform the Senate that if the Honourable Senator Kelly speaks now his speech will have the effect of closing the debate on the motion for second reading of this bill.

Senator Kelly: Very briefly, I find little to disagree with in what Senator Hicks has said. I think his points were well taken.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Kelly, bill referred to the Special Committee of the Senate on National Defence.

PATENT ACT

BILL TO AMEND—SECOND READING—ORDER STANDS

On the Order:

> Resuming the debate on the motion of the Honourable Senator Bonnell, seconded by the Honourable Senator Petten, for the second reading of the Bill S-15, An Act to amend the Patent Act.—(*Honourable Senator Cogger*).

Hon. Michel Cogger: Honourable senators, I am not prepared to speak to this order today. It is a subject of some importance, which has been the object of much debate in this chamber, and I wish to reflect upon it further during the Easter holidays. Then I will be ready to address the house.

Senator Frith: And the poor, the elderly gouged in the meantime!

Hon. H.A. Olson: Honourable senators, I can appreciate that Senator Cogger may want to reflect on Bill S-15, but he said he required until after the Easter recess. There are some very important reasons why this bill should be given second reading and referred to committee, one of them being that we can invite some of the principal spokesmen for the pharmaceutical companies to come back to the Senate committee so that we can ask them why they have violated the firm undertakings they gave when they were here before.

Senator Barootes: Allegedly firm.

Senator Olson: Let us get at the truth. I hope Senator Cogger will not attempt to sit on this and simply postpone it while he is reflecting for that long period of time.

There are people who are now paying as much as 30 per cent, 40 per cent and as high as 200 per cent more for prescription drugs than they were paying prior to January 1. This time delay is unconscionable and therefore I would ask him to get on with it.

Senator Cogger: Let me apologize, senators. I indicated to Senator Haidasz, who called me recently, that I was quite prepared to yield to him and allow him to speak on this matter, reserving my right, of course, to still address the question. I do not think there is anything unconscionable about that.

Senator Olson: Honourable senators, it may be that Senator Cogger has not had the privilege or the obligation to go into some of the pharmacies and pay some of these ridiculous price increases. I merely want to advise him that I will attempt to take some action shortly to see if we can get this past second reading. He, therefore, should not stand in the way by continually attempting to adjourn the debate.

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I think it is only fair to point out that there is no intention of delaying the debate. Any honourable senator who wishes to participate is quite welcome to do so. Senator Cogger has made it perfectly clear that he will yield to anyone at any time. As he has said, it is a very important matter and one in which he is very interested. I understand that he is doing quite a bit of research, and when he has the necessary material he will address the question. In

the meantime, if Senator Olson wishes to participate, he can speak now or tomorrow, or, indeed, we can come back on Friday or Monday if he wishes.

• (1430)

Senator Olson: Obviously the Deputy Leader of the Government missed the point. I simply want to get the bill to committee so that we can ask the people who have caused the problem to explain why and under what terms and conditions they did it.

However, that is not the point that prompted me to raise the matter. I want to ask the spokesmen for the pharmaceutical companies to appear before the committee and account for what they have done, which is a complete violation and contradiction of what they promised when they previously appeared before the committee.

Senator Doody: One understands Senator Olson's reluctance to speak. He has already done so.

An Hon. Senator: What committee do you have in mind?

Senator Olson: The Banking, Trade and Commerce Committee. That is where it was dealt with.

Order stands.

SENATE AND HOUSE OF COMMONS ACT

BILL TO AMEND—SECOND READING—ORDER STANDS

On the Order:

> Resuming the debate on the motion of the Honourable Senator Murray, P.C., seconded by the Honourable Senator Roblin, P.C., for the second reading of the Bill C-83, An Act to amend the Senate and House of Commons Act.—(*Honourable Senator Stewart (Antigonish-Guysborough)*).

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I fully appreciate the fact that Senator Stewart is unavoidably absent today; but I am wondering whether there is any intention of having this bill brought forward and debated in the Senate. Perhaps we could have second reading and get it moved into a committee. A certain number of people have shown a great deal of interest in it. I would not want to accuse honourable senators opposite of delaying the bill; but I certainly would like to see some action on it.

Hon. Royce Frith (Deputy Leader of the Opposition): I am sure we can talk.

Order stands.

THE CONSTITUTION

FIRST MINISTERS' ACCORD AND AGREED TEXTS—CONSIDERATION IN COMMITTEE OF THE WHOLE—ORDER STANDS

On the Order:

[Senator Doody.]

> The Senate again in Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, perhaps it would be a good idea to have this order stand temporarily. Honourable senators may wish to speak on other orders, and we can then return to Order No. 7.

Hon. C. William Doody (Deputy Leader of the Government): We can stand it for longer than that, if the honourable senator wishes.

Senator Frith: I used the word "temporarily" advisedly.

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

Hon. Senators: Agreed.

Order stands.

STANDING RULES AND ORDERS

CONSIDERATION OF SEVENTH REPORT OF STANDING COMMITTEE—DEBATE ADJOURNED

The Senate proceeded to consideration of the Seventh Report of the Standing Committee on Standing Rules and Orders (Rule 106 of the *Rules of the Senate*) presented in the Senate on Tuesday, March 22, 1988.

Hon. Gildas L. Molgat: Honourable senators, the Senate is in such a good mood today that I am sure that such a non-controversial proposition as the one which this report proposes will be accepted readily.

Rule 106 of the Rules of the Senate of Canada says:

> Seats shall be reserved without the Bar of the Senate Chamber for members of the House of Commons who may desire to hear the debates.

The procedure has been that at the south end of the chamber, where the brass bar is located, the chairs in the space beyond the bar can be used by members of the House of Commons who wish to listen to our debates. The chairs are not frequently used, but they have been used on occasion.

It was suggested by Senator Corbin that the Senate should give consideration to extending that same privilege to former members of the Senate. As honourable senators are aware, former members of the Senate are frequently seen sitting in the galleries.

This practice of reserving space for former colleagues is fairly common in the provincial legislatures. There are two chesterfields set aside in the Legislative Assembly of the province of Manitoba for former members. They are welcome to use those chesterfields at any time. Distinguished visitors sometimes use them, but generally they are reserved for former members of the legislature.

The suggestion is that we amend the rules so that former members of the Senate can sit in the seats now reserved for the members of the House of Commons.

Hon. Jacques Flynn: How many seats will be provided? Only the seats that are now available, or is it the intention to

have a couple of rows of seats so that you can call in a lot of former senators for next Wednesday, for instance?

Senator Doody: How is the recruiting going?

Senator Frith: Another good idea comes from the other side!

Senator Flynn: If you are talking about the seats that are there now, and not adding more seats, I see no difficulty with the proposed amendment to the rules, although I could speculate on what could happen on some occasions.

Senator Frith: Next Thursday, for example?

Senator Flynn: Next Thursday, but more so next Wednesday.

Senator Molgat: I cannot specifically answer that question, because I do not know if there are more chairs available to be brought into the chamber, although I presume there are.

Perhaps this is not a good time to bring forward this amendment; however, I can assure honourable senators that this is unrelated to the events of next Wednesday. I can assure Senator Flynn of that, but I can see I will have difficulty convincing him.

Senator Frith: Or next Thursday! We can let the matter stand. It is not related to the events of next Wednesday.

Senator Molgat: I am sure the members of the Rules Committee who attended the meeting at which this item was discussed did not give any consideration to that; the consideration was that this is a courtesy we should offer to former senators. However, I am sure extra chairs can be brought in if they are needed.

Senator Flynn: I suggest that the amendment state that the seats that are presently available be provided for that purpose. I do not think we should have two rows of chairs back there.

In any event, I move the adjournment of the debate.

On motion of Senator Flynn, debate adjourned.

[*Translation*]

STANDING RULES AND ORDERS

EIGHTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the Eighth Report of the Standing Committee on Standing Rules and Orders (Rule 67(1)(*d*) of the *Rules of the Senate*), presented in the Senate on March 22, 1988.

Hon. Gildas L. Molgat: Honourable senators, the eighth report has to do with translation. Some senators will remember that some time ago the Standing Committee on Standing Rules and Orders proposed to amend the rules of the Senate to change the name of this committee.

At the very last minute the Table notified me that, in their opinion, the translation was not acceptable, that the French terms did not convey the very same meaning as the English version and the purpose for the change.

In spite of that, I suggested at the time that the Senate should adopt the report so that the House of Commons, which had already made the change, could continue to sit for the time being and that we should have discussions with the House of Commons.

We have had these discussions. I am delighted to inform you that our legal advisers here were right, so that we propose another change to the name. The French text, therefore, should read:

> Le comité mixte d'examen de la réglementation, auquel doivent être nommés huit sénateurs . . .

Following this change and during the ensuing discussion it was decided that another change might be made to the English text to make it more precise. In view of this, we recommend that the English text be changed so as to read:

> The Joint Committee for the Scrutiny of Regulations.

I believe the House of Commons fully concur and so do our translating people. This committee, which has been at work for quite a long time, now has a name which should satisfy everybody.

Motion agreed to and report adopted.

● (1440)

[*English*]

THE CONSTITUTION

FIRST MINISTERS' ACCORD AND AGREED TEXTS— CONSIDERATION IN COMMITTEE OF THE WHOLE CONTINUED

Leave having been given to revert to Order No. 7:

On the Order:

> The Senate again in Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to.

The Senate was accordingly adjourned during pleasure and put into a Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to, the Honourable Gildas L. Molgat in the Chair.

The Chairman: Honourable senators, before we call our first witness in, I believe that Senator Barootes wishes to raise a point of order. Senator Barootes?

Senator Barootes: Thank you, Mr. Chairman.

My point of order has to do with the appropriateness and propriety of the appearance before us of the next witness. It is my understanding that members of the other place do not, as a rule, appear before the Senate in this chamber to give evidence. Moreover, it is my understanding that members of the federal cabinet from time to time appear in this chamber and at Senate committees in their capacity as ministers of government departments. My point of order is as to whether it is right, appropriate and proper for the next witness to appear in this chamber. In view of the fact that this will imminently be a fait accompli, and we do not wish to cause any embarrassment to the honourable gentleman, may I ask whether he is appearing here—inappropriately, as I believe—under his own invitation or whether he has been invited by our steering committee to appear?

The Chairman: Honourable senators, if I may, I will begin with the last question first. The steering committee of the

Committee of the Whole did not issue an invitation to Mr. Johnston. It was his request to come here. If my memory serves me correctly, the steering committee, by a decision of the steering committee, reported to the Committee of the Whole and approved by the Committee of the Whole, agreed to send invitations to a small number of persons. I believe specific invitations were issued to our witnesses of next week, Mr. Trudeau, Professor Russell, Professor Cairns and, subsequently, Premier Bourassa and one of his cabinet ministers, Mr. Rémillard. There was no invitation, then, issued to Mr. Johnston. He is appearing before us at his request.

All requests to appear before the Committee of the Whole were discussed by the steering committee, which approved of any persons who asked to appear here. The steering committee reported to the Committee of the Whole its recommendations as to who was to be heard, and the Committee of the Whole voted in favour of hearing those persons. Therefore, Mr. Johnston is appearing today by a decision of the Committee of the Whole on recommendation of the steering committee. That is the procedure which occurred.

In general terms, Senator Barootes, I know that the appearance of members of the House of Commons before us has been a matter of concern to senators in the past. It is not, however, a frequent occurrence. Quite often members of the House of Commons have appeared before Senate committees. I recall, although I do not recall the name of the member, that some months ago on a bill having to do with a sweetening product—Senator Barootes may recall that bill—a member of the House of Commons concerned with the legislation appeared before a committee of the Senate.

In any event, in this particular case I can assure senators that the decision was made by the Committee of the Whole.

Senator Barootes: I thank the chairman for his explanation. The reason I raise this as a precedent is that it is fairly obvious that the witness has an excellent platform and forum in which to express his views in the other place. That is why I brought the matter to the attention of honourable senators.

The Chairman: Thank you, Senator Barootes.

Senator Doody: Mr. Chairman, you mentioned Premier Bourassa and his minister responsible for intergovernmental affairs. Have they indicated a desire to appear?

The Chairman: I have had a response from both of them. The first response came from Premier Bourassa, and sometime later a response came from Mr. Rémillard. Both of them have declined to appear.

It was my intention to table in the committee all the requests that went forward and the responses that were received.

If there are no further business matters, then I ask our first witness to join us.

Pursuant to Order adopted on June 18, 1987, the Honourable Donald J. Johnston, P.C., M.P., was escorted to a seat in the Senate chamber.

[The Chairman.]

The Chairman: Honourable senators, I should like to welcome our first witness this afternoon, the Honourable Donald J. Johnston, who, I believe, needs no introduction to this chamber. He is a well-known colleague from the other place.

Mr. Johnston has sent a copy of his brief directly to all members of the Senate. It was decided, therefore, that it was not necessary to recirculate it.

Mr. Johnston, on behalf of my colleagues I would like to welcome you this afternoon. Our preference is to allow for a 15- or 20-minute presentation, to be followed by questions from senators. If that is agreeable to you, we will proceed in that way. We have one hour at our disposal, and we would like to adhere to our time limit, because we have witnesses to appear following you.

Hon. Donald J. Johnston, P.C., M.P.: Honourable senators, it is an honour and a privilege to be here. I heard someone say that I already had an excellent platform in the House of Commons, but, quite frankly, I cannot think of a better platform than this one.

Mr. Chairman, I have sent a rather extensive submission to senators. I do not intend to review it. In fact, in my initial remarks I do not even intend to deal with many of the arguments set forth in it. However, I would welcome questions afterwards.

Essentially, the brief that I submitted contains arguments to support the view that the Meech Lake Accord creates further decentralization and power in favour of all provinces through an entrenched constitutional mechanism that points more to a confederation than to a federation. It points to a total constitutional impasse through a requirement of provincial and federal unanimity for significant amendments. It also represents a retreat from the vision of a bilingual, multicultural Canada to a concept of two nations, one English-speaking and one French-speaking, each with geographically defined limits, and a status for Quebec as a distinct society which could provide constitutional legitimacy to future separatist demands for an independent nation.

Mr. Chairman, I have also taken the liberty of submitting to honourable senators a submission which I made recently to the Ontario Select Committee. This submission deals primarily with certain arguments put forward by constitutional authorities such as Professor Lederman and Professor Hogg, who both support the Meech Lake Accord. I point out in that submission how their sanguine view of the Meech Lake Accord contrasts dramatically with the opinions of Premier Bourassa and Minister Rémillard. I regretted to hear in your opening comments, Mr. Chairman, that they will not be appearing before you.

You have heard many arguments on the points I have just touched upon. I read an excellent brief which was submitted to you as of last week from Professor Brian Schwartz of the University of Manitoba. His brief covers many of the technical, legal aspects that I dealt with in my own material, although I deal with them in a somewhat different way.

[*Translation*]

But today, Mr. Chairman and honourable senators, I would like to review a few recent events that are significant in this debate on Meech Lake. First, the position taken by New Brunswick's Premier, Mr. Frank McKenna, and the shameful blackmail used by Prime Minister Mulroney and Premier Bourassa to convince him to change his positions.

The second matter I would like to raise at the beginning of my comments deals with the annual report of the Official Languages Commissioner, which was tabled yesteday.

Third, I would like to focus your attention on the attitude of Mr. Bourassa himself on the distinct society and this language duality in the Commissioner's report.

Finally, Mr. Chairman, I would like to develop the idea that the Accord's obvious shortcomings and flaws will be corrected during a second or third round of constitutional discussions.

First, the questions raised by Mr. McKenna are the following: Last week, Mr. McKenna apparently met with Mr. Bourassa. He raised the same objections he expressed before the Special Joint Committee of the Senate and the House of Commons last year, even before he was elected New Brunswick's Premier.

He should therefore realize, Mr. Chairman and honourable senators, that the objections he raised, the six questions he put last year were part of his election platform in New Brunswick. He is simply following up on the position he took last year and defended during the general election in New Brunswick. In turn, he is becoming the target of irrational attacks from Mr. Mulroney and Mr. Bourassa.

Even a newsman like Mr. Michel Roy, whom I hold in high esteem in every respect, a veteran newspaper man, referred to that. I have before me, Mr. Chairman, Mr. Roy's editorial that appear in *La Presse* last Saturday, from which I quote: "The young and proud leader . . . is entertaining his neighbour from Quebec with arrogant talk on Meech Lake and Canada's future."

He goes on to look for the reason behind those objections. He refers to the intervention of liberals of the Trudeau-ite school. That school of thought is scrutinizing Meech Lake among others. Mr. Chairman, that is not the Trudeau-ites' school, but the school of Macdonald, Laurier, Pearson, John Diefenbaker and of course Trudeau and every single Prime Minister since Confederation. It is not only the Trudeau-ite school. I understand Mr. Trudeau will be here next week.

But he did not realize that Mr. McKenna is the only elected leader in Canada now governing Canadians in his province under a specific mandate on Meech Lake. If there is arrogance there, Mr. Chairman, it is mainly on the part of Quebec, which does not accept the democratic reality of the overwhelming mandate Mr. McKenna received from the people in his province.

[*English*]

If I may say so, Mr. Chairman, I will be quite happy to defend it during questions and answers. Neither Mr. Mulroney nor Mr. Bourassa nor any other premier of this country has a mandate on Meech Lake like the mandate that Premier Frank McKenna holds.

One can say that the Commissioner of Official Languages, with equal arrogance, questions Meech Lake. In my view, he is a bit too gentle, but he does see the dangers inherent in Meech Lake, pointing as it does to a French Quebec in an English Canada, the point which I made in my own brief and which I raised at the outset.

Mr. Chairman, I would like to direct the attention of senators to a number of comments that the commissioner has made. First, I would like to say that I agree with his analysis, but not necessarily with his conclusions. At page 7 of his report he makes this statement:

> But a majority of Canadian electors and a majority of their elected representatives remain firmly opposed to a straight territorial solution to Canada's special linguistic dilemma, as being, in the end, a recipe for national suicide.
>
> With all its imperfections, some form of official bilingualism is the only answer that does not point toward a progressive dismemberment of Canada.

● (1500)

Well, Mr. Chairman, I happen to agree with that analysis that Canada will not survive with a unilingual French Quebec otherwise surrounded by a sea of anglophone Canada. He goes on to say that the language sections of the Meech Lake Accord are an honest attempt to address that issue. Mr. Chairman, I say to you and to honourable senators that it is not an honest attempt to address that issue at all. In fact, it does not address the issue, even as the commissioner suggests it does.

For example, elsewhere on page 6 he refers to the constitutional commitment to preserve the minority communities. I point out to honourable senators that the Meech Lake Accord does not contain any commitment to maintain minority communities. It commits the legislatures to preserve the existence of French-speaking Canadians outside Quebec and the existence of English-speaking Canadians in Quebec. Those are not communities, Mr. Chairman. There is a big difference between the preservation of a community, with its institutions, infrastructure and everything that makes a community of interest, and simply saying that we are to preserve the existence of English- or French-speaking Canadians, as the case may be.

So, Mr. Chairman, I suggest to honourable senators that the commissioner has identified the problem. I think he has been overly generous in his view of the Meech Lake Accord, but it is perfectly clear that he sees it moving us in the direction of a French Quebec in an English Canada. Mr. Chairman, this has been a concern of everyone concerned with the bilingual issue from the outset, going back to the B & B Commission—and Senator Frith was actually a member of that commission.

Recently I picked up a copy of the dissenting opinion of the late Frank Scott, written with respect to Recommendation 42,

which essentially supported the findings of the commission. He was concerned about one aspect which, he said, "will strengthen the hands of those, and their numbers are increasing, who think there can be a unilingual Quebec in a bilingual Canada."

Now, Mr. Chairman, I suggest to honourable senators that the growing number that Professor Scott was referring to at that time seems now to include most of the supporters of the Meech Lake Accord.

Professor Lederman, whose position I addressed in my exposé to the Ontario Select Committee, refers in his writing to the "distinct society" of French-speaking Canadians. There is no room for any other minority groups within that structure. [*Translation*]

What does Mr. Bourassa think of that, Mr. Chairman? He has not accepted your invitation to come here, nor has Mr. Rémillard, apparently. But when he refused the first time to come here, in front of the Senate—though maybe not officially—Mr. Bourassa said, as was published on February 13 in *Le Devoir*:

> Our position is well known. The Honourable Senators may read the deliberations of the National Assembly where I have explained why I approve the agreement.

[*English*]

So, Mr. Chairman, I think it is quite fair of us sitting here to see what Mr. Bourassa has said in the National Assembly. [*Translation*]

Thus, very briefly since I understand that I have only a few minutes and because I am anxious to hear the questions, I would like to bring to the attention of Honourable senators several comments that Mr. Bourassa has offered to his colleagues of the National Assembly.

On that same topic of a French-speaking Quebec, an exclusively French-speaking Quebec, on June 4, right after the Langevin Agreement, he said and I quote:

> . . . we must not only protect but promote the French language in Quebec. That is what we got yesterday in the Constitutionnal Agreement.

And later, speaking of Mr. Pierre-Marc Johnson, he added:

> . . . he must have been rejoicing over this great political victory we had achieved, one of the greatest political victories which the people of Quebec have experienced since the beginning of their history and which is acknowledged as such . . .

Further on he went on to say:

> The Constitution will give Quebec the means to maintain and promote the distinct character of the province, and it will provide a constitutional foundation for the French fact in Quebec.

Further still, Mr. Chairman, referring to the impact of the distinct society clause, he said:

> . . . first we must conclude that the distinct society clause is a major victory which is more than sheer symbolism, because henceforth the Constitution of the country will have to be interpreted in light of this acknowledgement. The French language is a basic aspect of this specificity, but there are others such as culture as well as political, economic and judicial institutions. As we have said on a number of occasions we did not want to be more precise so as to avoid reducing the role of the National Assembly in promoting this specificity . . .

And further still:

> With clause 2 we have secured safe and sound constitutional means to consolidate our powers in the linguistic realm.

I could go on, Mr. Chairman, but what is the point? I can assure you that the tone and meaning of each comment Mr. Bourassa made during the National Assembly debate clearly indicate he is trying to have a unilingual francophone Quebec in Canada, and this flies in the face of the recommendations of the Commissioner of Official Languages.

Mr. Chairman, finally I want to deal with the last question. Several times Mr. Bourassa said: If there are problems we will solve them at the next round. There will be a second round, a third round, and so on.

Michel Roy, whom I consider to be a very astute man, a very good journalist, said:

> . . . that in a second or third round of constitutional negotiations the objectives sought by Fredericton will become accessible.

Mr. Chairman, we know very well that one of Mr. McKenna's objectives is to have the Charter protected against the idea of the distinct society.

In light of the evidence given by Mr. Spector, who is adviser to the Prime Minister, we know very well that it was what we call a deal breaker and that Quebec would not go for it.

Why would Mr. Bourassa agree to change this policy at a new round of negotiations? The same goes for the question of Yukon and the Northwest Territories. Mr. Bourassa stated before a committee of the National Assembly, and perhaps even before the National Assembly, that Quebec was seeking a veto to prevent the creation of new provinces.

So all I can say, Mr. Chairman and senators, is that the train will have left the station for good. There can be no question of making changes at the second or third round. [*English*]

So I say, Mr. Chairman, in concluding these remarks—which have a lot to do with the substance but little to do with the text that I have submitted to you, but, because they are recent events, I wanted to address them—I say to you that if you believe as the Commissioner of Official Languages does, as all of our Prime Ministers have done, that the territorial division of the country into a French-speaking Quebec and an English-speaking rest of Canada will create the dismemberment of Canada and take us squarely in the direction of les deux nations, then you must reject Meech Lake.

Similarly, Mr. Chairman, if we—as I believe we all do at the federal level—believe that Canada is greater than the sum

of its parts, then we must reject Meech Lake. Similarly, if we believe that there is a national vision greater than provincial and local visions, then I also suggest, Mr. Chairman, that we must reject Meech Lake.

• (1510)

Mr. Chairman, I think I have said enough to get the session going, and I look forward very much to questions from honourable senators.

The Chairman: Thank you very much, Mr. Johnston. Indeed, I do have some questioners on my list. The first questioner will be Senator Fairbairn, who will be followed by Senator Gigantès.

Senator Fairbairn: Thank you very much, Mr. Chairman, and welcome, Mr. Johnston. In your remarks you dwelt at some length on the threat to the credibility of the Charter in terms of "distinct society."

In the same vein, I am wondering whether you could give us your views on section 16 of the Meech Lake Accord in that it specifically affirms Charter protection for aboriginal and multicultural rights, and in so doing may well open the rest of the rights under the Charter to challenge, namely, women's rights, mobility rights, and so on. I wonder if you could discuss that particular section.

Mr. Johnston: Indeed, Senator Fairbairn—through you, Mr. Chairman—section 16, of course, has been raised as a problem by all constitutional experts. Professor Lederman, who supports the Accord, has disregarded section 16. Specifically, he says that it is superfluous. However, there is another well-known rule of interpretation that parliaments do not speak in a superfluous way. Therefore, the other school of thought is that the maxim *Inclusio unius est exclusio alterius* would apply; namely, if you include one, you are, perforce, excluding others, and it has raised a major ambiguity.

If I may say so, Mr. Chairman, that is one of the reasons why I have pointed out to the premiers, the Prime Minister, to the Ontario legislature and in my own brief to you here today that there are questions such as that which could very easily be clarified by a judicial reference before the Meech Lake Accord becomes cast in stone. Therefore, I think that section 7 has created legitimate concerns in terms of constitutional interpretation.

Senator Fairbairn: Thank you. I have one additional question. I was interested in your reference to comments by Premier Bourassa, in either the National Assembly or in a committee of that body, specifically concerning the creation of new provinces in the North. This is a matter that our committee and a task force of that committee have studied in some detail. I wonder if you could give us a reference for those comments.

Mr. Johnston: I could indeed, senator. I was just looking at it this morning. I thought I saw it in proceedings of the National Assembly, but it is specifically in hearings before the committee of that assembly. I have a copy of it here with me and could probably find it for you.

This move on the part of the premiers and of the Prime Minister was not accidental, as many people have tried to make the people of the Yukon and the Northwest Territories believe. It was very specific. I am referring now to the blues from the committee, and the reference is 2465—C1—page 1. It is a little vague on this sheet. Mr. Bourassa says:

[*Translation*]

After referring to the Supreme Court decision and the gains made, he stated:

> As far as new provinces are concerned, I do not have to elaborate on the threat which the addition of new provinces would represent for Quebec's collective wealth especially in the regions where natural resources could become fully developed.

[*English*]

That is a direct quotation from Mr. Bourassa's remarks before the committee which, you will recall, sat after the Meech Lake Accord was signed but before the Langevin Block meeting took place. I also think there were some comments made in the National Assembly, but it would take me a little more time to find them.

Senator Fairbairn: So it was clear, then, from these comments that at Meech Lake the question of northern provincehood, and probably the extension of boundaries, was a live and specific issue, and not one that was forgotten in the discussions.

Mr. Johnston: No, I do not think that that was something that slipped between the cracks and that would be corrected in a second round.

Mr. Chairman, the other thing that I might say is that we must remember that the veto, by its very nature, creates a sort of constitutional horse-trading. For example, if agreement is to be obtained to allow a new province into the federation, as Mr. Schwartz might have said in his book or elsewhere, that veto is worth something to each premier who has agreed, so what is the *quid pro quo*? Is it a bit more territory? Is it a different federal-fiscal arrangement? Is it a causeway or whatever? It just lends itself to that kind of horse-trading that we have already seen take place around the table at Meech Lake.

Senator Fairbairn: Thank you very much, Mr. Chairman.

The Chairman: Thank you, Senator Fairbairn. Next is Senator Gigantès, followed by Senator Frith.

Senator Gigantès: Thank you, Mr. Chairman. Mr. Johnston, thank you for coming. I would like to say publicly that I admire very much your defence of Canada.

What do you think of the argument that if Meech Lake is rejected the social peace will be broken in Quebec? This is an argument that the *Gazette* has bought recently.

Mr. Johnston: Senator Gigantès—through you, Mr. Chairman—that argument has been used since the days of Mr. Duplessis and is now cropping up in the days of Mr. Bourassa. The threat of separatism raising its head was the basis of Mr. Duplessis' "two nations" theory that was, in a sense, adopted in the 1956 Tremblay commission report. It was very much

part and parcel of Premier Lesage's notion of special status, "Maître chez nous," "état du Québec." It also related to the additional powers requested by Quebec, and if you go back and look at some of Mr. Lesage's comments you will find that he was pointing the province very much in the direction of Meech Lake and asking for the same sort of things.

Mr. Lesage was followed by Daniel Johnson with "égalité ou indépendence." He basically said: "Here we have two nations, and if we do not get this there will be 'égalité ou indépendence'."

The same threat was raised with "souveraineté association" by Mr. Lévesque and, I suppose, "national affirmation" from Pierre Marc Johnson, although that concept never really became especially well defined.

Therefore, the question is: Who is going to stand up to those demands made by a series of premiers who see themselves as acting in the best interests of their province? With the exception of the period when Mr. Clark was Prime Minister, although nothing took place that was of consequence on the constitutional front, this is the first time since Confederation—and I say this in a non-partisan way—that we have had a Prime Minister who basically, as I said recently, "marche la main dans la main avec M. Bourassa vers l'ideé des deux nations." So that is the difference.

Senator Gigantès: Do you think that the peace will be broken?

Mr. Johnston: No, I do not think the peace will be broken. I think the important thing is for Quebecers to understand exactly what is at stake. We had to do that in 1980 during the referendum debate, and we did, and the peace was not broken. The problem is that, fundamentally, the people of Quebec are emotionally involved, although some have said that it is a non-issue with the man in the street in Quebec. However, I think if the people of Quebec understand what is at stake, and that this is a firm move towards the consolidation of the "two nations" theory; and ultimately sovereignty association, and ultimately a very useful and effective tool in the hands of a Péquiste government to move towards independence, they would appreciate full well that Meech Lake goes too far.

That is not to say that some resolution of the constitutional issue should not take place, as was proposed in the Liberal resolution of November 1986, which I and others at the time had understood would satisfy the desire of Quebecers—I being one of them, I might say—to have an identification—

[*Translation*]

—that Quebec constitutes within Canada a distinct society which is the main source but not the exclusive source of the French language and culture in Canada.

● (1520)

[*English*]

That was a preambular comment. I think that something like that should be the compromise position.

Senator Gigantès: Could you once more address yourself to the argument that if the 11 First Ministers, with a great negotiator at their head, arrived at an agreement in so short a period of time when it was never done before, and if they can accomplish miracles, why should they not accomplish a miracle again and change parts of the agreement? In other words, the objection based on the need for unanimity is not valid if we have a miracle worker at the head of the negotiations.

Mr. Johnston: Mr. Chairman, it is not hard to reach unanimity when you simply agree on how you are going to cut up the pie or the country. There was no give and take; there was only take in these negotiations. Would we have had unanimity if, for example, the federal government had insisted on defining spending power in a different way, if the federal government had said that it should be more involved in post-secondary education, or if the federal government had said that it should have a stronger role in terms of national securities and control? I do not think there would have been unanimity in these instances. Essentially, everybody walked away from Meech Lake thinking they had gotten something—except Canada!

Let me put a question to Senator Gigantès: What now would be given to Quebec to, for example, convince it to allow the formation of new provinces or to withdraw its veto in certain areas? I ask the Senate to bear in mind that Quebec has given nothing in these negotiations. I find it particularly upsetting when people say that Quebec has come wholeheartedly into the constitutional family. During the debate on the adoption of the Accord in the National Assembly on June 18 Mr. Bourassa, after citing a resolution of the Liberal Party with regard to the notion of self-determination, is reported as saying the following:

[*Translation*]

> A resolution which had been adopted by the Liberal Party, which is still in effect and which is still part of the constitutional program of the Liberal Party. It was adopted at the policy conference in Montreal on February 29 and March 1 and 2, 1980 . . . This resolution states that the Liberal Party recognizes the right of Quebec to determine its internal constitution and to express freely its will to maintain the Canadian federal union or to put an end to it. In other words, it recognizes the right of Quebecers to determine freely their own future. This was a resolution adopted by the Liberal Party in 1980, and it has been in no way amended—it is still part of the program—or affected by the Meech Lake Accord.

[*English*]

Mr. Bourassa said—and I hope that you will read his comments—in the National Assembly that Quebec gave up nothing during these negotiations, that Quebec likes this deal, that Quebec will not abandon its position that it can leave the federation at any time.

[*Translation*]

If the federation is not really profitable.

[*English*]

So that is the great historic miracle that was worked at Meech Lake, Senator Gigantès.

Senator Frith: Mr. Johnston, I want to ask you about two subjects.

Mr. Chairman, if I am crowding any of my colleagues on my second question, I hope that you will let me know.

The Chairman: I have five other names on my list, which gives each questioner roughly five minutes.

Senator Frith: The two points I want to ask you about are: first, the reference you made to the report of the B & B Commission; and, second, the distinction between political and constitutional judgments you make in the paper you presented to the Ontario committee.

Dealing with the first point, you have cited the opinion of Professor Scott. The commission, in the first volume of its report, did a study on what it calls, in chapter 4, "the territorial principle and the personality principle." It studied four other countries with language regimes and language problems. Those countries were South Africa, Finland, Belgium and Switzerland. What triggered my interest in your earlier comment relates to the fact that Belgium took the territorial approach in its answer to the language regime question. Your position seemed to be that we should avoid, as the commission felt, that solution—that is, two unilingual territories. Would you expand on how you see Meech Lake creating that territorial principle rather than the personality principle which the B & B Commission chose?

Mr. Johnston: As a preamble, I would say that the issue of whether it should be territorial or whether it should be bilingually national is a legitimate area of debate. I happen to think, as the commission did, as the commissioner does and as the whole program that has been adopted does—

Senator Frith: In the Official Languages Act, for example.

Mr. Johnston: —that the territorial principle is wrong. I am galled by the fact that Meech Lake can lay the groundwork for a territorial division of language without the public effectively being involved in the debate or opting for the principle.

Senator Frith: That is the topic I would like you to direct your remarks to.

Mr. Johnston: The "distinct society" clause, combined with the role assigned to the National Assembly and to the Government of Quebec to promote the distinct identity of Quebec, in Premier Bourassa's mind, from citations I have read, is the basis of consolidating the French fact in Canada. That is my first point. Second, when one looks at the policies already adopted by Premier Bourassa in the absence of Meech Lake, whether it be on signing, on schooling, on dubbing of films, or whatever, one sees the elements of how Mr. Bourassa would like to see the whole thing evolve. Many Canadians think that you can have a unilingual Quebec in either an English Canada or perhaps a bilingual Canada. A unilingual Quebec in a bilingual Canada is another issue we can discuss. It is my view that the rest of the country will reject the notion of bilingualism if Quebec is unilingual. The reason I went to Professor Scott is that back in the late 1960s he made the observation that there were a growing number of Canadians who believe that one can survive in this country with a unilingual Quebec in an Anglophone Canada.

Senator Frith: It is not only the problem of survival within this country but of survival on this continent in such isolation.

Mr. Johnston: That is true. The other aspect which we have not really addressed today is that I believe, as Mr. Bourassa, Mr. Rémillard and others do, that there is indeed a transfer of jurisdictional authority in Meech Lake by virtue of the interpretative clause. Some constitutional experts say that it is only a clause of interpretation. Those of us who have studied constitutional law realize that many of the most important jurisdictions, including communications, for example, have resulted from judicial interpretation. I believe that the "distinct society" clause would give Quebec, certainly a Péquist government, a very strong argument, which they have already tried, to establish its own control over all domestic communications, including content. So I think that there is a power transfer plus the notion of a unilingual French province.

• (1530)

Senator Frith: The second point, Mr. Johnston, has to do with the fact that, although we have this paper you sent us, I would like something from it on our record. Perhaps, therefore, you could give us a few sentences to develop what you have pointed out regarding the constitutional opinions of Professors Lederman and Hogg and their political opinions.

Mr. Johnston: I went into their writings and their testimony very carefully. It is clear that in both instances Professors Lederman and Hogg crossed over the line of constitutional law into the area of politics: Professor Lederman saying that this will make the process complete and Quebec will now legitimately come back to the table; and Professor Hogg saying that there was a deep sense of grievance in 1982 with the patriation. He said that there was a profound sense of grievance in Quebec and that it was terribly important that this be eliminated. I am not critical of anyone expressing a political opinion. The point is that their credentials as constitutional authorities should not add any weight to their views as amateur politicians. In my paper I took issue with Professor Hogg's analysis of the psyche of Quebec in 1981 and in 1982. I do not agree that there was a profound sense of grievance.

One of the points, Senator Frith, that I think senators should be aware of is that if one goes back to the provincial general election of 1985 between Premier Bourassa and Pierre Marc Johnson, who was then premier, one will find not one instance of a debate on the issue of the Constitution. If there was such a profound sense of grievance and such a priority in the minds of Quebecers, is it not unusual that there was not one word or one issue raised, except—and I have done a computer study of this—a question about what Mr. Rémillard's position might be in the Constitution, because he came in as a candidate? There was nothing about the five points at all. The only place it is found is in a document called "Mastering our Future", which is part of the election literature which is buried away; it is vague, it is not specific, and therefore Mr.

Bourassa, I say, has no mandate like Premier Frank McKenna has on Meech Lake.

Senator Frith: Just as a footnote on the purely constitutional side of the opinions of Professor Lederman and Professor Hogg, you also point out that they are not universally supported by other constitutional experts.

Mr. Johnston: Although I do not even purport to list them all, I do point out a few of those in my paper. For example, let me offer this interpretation. Professor Hogg believes that the promotion of the distinct society also means the promotion of English in Quebec. When I read that I cannot give it any credibility at all. Can you imagine the Supreme Court of Canada faced with a situation where the Meech Lake Accord says that other provinces are obliged only to preserve the existence of French-speaking Canadians, but in Quebec the Quebec government is to promote the distinct identity, which includes English-speaking Canadians? It is a non-starter, and Premier Bourassa certainly recognizes it as such, and so, in fact, does Professor Lederman.

The Chairman: I remind my colleagues that I have five names on the list and that we have 20 minutes left. The next questioner will be Senator Lang, followed by Senator Denis.

Senator Lang: Mr. Johnston, I would like for a moment to try to take you away from the idea that you are on a platform to the idea that you are addressing a Senate Committee of the Whole and to seek your advice as a lawyer and, I presume, a constitutional expert. I believe you were a member of the government in 1982, were you not?

Mr. Johnston: Yes, I was.

Senator Lang: At that time you will recall that our authority in respect to the amendments to the Constitution was curtailed with the agreement of what I would say, in my humble opinion, was a rather supine Senate reaction. You will remember how our powers were thus curtailed, will you not?

Mr. Johnston: Yes.

Senator Lang: In other words, we have nothing more, with respect to Meech Lake, than a six-month suspension, and thereafter, if we do not pass—and I want to underline the next word—"such" a resolution, the House of Commons can thereafter repass the same resolution and it becomes law without our concurrence. What, under those circumstances, would you suggest that we, as a Senate, might do with respect to the recommendations and ideas that you are putting forward today?

Mr. Johnston: Senator Lang, I think the legal reality is that, in terms of stopping the Meech Lake process, only provincial legislatures now have that capacity. I am talking of a political reality, because the Conservative majority in the House of Commons has taken its position and made it clear, and the Senate does not have the means of stopping it.

But the issue that has concerned me most often in this debate has not been whether I am right or wrong or whether others are right or wrong, but that the process should be such that Canadians understand what is at stake in Meech Lake.

[Mr. Johnston.]

That is what the Senate can do and that is what the Senate is doing. I hope that is what the Senate will continue to do and that its report emerging from this, and the recommendations it may make with respect to amendments will be such that Canadians will sit up and take notice. I think that more and more have taken notice, but one of the great problems in this debate has been the conspiracy of silence amongst the political leadership of the country. We are now seeing some breach of that in Manitoba, with Sharon Carstairs taking this issue on, and, in fact, NDP members, as well, are very much opposed to Meech Lake. We also have Frank McKenna in New Brunswick. There are also the hearings in the Ontario legislature. All of these can make a contribution to raising the level of public awareness. I believe that if the public were aware of what is likely to happen as a result of Meech Lake public opinion would go strongly against it and people in a position politically to stop it would react accordingly.

Senator Lang: Following on that, I am again trying to bring you back from the public platform idea to the legal realities of the situation that we are in in the Senate. It does not say in the 1982 amendments that we should pass "the same" resolution as the House of Commons, it says "such" resolution. In your opinion, would that open it up to us to suggest amendments to that House of Commons resolution?

Mr. Johnston: In looking at the provisions, which I do not have in front of me, I have thought that the Senate would be perfectly free to make amendments to the resolution or to adopt another resolution and send it back to the House of Commons.

Senator Frith: No, under section 47, we cannot send it back. We pass our own resolution.

Mr. Johnston: It is not sent back, but the House of Commons then has to readopt the original resolution or, presumably, the resolution which you have adopted. When you say that you cannot send it back, I suppose that, technically, that is correct, but, in effect, you would be making them react to what you have done. If you adopt the resolution as presented to you, then that is the end of the matter, as I understand it. Your action here can determine whether it actually comes before the House of Commons again. That would be my reaction to your question. Then, of course, the House could take the recommendations that you make, modify the resolution and readopt it. However, the more likely scenario in the current climate is that they will adopt it in its present form.

Senator Lang: If the Senate were disposed to amend the resolution, in what specific regards would you consider it advisable for the Senate to do so?

Mr. Johnston: Senator Lang, that would be a long answer.

Senator Lang: Take your time.

● (1540)

Mr. Johnston: To be quite candid, and not to sound as though I am obdurate in my position on the Constitution, I see very little in the Meech Lake Accord that is good. I have gone through all of the provisions many times and I really see no

improvement over the status quo; and I am very concerned about nearly every element of it, in terms of a one-way ratchet or one-way street to decentralization, in terms of the institutionalization of the First Ministers' conferences—because we have already seen what came back as a result of Meech Lake—in terms of the "distinct society" clause, which we have talked about here; in terms of the federal spending power; in terms of the opting out provision; in terms of the Supreme Court appointments, which I think—

An Hon. Senator: And Senate appointments?

Mr. Johnston: And in terms of Senate appointments. It is no accident, surely, Mr. Chairman—I say to you, to Senator Lang and to others who are prominent legal authorities in their own right—that the lawyers in this country are overwhelmingly opposed to the Meech Lake Accord—and with good reason.

Concerning the amendments, I really think that one has to go back to the drawing board, because one really cannot make a silk purse out of this sow's ear, in my judgment.

Senator Lang: Are you rather regretful that you may have supported the 1982 amendments that curtailed our powers in the constitutional area?

Mr. Johnston: There are many things that I regret over the years.

[*Translation*]

The Chairman: Next is Senator Denis, followed by Senator Lucier.

Senator Denis: Mr. Johnston, we are very glad to hear your testimony. We know from the votes taken in the other place that you object to the Meech Lake Accord.

If I am not mistaken, you said earlier that Mr. Mulroney and Mr. Bourassa used blackmail in trying to convince Mr. McKenna. You yourself are trying to oppose the Meech Lake Accord, but I would not say you are using blackmail to do so.

Am I right to say that you are trying to convince people it would be better not to adopt the Meech Lake Accord?

Mr. Johnston: Senator Denis, that is the impression I get from the media. It is true I wasn't there when Mr. Mulroney and Mr. Bourassa said openly that if you don't accept the Meech Lake Accord as is, you will create very fundamental social problems in Quebec. You will resurrect separatism, you will create another independence movement, and so forth. That is what I consider blackmail.

Senator Denis: When you say that Canada will go down the drain if the Accord is adopted, that isn't blackmail, of course. That is just an opinion.

You are using the decision made by Mr. McKenna, who represents one province out of ten, but you tend to forget the other premiers who also agree with the Accord. They signed it. They were not alone. They had their whole Cabinet. They were democratically elected in their respective provinces.

Today, what remains of the opposition to the Meech Lake Accord is about a dozen members in the House of Commons and maybe a few senators.

However, in addition to the other provinces in this country, Canada's three major political parties, the Conservatives, the Liberals and the New Democrats are represented and there are not many people left who are opposed to the Accord.

This reminds me of the story of the woman who was watching the troops march past and who told her friend: Look at my son, he's the only one who is in step! So we should not conclude that being for the Meech Lake Accord means the end of the world.

You said in your brief that it was a disaster. You put a great deal of emphasis on the province of New Brunswick and Mr. McKenna. The other provinces are not as important. The other premiers are not important. You also said that the election campaign in New Brunswick was run on the issue of the Meech Lake Accord. I don't think that is correct. In any case, there is always more than one issue in an election campaign.

Mr. Johnston: I would like to answer, if I may.

As far as I am concerned, the procedure we have followed so far is unacceptable. Our First Ministers met behind closed doors. Amongst themselves they made decisions about the future of this country, based on the discipline and credibility of each one when he signed the Accord, and that was it.

Mr. Mulroney said last week: They gave me their word, and I am counting on them. Quite obviously, Canadians had nothing to do with it.

Senator Denis: Well, Mr. Johnston—

Mr. Johnston: Senator Denis, with all due respect, please give me a chance to answer the question.

Senator Denis: The signing by the First Ministers will be followed by meetings and resolutions in each of the provinces. It is worth something.

Senator Frith: It has not been finalized yet.

Senator Denis: No, but it will.

Mr. Johnston: Listen. This would disregard the political reality.

We are well aware that party discipline requires that if the leader signs a resolution, everybody else must do so too.

In the case of Mr. McKenna, there is quite a big difference. I could provide you with quotes, for there are many other things. I can tell you that this was part of his election platform.

The Chairman: I am sorry to interrupt you, but it is not really a debate that we are supposed to have, but rather questions and replies.

Mr. Johnston: An exchange.

May I add something?

The Chairman: Certainly, Mr. Johnston.

Mr. Johnston: When I visited Nova Scotia, I watched a debate between Mr. Hatfield and Mr. McKenna on the impact of the accord and the distinct society, as well as the connection between the two.

The New Brunswick people, therefore, knew quite well that Mr. McKenna was definitely against it, for the reasons he had explained.

Senator Denis: In conclusion, Mr. Johnston, almost unanimously throughout the country, those who are in office are in favour of the Meech Lake Accord. Those who are against might include a few senators and the 15 or 16 MPs who voted against it in the House of Commons.

Mr. Johnston: The Canadian people should also be involved. They have yet to say where they stand.

Senator Denis: Mr. Bourassa is doing all right in Quebec; he is ahead.

The Chairman: Any further questions, Senator Denis?

Senator Denis: Mr. Chairman, we cannot ask questions because when we do the witness launches a debate. Mr. Chairman, you do not want me to debate the issue.

The Chairman: I am asking you both not to debate the issue and, if possible, to limit yourselves to questions and answers.

Are you finished, Senator Denis?

Senator Denis: That is all, and I enjoyed it, Mr. Chairman.

The Chairman: Thank you, Senator Denis.

[*English*]

Senator Lucier is next, followed by Senator Marsden and Senator LeBlanc (Beauséjour).

Senator Lucier: Mr. Johnston, I am sure that you are aware of the betrayal and insult which northerners feel as a result of the Meech Lake Accord, with the way that the aboriginal people of the North have been treated; the fact that we have been relegated to second class citizen status. It has now been written into the Constitution that anyone who lives north of the 60th parallel is less Canadian than those who live south of the 60th parallel. I am sure that you are aware of all of those things.

We have been told about the fragility of the accord, the fact that it is a seamless web, and all the rest of it, and that we should wait for the second round of negotiations for corrections to be made. Do you see any chance for significant changes to the Constitution over the next 20 years, bearing in mind what the premiers have achieved this time around?

● (1550)

Mr. Johnston: No, senator. When we know that the treatment of the northerners and the aboriginal peoples was not accidental, why would we have any confidence that another First Ministers' conference would resolve the very obvious injustices which have been incorporated into the fundamental law of the land?

I might say, Mr. Chairman and honourable senators, that I thought of bringing the many pieces of correspondence I have received from every part of this country respecting Meech Lake. I can assure Senator Denis that there are many people besides senators and members of the House of Commons opposed to Meech Lake. I have never received such a large amount of correspondence on any issue.

What concerns me is that most Canadians do not understand the nature of entrenchment. Most Canadians say, "Maybe it is terrible, but they will fix it up next year." Not everybody in the country is a constitutional lawyer. The message is not out there that Meech Lake is forever. The Senate could be helpful if it were to tell the people out there that this is not something we can revisit next year.

Senator Lucier: I agree with that.

The statement has been made by a couple of northerners that the premiers have won the pot, that there is no need to keep playing poker, because they have cleaned up on everything they wanted.

My second question also relates to Senate reform. I thought we were moving towards real Senate reform in this country. I thought the Canadian population had sent the message that they wanted Senate reform.

Do you see an opportunity of meaningful Senate reform now that we have the unanimity clause?

Mr. Johnston: Mr. Chairman, honourable senators, there are many people in this chamber more experienced in politics than I am, but in my experience I cannot recall a politician voluntarily giving up power. The premiers have come out the big winners with the Meech Lake Accord, including their right to nominate people to the Senate. The idea of a premier abandoning that in the name of a Triple E Senate might fly in a political science classroom at the University of Toronto, but in the real world of politics that is just not going to fly.

Senator Marsden: Thank you, Mr. Johnston, for a brief which is in such detail, and in which I note you state that the premiers have compromised constitutional safeguards for sexual equality rights. I am pleased to have that on the record.

Since you have not given us in your brief the benefit of your views on the kind of process which you think would be desirable in future constitutional reform, could you give us your views on that now? In view of the time constraints, if you wish to submit your views in writing later, I will ensure that they are placed on the record.

Mr. Johnston: I think I can reply briefly, Mr. Chairman. I do not have a fixed view, but I was attracted to the proposals made by Al Johnson when he recently appeared before this committee.

I have spoken to him about this matter. We have had previous discussions regarding the accord, but he did not raise those specifics in the past. I think that his ideas are well worth exploring. Given that we have created this mechanism of First Ministers' conferences, I think we have to pursue this matter and arrive at some national consensus. That is certainly a good point of departure, in my judgment.

Senator LeBlanc (Beauséjour): Mr. Chairman, being a member of a minority, I always worry when people use majorities to justify a position. I think it was Paul Claudel, the French writer, who said that truth has nothing to do with the

number of people who believe in it. I also think that "les moutons de Panurge" that jumped over the cliff were probably the majority in that field of sheep.

I worry because Mr. Johnston has raised the concerns of some minorities. Mr. Johnston spoke about the English minority in Quebec. Of course, some of us worry about the fact that, if you define Canada as a French Quebec and an English Canada, a million of us will be deprived of the feeling of citizenship, of equality and the possibility of survival.

How do you explain this move backwards when Canada was making such progress towards being fundamentally bilingual and consisting of many cultures? How do you explain this intolerance—and I do not like to use that word, but the term "paix sociale" has always worried me since I started my readings in the late 1930s and early 1940s?

Minorities in Canada did not survive by playing "la paix sociale." If we had played "la paix sociale" in New Brunswick we would still be in a situation where going to school in a totally French village meant that a pupil had to learn to read and write from English textbooks. That was not "la paix sociale" that we engaged in. In fact, Louis Robichaud, who sits on this front bench, did not practise "la paix sociale" when he brought in equal opportunity.

That is my speech, Mr. Chairman. I hear you rattling the glass.

Mr. Johnston: Do I have an opportunity to reply?

The Chairman: Certainly.

Mr. Johnston: I should like to say that probably millions of Canadians are as profoundly dismayed as you and I with what looks like a movement backwards, because so much seems to have been accomplished. There is no question that the level of tolerance in western Canada has increased. Those of us who have been on hotline shows recognize the difference immediately when we are in any of the western provinces.

All of this had been accomplished, I might say, speaking as a Liberal, at considerable political cost to the Liberal Party. Similarly, in Quebec it seemed that we finally had our linguistic act together. The Commissioner of Official Languages finds problems every year, just as the Auditor General does, but on each page of his reports one sees encouraging signs. There have been many demands for French immersion schools, but there are not enough schools to meet the demand, and that is not good.

When I was President of the Treasury Board, I was responsible for the administration of the Official Languages Act in the Public Service, and I do not like what I see happening in the Public Service today. I am profoundly dismayed by what I see taking place and this step backwards from the bilingual approach that has been successfully promoted over the past 20 years to entrench linguistic positions of the past. I think it is a great tragedy.

I hope that the report of the Senate and other reports will draw Canadians' attention to this and stir their social conscience once again on this issue so we can get back to where we were.

The Chairman: Mr. Johnston, I wish to thank you very much for taking the time to prepare the brief that you have left with us and for taking the time to appear before us today to share your views on this most important subject.

Hon. Senators: Hear, hear!

The Chairman: The next group of witnesses represents the Public Service Alliance of Canada. The Alliance was established in 1966 and has 180,000 members. It represents most federal government public servants. We welcome this afternoon Mr. Daryl T. Bean, National President, and Ms. Joane Hurens, Executive Vice-President.

Pursuant to Order adopted on June 18, 1987, Mr. Daryl T. Bean and Ms. Joane Hurens were escorted to seats in the Senate chamber.

The Chairman: Will you both be speaking or will the presentation be made by one of you alone?

• (1600)

Mr. Daryl T. Bean, National President, Public Service Alliance of Canada: I will be doing most of the speaking, Mr. Chairman. Depending upon the questions, it may be necessary for my colleague to respond.

The Chairman: Thank you, Mr. Bean. On behalf of all senators, I welcome you. Our normal procedure is to have a 15- or 20-minute statement by the witness, followed by questions. We have an hour at our disposal, and if you are ready please proceed.

Mr. Bean: Thank you. On behalf of the 180,000 members of the Public Service Alliance of Canada, I would like to thank the Committee of the Whole for inviting our participation in the Senate deliberations on the Meech Lake Accord. Late last summer the Alliance appeared before the Special Joint Committee of the Senate and the House of Commons that was established to pronounce upon the accord. At that time we joined with organizations representative of Canadian women, Canada's North, Canadian aboriginal people, and other labour organizations in a critique of some of the specific aspects of the accord. It becomes clear from a reading of the Special Joint Committee's report that the legitimate concerns of organizations representative of millions of Canadians were either not heard or, worse still, were consciously ignored by the members of the committee. Hence, our purpose in appearing before the Committee of the Whole this afternoon is primarily to reiterate what we have said before—to press upon senators the fact that the Constitution belongs to the Canadian people, and not to the 11 men whom the Prime Minister has referred to as the modern Fathers of Confederation.

First, as a national union, the Alliance has the privilege of representing some 5,000 workers employed in the Northwest Territories and the Yukon. Our members resident in Canada's North have joined with the northern majority in the campaign against the accord's requirement that henceforth 11 First Ministers and their parliaments must concur before a new province can be created. On their behalf, we should like to congratulate the Senate and its Task Force on the Meech Lake

Constitutional Accord and on the Yukon and the Northwest Territories for its comprehensive recommended amendments related to the constitutional rights of Canada's North and its people. Second, in our formal submission to the Special Joint Committee last summer the Alliance lauded the goal that gave rise to the accord, while amending many of its specific clauses.

Representing, as we do, some 31,000 members who reside in the province of Quebec, the PSAC wholeheartedly supports the profound desire on the part of the Prime Minister to have Quebec become a signatory to the Constitution rather than remain bound by law to a constitutional instrument with which it disagreed. We accept without reservation the distinctive nature of Quebec's society within the Canadian Constitution and have no qualms about the expression of that distinctiveness. We find it hard to accept, however, that the accord provides for the transfer of power to all provinces, particularly with regard to federal spending power and immigration.

As all senators are undoubtedly aware, your current review of the Meech Lake accord represents the last opportunity at the federal level for critics of that accord to present their views and to correct the many misrepresentations contained in the report of the Special Joint Committee. While we can understand the pressure of time faced by the Senate, it is, in our view, unfortunate that the Senate has decided to invite some groups and individuals to appear before a small submissions group while others gain access to the attention of the full Senate. We find it disturbing that the Alliance is the only union to be granted an appearance before the Committee of the Whole and, similarly, that the Women's Legal Education Action Fund is the only national women's group to be so invited. Those so selected shoulder an additional obligation to attempt to represent the interests of a broader constituency than they would normally represent. As the president of an affiliate of the Canadian Labour Congress and a union representing 90,000 Canadian women, I am privileged to accept this responsibility. However, as I have said, it would have been preferable for the Senate to have heard all witnesses on an equal footing.

As was stated in our formal submission, the Alliance believes the accord to be frequently imprecise and ambiguous. The imprecision and ambiguity has led us to the conclusion that the accord must either be subject to substantial amendments now or be open to protracted and costly litigation later.

With respect to clarity, or the lack thereof, in the constitutional language, the PSAC knows of what it speaks. In our formal submission we addressed at length the interpretation of "freedom of association" that was imparted to the Special Joint Committee on the Constitution by the acting Minister of Justice on January 22, 1981, when he stated that freedom of association included "freedom to organize and bargain collectively." Subsequently, the Supreme Court of Canada, in a majority decision related to Bill C-124, the Public Sector Compensation Restraint Act, which decision was rendered on April 9, 1987, came to the conclusion that the Charter guarantees unions neither the right to collective bargaining nor the right to strike.

Our purpose in recounting these two contradictory episodes in Canadian constitutional history is threefold. First, words on paper and the interpretation placed upon them can be contradicted with resultant dire consequences. Therefore, considerable care must be taken when crafting a legal document of the importance of the Constitution. Second, we believe that constitutionally guaranteed freedoms must recognize collective rights in addition to individual rights. Specifically, freedom of association must not simply protect the rights of individuals to associate but must, at the same time, protect the legitimate purposes and objectives of the association. Third and finally, we believe that the current debate on the accord, following so closely on the heels of the Supreme Court judgment in respect of Bill C-124, provides Parliament with an opportunity—a unique opportunity—to correct the interpretation that has been placed on the right of freedom of association since Parliament last debated the Constitution in 1981-82. We have, therefore, proposed an amendment to subsection 2(*d*) of the Constitution Act, 1982 that would explicitly recognize freedom to organize and bargain collectively. We do not believe that this amendment will be problematic. In fact, we believe that this can be accomplished without placing other aspects of the accord in jeopardy.

In this regard, it is instructive to note that the Charter is being interpreted in a manner that was never intended. Even Roy Romanow, who, as the Attorney General of Saskatchewan, helped to write it, has been quoted as being surprised and dismayed to find that the Charter has Americanized our justice system and endangered the rights of labour unions.

In a similar vein, in its formal submission the Alliance urges consideration of an amendment to subsection 2(*b*) of the Charter, explicitly recognizing the right of all Canadians to participate in the political process. Such a provision would have the effect of removing a restriction—a substantial restriction—placed upon federal public sector workers by section 32 of the Public Service Employment Act. Such an amendment is completely consistent with the constitutional reform, since the removal of the restriction on the rights of political participation is supported by Canadians at large. In my view, the failure of the Special Joint Committee to comment on these two issues at all did a disservice to all Canadian workers. I hope that the Senate adopts a different posture and recommends, at the very least, that these issues be the subject of discussion at a future constitutional conference.

Since it was signed by Canada's First Ministers on June 3, 1987, the Meech Lake Constitutional Accord has been subject to scrutiny from a number of constitutional experts who are alarmed at the ambiguity in the accord. We share that concern and are particularly disturbed by the language's inconsistency as between the sections of the accord dealing with the spending power and those dealing with immigration.

One does not have to be a legal or constitutional expert to conclude that, because the accord refers to "national standards and objectives" in one section and "national objectives" in

another, the courts will interpret "national objective" as being something different from and probably less than "national standards and objectives." A similar situation will prevail vis-à-vis "not repugnant" and "compatible."

Like many Canadians, we find the Special Joint Committee's conclusion in this regard to be alarming. The report states:

> The drafting of this section may not be a picture of perfection, but this is likely one of the areas where some ambiguity was the price of agreement. We are not prepared to reject the section or call for changes in its language simply on the grounds that some of the language is ambiguous. We believe that the courts will be able to work out the interplay of concepts in the concrete fact situations that come before them.

In the first instance, we believe that, to the extent possible, members of the House of Commons and the Senate have a responsibility to be as clear as possible. In my view, members and senators should not defer to the courts on such fundamental questions, particularly considering the time and cost of legal proceedings.

While the accord is sometimes contradictory and ambiguous, the clarity of other sections is equally alarming. In this regard, we are particularly concerned with the provision in the chapter dealing with spending power that provides for the establishment of a national shared-cost program by cabinet or executive decree, without reference to Parliament. If this eventuality is what the 11 First Ministers intended, it is without question a travesty of Canadian democracy.

● (1610)

Likewise, the Alliance is incredulous that the federal government is willing to grant ten provinces enhanced power vis-à-vis immigration in response to what we conclude must have been a "me-too" refrain from the provinces other than Quebec. We simply cannot understand why a government—a sovereign nation state—could abdicate its clear constitutional primacy in an area as important as immigration. Moreover, as a union representing the bulk of federal public sector workers employed by Employment and Immigration Canada, we are alarmed at the potential provincialization of immigration administration and services. As senators are undoubtedly aware, the storm of public protest that followed the signing of the Meech Lake Accord focused primarily on the effects of the accord on equality rights. The position articulated by a variety of women's groups, and which, incidentally, was supported by the Alliance in its formal submission, is that section 16 will likely result in the establishment of a hierarchy of rights should the court at some point be asked to provide an interpretation of its meanings. Such an eventuality cannot be tolerated or allowed to occur, because it would serve to erode the individual and collective protections provided under the Charter.

In support of the positions that have been advanced before you, and on behalf of the 90,000 women members of the Alliance, I urge the senators to reject the cavalier treatment afforded this fundamental issue by members of the Special Joint Committee. I urge you, instead, to insist that the accord is amended to ensure beyond a shadow of a doubt that section 16 of the accord does not call into question the legitimacy of other equally important Charter rights.

As committee members will appreciate, it is difficult to summarize the tenor and tone of a 31-page submission in 15 minutes. Inevitably some items get short shrift while the complexity of the argument in others is lost. Nevertheless, I am more than willing to elaborate on the Alliance's position in response to any questions you may have.

The Chairman: Thank you, Mr. Bean. Before I go to the questioners, I would like to clarify a point that you made in your presentation at the outset. You referred to the fact that you are being heard here while other groups have not been heard here. Let me assure you that the selection process was eminently fair. It was based on first come-first served. Your presentation, as you recall, was sent to us in August of 1987. Therefore, you were on the early list. The cutoff was sometime in October of 1987. After that, it was impossible because of considerations of time to hear everyone in this forum. The Senate then established a submissions group.

Mr. Bean: I appreciate that. My concern, of course, was that, because the Constitution is such an important document, as many people as possible should have an opportunity to be heard. I was not trying to be overly critical of what you have done, by any stretch of the imagination.

The Chairman: I simply wanted to point that out so that other people would understand that we did not discriminate against anyone.

The first senator on my list is Senator Lucier, followed by Senator Frith.

Senator Lucier: Mr. Bean and Ms. Hurens, I would like to congratulate you on the presentation that you have made and on the amount of work that you have put into your brief. We appreciate the time you have taken to come here and appear before us.

On page 31 of your brief you say:

> Finally, we believe that the language of the Accord is insufficiently precise and ambiguous.

May I suggest to you that that may not be the case. We have been told by Senator Murray, the Leader of the Government in the Senate, that the accord reflects exactly what the premiers wanted it to reflect, that they knew exactly what was in it. I do not think it was ambiguous or imprecise in their minds. I think it says exactly what they wanted it to say, which is an argument that northern Canada especially has put forth with some vigour, I can assure you.

You said that you represent 90,000 women, but how many members do you represent in total?

Mr. Bean: One hundred and eighty thousand.

Senator Lucier: Mr. Bean, the political reality is that this Meech Lake Accord is going to be a tough thing to stop. We are certainly hopeful that Premier McKenna will be able to at

least delay it for some period of time until a couple of other premiers get some backbone. In the meantime, I have been searching out any method that I can think of to find a way to stop this accord. As I am sure you realize, the North is very offended by it.

You must have a large number of members in Manitoba. There is a provincial election taking place in Manitoba. The accord is an insult to women, to the unions, and to the aboriginals. Why are you not taking a political stand that you will not support anyone who supports the Meech Lake Accord?

Mr. Bean: The first difficulty that we run into is with section 32 of the Public Service Employment Act. I can tell you point blank that we are suggesting our members ignore the law. That is not something that we do lightly, but for many years we have been promised that this legislation would be changed.

Generally speaking, members tend to be afraid to ignore the law, because they can be fired for doing so. Certainly we will be raising the issue during the election campaign through those staff members in Manitoba who choose to ignore the law. The position we will be taking—as we have taken all along—is that the Meech Lake Accord should be rejected or substantively amended. If the government insists that it cannot be substantively amended, then we suggest that it should be rejected.

We do not do that lightly. I think it is very important that Quebec be brought into the Constitution. At the same time, in our view this is too high a price to pay. We have raised concerns about the North; we have raised concerns about the rights of women, particularly equality rights provisions; we have raised concerns about the spending powers; we have raised concerns about immigration, which I covered briefly and which is more fully covered in the brief. To some degree, we will certainly be involved in the Manitoba election. Again, it is a question of how many of our members are prepared to defy a law when such action might eventually lead to their being fired.

● (1620)

Senator Lucier: Does section 32 prevent your organization from taking political stands, or does it just prevent your members from taking part in political activity?

Mr. Bean: Section 32 of the Public Service Employment Act only deals with the members. However, there is a section—I believe it is section 39 of the Public Service Staff Relations Act—which prevents our union from endorsing or supporting a political party or a candidate. Nevertheless, in that situation, I can tell you that we have reached the stage where we are prepared, as a union, to ask our members to support openly candidates who support issues that we believe in, despite the fact that that may well mean that some day down the road we will be before the courts with a decertification prospect.

Senator Lucier: If the clause prevents you from supporting a political party, will it also prevent you from saying that you do not support a political party? There may be a way around that that you have not looked at yet.

[Senator Lucier.]

Mr. Bean: Unfortunately, the clause is all encompassing, because you cannot work for or against a political party or candidate. It covers both ends of it. We have had members successfully disciplined for that very fact.

The difficulty that we have with that is that they get you coming and going, because if you start to participate in the political process, then the employer can tell you that you must cease participating in that political process; if you refuse to cease participating in that political process, then they can charge you with insubordination, and as a result of that you can be fired, period. So they have us coming and going at this stage. That is why you have not seen many Public Service workers participating in the election process openly. That is not to say that many have not participated in the political process—and every political party knows that.

Senator Lucier: Mr. Bean, I would like to end by saying that no one in Canada wants to see this Meech Lake Accord, as it is presently written, go down more than I do.

Having said that, I would also like to say to you that, while I encourage you to do everything within the law to object to Meech Lake, I would certainly not like to see you do anything to break the law to support Meech Lake; I do not think two wrongs make a right. Thank you.

Mr. Bean: I agree with you to that degree. We did not take this decision lightly a number of months ago. We have been promised for 15 years or more that the legislation would be amended. There was agreement from all political parties that the legislation would be amended to provide Public Service workers who belonged to unions the right to participate in the political process. We think 15 years is long enough to wait. I do not take this process lightly, and it is regrettable that it is necessary for a union to urge its members to take that type of action, but, if that is the only way that we can get the law changed, so be it; we will live with the consequences.

The Chairman: Thank you, Senator Lucier. Next is Senator Frith, followed by Senator Fairbairn.

Senator Frith: I want to ask you about two subjects. One arises out of your large membership of 180,000. I do not know whether you were here when Mr. Johnston was giving evidence, and whether you heard his evidence, but he and others are concerned about the level of awareness in the Canadian population of the provisions of Meech Lake and its effects.

Obviously, you are closely focused on Meech Lake—from your presentation it is quite apparent—but can you tell me, in your opinion, the extent of awareness, first, among your membership? Did you say that you are a member of the congress?

Mr. Bean: Yes.

Senator Frith: So that would put you on the board of the congress and in touch with its larger membership. What do you think the general awareness is?

Do not make me feel good by saying that it is higher than you really believe it to be. I would like as accurate a report as you can give as to your perception of the extent of awareness of Meech Lake among your members and the congress members.

Mr. Bean: In both situations, to be quite honest, it is limited. I suspect if somewhere between 5 and 10 per cent of our members, as well as the members of the Canadian Labour Congress, have any significant knowledge—I will not even say extensive, but significant knowledge—I would be surprised. While we try to bring the concerns to our membership—in our next edition we will have an article on the Meech Lake Accord to bring it to the attention of the membership—let us face it, a whole lot of Canadians have other things they worry about, like bread and butter on the table these days, and so on, more than the Constitution. I wish it was not that way, because I happen to view the Constitution as being an extremely important document. So I wish I could say otherwise, but I would not be truthful if I said it amounted to any more than 5 to 10 per cent.

Senator Frith: Thank you for that candour.

Do you think that your membership is more aware of your position on the relationship between Meech Lake and the right to collective bargaining and the right to strike than it is on the other aspects of the accord?

Mr. Bean: Yes. There is no question about that. Because of the Supreme Court decision on April 9, 1987, they would be more aware of the fact that freedom of association does not cover, according to a majority decision of the Supreme Court, the collective bargaining rights which we anticipated were covered, and, certainly based on Mr. Kaplan's statement, we believed to be covered prior to that decision.

Senator Frith: That brings me to the second part of my question. It has two sub-parts.

I want to talk about section 16 and then section 2. On section 16, you have been keeping up, I take it, with the position of the persons concerned with aboriginal rights and women's rights as affected by section 16; is that right?

Mr. Bean: Yes; we have tried to keep abreast of any presentations that have been made by either group.

Senator Frith: So your concern would be the same as theirs, namely, that, although section 16 refers to specific items in the Charter that are not overridden by Meech Lake, others may be overridden by Meech Lake, which, in turn, if you managed to get section 2 amended, would affect you, because, conceivably, the "distinct society" clause could override that also. Is that too complicated, or are you following me?

Mr. Bean: No; I follow what you are saying. Certainly we are concerned that, yes, section 16 may well override the existing sections 15 and 28 of the Charter. I must confess that we did not put much thought into whether that would override the amendment, if we were successful with section 2, though. However, for the major part, we represent federal government workers. Thus, I would think that, taking that specific aspect by itself, it would probably not interfere in those particular circumstances, but it might in others.

● (1630)

Senator Frith: With respect to those who are concerned with women's rights, aboriginal rights and, to some extent, multicultural rights, if they are right about section 16 in the sense that because of the specific mention of some of the rights other rights are affected, then you could find yourself with section 2 amended, but still be overridden by section 16.

Mr. Bean: I would not doubt that that is possible, senator.

Senator Frith: Therefore, let us turn to what you think should be done with section 2. Perhaps, if it is not too complicated, you would put it right on the record to save an interested party having to look at the appended documents.

Section 2 of the Constitution Act, 1982 says:

> Everyone has the following fundamental freedoms:

Then dropping down to (d):

> (d) freedom of association.

Which was held by the Supreme Court of Canada not to include the right to collective bargaining or the right to strike. Am I right?

Mr. Bean: That is correct.

Senator Frith: Can you tell us what you want to add there to that section?

Mr. Bean: On page 8 of our submission you will find a proposed amendment, under paragraph 19, which states:—

Senator Frith: Just a second, let me get that. Page 8, paragraph 19?

Mr. Bean: Yes:

> (d) Freedom of association, including the freedom to organize, bargain collectively and strike.

Having said that—

Senator Frith: Perhaps you would read that whole paragraph into the record, because it is not very long.

Mr. Bean: Very well:

> As a result, we would recommend to Members of the Committee an amendment to Section 2 (d) of the Constitution Act of 1982 to the effect that:
>
> (d) Freedom of association, including the freedom to organize, bargain collectively and strike.

I might add that we recognize that section 1 of the Charter of Rights remains, which means that the other sections can be overridden if it is demonstrably justified. We recognize that.

Senator Frith: Yes, that goes for all sections. That is in the Charter, and you do not want any special exception from that?

Mr. Bean: No, senator.

Senator Frith: Thank you, Mr. Chairman.

The Chairman: Thank you, Senator Frith. Mr. Bean, I wonder if I could ask you a supplementary question on that.

Your view is that there would be no exceptions to the right to bargain collectively and strike.

Mr. Bean: Not without instituting section 1, which would require that it be demonstrably justified. In other words, there is a possibility that it would be overridden, but in order to do that section 1 would need to be used, and section 1 is a much tighter provision than anything that currently exists.

The Chairman: But there would be no exceptions for certain types of worker or anything like that.

Mr. Bean: Again, it may well be that one could demonstrably justify that workers performing certain functions or essential services of some sort might well not have the right to strike. I do not argue that. As a matter of fact, our position as a union has been very clear that, even if we had the right to strike in all of our bargaining units, there are certain groups which we clearly recognize would not have the right to strike. For instance, with respect to hospital workers, it would be important to take steps to see that people would not die because of lack of service. Firefighters at airports would be another group that would fall into this same category. It is obvious that we would have to make sure that there were sufficient firefighters on the job at all times so that if there was an aircraft that had an emergency situation it would be taken care of. Obviously we recognize that there must be the capability of providing that essential service. Therefore, my answer is yes, there would be certain groups or certain individuals who would be excluded.

I might add that this used to be the case under the Public Service Staff Relations Act prior to a Supreme Court decision in 1981-82. That was a decision in the case of the Canadian air traffic controllers, and at that time the Supreme Court decided that the Public Staff Relations Act required that if any part of the duties of any particular group could at any time be considered to be essential services, those employees would be so designated for the safety and security of the public.

An example of that might well be our general labour and trades people who clean the runways. I can well understand that at least one runway must be kept clear of snow in the wintertime. However, I have a hard time understanding how someone who snowploughs a runway needs to be in July, in this country, designated for the safety and security of the public. There are not too many areas in this country where we get snow in July.

Senator Frith: Mr. Chairman, may I ask for clarification on that point?

Mr. Bean, I take it that what you are saying to the chairman is that a possible sequence could be that a law would be passed, saying that the following workers shall not have the right to strike, let us say. Then the amendment that you have given us would be included. That law would then be challenged as being unconstitutional, because it offends the new section 2(d).

Mr. Bean: That is correct.

[The Chairman.]

Senator Frith: Then the lawyers for the government would try to persuade the court that, although it does offend against section 2(d), it is a reasonable limit prescribed by law, as can be demonstrably justified in a free and democratic society.

Mr. Bean: Exactly.

Senator Frith: And you would accept that sequence.

Mr. Bean: No question.

Senator Frith: If the court so held.

Mr. Bean: That is correct.

Senator Frith: Thank you, Mr. Chairman.

The Chairman: Thank you, Senator Frith. The next questioner is Senator Fairbairn, followed by Senator Gigantès.

Senator Fairbairn: Thank you, Mr. Chairman. Senator Frith really touched on the area that I had intended to ask you about in terms of section 16. I appreciate your comments on the degree to which this could create a hierarchy of rights and perhaps put in jeopardy the question of equality rights.

In your brief you talk about an amendment concerning the recognition of Quebec as a distinct society, and I am wondering whether an amendment which would declare that the Charter has precedence in terms of interpreting the accord and the Constitution would satisfy your concerns as well as would the specific suggestion you have made in your brief.

Mr. Bean: I believe that it must be clearly spelled out, and we have taken the example of one area—namely, sections 15 and 28 of the Canadian Charter as it now exists—which deals with equality rights. I think it should be very clearly spelled out in the accord that the "distinct society" provision cannot overrule those Charter provisions.

It may well be that there are other Charter provisions that should take precedence over that. I have not really dealt at any length with other areas, but certainly, while we do not quarrel with the "distinct society" approach, it must be clear that there are certain rights—including equality rights—that that "distinct society" provision cannot overrule. There may be others; I would not say that there are not.

Senator Fairbairn: Thank you.

The Chairman: Thank you, Senator Fairbairn. The next questioner is Senator Gigantès, followed by Senator LeBlanc, Beauséjour.

Senator Gigantès: Mr. Bean, would you add mobility rights to the list of essential rights to be protected?

Mr. Bean: To be honest, I have not dealt with the mobility rights aspect, but it is certainly one of the areas that I think should seriously be considered. I must admit that I have not seriously studied that aspect of it personally.

Senator Gigantès: Mr. Bean, within Quebec itself, if you are a carpenter in the Lac St. Jean area, you cannot go and practise as a carpenter in Montreal, at least not officially. That has always bothered me in terms of Charter rights, and I have always wondered why the labour unions have not chal-

lenged this situation. This does not even involve movement from province to province; it is within the same province.

● (1640)

Mr. Bean: As I have said, we have not looked at that aspect. Certainly it is a valid concern and it should be looked at. This is one of the reasons why I am concerned with the rush the Prime Minister seems to be in to get this accord through. It seems to me that when dealing with the Constitution we should not be in a rush to proceed with these types of changes. I think we should sit down and take a serious look at the whole question of mobility rights. I must admit that we have not taken this action. Not only do we have problems of jurisdiction within Quebec but we have problems right here as between Hull and Ottawa. I think the matter should be looked at for sure.

Senator Gigantès: You raised the issue of spending power. Spending power would also affect mobility rights. For example, if one province has a decent day-care system and another does not, the mobility of a young mother is reduced if she is going from one province with good child care to one with unsatisfactory child care, as one might expect from, say, Premier Vander Zalm in British Columbia. Have you studied this point at all? Have you discussed it?

Mr. Bean: We have discussed it as it relates to our concern about the accord being ambiguous and unclear. When you talk about spending power you must talk in terms of national objectives, which are not really defined. With regard to immigration, they talk about national standards and objectives, which obviously means something more than national objectives, but I am not sure what it means. If you look at the whole aspect of spending power, you begin to realize that there is really no precision with regard to what a national program such as child care might entail. One wonders how many provinces have to be involved in the child care program to make it a national program. If only one or two provinces are involved, is it a national program? How does the accord affect accessibility, affordability and universality? None of these aspects has been addressed. The accord is very imprecise and ambiguous in many areas, and we are concerned about it. We have looked at the accord in the sense that if some of the more progressive provinces institute good child care programs, which I expect they will, what will happen when you go to one of the provinces like B.C., as you mentioned, which is not known these days for being very progressive on anything? What kind of child care program will you get under the government there? I believe that clear minimum standards that address accessibility, affordability and universality of national programs should be established, if the federal government is going to provide funds for provincial governments.

Senator Gigantès: The Honourable Don Johnston, who appeared before you, said that at least some aspects, such as the veto power of the provinces with regard to the territories gaining provincehood, were not entered in the accord by inadvertence but were put there on purpose, with some premiers knowing precisely what they were asking. Do you see any evidence of this in other fields? We have been told that the accord is a seamless web, that no matter how many faults we can find we cannot touch it.

Mr. Bean: I have no doubt that the words in the accord were deliberately put there by the premiers and the Prime Minister. I do not doubt that there was compromise; otherwise, they would not have taken the position that you cannot change one word in this constitutional accord. On page 23 of our brief we address the suggestion that shared-cost programs be established by the Government of Canada. We are not talking here about the Parliament of Canada but about the Government of Canada. I think that this is a very serious and deliberate provision. The Parliament of Canada should determine the minimum objectives of any shared-cost national program, not the Government of Canada through cabinet or by some executive decree. I think that this provision totally abrogates the rights of the Parliament of Canada.

Senator Gigantès: Do you think that the Prime Minister gave away powers both of the federal government and of Parliament at Meech Lake?

Mr. Bean: There is no question whatsoever that a number of federal powers were given away in the Meech Lake Accord, and we have talked about some of them—for example, the national cost-sharing programs, equality rights, and so on. Another area that concerns me is that of immigration. Prior to the Constitutional Accord, immigration policy was worked out in consultation with provincial governments, and any agreement could not be repugnant to any act of the Parliament of Canada. This process has now been changed. The provision in the accord says that it is compatible to the existing process, but, in my submission, there is a significant difference. I think that to get the accord the Prime Minister of this country is giving away rights that should be retained by the national sovereign state of Canada and the Parliament of this country, not the government of the day.

Senator Gigantès: When it comes to the rights in the Charter, would you say that the rights of individual citizens have also, to some extent, been jeopardized and sacrificed, or, at least, that the protection accorded to them before the accord has been diluted?

Mr. Bean: Yes. This traditional federal government right has been transferred to the provincial governments, and I believe that it will interfere with some of the rights of individuals.

Senator Gigantès: Do you see any connection between this Meech Lake Accord and Canada being able to withstand or to play a strong role in the forthcoming negotiations with the Americans about "harmonizing" the playing field? If the playing field is a football field, you can say that Canadians occupy from the goal line to the ten-yard line and the Americans occupy the rest of the field. Of course, the tendency will be to "harmonize" to ten elevenths. Does the Meech Lake Accord weaken the federal government's stance in this major set of negotiations it faces?

Mr. Bean: I believe that it does weaken the government's stance. I am not in a position to know, but I believe that the

whole Free Trade Agreement was on the table in those discussions on the Meech Lake Accord, and it probably resulted in some of the compromises we see in the accord. Obviously I am in no position to confirm that, but there is no question in my mind that some of the changes in the Meech Lake Accord probably contributed to some of the provinces coming on side on the issue of free trade. Certainly, in my view, the two are interlinked and are very detrimental to Canada.

● (1650)

Senator Gigantès: If what you are presuming is so, that is, that this was done entirely in secret, how do you feel about the business of the people of Canada, the Parliament of Canada and the provincial legislatures having absolutely no insight as to what deals were made and whether the country wanted those deals?

Mr. Bean: To be very blunt about it, I think the whole process was an insult to the Canadian people. I believe that when we are talking about a document as important as the Constitution of this country, as a very minimum, any government—and I do not care who the government is—should at least start with some type of green discussion paper, move up to getting input by holding meetings across the country, whether it be by way of parliamentary committees or otherwise, to get input from Canadians, and then they should move to the white paper process so that Canadians will have had an ample opportunity to have input into their Canadian Constitution. As I said before, the Constitution does not belong to 11 elected people of this country, it belongs to all Canadians and it should be debated by them.

Senator Gigantès: Thank you very much.

The Chairman: Thank you very much. The last questioner on my list is Senator LeBlanc, Beauséjour.

Senator LeBlanc (Beauséjour): Earlier our witness made the point—and I am not quarrelling with him—that perhaps the Constitution was not a bread and butter issue. I must say that for some of us—and I have a few scars to show—who fought for the fishermen's right to organize in provinces where, by law, they could not, it was a bread and butter issue.

I raise that subject with you because you raised the question of the judgment on the right of association and the interpretation of that. I must say that, as one who sat at the table when many of these discussions took place, certainly none of us ever envisaged that the right to association dealt with anything other than the protection of citizens who wanted to get together and associate in whatever form they chose and that it would eventually be interpreted as it was. If that had been the case, I am sure there would have been some amendments to the draft resolution before it went forward. On that point, you have a fair number of friends in this room and elsewhere.

I do not want to be garrulous with you, but I must say that, although the Constitution is a subject for legal discussion, it is also a part of the political process, and that is why I am surprised that you did not raise much more hell than you did in the party whose leader is applauded every year at C.L.C. congress meetings, who was so quick to come out and give so much away to provincial premiers who, in the area of right of association, I suspect, have very regressive views. I wonder why your friends in the NDP did not, in fact, bargain more than they did and why they seem to have given so much away. I say that, recognizing that my own party leader supported the Meech Lake Accord, but, then, I have to say that there is a saving grace in that all the Liberal members of Parliament from the three maritime provinces opposed it. I think they did that because of the fear of a weaker spending power. The loss of the support of the spending power is obviously very important to maritimers. This is a political discussion and this is a political institution. I am not a lawyer. Why did you not burn Mr. Broadbent's feet a little bit more than you did?

Mr. Bean: Mr. Broadbent is certainly well aware of the Public Service Alliance of Canada's position with regard to the Meech Lake Accord. We have made no bones about that. We think they erred; we believe to this day that they erred; and we have told them so.

I cannot speak for all of the other unions, but I can tell you that other unions are certainly in disagreement with the Meech Lake Accord and have so expressed those views. As to whether they have personally done anything else with regard to the NDP position, I cannot say, but I can certainly tell you that we have made it very clear both in meetings with Mr. Broadbent and via correspondence with him that we are upset and that we are not happy, by any stretch of the imagination, with their endorsing the Meech Lake Accord.

He has tried to explain some of the reasons why they have, and I do not accept them. I still think he is wrong.

I am not shying away from the political aspect of this. Three parties have endorsed the Meech Lake Accord, and certainly, while there has been some fudging since, I understand that all three parties will still endorse it, at least officially. While there may be some fudging, that is about as far as it goes.

I want to address the other issue you raised about what I said regarding individual members not necessarily seeing this as a bread and butter issue. I agree with you that it certainly is. I think the Constitution, and particularly the aspect of freedom of association, is a very clear bread and butter issue, because legislation like Bill C-124 can be passed, legislation which not only took away our right to bargain for two to three years, depending on which group was involved, but which rolled back signed collective agreements that were signed by the government. I must admit that rather shook my faith in the justice system, because I did not believe that the justice system in this country would allow a government to renege on signed collective agreements.

However, despite all that, it is very difficult to get to individual members and convince them that this or some other provision that we are fighting for in the arena, such as political rights, is just as important to them as this round of negotiations. It is very difficult to convince individual members that this type of thing is important, but, nevertheless, we do try.

Senator LeBlanc (Beauséjour): If I were playing poker I would be tempted to say, "How else would you have gotten such a good dental plan?" However, that is another issue.

Mr. Bean: I agree with you.

Senator LeBlanc (Beauséjour): Do you think that, if the Meech Lake Accord goes ahead and there is the requirement for unanimity on so many major subjects, you will ever get an amendment that will really guarantee the freedom to bargain and the freedom to strike as a formal document of the Constitution, and the correction of a situation which no one could foresee in 1982?

Mr. Bean: When you talk about no one foreseeing a situation in 1982, I would point out that an amendment was proposed in 1982. That is what I alluded to when I referred to Mr. Kaplan's statement, which is found on page 3 of our brief. The amendment was proposed, but it was determined by Mr. Kaplan, who was sponsoring the bill, that there was no need for amendment.

To answer your first question, there is no question in my mind that if this accord goes through the chance of ever getting unanimity in terms of an agreement to amend the Constitution in that area, or in many other areas, is almost nil. I suspect that we shall have Vander Zalms in government somewhere across this country.

● (1700)

The Chairman: Thank you, Mr. Bean. That concludes the questioning. On behalf of the committee, I thank you both for preparing your brief and sharing your views with us this afternoon. It has been very helpful on this most important subject.

Honourable senators, this concludes the hearing of witnesses for this afternoon. Is there a motion that the committee rise and report progress?

Senator Frith: Mr. Chairman, I move that the committee rise, that the chairman report progress and ask for leave to sit again.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: Honourable senators, the sitting of the Senate is resumed.

REPORT OF COMMITTEE OF THE WHOLE

Hon. Gildas L. Molgat: Honourable senators, the Committee of the Whole, to which the Meech Lake Accord and texts subsequently agreed to were referred, reports progress and asks for leave to sit again.

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

Hon. Senators: Agreed.

The Hon. the Speaker: Honourable senators, when shall this committee have leave to sit again?

Senator Molgat: Honourable senators, I move that the Committee of the Whole be given authority to sit again on Wednesday, March 30, 1988.

Motion agreed to.

The Senate adjourned until tomorrow at 2 p.m.

THE SENATE

Thursday, March 24, 1988

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

Prayers.

[*Translation*]

WESTERN ARCTIC (INUVIALUIT) CLAIMS SETTLEMENT ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message has been received from the House of Commons with Bill C-102, to amend the Western Arctic (Inuvialuit) Claims Settlement Act.

Bill read first time.

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

On motion of Senator Doody, bill placed on the Orders of the Day for second reading on Tuesday next, March 29, 1988.

[*English*]

UNEMPLOYMENT INSURANCE ACT, 1971

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-116, to amend the Unemployment Insurance Act, 1971.

Bill read first time.

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

On motion of Senator Doody, with leave of the Senate and notwithstanding rule 44(1)(*f*), bill placed on the Orders of the Day for second reading later this day.

COPYRIGHT ACT

BILL TO AMEND—REPORT OF COMMITTEE PRESENTED

Hon. Ian Sinclair: Honourable senators, the Standing Senate Committee on Banking, Trade and Commerce has the honour to present its twenty-third report, respecting Bill C-60, an act to amend the Copyright Act and to amend other acts in consequence thereof, with certain amendments.

(*For text of report see appendix, p. 2936.*)

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

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

ADJOURNMENT

Hon. C. William Doody (Deputy Leader of the Government), with leave of the Senate and notwithstanding rule 45(1)(*g*), moved:

That when the Senate adjourns today, it do stand adjourned until Tuesday next, 29th March, 1988, at two o'clock in the afternoon.

Motion agreed to.

QUESTION PERIOD

[*Translation*]

IMMIGRATION

ANTICIPATED DATE OF PRESENTATION OF REPORTS OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE ON BILLS C-55 AND C-84

Hon. Arthur Tremblay: Honourable senators, I have a question for Senator Neiman in her capacity as chairman of the Standing Committee on Legal and Constitutional Affairs. I will add, Senator Neiman, that I did not say anything important, so you did not miss much while you were going back to your seat.

My question is based on two facts. First, the fact that Bill C-84 was sent to the Senate on September 14 or 15, 1987 and, after the odd incidents, as we recall, it is still under consideration by the Committee on Legal and Constitutional Affairs.

Second, the fact that Bill C-55 came to the Senate after it was adopted by the Commons on October 22, and that it is still being considered by the same committee after more than five months.

Hon. Royce Frith (Deputy Leader of the Opposition): You forgot the intermission in the case of Bill C-84.

Senator Tremblay: I did suggest there was an intermission by referring to the odd incidents we all recall. I could have been more specific by describing to-and-fro traffic between the Senate and the House of Commons, but I chose to do so implicitly.

Senator Frith: We got it in February, not September. The second time, Bill C-84 was before the committee since February.

Senator Tremblay: Honourable senators, it had gone through committee at an earlier stage. If you will, I added up the total time the Senate took to study this bill, because the

intervening incidents resulted from the work of the Senate, if I may put it that way.

As to Bill C-55 it goes back to October, and since today is March 25 it is over five months since the bill first came to the Senate.

So my question is simply this: When can we expect the Committee on Legal and Constitutional Affairs to report on the two bills, C-84 and C-55?

[*English*]

Hon. Joan Neiman: Honourable senators, I have before me material that explains the history of these two bills. Senator Tremblay is quite right that Bill C-84 was referred to us in the middle of September 1987. As you know, prior to that Bill C-55 had been tabled and studied in the other House, but it was not referred to us at that time.

We proceeded with Bill C-84 on the understanding that this was the bill that constituted the emergency. We dealt with that bill and passed it, with amendments, on December 15, 1987. After the House and the Senate reconvened in January the bill was returned to us. We have had a few hearings on Bill C-84 with respect to our amendments and the minister's response to them.

It is true that one would have wished to have been able to deal with that more expeditiously than we did, but while we were waiting for Bill C-84 to return we had started our study of Bill C-55, which we had put aside.

Since reconvening in the latter part of January we have dealt primarily with Bill C-55, interspersing it with hearings with respect to Bill C-84. We have listened to a total of 47 different witnesses—that consists of groups and not only individuals. There were over 102 individual witnesses with respect to Bill C-55. I have to tell you that we had a great many more requests than we could possibly deal with, and that is why we tried to deal with them in groups. If we had tried to deal with all the witnesses, we would have had well over 200 witnesses. We had to take some time to put these groups together and try to get a common expression of opinion.

At the moment we are preparing our report on Bill C-84. I have every hope that we can get it back into the Senate by Thursday, March 31. We have had two meetings with our staff and legal counsel, and I believe that that is the best we can hope for. We have been sitting during adjournments of the Senate, and we intend to come back on Monday, March 28. However, there have been problems with translators and being able to get the committee together at various times to approve what we are doing.

We can certainly hope to have Bill C-84 back here on March 31. As far as Bill C-55 is concerned, we have concluded our hearings as of this morning, having heard from Mr. Gordon Fairweather, the chairman designate of the proposed Immigration and Refugee Board. We are making arrangements to hear from the minister sometime soon.

If we are able to dispose of Bill C-84 more quickly than we anticipate, perhaps we can hear from the minister next week. However, I would not anticipate that we would be able to report on Bill C-55 prior to the Easter break. I may advise my committee—and I believe they already know—that I would anticipate we will be coming back for one or two days in the second week of the Senate adjournment to attempt to dispose of Bill C-55.

Senator Tremblay: Thank you very much.

DELAYED ANSWER TO ORAL QUESTION

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have a delayed answer that I would like to report.

FOREIGN AFFAIRS

SENEGAL—PRESIDENTIAL ELECTION—SAFETY OF OPPOSITION CANDIDATE—ATTENDANCE OF OBSERVERS—REACTION OF PROGRESSIVE CONSERVATIVE PARTY

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, this answer is in response to a question asked by Senator Grafstein and Senator Marsden on March 16, regarding Foreign Affairs—Senegal—Presidential Election—Safety of Opposition Candidate.

It is a two-page answer, and I ask that it be printed as part of today's proceedings.

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

Hon. Senators: Agreed.

(*The answer follows:*)

Maître Wade (and 12 other persons) have been formally charged with compromising the internal security of the State under specific provisions of the existing criminal code (articles 86 and 98). The charges are related to their alleged involvement in the violent demonstrations which followed the announcement of the results of the Presidential and legislative elections (February 28). The opening date for the court hearings has not yet been set. It is up to the court to decide on this date. In the meantime, Maître Wade and the others remain in custody.

The opposition newspaper "Sub Hebdo" wrote on March 16 that, "Maître Ba has been named coordinator by Maître Wade of the group of lawyers (24 Senegalese lawyers for the time being, others from overseas are expected to join in) who will defend the 13 persons charged before the 'cour de sûreté de l'État' ".

The accused have requested special status (permitted under certain provisions) for the duration of their detention, i.e. a status which is different from that applied to regular detainees. The request is still pending, given procedural issues raised by both sides (i.e. the Interior Minister and the accused).

In the same article as quoted above, Maître Ba indicated that "the accused are in good health, physically and psychologically, and medical attention is being given when requested." Visits by relatives do take place. Visits

by friends and supporters could also be permitted very shortly.

The safety of Maître Wade does not seem to be at stake.

It is now up to the court to decide whether Maître Wade did participate in the violent demonstrations in such a way as to compromise the internal security of the State of Sénégal. At least 24 Senegalese lawyers and possibly others from overseas will present a different case. In this regard, it should be mentioned that the 24 lawyers expressed their appreciation for the independence of the Senegalese tribunals which released, in the absence of sufficient evidence, the majority of the demonstrators who were arrested by the police.

Situation as at March 21, 1988.

UNEMPLOYMENT INSURANCE ACT, 1971

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Mira Spivak moved the second reading of Bill C-116, to amend the Unemployment Insurance Act, 1971.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, before the motion is put, this bill just came to us today. Senator Doody told me that he had hoped that Senator Spivak, the spokesperson for the government on the bill, would be able to proceed today. I said that I thought that would be satisfactory. However, I said that I had hoped to contact Senator Marsden, our spokesperson, who is not in her place at the moment—and I am not sure if she will be attending today. I mention this only because, if she has to work from the record, rather than being present to enjoy hearing Senator Spivak, as the rest of us are, that may affect when she will be able to deal with it.

Senator MacDonald: You mean the nuance would be different from reading the transcript, senator?

Senator Frith: In the case of Senator Spivak, yes, senator; in your case, probably not!

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I want to say that I appreciate the courtesy extended to us by the opposition in allowing us to start second reading on this bill. It would be better if Senator Marsden were here, but, unfortunately, as yet she has not been able to make it. Nevertheless, Senator Spivak will outline the importance of this particular legislation in the course of her remarks.

Senator Frith: Importance and urgency!

Senator Doody: Yes. I believe that honourable senators will share our concern in getting this bill started when they hear the message.

Senator Spivak: Honourable senators, Bill C-116 contains amendments to the Unemployment Insurance Act which are designed, in special circumstances, to make the application of unemployment insurance—and particularly the special benefits—more equitable.

[The Hon. the Speaker.]

This bill will extend benefits to fathers who, because of tragic circumstances beyond their control, become the primary caregivers to a newborn baby. It will also allow mothers, who are separated from their newborn baby due to the hospitalization of that baby, to take their maternity benefits when the baby comes home from the hospital.

• (1420)

These amendments are also designed to bring more flexibility to the Unemployment Insurance Act and, in so doing, will provide benefits to people like John McInnis, who was certainly a catalytic agent in the genesis of this legislation. As you may recall, honourable senators, Mr. McInnis' wife died following the birth of their daughter. He not only had to cope with the death of his wife and the new responsibilities of parenting, he also had to leave his job in order to care for his newborn child. To compound his problems, he was unable to collect UI benefits. He was denied those benefits because he was not available for work, and, although he had applied for Unemployment Insurance Adoption Benefits, he was denied these also, because he was the natural father. Mr. McInnis saw the minister in February, and this legislation is, in part, the result of that meeting. The legislation before us today will make Mr. McInnis and other fathers who find themselves in a similar situation eligible for UI benefits.

Specifically, the bill will bring into effect the following changes: In a situation where the mother dies and the father becomes the primary caregiver for the baby, the father would be eligible for up to 15 weeks of Unemployment Insurance Special Benefits provided all the normal qualifying conditions are met; other circumstances such as serious illness may create a similar dilemma—in other words, disability of the mother to such a degree that she cannot care for the baby. In such a situation, if the mother is already receiving sickness or maternity benefits, these benefits would continue as they do under the current Unemployment Insurance Act.

However, if the mother is not entitled to receive Unemployment Insurance benefits, and provided normal qualifying conditions are met, the father would be eligible for up to 15 weeks of benefits.

In both cases these benefits will be payable only to the father. The term "father" is defined as not only the biological father but also the man who stands in the position of the child's father in the eyes of the community.

These changes to the Unemployment Insurance Act, of course, would also apply to people claiming Unemployment Insurance Adoption Benefits in exactly the same way and with the same qualifying conditions.

Bill C-116 also addresses another inflexibility in the Unemployment Insurance Act. It will allow for the payment of maternity or adoption benefits from the time a baby comes home from the hospital. This change would allow mothers of babies born prematurely, or hospitalized for other reasons after birth, to take the balance of their maternity benefits

when the baby comes home from the hospital. The maternal period, as it is called, is extended one week for every week that the baby is hospitalized.

While these amendments introduced here today address specific sets of circumstances, a number of questions related to the broader issue of paternal benefits remain: issues such as the apparent difference in the qualifying period between regular employment benefits and special benefits; the time of payment of special benefits, now limited to the initial phase; the maximum amount of maternity and/or parental benefits available, et cetera. These questions, as I understand it, are being examined carefully by the department now.

Honourable senators, Bill C-116 will be retroactive to one year from its date of proclamation. A retroactivity period of one year was selected in order to be as generous as possible and cover cases where these changes are relevant. Quick action on the measures before us is being asked for by the minister, since it is felt most important that the legislative inflexibility which denied someone like John McInnis benefits should be corrected. These amendments to the Unemployment Insurance Act are one important step in the evolution of an equitable benefits system, and I hope that they will be supported in this chamber.

On motion of Senator Frith, for Senator Marsden, debate adjourned.

TOBACCO PRODUCTS CONTROL

MOTION TO AUTHORIZE SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE TO STUDY SUBJECT MATTER OF BILL C-51—ORDER STANDS

On the Order:

Resuming the debate on the motion of the Honourable Senator Tremblay, seconded by the Honourable Senator Kelly:

> That the Standing Senate Committee on Social Affairs, Science and Technology be authorized to examine the subject-matter of the Bill C-51, An Act to prohibit the advertising and promotion and respecting the labelling and monitoring of tobacco products, in advance of the said Bill coming before the Senate or any matter relating thereto.—(*Honourable Senator MacEachen, P.C.*).

Hon. Finlay MacDonald: Honourable senators, I thought that Senator Olson made some very interesting points yesterday, of which we should all take heed, when he challenged Senator Cogger to speak to an order that was dated March 1. Then we went on to the third order, which is in the name of Senator Stewart, and which has been on the order paper since February 4. Then we had another situation.

In any event, with respect to Order No. 18, possibly the Deputy Leader of the Opposition could give us some indication of when Senator MacEachen proposes to speak to this matter, which has been on the order paper since October 1 of last year. Those of us who are on committees that do not meet in the summertime will have no problem with this order; it is only those of us who are on committees such as Transport and Communications and Banking, Trade and Commmerce who may be looking for some time off who might find this situation a little bit shaky. Since Senator Olson has brought up what I think is a very good point, possibly Senator Frith could indicate when his leader will get into the mood to get around to this order, which has been standing on the order paper for a heck of a lot longer than the two orders mentioned by Senator Olson yesterday.

Hon. H.A. Olson: Honourable senators, I would like to ask Senator MacDonald if he is now in a position to advise the house on whether or not Senator Cogger intends to take his advice.

Hon. Michel Cogger: As I indicated to Senator Olson yesterday, I intend to give Bill S-15 the same amount of undivided, non-partisan and profound attention that Bill C-22 received.

Senator MacDonald: Meditation.

Senator Cogger: Yes, meditation.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, Senator MacDonald has suggested that possibly I could explain when Senator MacEachen will proceed with Order No. 18. He is quite right, possibly I could, but, in fact, I am not going to. However, I can recognize circumstances under which we might all try to give explanations on our own behalf or on behalf of absent colleagues with respect to every order that stands. I do not understand why he has particularly picked out Order No. 18. Certainly, this question of standing orders, when our order paper is as full as it is now, is something that I think all honourable senators have been thinking about. As a matter of fact, one aspect of this, the reprinting costs involved, has been considered by the Standing Committee on Internal Economy, Budgets and Administration. And it was considered by the Standing Committee on Standing Rules and Orders this morning. The general concern Senator MacDonald has expressed is well founded, and we are concerned about it and the committees are taking it into account.

• (1430)

As to the question of "shakes" and the summer, I do not quite get the relevance of that to Order No. 18.

Senator MacDonald: Senator Frith has always been a role model to me. I am sure it has been his experience in the past, as it has been that of others who have been off cigarettes for the last few months, that we tend to become more shaky every day, and anything that involves the tobacco industry is a matter of concern.

Senator Doody: So that is your role model. No wonder you are shaky!

Senator MacDonald: We gave up smoking in committees as a result of Senator Frith's interventions. I do not think this is a frivolous matter to bring up. We seem to be facing the kinds of threats that we usually do at this time of the year, with a lot on our plates and a lot coming before us. I just do not understand why these orders keep going on and on. I recently withdrew an

inquiry, because I thought it would have been scandalous to leave it on the order paper for more than a number of months.

Senator Frith: So did I.

Senator Doody: You got unanimous consent.

Senator MacDonald: Senator Olson brings up matters which have been on the order paper for a matter of days or weeks. I was particularly enthusiastic to hear Senator Stewart, because the item on which he is to speak is a subject in which I happen to have a particular interest. It has only been on the order paper a short time. Senator Olson raised this matter, and I think he is right. Senator Cogger has a responsibility, as does Senator MacEachen. This item has been on the order paper since Moses was a pup, that is, since October of last year. That is shocking! How long do we have to wait?

Senator Frith: Honourable senators, I, as well as other senators, have observed Senator MacDonald very closely and I only hope that, since he says that I am his role model, some colleague of mine will assure me that he has been unsuccessful in emulating that role model!

Hon. Joyce Fairbairn: Honourable senators, I would just like to say a word about the inquiry which stands in my name, and which has now been on our order paper for over a year.

Senator Frith: What number is that?

Senator Fairbairn: I believe it is Order No. 13, which deals with the question of illiteracy in Canada. It was my hope that a great number of senators would take part in this debate, and it certainly is my intention to keep this inquiry on the order paper just as long as it takes to eradicate the problem.

Some Hon. Senators: Hear, hear!

Senator Frith: That is setting a role model for Senator Cogger.

Order stands.

THE CONSTITUTION

MEECH LAKE COMMUNIQUÉ—AGENDA FOR SENATE REFORM—ORDER STANDS

On the Order:

Resuming the debate on the motion of the Honourable Senator Roblin, P.C., seconded by the Honourable Senator Flynn, P.C.:

That it is timely for the Senate of Canada to take into consideration the agenda set out in the Meech Lake communiqué on the subject of Senate Reform including the following:

—the functions and role of the Senate;

—the powers of the Senate;

—the method of selection of Senators; and

—the distribution of Senate seats.—(*Honourable Senator Marshall*).

Hon. Jack Marshall: Honourable senators, Order No. 27 has been on the order paper for a long time. The reason I stood this order was because I happened to be acting whip at the time. I could take it off today, but, in view of what has been said before, I will leave it on.

Hon. Henry D. Hicks: May I observe, honourable senators, that every single order that has been called and stood since Order of the Day No. 18, which was the subject of our original discussion, has been on the order paper since October 1987 or before that time.

Order stands.

THE SENATE

OTTAWA CITIZEN ARTICLE OF NOVEMBER 18, 1986—INQUIRY STANDS

On Inquiry No. 2:

By the Honourable Senator Marshall:

That he will call the attention of the Senate to an article dated November 18, 1986, in the *Ottawa Citizen*, which in its imputations holds in contempt not only an institution of Parliament, but by extension all of its Members, and goes beyond the guarantees of freedom of expression under the *Canadian Charter of Rights and Freedoms*.

Hon. Eymard G. Corbin: Honourable senators, on a point of order, last week I raised the matter of Inquiry No. 1 having been on the order paper for 16 months—that is, the inquiry has yet to be introduced and debated. I thought that Senator De Bané gave us very good reasons why we should now take it off the order paper; but, as one who believes in freedom of speech, I suppose that we can let it remain for a further period.

My question on the point of order concerns Inquiry No. 2, which stands in the name of Senator Marshall. It has been on the order paper since December 1986—that is, for the past 15 months. Senator Marshall has yet to launch that debate. Has he any good reason for not launching it at this time?

Hon. Jack Marshall: Honourable senators, there is no one I respect more than Senator Corbin through our relationship on committees and on other matters, and we agree on most of them. However, in this case all I can say is that I have reasons of strategy for leaving this inquiry on the order paper. If I disclose that strategy, the person to whom I am directing the inquiry will be aware of what I am trying to do; and I would not want that to happen.

An Hon. Senator: Let him stew for a while!

Senator Corbin: I accept that explanation.

Inquiry stands.

CANADA-EUROPE PARLIAMENTARY ASSOCIATION

FIFTEENTH ANNUAL MEETING HELD IN BANFF, ALBERTA—INQUIRY STANDS

On Inquiry No. 4:

By the Honourable Senator Macquarrie:

That he will call the attention of the Senate to the Fifteenth Annual Meeting of the Canada-Europe Parliamentary association held in Banff, Alberta, from 21st to 25th September, 1987.

Hon. Heath Macquarrie: Honourable senators, before this continuing point of order—which actually is a group confession, it seems to me—is directed to my inquiry, which in comparison with some is a mere adolescent, I want to say that I do not feel at all guilty, although I am a Calvinist. I think it is an excellent idea to have these things on the order paper. It demonstrates to the hundreds of thousands of Canadians who read our documents that the Senate encompasses a wide range of interests. We would not want to be a narrow group of privileged people who care only about a few things.

Also, I want a little more time to fructify my thoughts, to polish my phrases, so they will be fit and suitable for the audience I expect to have when I deliver them. Long ago, God knows, when I was a little boy, my father taught me that those things which are of great value are worth waiting a good deal of time for.

Some Hon. Senators: Hear, hear!

Inquiry stands.

The Senate adjourned until Tuesday, March 29, 1988, at 2 p.m.

APPENDIX

(*See p. 2930*)

COPYRIGHT ACT

BILL TO AMEND—REPORT OF STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

THURSDAY, March 24, 1988

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

TWENTY-THIRD REPORT

Your Committee, to which was referred the Bill C-60, An Act to amend the Copyright Act and to amend other Acts in consequence thereof, has, in obedience to the Order of Reference of Thursday, 11th February 1988, examined the said Bill and now reports the same with the following amendments and observations:

1. *Page 2, clause 2:* Strike out lines 18 to 28.

2. *Page 23, clause 26:* Strike out lines 1 to 3 and substitute the following:

"26.(1) Sections 12, 13, 15, 17, 20 and 25 shall come into force on a day or days to be fixed by proclamation.

26.(2) Sections 50.1 to 50.6 of the *Copyright Act*, and the headings in relation thereto, as enacted by section 14 of this Act, shall come into force on the day that is one year after the day they are assented to or on such later day as may be fixed by proclamation.

26.(3) Section 50.7 of the *Copyright Act*, and the heading immediately preceding that section, as enacted by section 14 of this Act, shall come into force on a day to be fixed by proclamation."

PURPOSE OF BILL C-60

The purpose of this Bill is to amend the *Copyright Act* and in consequence the *Competition Act*, the *Access to Information Act*, the *Industrial Design Act* and the *Privacy Act*.

BACKGROUND INFORMATION

Copyright is "the legal recognition of the exclusive right of a creator to determine the use of a work and to share in the benefits produced by that use."

(Canada, Consumer and Corporate Affairs Canada, *From Gutenberg to Telidon, A White Paper on Copyright*, Supply and Services, 1984.) In Canada, this legal recognition is provided through the *Copyright Act*, a statute which remains substantially the same as when it was proclaimed in 1924. Since that time, technology has changed dramatically, increasing the number of ways in which the results of artistic endeavour may be exploited. The *Copyright Act* has proved remarkably adaptable to the new technology considering that its framers could hardly have foreseen the advent of such inventions as television, photocopiers, video tape recorders, computers and other devices. Nevertheless, as far back as 1957 when the Ilsley Royal Commission reported on copyright reform, the Canadian government has recognized that the *Copyright Act* was in need of revision. Subsequent reports were issued by the Economic Council in 1971, by the Department of Consumer and Corporate Affairs in 1976 (the Keyes/Brunet report), the white paper on copyright reform in 1984 (*From Gutenberg to Telidon*), and the report by the Subcommittee on the Revision of Copyright of the House of Commons Standing Committee on Communications and Culture in 1985 (*A Charter of Rights for Creators*). In addition to these comprehensive studies on copyright reform, specific aspects of copyright have been examined by the Department of Consumer and Corporate Affairs and proposals for change were made in 1982 by the Federal Cultural Policy Review Committee (the Applebaum/Hébert committee), and in 1986 by the Task Force on Broadcasting Policy (the Caplan/Sauvageau task force).

In February 1986, the Government responded to the report of the Subcommittee on the Revision of Copyright endorsing the approach taken by the subcommittee and agreeing with most of its recommendations. On 27th May 1987, Bill C-60 was introduced by the Government and read the first time. Second reading was given on 26th June 1987 at which time the Bill was referred to a legislative committee. The Bill was passed by the House of Commons on 3rd February 1988 and was sent to the Senate.

AN OVERVIEW OF BILL C-60

Bill C-60 represents the first stage in the Government's proposed comprehensive revision of the *Copyright Act*, containing approximately 25 percent of the recommendations made in the 1985 Report of the Subcommittee on the Revision of Copyright entitled *A Charter of Rights for Creators*. There are nine main issues addressed in Bill C-60. These are the following:

1. Exhibition Rights - introduces a new right providing the holder with the sole right to present artistic works at public exhibitions.

2. Moral Rights - expands existing moral rights and defines the nature of an infringement.

3. Compulsory Licences - abolishes the compulsory licensing of sound recordings at the rate of 2¢ per side.

4. Collectives - provides the statutory foundation for the collective administration of all economic rights under copyright.

5. Copyright Board - reconstitutes the existing Copyright Appeal Board as the "Copyright Board" and expands its jurisdiction.

6. Choreographic Works - provides copyright protection for any choreographic work regardless of whether or not it has a story line.

7. Computer Software - explicitly extends copyright protection to computer software.

8. Copyright Infringement - substantially increases the penalties for infringement of copyright.

9. Industrial Design - clarifies the relationship between industrial design and copyright protection.

The Standing Senate Committee on Banking, Trade and Commerce heard evidence touching on each of these issues and while it supports the overall thrust of Bill C-60, including many of its key provisions, there are other aspects of the Bill and of the legislative process which the Committee finds troubling.

Copyright Protection for Computer Software

In testimony before the Committee, representatives from the Information Technology Association of Canada (ITAC) emphasized their strong support for Bill C-60, which explicitly extends copyright protection to software by re-defining "literary work" to include computer programs. The Bill also considerably strengthens the penalties for commercial infringement of copyright. Members of ITAC stated that without Bill C-60, owners or creators of software were not assured of protection for their products under Canadian law. According to ITAC, illegal copying of software costs the Canadian industry approximately $400 million annually and an estimated 8,000 jobs. Further, if Bill C-60 does not pass, Canadian entrepreneurs who develop software are likely to suffer greater hardship as a result of software piracy than the multinationals which are able to fight back through the courts. ITAC urged the Committee to move for swift passage of Bill C-60 because,

"We desperately need the legal certainty that Bill C-60 will bring for software." (53:34)

This Committee is aware of the importance of the information technology industry to Canada's economy and of the need to provide copyright protection for computer software which is the fastest growing sector of that industry. We support the provisions of Bill C-60 extending copyright protection to the Canadian software industry.

Exhibition Rights

Some of the strongest objections by witnesses were made over the introduction of an exhibition right for artistic works under the *Copyright Act*. Representatives from the Canadian Museums' Association and the Canadian Art Museum Directors' Organization both stated that they support the principle that artists receive compensation for the public exhibition of their works. Indeed, according to the Canadian Museums' Association brief, 95 percent of museums have voluntarily paid fees to artists for the public exhibition of their works that are on loan. However, in the opinion of the Canadian Museums' Association, entrenching an exhibition right in the legislation is likely to have serious consequences for the art market and for the public display of art. The Association further noted that the introduction of exhibition rights was predicated on the view put forward by the report "A Charter of Rights for Creators" that there is a consensus in the art community in support of such a right. The museum representatives made it clear that no such consensus existed. In fact, neither curators nor museum representatives appeared before the House of Commons Subcommittee on the Revision of Copyright.

Museum representatives outlined several problems likely to arise as a result of the introduction of an exhibition right. Mr. Duncan Cameron, President of the Canadian Art Museum Directors' Organization, stated that determining and locating the holder of the copyright could create an onerous administrative burden for exhibitors. Further, if the holder of copyright can determine whether or not a work of art may be exhibited, he or she may also determine when, where and in what context the work is exhibited. Copyright holders (who are not necessarily the artists) will thus be provided with the power of censorship over art works which they do not own. The rights of the public to view certain works of art may be impaired if the exhibition right is exercised in a censorious or capricious manner. Ms. Barbara Tyler, President of the Canadian Museums' Association stated that it would "not make sense" to acquire for a collection works of art that did not carry with them the exhibition rights.

The Joint Copyright Legislative Committee of the Canadian Bar Association and the Patent and Trademark Institute of Canada testified that they

took no position with respect to clause 2 which implements exhibition rights. However, they noted that there were "certain difficulties with the clause." (53:50)

On the other hand, groups representing artists indicated that while they support the introduction of an exhibition right, they feel that it does not go far enough. The Canadian Conference of the Arts stated their desire to see the exhibition right extended to include all works of art regardless of whether they were created before or after the coming into force of Bill C-60.

Perhaps the most surprising evidence received by this Committee was in relation to an agreement amongst representatives of the visual arts community producing a compromise on the issue of exhibition rights. The 22nd February 1988 meeting at which the agreement was reached was attended by the following organizations: the Canadian Artists' Representation (CARFAC), Vis-Art Copyright Inc., the Royal Canadian Academy of Arts (RCAA), the Association of National Non-Profit Artist Run Centres (ANNPAC), the Canadian Museums' Association, the Canadian Art Museum Directors' Organization (CAMDO) and the Professional Art Dealers Association of Canada (PADAC). The terms of the agreement involved an extension of the exhibition right to works created before the coming into force of Bill C-60, on the one hand, while limiting the application of the right "to works that are not owned by a museum and presented by that museum at a public exhibition", on the other. Thus museums' permanent collections would be exempt under the agreement while all other copyright works, whenever created, would be subject to the exhibition right. Representatives from the Canadian Conference of the Arts stated that irrespective of the agreement, they wished to see Bill C-60 enacted in its current form. Ms. Barbara Tyler, President of the Canadian Museums' Association, stated that it was her understanding that the agreement was to be put before this Committee in the form of an amendment to clause 2 of Bill C-60. Ms. Tyler declared that as far as her organization was concerned, if the Bill were not amended as agreed, there was no deal with respect to exhibition rights.

While the Committee is sensitive to the right of artists to receive fair and adequate compensation for their work, it feels that establishment of an exhibition right might not help in achieving this goal. Evidence indicated that knowledgeable art buyers are not likely to purchase works without the exhibition rights included. Further, it is uncertain whether assignment of exhibition rights will permit all artists to demand a premium over the current price they receive for their works. Compared with the present situation, transfer by the artist of the exhibition right may not enhance the value of an artwork to a collector except to the extent that he or she does not feel obliged to pay exhibition fees previously remitted voluntarily. At the same time, the Committee does not hold the extreme view taken by one witness that the introduction of an exhibition right could destroy the market for artists' works. The same witness pointed out that the exhibition right is likely to be nullified by an assignment in every transaction. While the introduction of this right may not have a significant impact on large art buyers, it could result in the acquisition of art works by less informed private collectors without a proper determination of the attendant rights.

The evidence heard by this Committee indicates that exhibition rights remain a controversial matter in the art community. Indeed, aside from the aborted agreement between artists and museum representatives, there has not been a consensus on the matter. Visual artists' representatives suggested that, despite their desire to change clause 2 in the second stage of copyright revision, the Bill should be passed in its present form. Representatives from the museums stated that their support for the agreement reached with respect to clause 2 was conditional on the Bill being amended as agreed, otherwise clause 2 should be eliminated.

Since the exhibition right would affect not only museums and galleries, but also schools of art, universities, and any other place where artistic works are publicly displayed, this provision would have wide application. Furthermore, the definition of "artistic work" (clause 1 (1)) and the meaning of the term "public exhibition" are contentious. The Committee has learned that the Government intends to re-define the former term in the second stage of amendments to the *Copyright Act*. When she appeared before the Committee, the Minister of Communications, the Honourable Flora MacDonald, confirmed that work is already well advanced on a revised definition of "artistic work". As a revised definition and an agreed upon exhibition right are to be included in the next set of copyright amendments expected shortly, it would seem unwise to proceed with the introduction of an exhibition right at this time.

The Committee believes that the issue of exhibition rights should be dealt with in stage two of copyright revision. Therefore, it recommends that the provisions of Bill C-60 introducing exhibition rights be withdrawn by amending the Bill as follows:

Page 2, clause 2: Strike out lines 18 to 28.

COLLECTIVE MANAGEMENT OF COPYRIGHT

The *Copyright Act* already provides for the collective exercise of the performing rights in musical works. Currently, there are two performing rights societies in Canada, the Composers, Authors and Publishers Association of Canada (CAPAC) and the Performing Rights Organization of Canada (PRO CAN, formerly BMI Canada), both of which have been in operation for more than 40 years licensing the right to broadcast or publicly perform musical works. Other copyright collectives such as the *Union des écrivains du Québec* (Quebec Writers' Union), Vis-Art Copyright Inc., and *La Société pour l'avancement des droits en audio-visuel* (SADA) have been established to administer other copyright rights.

At the present time, formation of collectives not sanctioned by law is discouraged by the provisions of the *Competition Act*. However, Bill C-60 provides that new collectives may negotiate agreement on their rates with users and will be exempt from section 32 of the *Competition Act* on condition that they file the agreement with the Copyright Board.

A number of witnesses expressed resistance to the implementation of further collective administration of copyright at this time. In many cases this appeared to stem from the uncertainty associated with the new system. The degree of uncertainty and apprehension has been heightened by the Government's decision to proceed with copyright revision in two stages. Submissions from educational users such as the Canadian Teachers' Federation, while generally endorsing the idea of collectives, were concerned that adequate funding be made available to meet the projected increase in expenditures on copyright material.

Another concern was that the number of collectives be kept to a minimum in order that negotiating and transaction costs be minimized. Other witnesses pointed out that negotiations between collectives and the educational institutions were likely to be carried out at the ministry level, relieving individual schools from any negotiating burden. However, since the provincial ministers of education did not appear before the Committee, we are unable to confirm that negotiations with the collectives will be concluded at the ministry level. Even if this were the case, such negotiations would fail to cover other educational institutions not within the ministers' responsibility. In a communiqué dated 26th February 1988, the Council of Ministers of Education stated that the Parliament of Canada should postpone the enactment of Bill C-60 until the more "substantive" elements of copyright reform are known.

Witnesses from the educational community suggested that there should be provision in the legislation to allow educators to use works not covered by a collective copyright licence. Otherwise, teachers would be subject to lawsuits from "maverick" authors or artists who do not belong to any collective. In its submission, the Association of Universities and Colleges of Canada (AUCC), was particularly concerned that the works of all authors be available for study and research. According to the AUCC, it would not be realistic to expect certain works such as correspondence, notes, diaries, lectures, etc. which were not created for commercial gain, to be licensed through collectives. The Committee is sympathetic to the argument put forward by educators that students be allowed access to the broadest range of information without putting educators in legal jeopardy.

Therefore, the Committee recommends that the Government and representatives from the educational community immediately begin consultations designed to ensure that educators enjoy access to material not included in the repertoire of the collectives.

EXEMPTIONS FROM COPYRIGHT

The overwhelming weight of evidence from copyright users dealt with the Government's decision to implement copyright revision in two stages. One submission compared evaluating copyright reform at this stage to providing an opinion on a meal after having consumed only the appetizer. The criticism heard from representatives of educational institutions, libraries and broadcasters centered primarily on the lack of provision in Bill C-60 for further exemptions from copyright and on the absence of a definition of what constitutes "fair dealing" under the Act.

Fair dealing presently lacks a statutory definition. The *Copyright Act* simply states that the following Acts do not constitute an infringement of copyright: "a) any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary." (R.S.C. 1970, c.C-30, s. 17(2)(a))

According to evidence received by the Committee, the courts have given a narrow interpretation to "fair dealing" by ruling that it does not extend to copies of complete works.

Representatives from the Canadian Association of Broadcasters stated that the definition of "fair use" (fair dealing) should be expanded to include "incidental use" of protected material such as when background music is played at a televised sporting event. What broadcasters are really seeking, however, is the right to make reproductions of performances for later broadcast (an exemption for ephemeral recordings). The current provisions of the *Copyright Act* have been interpreted to require a broadcaster to obtain a clearance from the rights holder before making such a reproduction. According to broadcasters, such an exemption would be needed in light of the decision of the Federal Court of Canada in the case of *Bishop v. Télé-Métropole*, involving the copying of a performance of a song for broadcast at a future time. Application for leave to appeal this decision to the Supreme Court of Canada is pending. Unless the Federal Court's decision is overturned, broadcasters fear that they will have to pay composers large fees for reproduction of their works or face the stiff penalties for commercial piracy imposed under Bill C-60.

The Canadian Musical Reproduction Rights Agency Limited (CMRRA), which brought the suit against Télé-Métropole, stated that the broadcasters are merely attempting to obtain an exemption from the requirement to obtain synchronization licences. According to CMRRA, these licences are a standard practice around the world. The CMRRA has indicated its willingness to negotiate some form of ephemeral recording exemption for broadcasters.

Representatives from the Canadian Teachers' Federation noted that the U.S. Copyright legislation provides an exemption for use of copyright material within a classroom or educational setting. The Canadian Association of University Teachers believes that some uses of copyright material, such as for examination purposes, should be exempted from copyright. However, witnesses from the Canadian educational community were still unaware whether such exemptions would be provided in stage two of copyright revision.

Representatives from the Canadian Library Association also indicated that they remain unenlightened concerning the specific library/archival exemptions that the Government intends to introduce in stage two.

Officials from the Department of Communications acknowledged that provision for fair dealing and exemptions would have to wait until the second stage of copyright revision. They maintained, however, that pending the arrival of stage two, the position of users would not worsen. From the user's standpoint, though, the advent of copyright collectives provided for in Bill C-60 would change their circumstances considerably. In order to maintain access to copyright material, educational institutions and libraries would be required to acquire a licence and negotiate a fee with a reprography collective, for instance. However, without a definition of fair dealing and knowledge of what exemptions will be provided in stage two, users will be handicapped in negotiating equitable fees.

Despite provision for a newly reconstituted Copyright Appeal Board (renamed the Copyright Board) which would be empowered to make a fee determination where a licensing body and a user fail to reach agreement, user groups appearing before the Committee were apprehensive about the prospect of dealing with the monopolistic collectives. As Ms. Lorraine Flaherty from the Canadian School Trustees' Association stated before this Committee: "We know very clearly that once Bill C-60 is passed, the collectives will be ready to start negotiations. In addition to not knowing where those negotiations will take place, we feel we are at a terrible disadvantage in not even knowing what it is we are negotiating." (54:38)

In the Committee's view, an arbitral tribunal such as the Copyright Board is a necessary and valuable counter-balance to the power of the collectives. However, another type of check on this power is legislative exemption which would limit the collectives' mandate and provide users with explicit rules as to what does and does not constitute copyright infringement.

In testimony before the Committee, witnesses representing the Social Science Federation of Canada, the Canadian Association of Broadcasters, the Canadian Library Association, the Canadian Teachers' Federation, the Canadian School Trustees' Association, the Ontario School Trustees' Council, and the Ontario

Teachers' Federation, advocated that the clause of Bill C-60 dealing with the collective administration of copyright not be proclaimed until the second stage of copyright amendments are complete. Thus exemptions from copyright would come into effect simultaneously with the statutory foundation for the establishment of collectives. As the Canadian Library Association stated, "In that environment, we feel we can be partners in negotiations with the collectives." (54:20)

The Committee agrees that copyright users should be permitted to negotiate with the collectives on a level playing field. In our view, this can only be accomplished by postponing the clause of Bill C-60 providing the statutory foundation for the establishment of collectives. While the Minister has assured the Committee that stage two is imminent, no firm date was provided for the introduction of the next phase of amendments. Absent a specific date on which to fix implementation of the provisions of clause 14 dealing with collectives, the Committee believes that the coming into force of these provisions should be postponed for at least one year to provide a reasonable period of time for the Government to determine what exemptions are to be granted to users. Therefore, the Committee recommends the following amendment:

Page 23, clause 26: Strike out lines 1 to 3 and substitute the following:

"26.(1) Sections 12, 13, 15, 17, 20 and 25 shall come into force on a day or days to be fixed by proclamation.

26.(2) Sections 50.1 to 50.6 of the *Copyright Act*, and the headings in relation thereto, as enacted by section 14 of this Act, shall come into force on the day that is one year after the day they are assented to or on such later day as may be fixed by proclamation.

26.(3) Section 50.7 of the *Copyright Act*, and the heading immediately preceding that section, as enacted by section 14 of this Act, shall come into force on a day to be fixed by proclamation."

Explanatory Note

This amendment would divide clause 26 into three subclauses.

Subclause 26(1) would remove clause 14 from the general proclamation provisions. It would also amend clause 26 to refer to "a day or days" to be fixed by proclamation rather than "a day" as clause 26 currently provides. In itself, this amendment would give the Government more flexibility in proclaiming certain provisions of the Bill into force.

Subclause 26(2) would prevent sections 50.1 to 50.6 of clause 14 from being proclaimed into force for at least one year after Bill C-60 receives Royal Assent. By imposing such a delay, this amendment would make possible the enactment of specific exemptions for certain categories of users under the *Copyright Act* before those sections of clause 14 respecting the collective administration of copyright, on the one hand, and the examination of agreements, on the other, could be proclaimed into force.

This amendment would not compel the enactment of any exemptions; nor would it make the coming into force of sections 50.1 to 50.6 of clause 14 conditional upon the passage of such exemptions. However, by preventing their coming into force for at least one year, it would provide a reasonable period of time within which to enact the relevant exemptions, thus enabling the law contemporaneously to strike an equitable balance between the interests of both creators and users alike.

Subclause 26(3) would provide for the coming into force of section 50.7 of clause 14 on a day to be fixed by proclamation. This section sets out a licensing mechanism in the case of an unlocatable copyright owner. Because it is totally unrelated to the other sections under clause 14 respecting the collective administration of copyright and the examination of agreements, there is no reason to postpone its coming into force, as is being recommended under subclause 26(2) in relation to the measures on collectives. Consequently, this amendment, together with the amendment under subclause 26(2), would divide clause 14 of the Bill into two parts and it would enable section 50.7 to come into force on proclamation, as is currently provided under clause 26 of the Bill.

The Copyright Board

Copyright lawyer Ms. Gloria Epstein, in testimony before the Committee, criticized the lack of guidance provided in Bill C-60 to the Copyright Board. In this respect, she raised two issues: first, how the Board determines a fair tariff; second, determining who has the burden of proof in suggesting what tariffs might be fair in situations where the Board is called upon to arbitrate. The witness noted that under the current regime, the interested parties make numerous appearances before the Copyright Appeal Board, and motions and appeals to the Federal Court. It was suggested by the witness that measures be added to Bill C-60 providing some guidance to the Copyright Board. Professor Dennis Magnusson from the Social Science Federation of Canada also stated his belief that the Board should be given at least limited legislative direction to ensure a fair balance is attained between users' access to works and creators' need for compensation.

Evidence to the contrary was received from the Canadian Bar Association, which stated that the tribunal did not need further definition since it

could be relied upon "to exercise its common sense and operate on a reasonable basis." (53:55)

When she appeared before the Committee, the Minister of Communications was of the opinion that the Copyright Board has the power to promulgate its own regulations with respect to determining certain matters, including which party in a dispute before the Board has the onus of proof. If this is the case, the Committee does not see any need to set out in the legislation further guidelines for the operation of the Board. On the other hand, if it transpires that the Board does not have this power, the Committee believes that the Government should give consideration to providing in the legislation the necessary guidelines for the Board's smooth operation.

CONCLUSION

The Committee would like to reiterate its support for the broad thrust of Bill C-60 which is certainly responsive to the creators' need for legal protection of the fruits of their efforts. At the same time, it is necessary that the rights of users also be adequately protected and thus a balance maintained. The amendments suggested in this report seek to engineer such a balance between creator and user needs while keeping alterations to the proposed legislation at a minimum.

Some groups which came before the Committee suggested that they had already waited too long for this legislation and they urged that Bill C-60 be passed by the Senate regardless of flaws. As representatives from the Canadian Bar Association and the Patent and Trademark Institute of Canada stated: "In our view, any deficiencies in the Bill do not warrant further delay of its passage . . . To permit any further delay in the progress of Bill C-60 may jeopardize the passage of the Bill and leave the major problems which the Bill addresses still unresolved." (53:48)

Other witnesses had a different view. As one of them said: "What is the point of having these hearings before the Senate if, although the Senate may recognize problems, it will pass the Bill anyway? . . . This Senate committee has to have some purpose behind it. If the committee sees problems, in my submission, the legislation should be sent back with recommendations for amendment." (54:78)

This Committee subscribes to the latter view of its role in the legislative process.

Dissenting Opinions

Members of the Committee who support the Government, although concerned about the two-stage approach to copyright reform, do not approve of the aforementioned amendments.

This report represents the views of a majority of the Committee. The members who support the Government are in disagreement with the report.

APPENDIX A

List of Witnesses

Wednesday, March 2, 1988: (Issue No. 52)

From the Department of Communications:
Mr. Ken Hepburn, Senior Assistant Deputy Minister, Corporate Policy;
Mr. Michel Hétu, General Counsel, Legal Services.

From the Department of Consumer and Corporate Affairs:
Mr. Mel Cappe, Assistant Deputy Minister, Bureau of Policy Coordination;
Mr. Howard Knopf, Analyst, Legislative Analysis Unit.

From the Colbert Agency Inc.:
Mr. David Colbert, Vice-President.

From the Composers, Authors and Publishers Association of Canada Limited:
Mr. John V. Mills, O.C., Q.C., Senior Counsel; Former General Manager, CAPAC.

From the Canadian Association of University Teachers:
Dr. J.H. Evans, President;
Dr. D.C. Savage, Executive Secretary.

Thursday, March 3, 1988: (Issue No. 53)

From the Canadian Art Museum Directors' Organization:
Mr. Duncan Cameron, President; Director, Glenbow Museum;
Ms. Maia-Mari Sutnik, Curator, Art Gallery of Ontario.

From the Social Science Federation of Canada:
Mr. Jean-Pierre Gaboury, Department of Political Science, University of Ottawa;
Dr. Dennis Magnusson, Faculty of Law, Queens University;
Mr. Robert Davidson, Government Relations Officer.

From the Information Technology Association of Canada:
Mr. Norman Cheesman, Director of Public Affairs;
Mr. Philip Erickson, Vice-President, Patents and Licenses, Northern Telecom;
Mr. John M. Dean, Senior Counsel, Manufacturing and Staff Services, IBM Canada Ltd.

From the Canadian Bar Association:
Mr. Charles Kent, Chairman, Industrial and Intellectual Property, National Section.

From the Patent and Trademark Institute of Canada:
Mr. Nicholas Fyfe, President;
Mr. Robert Mitchell, Member of the Council.

From the Joint Copyright Legislation Committee:
Mr. R. Richard Hahn, Chairman;
Mr. Paul Amos;
Mr. Bernard Mayer;
Mr. Paul Barrett.

From the Canadian Conference of the Arts:
Ms. Claudette Fortier, President; Chairman, Copyright Committee;
Mr. Paul Siren, Vice-President;
Ms. Michelle d'Auray, National Director;
Ms. Nancy Burgoyne, Associate Director;
Ms. Edie Yeomans, Member of the Board of Governors;
Ms. Anna Babinska, National Director, Canadian Artists' Representation.

From the Canadian Museums Association:
Ms. Barbara Tyler, President;
Mr. John McAvity, Executive Director;
Ms. Maia-Mari Sutnik, Curator, Art Gallery of Ontario;
Mr. Marcel Brisebois, Director, "Musée d'art contemporain".

Tuesday, March 8, 1988: (Issue No. 54)

From the Canadian Association of Broadcasters:
Mr. Pierre Nadeau, Vice-President;
Mr. Tony Scapillati, Legal Counsel;
Mr. Robert Buchan, Legal Counsel.

From the Canadian Library Association:
Ms. Jane Cooney, Executive Director;
Ms. Judith McAnanama, Member; Chief Executive Officer, Hamilton Public Library.

From the Canadian Musical Reproduction Rights Agency Limited:
Mr. Paul M. Berry, General Manager.

From the Canadian Teachers' Federation:
Ms. Sheena Hanley, President;
Dr. Stirling McDowall, Secretary General;
Br. Jean-Marc Cantin, Deputy Secretary General.

From the Canadian School Trustees' Association:
Ms. Lorraine Flaherty, Executive Director.

From the "Société des auteurs, recherchistes, documentalistes et compositeurs":
Ms. Louise Pelletier, Member.

From the "Association des réalisateurs et réalisatrices de film du Québec":
Ms. Iolande Rossignol, President;
Ms. Brigitte Sauriol, Member; President, "Fédération professionnelle des réalisateurs et réalisatrices de télévision et de cinéma";
Mr. Richard Boutet, Member;
Mr. Roland Paret, Member.

From the Ontario School Trustees' Council:
Ms. Fiona Nelson, Vice-Chairperson.

From the Ontario Teachers' Federation:
Mr. John Fauteux, President;
Mr. John P. Bell, Legal Counsel, Schibley, Wright & McCutcheon;
Mr. Paul D. Blanchard, Legal Counsel.

From the Canadian Artists' Representation:
Ms. Anna Babinska, National Director;
Mr. Ricardo Gomez, National Secretary;
Ms. Pamela Medjuck, Legal Counsel; Executive Director, Vis-Art Copyright Inc.

From Gloria J. Epstein & Associates:
Ms. Gloria J. Epstein.

Tuesday, March 15, 1988: (Issue No. 55)

Appearing:

The Honourable Flora MacDonald, M.P., P.C., Minister of Communications.

From the Department of Communications:
Mr. Alain Gourd, Deputy Minister;
Ms. Wanda Noel, Expert Consultant, Copyright Division;
Mr. Michel Hétu, General Counsel, Legal Services.

APPENDIX B

List of Briefs Received

In addition to letters and telegrams from interested parties, the Committee received the following written submissions:

ALLIANCE OF CANADIAN CINEMA, TELEVISION AND RADIO ARTISTS
Toronto, Ontario

ASSOCIATION DES RÉALISATEURS ET RÉALISATRICES DE FILM DU QUÉBEC (A.R.R.F.Q.)
Montreal, Quebec

ASSOCIATION OF NATIONAL NON-PROFIT ARTISTS' CENTRES
Toronto, Ontario

ASSOCIATION OF UNIVERSITIES AND COLLEGES OF CANADA
Ottawa, Ontario

ATLANTIC PROVINCES LIBRARY ASSOCIATION
Halifax, Nova Scotia

BOWERS, Professor Kenneth S.
Waterloo, Ontario

CANADIAN ARTISTS' REPRESENTATION
Ottawa, Ontario

CANADIAN ASSOCIATION OF BROADCASTERS
Ottawa, Ontario

CANADIAN ASSOCIATION OF UNIVERSITY TEACHERS
Ottawa, Ontario

CANADIAN BOOK PUBLISHERS' COUNCIL
Toronto, Ontario

CANADIAN CONFERENCE OF THE ARTS
Ottawa, Ontario

CANADIAN COPYRIGHT INSTITUTE
Toronto, Ontario

CANADIAN LIBRARY ASSOCIATION
Ottawa, Ontario

CANADIAN MUSEUMS' ASSOCIATION
Ottawa, Ontario

CANADIAN MUSICAL REPRODUCTION RIGHTS AGENCY LIMITED
Toronto, Ontario

CANADIAN RECORDING INDUSTRY ASSOCIATION

CANADIAN SCHOOL TRUSTEES' ASSOCIATION
Ottawa, Ontario

CANADIAN TEACHERS' FEDERATION
Ottawa, Ontario

CARLETON GRADUATE STUDENTS' ASSOCIATION
Ottawa, Ontario

CONNELL, Mr. G.E.
Toronto, Ontario

COUNCIL OF MINISTERS OF EDUCATION
Toronto, Ontario

COUNCIL OF POST SECONDARY LIBRARY DIRECTORS - BRITISH COLUMBIA
Victoria, British Columbia

EPSTEIN, GLORIA J. & ASSOCIATES
Toronto, Ontario

FÉDÉRATION PROFESSIONNELLE DES RÉALISATEURS ET RÉALISATRICES DE TÉLÉVISION ET DE CINÉMA
Montreal, Quebec

INFORMATION TECHNOLOGY ASSOCIATION OF CANADA
Toronto, Ontario

LEAGUE OF CANADIAN POETS
Toronto, Ontairo

McCARTHY & McCARTHY
Toronto, Ontario

MANITOBA ASSOCIATION OF SCHOOL TRUSTEES
Winnipeg, Manitoba

METROPOLITAN SEPARATE SCHOOL BOARD
Toronto, Ontario

NAENAE TECHNICAL SERVICES LTD.
Mississauga, Ontario

ONTARIO ASSOCIATION OF ART GALLERIES
Toronto, Ontario

ONTARIO ASSOCIATION OF EDUCATION ADMINISTRATIVE OFFICIALS
Toronto, Ontario

ONTARIO SCHOOL TRUSTEES' COUNCIL
Toronto, Ontario

ONTARIO TEACHERS' FEDERATION
Toronto, Ontario

POLICY FORUM OF THE ASSOCIATIONS OF MUSEUMS AND ART GALLERIES IN CANADA
Ottawa, Ontario

POST-GRADUATE STUDENTS' SOCIETY OF MCGILL UNIVERSITY INC.
Montreal, Quebec

SOCIAL SCIENCE FEDERATION OF CANADA
Ottawa, Ontario

SOCIÉTÉ DES AUTEURS, RECHERCHISTES, DOCUMENTALISTES ET COMPOSITEURS (S.A.R.D.E.C.)
Montreal, Quebec

SOCIÉTÉ DE DROIT DE REPRODUCTION DES AUTEURS, COMPOSITEURS ET ÉDITEURS AU CANADA (SODRAC) INC.
Montreal, Quebec

VANCOUVER COMMUNITY COLLEGE
Vancouver, British Columbia

Respectfully submitted,

IAN SINCLAIR
Chairman

THE SENATE

Tuesday, March 29, 1988

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

Prayers.

APPROPRIATION BILL NO. 6, 1987-88

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-119, for granting to Her Majesty certain sums of money for the Government of Canada for the financial year ending March 31, 1988.

Bill read first time.

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

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I am at a disadvantage. Obviously, my counterparts are detained somewhere. Earlier today we had discussions with Senator Frith, and the indications were that it would be permissible to proceed with second reading of this bill later this day. However, if it is the desire of the Senate that we stand it until Senator Frith or Senator MacEachen arrives, that is fine.

Senator Bonnell: Let us deal with it later this day.

On motion of Senator Doody, with leave of the Senate and notwithstanding rule 44(1)(*f*), bill placed on the Orders of the Day for second reading later this day.

APPROPRIATION BILL NO. 1, 1988-89

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-120, for granting to Her Majesty certain sums of money for the Government of Canada for the financial year ending March 31, 1989.

Bill read first time.

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

On motion of Senator Doody, with leave of the Senate and notwithstanding rule 44(1)(*f*), bill placed on the Orders of the Day for second reading later this day.

[*Translation*]

COASTING TRADE AND COMMERCIAL MARINE ACTIVITIES BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message has been received from the House of Commons with Bill C-52, respecting the use of foreign ships and non-duty paid ships in the coasting trade and in other marine activities of a commercial nature.

Bill read first time.

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

On motion of Senator Doody, bill placed on the Orders of the Day for second reading on Thursday, March 31, 1988.

ANIMAL PEDIGREE BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message has been received from the House of Commons with Bill C-67, an Act respecting animal pedigree associations.

Bill read first time.

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

On motion of Senator Doody, bill placed on the Orders of the Day for second reading on Thursday, March 31, 1988.

[*English*]

FOREIGN AFFAIRS

STUDY OF ELEMENTS OF CANADA-UNITED STATES FREE TRADE AGREEMENT AND AGREED TEXTS—DEADLINE FOR PRESENTATION OF REPORT EXTENDED

Hon. George van Roggen, Chairman of the Standing Senate Committee on Foreign Affairs, presented the following report:

Tuesday, March 29, 1988

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

THIRTEENTH REPORT

Your Committee, which was authorized by the Senate on November 5, 1987, to examine and report upon elements of a Free Trade Agreement between Canada and the United States, tabled in the Senate on October 6, 1987 (Sessional Paper No. 332-589), and texts subsequently agreed to, respectfully requests that the date of presenting its report be extended from 29 March, 1988, to no later than 31 March, 1989.

Respectfully submitted,

GEORGE C. VAN ROGGEN,
Chairman.

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

Senator van Roggen: Honourable senators, I wish to explain the reason for the extension of the date to March 31, 1989.

While the wording, of necessity, refers to the report not being brought in until that time, honourable senators should understand that the manner in which the committee is approaching this subject is that there are a number of reports within a report that we will probably be producing. We are now drafting a report on a constitutional aspect of this matter. We have taken a good deal of evidence on the energy sector; we have not yet started evidence on the agricultural sector, which is a large add-on to a normal free trade arrangement. Similarly, we would be approaching the financial services and services sector as a separate large subject—the first time that it has ever been attempted in a free trade agreement between two nations. There is then the Auto Pact, the dispute settling mechanism, and, in due course, the American legislation, to say nothing of the Canadian legislation. So I hope that we will be producing reports for the Senate in the interim, but, certainly, this whole process will take at least until next March, and maybe even after that.

So, honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*f*), I move that this report be taken into consideration now.

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

Hon. Senators: Agreed.

Motion agreed to and report adopted.

• (1410)

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

THIRTY-FOURTH REPORT OF COMMITTEE PRESENTED

Hon. Royce Frith, Deputy Chairman of the Standing Committee on Internal Economy, Budgets and Administration, presented the following report:

Tuesday, March 29, 1988

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

THIRTY-FOURTH REPORT

Your Committee recommends the following:

1) Salary and Benefits Revision for Unrepresented Senate Employees on Fiscal year 1988-89

a) The pay scales of unrepresented employees (except Senators' secretaries) be increased by 4% effective April 1, 1988.

b) Senators' secretaries pay scale be modified by adding an additional step at $32,616.

c) Senators' secretaries not at the maximum of the scale be entitled to a lump sum payment equivalent to 3.5% of their salary on April 1, 1988 and payable on a monthly basis. This will permit the maintenance of pay relativities between steps in the scale.

2) Taxi Regulations

a) That claims without receipts be increased to $18.

b) That there be no maximum limit for taxi claims since it is part of a Senator's travel entitlement to his or her residence or to Ottawa. Claims above $18 must be accompanied by a receipt.

Respectfully submitted,

ROYCE FRITH
Deputy Chairman

MOTION FOR ADOPTION OF REPORT—DEBATE ADJOURNED

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

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, with leave, I move the adoption of this report now, but before I ask that it be voted upon without adjournment I will explain it.

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

Hon. Senators: Agreed.

Senator Frith: Honourable senators, this is a report of the committee dealing with the salary and benefit revisions for unrepresented Senate employees for the fiscal year 1988-89; that is, those employees not subject to statutory collective bargaining.

The second part of that report deals with an increase or a change in the taxi regulations to increase the amount that can be claimed without a receipt. It is based on recent increases in taxi rates.

Honourable senators, there are two ways we can proceed. If honourable senators wish to have a closer look at this report, which I received just a few moments ago, I can have copies distributed and adjourn the matter until later this day, or I can adjourn it until tomorrow. My preference is to distribute copies while the matter stands adjourned until later this day. If at that point honourable senators are not satisfied, then we can adjourn it further.

Hon. Duff Roblin: Honourable senators, I think that is a very reasonable suggestion. I am one of those people who like to read the fine print before I vote on something. Therefore, I appreciate Senator Frith's consideration.

When Senator Frith speaks to the matter, perhaps he would tell us whether or not the changes in salaries have been included in the budget for the same fiscal year.

On motion of Senator Frith, debate adjourned until later this day.

PROBLEMS OF THE AGED

NOTICE OF INQUIRY

Hon. M. Lorne Bonnell: Honourable senators, I give notice that on Tuesday, May 3, 1988, I will call the attention of the Senate to the problems of the aged, including the substantial increase in population of those aged 65 and over as well as problems of income security, retirement, housing, transportation and social welfare in general, including abuse and health care.

OFFICIAL LANGUAGES

APPOINTMENT OF SPECIAL COMMITTEE TO STUDY SUBJECT MATTER OF BILL C-72—NOTICE OF MOTION

Hon. Dalia Wood: Honourable senators, with leave of the Senate and notwithstanding rule 44(1)(*d*), I move:

That a special committee of the Senate be appointed to examine and report upon the subject-matter of the Bill C-72, An Act respecting the status and use of the official languages of Canada, in advance of the said Bill coming before the Senate or any matter relating thereto;

That the Bill be referred to the said special committee, in due course;

That, notwithstanding Rule 66(1)(*b*), the special committee be composed of the Honourable Senators Bonnell, Cools, Cottreau, David, De Bané, Guay, Ottenheimer, Robichaud, Tremblay and Wood;

That the quorum of the special committee be four members; and

That the committee have power to send for persons, papers and records, to examine witnesses, to report from time to time and to print such papers and evidence from day to day as may be ordered by the committee.

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

Some Hon. Senators: No.

The Hon. the Speaker: Honourable senators, if leave is not granted the motion will be placed on the order paper for Thursday next, March 31, 1988.

THE CONSTITUTION

FIRST MINISTERS' ACCORD AND AGREED TEXTS—COMMITTEE OF THE WHOLE—STILL PHOTOGRAPHY POOL AUTHORIZED TO RECORD MARCH 31 PROCEEDINGS

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(i), I move:

That a still photography pool be permitted to record the proceedings of the Committee of the Whole on the Meech Lake Constitutional Accord on Thursday, March 31, 1988.

[Senator Roblin.]

Honourable senators, if leave is granted, I shall explain why I am moving this motion.

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

Hon. Senators: Agreed.

Senator Frith: Honourable senators, last week I moved a similar motion for tomorrow, March 30, when Mr. Trudeau will be appearing before the committee. I do not know whether or not it appears in *Hansard*, but I recall Senator Flynn's asking why it was simply for March 30. To tell you the truth, I do not know why we made it simply for March 30, but we did. It was really a mistake in the wording. The motion ought not to have been limited to March 30. At the time I offered to amend the motion, but in the cross-talk we just did not get it done. However, there is no reason why, when we are going to have cameras, including the still camera pool, here for Mr. Trudeau on March 30, we should not also have them here for Senator Murray, who will be our only witness on Thursday.

Motion agreed to.

QUESTION PERIOD

[*English*]

THE SENATE

ABSENCE OF GOVERNMENT LEADER FROM CHAMBER

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have to inform the house that Senator Murray will not be with us today. He is in the Maritimes on official business.

REQUEST FOR ANSWERS

Hon. H.A. Olson: Honourable senators, I would like to ask a question of the Deputy Leader of the Government. During the past three weeks I have raised a number of questions with the Leader of the Government, Senator Murray, who took the questions as notice and gave undertakings to provide answers to them. One such question was with regard to the new tar sands processing plant near Fort McMurray. Another particularly important question was with regard to the initial price paid by the Canadian Wheat Board for cereal grains this year, in view of the fact that the international market has recovered somewhat since prices were established one year ago.

Perhaps the Deputy Leader of the Government has delayed answers to these questions with him today, but, if not, perhaps we could have them prior to the adjournment this week, which adjournment will be, I think, until April 18. I would prefer his confirming that he will supply answers to these questions so

that I will not need to ask these questions again tomorrow and the next day.

● (1420)

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, if I had the answers I would be most pleased to deliver them. However, I do not, but I will undertake to try to provide them for Senator Olson just as quickly as they can be made available.

OFFICIAL LANGUAGES

ANNUAL REPORT OF COMMISSIONER—PERCENTAGE OF ANGLOPHONES IN FEDERAL PUBLIC SERVICE IN QUEBEC

Hon. Dalia Wood: Honourable senators, my question is really for the Leader of the Government. However, in his absence I should like to put it to the deputy leader. It deals with the Annual Report of the Commissioner of Official Languages.

Before asking my question I would like to state that I support the Commissioner of Official Languages, Mr. D'Iberville Fortier, and his 241-page annual report, notwithstanding that he had the "audacity" to use the word "humbling."

My question is: What is the federal government proposing to do about the deplorably low percentage of English-speaking Canadians working in federal government departments in the province of Quebec? In 1986 it was less than 5 per cent, and in the last annual report it is still less than 5 per cent. Again, there has been no change. Therefore, I ask what the federal government is proposing to do about this deplorable situation.

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I will certainly attempt to get all the available information for Senator Wood at the earliest opportunity.

UNEMPLOYMENT INSURANCE ACT, 1971

BILL TO AMEND—SECOND READING

On the Order:

> Resuming the debate on the motion of the Honourable Senator Spivak, seconded by the Honourable Senator Cogger, for the second reading of the Bill C-116, An Act to amend the Unemployment Insurance Act, 1971.—(*Honourable Senator Marsden*).

Hon. Lorna Marsden: Honourable senators, I am sorry that I was not present last Thursday to comment, from our side, on Bill C-116. Senator Spivak described the content and the advantages of this bill very well and fully.

For our part, we are in complete agreement with and support the changes contained in this legislation, including the retroactivity, which will ease the circumstances of parents in some, but certainly not all, situations in looking after newly-born or adopted children.

In this case, as honourable senators heard in Senator Spivak's speech last Thursday, the minister sponsoring this bill in the other place was responding to the very sad circumstances of Mr. McInnis, whose name will be familiar to senators from coverage by the media. Mrs. McInnis died shortly after childbirth and Mr. McInnis was unable to collect unemployment insurance benefits which would have allowed him to stay home to look after his child. The amendments to the Unemployment Insurance Act, 1971 in Bill C-116 will change the circumstances for Mr. McInnis and, of course, for any other parent who finds himself in similar circumstances. It will also improve the situation of mothers whose babies, because of complications at childbirth, must stay in hospital longer than their mothers. Now those mothers will be able to claim unemployment insurance benefits within the 52-week period. We are in favour of both these changes to the legislation. They improve the flexibility considerably.

However, it is our position that the benefits announced in this bill should be only the first step toward the provision of real and complete parenting leave, allowing mothers full maternity leave, that is, either the current allowable time or longer allowable time with benefits, and allowing fathers parenting leave as well. Times have changed and both mothers and fathers now provide for the care of young children, and both mothers and fathers now have full-time, full-year work in the paid labour force.

In the case of adoption the initial period of entry of an adopted child into the family is a crucial and often difficult time which requires the involvement of both parents.

We commend the government for the provisions contained in this bill and urge them to bring in as full a parenting leave policy as possible for all Canadian families. Certainly, it will be our intention, as government, to give early and full attention to such a benefit.

Some Hon. Senators: Hear, hear!

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, it is our hope to have this bill considered in Committee of the Whole this afternoon. The minister is trying to make himself available and, following Question Period in the House, if honourable senators are agreeable, we may be able to discuss this matter in Committee of the Whole. In the circumstances it may be advisable to stand this matter until later this day and then refer it to committee at that time.

Hon. Royce Frith (Deputy Leader of the Opposition): If debate on second reading is about to finish, why does not the Honourable Senator Spivak close the debate now and move that the bill be referred to a Committee of the Whole later this day?

Senator Doody: I believe that Senator Spivak wishes to say something on this bill, so we should allow the sponsor to speak.

Hon. Allan J. MacEachen (Leader of the Opposition): If this bill is to be discussed in Committee of the Whole, do you think it would be all right if we asked the minister about Bill C-84 also?

Senator Doody: Far be it from me to suggest that I would put limitations on the questions that the honourable senator might feel called upon to raise in Committee of the Whole. I am sure that he is quite familiar with the proceedings, although I will admit that recently we have been branching out in new directions with Committee of the Whole in this place, in connection with which he, too, may admit to not having too much experience. However, I suspect that there will be no problems with the questions. As for the answers, that is something entirely different.

Hon. Mira Spivak: I thank the Deputy Leader of the Government.

Honourable senators, first, I wish to thank Senator Marsden for her support of the bill and for her remarks in this regard. I have just a few brief comments additional to those that I made in introducing the bill. I would first like to congratulate the minister for moving so expeditiously on these specific inequities with regard to unemployment insurance. I had congratulated Mr. McInnis, as the catalytic agent here, but I did not congratulate Cathy McLean from Nova Scotia and Melanie Williams of Vancouver, whose cases were the impetus for the amendments concerning premature babies, and the period in which benefits can apply.

There was one other aspect that I did not mention. In introducing these amendments the government has maintained the principle of the individual entitlement, not shared entitlement; that is, that the maternity benefits for the mother are protected. The bill protects the woman's right to use her entitlement to benefit. It protects that principle, and, in my view, that is very commendable and the right way to go.

● (1430)

As Senator Marsden pointed out, the bill addresses specific inequities. The first is the ability of the father, in circumstances where the mother has died or become disabled, to collect unemployment insurance benefits, provided he had a major attachment to the work force. This also applies to parents who have adopted children.

The second issue it addresses relates to premature babies that have to be left in the hospital for a longer period of time than is normal, and who need a mother's care when they leave the hospital. The mother will benefit from the flexibility in the legislation that enables unemployment insurance benefits to be paid until the mother returns to work.

I appreciate Senator Marsden's comments regarding the need for more comprehensive coverage under the Unemployment Insurance Act for maternity and parental leave. I am aware, as is everyone else, that many reports have suggested a two-tier system of maternity and parental leave, which, again, would protect the mother's right to maternity leave, but which would expand parental leave. While this bill is not meant to address any of those issues, I have been told by officials in the department that many of the issues are being considered. It is my personal hope—although I am not expressing the government's position now—that, indeed, at some point in the future we will see that there is more comprehensive coverage; that is, the principle of child care provisions in the Unemployment Insurance Act, which is really established by this bill—

[Senator MacEachen.]

Senator Frith: Is or is not?

Senator Spivak: It is, because the bill recognizes the fact that there is a need for child care on the part of the parents, and these provisions will be expanded and will mean more comprehensive coverage.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE OF THE WHOLE

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

Hon. Mira Spivak: Honourable senators, I move, seconded by the Honourable Senator Atkins, that the bill be referred to a Committee of the Whole.

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

Motion agreed to and bill referred to Committee of the Whole.

WESTERN ARCTIC (INUVIALUIT) CLAIMS SETTLEMENT ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Heath Macquarrie moved the second reading of Bill C-102, to amend the Western Arctic (Inuvialuit) Claims Settlement Act.

He said: Honourable senators, the government has made a commitment to resolve comprehensive land claims in the North through the fair negotiation of settlement agreements. This commitment is an important part of the government's overall northern framework. Settlement agreements will make clear and certain all rights to the ownership and use of land and resources throughout vast northern areas. In the absence of clear, final agreements in the North, social and cultural developments are affected. Inuit and other native northerners face uncertain futures. The relationship between native and non-native northerners becomes strained. And, unfortunately, the orderly economic development which all northern citizens desire is considerably jeopardized.

When the government took office in 1984, it found that much work remained to be done in the area of comprehensive claims. Although the policy decision to negotiate such claims had been established in 1973, few final agreements had actually been reached. In Quebec agreements had been signed between the Cree Indians and Inuit of northern Quebec in 1975 and with the Naskapi Indians in 1977.

One northern claim to be finalized was that with the Inuvialuit of the Beaufort Sea region, which was completed in mid-1984. However, throughout the rest of the North no agreements had been reached. Although much negotiation and discussion had taken place, major agreements were still outstanding with the Council for Yukon Indians, the Denè and

Métis people of the Mackenzie Valley and the Inuit of the eastern Arctic.

Our government found that negotiations were generally dragging due in part to concern by native groups involved that the claims policy then in effect was outdated. They wanted from the government a more flexible and responsive set of policies for comprehensive land claims, and the government listened and responded to this need.

The first stage was the appointment of a federal task force to make a comprehensive review of the whole area, and I point out that this was not the task force of the Senate which Senator Molgat so capably chaired—this was a government task force. Its mandate was to meet extensively with leaders and citizens alike and to provide an informed, thoughtful and independent appraisal of the situation along with appropriate recommendations. The task force's report was made public in the spring of 1986.

It was well received by native northerners. Its findings and the discussion which followed paved the way for a new and more effective claims policy. This new policy was announced by the Honourable Bill McKnight, Minister of Indian Affairs and Northern Development, in December 1986. It deals in a positive way with the concerns of the native groups involved, and it has opened the way to more active negotiations on the three remaining northern claims—negotiations which are proceeding in earnest and which, we are hopeful, will lead to final agreements in the not too distant future.

With this action the government has demonstrated its willingness to listen and to respond when change is needed. This has been our policy, and this is the major point of the legislation we have before us today.

Honourable senators, I mentioned earlier that one northern claim has been made final. This was popularly termed the COPE, or Council for Original Peoples' Entitlement agreement, otherwise known as the Inuvialuit Final Agreement, reached with the Inuvialuit people who inhabit the Beaufort Sea region. Honourable senators, I am not too confident of my pronunciation of some of these terms—I have trouble with Gaelic and Arabic as well!

Senator Roblin: They sound all right to me.

Senator Macquarrie: Thank you!

The agreement was ratified by Parliament in 1984 through the Western Arctic (Inuvialuit) Claims Settlement Act.

The Inuvialuit are a small group of some 2,500 people, living mainly in six communities that border on the Beaufort. But the area which they have traditionally inhabited and in which they have hunted and fished for their livelihood is enormous, covering some 435,000 square kilometres of land and water in the western Arctic.

The agreement covered a wide range of concerns: title and ownership of land, water rights, wildlife harvesting, financial compensations and the establishment of various bodies by the Inuvialuit to manage and administer various aspects of the agreement.

Honourable senators, over the past four years, since the Inuvialuit Final Agreement was signed, its implementation has generally progressed smoothly. However, as with any complex agreement, amendments of one sort or another prove to be necessary from time to time. The drafters of the agreement recognized that this would be so, and the Inuvialuit Final Agreement makes direct provision for amendments by the parties to the agreement.

The process by which the Inuvialuit may give consent to amend the agreement is quite clear. The Inuvialuit Final Agreement stipulates that this may be given by resolution of the board and of regional councillors of the Inuvialuit Regional Corporation. However, neither the agreement nor the subsequent act of Parliament specifies the process by which Canada may give consent to such amendments. As a result, there is currently a need for parliamentary approval of amendments, unless they are purely technical in nature.

Such a procedure makes unnecessary demands on Parliament's time and hampers the government's capacity to respond in a timely fashion to amendments that might be required to the Inuvialuit Final Agreement.

Bill C-102 seeks to clarify and simplify the consent procedure. Amending the Western Arctic Claims Settlement Act will enable the Governor in Council to authorize the Minister of Indian Affairs and Northern Development to sign amending agreements arrived at with the concurrence of the Inuvialuit Regional Corporation.

Honourable senators, this procedure has been discussed with the Inuvialuit and they are in complete agreement with the amendments embodied in Bill C-102. They, like the government, want to see a streamlined procedure established so that necessary amendments to the Inuvialuit Final Agreement may be made expeditiously when they arise.

Honourable senators, as I have said, the government is anxious to be responsive in all matters relating to these comprehensive claims agreements. It wishes to demonstrate to the Inuvialuit and to other groups with whom negotiations are still under way that it can and will act when necessary to amend those agreements when and if such amendments are needed.

● (1440)

I hope that all honourable senators will support the amendments proposed in Bill C-102, which will help clear the way for such response. As honourable senators no doubt know, this measure passed the other place last week, all stages at one sitting, and with unanimous support of all three parties.

Honourable senators, I have a related matter to mention. Unfortunately, a printing error has been made in clause 1(*c*) of the bill relating to the date of the amending agreement. I believe that it will be appropriate in committee to have a technical amendment proposed to correct this error. I suggest that this bill be given the commendation of the Senate and that it be referred to an appropriate committee for further study and elucidation.

On motion of Senator Frith, for Senator Adams, debate adjourned.

PATENT ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

Resuming the debate on the motion of the Honourable Senator Bonnell, seconded by the Honourable Senator Petten, for the second reading of the Bill S-15, An Act to amend the Patent Act—(*Honourable Senator Cogger.*)

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I appreciate the fact that there is some anxiety among senators to get this bill moving. Senator Cogger is prepared to speak on this bill as soon after Easter as possible. In the meantime, he would be happy to yield to any other senator who wishes to speak.

Hon. Stanley Haidasz: Honourable senators, I wish to thank Senator Doody for the opportunity of speaking today, before Senator Cogger delivers his speech, on second reading of Bill S-15, an act to amend the Patent Act. Of course, I was also pleased to second the motion by Senator Bonnell introducing Bill S-15. I believe that this bill is both necessary and urgent in order to protect the public interest from rapid and excessive price increases of prescription drugs.

In the last week of December I was shopping for an antibiotic at a pharmacy operated by a young, concerned pharmacist, Andrew Musial, in the heart of Parkdale, a workingman's community in Toronto's west end. I was shocked when Mr. Musial told me he had just received some manufacturers' price lists on prescription drugs which exceeded the Consumer Price Index of 4.4 per cent in 1987. He stated that the prices of some drugs had exceeded 5 per cent and that other drugs were to cost from 20 to 100 per cent more in 1988 than in 1987.

I could hardly believe that such an awful thing could be done, that such bad news could come just after Christmas and before New Year's Eve. And to come so soon after Royal Assent to Bill C-22 on November 19 last year; so soon after verbal commitments in November and earlier by the Minister of Consumer and Corporate Affairs and other committee witnesses representing the Pharmaceutical Manufacturers' Association of Canada that Bill C-22 would limit drug price increases to the rate of inflation.

What many of us on the Standing Senate Committee on Banking, Trade and Commerce, in this chamber and throughout the country feared all along would happen, did happen. Bill C-22 was, as we felt all along, weak, and the PMAC and minister's commitments were unreliable. That is why the majority of senators in this chamber did not support Bill C-22. I, for one, voted against it.

On February 9, 1988, Andrew Musial, a member of the Society of Independent Community Pharmacists of Ontario, and Jerry Taciuk, a member of the Ontario Health Committee of the Consumers' Association of Canada, who are both present in the gallery this afternoon, brought me their "labour of love" and concern, a report of a study they had conducted along with members of the Society of Independent Community Pharmacists of Ontario. This study related to the extent of the excessive price increases of drugs manufactured by five companies: Janssen, Merck Frosst, Merrell Dow, Sandoz, and Smith, Kline and French. The Musial-Taciak study confirmed the original fears and suspicions that many drug prices increased 10 to 15 times the annual inflation rate in Canada in 1987.

However, I would like to state that one of these five companies that were studied, Merck Frosst, not only restricted a few price increases to a tolerable level but also reduced prices by approximately 3 per cent on over 90 per cent of their products.

I ask you, honourable senators, how can the PMAC or their individual members justify or even explain why the majority of the pharmaceutical companies belonging to that organization increased their prices to such an extent while Merck Frosst was able to reduce their prices on so many of their prescription drugs? Is Merck Frosst the good boy of the PMAC, or is it the sacrificial lamb of 1988? Why did the majority of the PMAC members break their commitment and Merck Frosst keep it? What about that Code of Conduct for the PMAC members? Does it not honour reasonable drug prices? Was the code breached by any or all or most of the PMAC members? I ask: Is a Code of Conduct for the PMAC members enforceable, or is the PMAC impotent to control the actions of its members?

I also ask: Is the PMAC still a voluntary association? If it is, can the PMAC not afford $350 to incorporate and, therefore, be more in control of its members? What is the PMAC doing about their broken commitments, their betrayal of trust? Why has not the PMAC told their members to voluntarily roll back their excessive price increases for 1988 instead of casting stones; hurting the sick; fleecing the poor; gouging the unprotected; imputing false motives to me; attacking retail pharmacists who cannot protect themselves; and trying to defend the indefensible?

● (1450)

And why hasn't the Minister of Consumer and Corporate Affairs lived up to his commitment? Why does the minister have to be always so subservient to the multinational pharmaceutical industry? Why doesn't he act upon the admonitions that he put in his letter of January 7, 1988, to all the pharmaceutical companies? Why doesn't he also publicly apologize to Musial and Taciuk for using his comfortable parliamentary immunity in the House of Commons to ridicule a properly executed study and report?

It has been said that in that study oranges were mixed with apples. But that is not true. Doesn't the minister know that the federal sales tax is not applicable on prescription drugs, because it was removed by a Liberal government in the late 1960s? The federal sales tax on drugs applies only to non-prescription drugs. It was imposed on the people of Canada by a Conservative Minister of Finance of this present government.

Honourable senators, the increased cost of drugs has fallen heavily upon the poor, the unprotected, the uninsured and the overtaxed consumer of Canada as well as upon the insurance plans and the provincial governments' drug benefit plans.

Since the January 1988 announcement of increased drug prices, Dr. Psutka, the Assistant Deputy Minister of the Ontario Ministry of Health, whose drug plan cost is running close to $1 billion a year, announced that 1,088 drugs had their prices increased by more than 5 per cent—69 per cent of these increases were made by the PMAC companies—and only 31 per cent by the CDMA generic companies, which contradicts the figures given to us by Senator David in his speech of March 15 in this place. It is also a fact that as so many drugs in the Ontario drug formulary are single sourced, the Ontario government will eventually have to pay the total cost of more than the 5 per cent price increases that we have been hearing about. The same burden awaits the other provincial governments across this country.

Furthermore, honourable senators, we have noticed dubious or devious practices by the multinational pharmaceutical companies. It is said by some knowledgeable people in the CDMA that multinational pharmaceutical companies are taking unfair advantage of the public, the provincial governments and the drug insurance plans.

I have been told that the genuine Canadian, solely generic companies have complained about the anti-competitive practice of some multinational pharmaceutical companies, which, apparently, circumvent the provisions of the Ontario Prescription Drug Cost Regulation Act and thereby increase drug costs to the provincial health ministry and the public. They were referring to the incorporation by the multinationals of their own generic subsidiaries for the purpose of offering the identical products at two different price levels.

One example, honourable senators, is the company Syncare, a division of the parent company Syntex. Syncare offers a so-called generic anti-arthritic noproxen tablet under the brand name Naxen for $6.40 per 100 tablets as an alternative to Syntex's Naprosyn brand drug which sells for $20.03—more than three times the cost of the generic brand.

The complaint is that the intent of these companies is to use the so-called "generic brand" to compete at low prices in the generic market without having to reduce the prices of their brand products. At the same time, these multinational companies do everything possible to encourage physicians to write "no substitution" prescriptions for their brand products. This compels the Ministry of Health of any province to pay the "brand" prices under special authorization, notwithstanding that the identical products are available from the same companies under the generic labels at generic prices, which are a fraction of their brand prices. The public is also compelled to pay the exorbitant prices for these brand products, again notwithstanding that the identical products are available under different labels at much lower prices. This practice by some of the multinational pharmaceutical companies has been described by the CDMA as unconscionable, as no knowledgeable consumer would willingly pay the brand price if he or she knew that it was available at a fraction of the price under another label. Similarly, they say that it appears unconscionable for the health ministry, a provincial ministry, to pay for the brand prices under special authorizations when the ministry knows the facts. Such an arrangement has been described by the CDMA as a circumvention of the federal Competition Act.

Honourable senators, in order to meet the challenge of excessive drug price increases in the face of broken commitments by the PMAC and the Minister of Consumer and Corporate Affairs, further amendments to the Patent Act are urgently required in order to strengthen the powers of the Patented Medicine Prices Review Board and to ensure that the pricing commitments of the industry and of the government are met. Bill S-15 would require the board to examine, on an annual basis, the prices at which patented medicines are sold in Canada, to note the increases in price, and to make a determination as to whether such price increases are excessive.

Under Bill S-15 these prices could be judged as being excessive whenever their rate of increase exceeds that of the consumer price index. All price increases that occur after June 27, 1986, will also be subject to the scrutiny of the board.

In the event that the board determines any price to be excessive, it must—and I underline the word "must"—take some remedial action, and not "may," as provided in Bill C-22. Under Bill S-15 the new powers could also remove exclusivity from the drug in question or one other patented medicine of the patentee. In the event that the board chooses not to take this action, it can order the price to be reduced to a level which is not excessive and/or limit future price increases in order to recoup the overcharge.

In the event that a patentee has been found to be charging an excessive price for only a short period of time, the board would order a reduction in the price of that drug. However, where a drug has been sold at an excessive price for a longer period of time—12 months or more—the board can limit future price increases in such a way as to recoup the overcharge for consumers.

Honourable senators, I hope that the points I have made illustrate the necessity and the urgency of giving second reading to Bill S-15 and of sending it, without further delay, to the Standing Senate Committee on Banking, Trade and Commerce. In this way we will be showing our concern and our caring for the disadvantaged people of this country who are unprotected by any drug plans, whether offered by provincial governments or private insurance companies.

Honourable senators, in view of the high cost of the health care system in Canada, which is reaching unmanageable proportions, I urge that we, both in this chamber and in the other place, should act. There is also a necessity to establish a royal commission to examine the high cost of medical services in Canada, including the pricing and marketing practices within the drug industry.

Honourable senators, in my opinion, it is important to pass Bill S-15 since we are facing an impending general election. I therefore urge honourable senators to give second reading to this bill quickly, study it in committee and then send it to the House of Commons without further delay.

• (1500)

[*Translation*]

Hon. Paul David: Honourable senators, I have three questions for Senator Haidasz, if he is agreeable.

Senator Haidasz: Please proceed, Senator David.

Senator David: My first question is this: In a number of English-language newspapers I read that you sponsored pharmacists Musial and Taciuk to carry out the study mentioned in the report, of which I read five pages.

I would like to know whether my information is correct. My second question is—

Senator Haidasz: Senator David, do you want the answer to your first question right away?

Senator David: By all means, Senator Haidasz.

[*English*]

Senator Haidasz: As I mentioned in the opening remarks of my speech this afternoon, I just happened to walk into a drug store in December in order to shop for an antibiotic, and Mr. Musial brought to my attention a manufacturers' drug price list indicating increases of over 5 per cent for many drugs. Also, some time later the Ministry of Health for Ontario stated that approximately 1,088 of their more than 2,000 listed drugs were subject to this increase of 5 per cent or more.

As I said, I was shocked at this news and asked them to give me some more information. To my surprise, they did. I am sure it took a lot of time and effort for busy businessmen to amass such a study. I thank them for having responded to my request for more information respecting these increases to prescription drug prices of 5 per cent or more, as indicated on the manufacturers' price list.

[*Translation*]

Senator David: Senator Haidasz, I assume from your answer that the pharmacists did the work at your request but on a voluntary basis, free of charge.

Senator Haidasz: Yes, Senator David.

Senator David: Thank you. That was not the impression given in certain articles in the English-speaking press. I am glad to hear it was done this way.

The article I quoted reported that 55 per cent of the products on the list given to the Government of Ontario, the list to which you referred, were generics.

The author of this article, which you have probably read, said that he obtained the information from the Ontario Department of Health, while your information, which was also obtained from that department, mentions a percentage of 69 per cent for innovative companies and 31 per cent for generic products.

Would it be possible to obtain a copy of the list or of the information you have?

[*English*]

Senator Haidasz: Senator David, I will, with pleasure, supply you with a copy of the letter sent to the CDMA by Dr. Psutka, the Assistant Deputy Minister of Health for Ontario, stating that according to their figures, 31 per cent of the increases were imposed by generic companies and 68.5 per cent by the multinational, so-called innovative pharmaceutical companies.

[*Translation*]

Senator David: My third question is as follows: You suggested appointing a royal commission on health care costs, which would include drug costs. If I am not mistaken, one of your colleagues, Senator Argue, asked for a special committee of the Senate on preventive health care, and in fact a committee is being set up.

In that case, would we have a special committee of the Senate and a royal commission working on practically the same subject at the same time?

• (1510)

[*English*]

Senator Haidasz: Honourable senators, if I understood the motion, and the speech by Senator Argue, to set up the special committee on health care costs, the purpose of that committee is to emphasize the preventive side of health care. Senator Argue is here, and he can elaborate on that matter for you. However, if there is to be a dissolution of Parliament and an election this year, this will take up a number of months, so a royal commission would be better, because it could continue to do its job. A federal election will postpone any work by Senator Argue's committee.

[*Translation*]

Senator David: Honourable senators, my last question is this: Senator Haidasz, do you think that a report covering five companies, four of which exceeded the consumer price index of 4.4 per cent, is enough to blame all sixty-nine industries that constitute the association of innovative products?

Do you think it is statistically acceptable and sufficient to discuss only the prices of innovative companies, which you refer to as multinationals, and blame them exclusively for price increases?

[*English*]

Senator Haidasz: Honourable senators, two retail pharmacists do not have the time and the money to compute the price increases of more than 66 members of the PMAC and, who knows, about 30 more other drug companies in Canada. That is why a royal commission could be helpful in this case. Let me ask the honourable senator a question: Why is the Patented Drug Prices Review Board not operational? Why is it not doing any studies? Why is the PMAC not doing any studies on their member companies? Why is the Minister of Consumer and Corporate Affairs not investigating this matter? They have the resources and money to do so.

Senator Doody: Honourable senators, I would like to adjourn the debate on Bill S-15 in the name of the Honourable Senator Cogger.

[*Translation*]

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I would like to raise a point that may not be terribly important, but I am told that Senator Thériault is not here today but is anxious to speak in this debate.

If I understood Senator Cogger correctly, he is agreeable to Senator Thériault taking the floor before he himself rises to speak to this question. In that case, it might be better to adjourn the debate in the name of Senator Thériault.

[*English*]

Senator Doody: Honourable senators, I would have no problem with that proposal.

On motion of Senator Frith, for Senator Thériault, debate adjourned.

BUSINESS OF THE SENATE

On Orders of the Day:

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have been informed that Minister Bouchard is now available and waiting outside the chamber. Therefore, I move that the Senate resolve itself into a Committee of the Whole and that the minister be invited to appear before us on Bill C-116.

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

Hon. Senators: Agreed.

UNEMPLOYMENT INSURANCE ACT, 1971

BILL TO AMEND—CONSIDERED IN COMMITTEE OF THE WHOLE

Pursuant to Order of earlier this day, the Senate was accordingly adjourned during pleasure and put into a Committee of the Whole on Bill C-116, to amend the Unemployment Insurance Act, 1971, the Honourable Rhéal Bélisle in the Chair.

Pursuant to rule 18 of the Rules of the Senate, the Honourable Benoît Bouchard, P.C., Minister of Employment and Immigration, was escorted to a seat in the Senate chamber.

Senator Doody: Honourable senators, it is my pleasure to introduce to you the Honourable Benoît Bouchard and Mr. Gordon McFee, Director, Policy and Legislation Development.

Some Hon. Senators: Hear, hear!

The Chairman: Honourable senators, as there is no short title for this bill, I now call upon the Honourable Benoît Bouchard.

[*Translation*]

Hon. Benoît Bouchard, Minister of Employment and Immigration: Mr. Speaker, I have no particular statement to make with respect to Bill C-116, which was passed in the House of Commons. We await the approval of the Senate.

[*English*]

The Chairman: Honourable senators, is it your pleasure to adopt clause 1?

Senator Frith: Are we not going to have a brief explanation?

The Chairman: The minister has no statement to make. Would you like to begin questioning on clause 1?

[*Translation*]

Senator Frith: Mr. Minister, could you briefly explain to us, from your perspective, the purpose of this bill and the nature of the problem that has made this bill necessary?

Mr. Bouchard: Mr. Speaker, the amendments we are proposing to the Unemployment Insurance Act are based on one specific case that occurred in Kitchener and is referred to as the McInnes case. Mr. McInnes lost his wife upon the birth of his child. He was not eligible for unemployment insurance benefits because of certain provisions of the Act.

We have now added the case of women with a disability rendering them incapable of drawing unemployment insurance benefits, which will allow the husband to do so.

Furthermore, we considered the case of infants, whether or not premature, who must be hospitalized for some time, in which case the mother is forced to "waste" the unemployment insurance benefits she is allowed. Under Clause 6 of the bill, a period of time equal to the period during which the infant is hospitalized may be made retroactive so that the mother will not lose her benefits. That is the gist of the amendments we are proposing to the Unemployment Insurance Act.

● (1520)

[*English*]

Senator Marsden: Mr. Minister, could you explain, in a general sense, clause 3(2)(*a*), which refers to the week immediately following the week in which the mother became disabled? Suppose you had a mother who was in the paid labour force, entitled to unemployment insurance, but who had an on-going disability, which meant that childbirth was particularly onerous. Would that mother's situation make it possible for a father to receive the benefit of these amendments? Have I made myself clear?

Mr. Bouchard: If the mother is entitled to receive benefits, she could not be replaced by the father. We restricted the application to mothers, because that was firmly requested by women's groups who said that if we gave those benefits to fathers, we could face abuses by men who could forcibly insist that women continue to work so that fathers could receive the benefits. When wives are not entitled to receive maternity benefits and yet they are disabled, men are entitled to receive their own, what we call "parental benefits."

Senator Marsden: I am in complete agreement with the women's groups who have argued in favour of mothers retaining their benefits.

Mr. Bouchard: The decision to pass the bill as it is was, because women's groups were worried about the fact that we could transfer the rights of women to men.

Senator Marsden: My point is somewhat different. I am thinking of circumstances—which I hope and trust are highly unusual—where a mother has a disability and giving birth makes it even more difficult for her to look after the child. Therefore, even though she is entitled to benefits, and would be receiving those benefits as a result of maternity leave, but is not because of her disability able to look after her child, would the father of the child then also be entitled to receive benefits? Is that included in the definition of "disability" in this bill?

Mr. Bouchard: No, the only option we would have in those circumstances would be to transform the maternity sickness benefits to sickness benefits. In other words, there would be a change in terms of the benefits she would be entitled to receive.

The Chairman: Are there any further questions?

Honourable senators, shall clause 1 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 2 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 3 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 4 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 5 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 6 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 7 carry?

Hon. Senators: Carried.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.

[*Translation*]

The Chairman: Mr. Bouchard, I want to thank you for coming here to explain your bill to us, and we hope to see you again.

Mr. Bouchard: It was a pleasure. Thank you, honourable senators.

The Chairman: Thank you, Mr. Bouchard.

[*English*]

Senator Doody: Honourable senators, I move that the committee rise and report progress.

[Mr. Bouchard.]

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

[*Translation*]

The Hon. the Speaker: Honourable senators, the sitting of the Senate is resumed.

REPORT OF COMMITTEE OF THE WHOLE

Hon. Rhéal Bélisle: Honourable senators, the Committee of the Whole, to which Bill C-116, an Act to amend the Unemployment Insurance Act, 1971, was referred, has considered this bill and has asked me to report the bill without amendment.

THIRD READING

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

[*English*]

Hon. C. William Doody (Deputy Leader of the Government), with leave of the Senate and notwithstanding rule 45(1)(*b*), moved that the bill be read the third time now.

Motion agreed to and bill read third time and passed.

APPROPRIATION BILL NO. 6, 1987-88

SECOND READING

Hon. C. William Doody (Deputy Leader of the Government) moved the second reading of Bill C-119, for granting to Her Majesty certain sums of money for the Government of Canada for the financial year ending March 31, 1988.

He said: Honourable senators, the bill before us today deals with Appropriation Act No. 6, 1987-88. I wish to thank honourable senators on both sides of the house for their cooperation in allowing us to deal with this supply bill today. It provides supply for all of Supplementary Estimates (E) for 1987-88. The final supplementary estimates for this year total approximately $1.643 billion and brings the total tabled estimates for 1987-88 to $116.8 billion. Supplementary estimates represent approximately 6 per cent of the Main Estimates level for the year.

These estimates were tabled in the Senate on March 3, 1988, and were referred to the Standing Senate Committee on National Finance on March 22. These estimates were also discussed with Treasury Board officials on March 9, 1988. The total of $1.643 billion consists of a net increase in statutory requirements of some $882.8 million and some $760.6 million of new spending authority is being recommended to Parliament for approval.

As indicated to the committee, the vast majority of the increase in the statutory requirements is an item of $745 million for public debt charges, bringing the total estimates of public debt payments for 1987-88 to $29,220 million.

There are a number of other statutory adjustments representing a further net increase of $137.8 million.

Honourable senators, the new spending authority being recommended includes the following major items: $200 million returned to the Department of National Defence originally deferred in fiscal year 1987-88; $84.1 million for reimbursement to the Canadian Wheat Board for the 1986-87 barley and designated barley pool accounts deficits; $82.1 million to the Department of Justice as contributions under the Young Offenders Act; and $42.2 million to RCMP for airport security. There are some 46 $1 votes in the supplementary estimates. A listing of those votes containing additional explanation for the last eight votes has been provided to members of the committee. Those votes were discussed with Treasury Board officials at the March 9, 1988, meeting.

● (1530)

Should honourable senators require additional information, I will be pleased to try to provide it. As I have said, the committee has examined these supplementary estimates.

I should also like to add that the bill is in the standard form and contains no surprises of which I am aware.

I should also like to table, and ask that it be printed as part of today's proceedings, a list of supply to date for 1987-88 as well as the estimates tabled to date for 1987-88.

(*For text of documents, see Appendix "A", p. 2970.*)

Senator Doody: Honourable senators, I commend these supplementary estimates to you for second reading.

Hon. John B. Stewart: Honourable senators, now that the Deputy Leader of the Government has yielded the floor, perhaps he would answer a question. When the Standing Senate Committee on National Finance was looking at the supplementary estimates, questions were asked about a series of items, and the committee was told that the information sought by the committee would be made available. I wonder if the honourable senator knows whether that information is now available; and, if it is not now available, whether it will be available when we return after Easter.

Senator Doody: The honest answer, Senator Stewart, is that I do not know if it is available at this point. Certainly, I have not seen it; but I will make inquiries and will try to ensure that it is available when we return.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, traditionally, we do not in this place deny the government supply unless there is a very good reason to raise questions about it; also, the National Finance Committee has studied these estimates and reported on them, I believe, without criticism—perhaps someone on the committee will correct me if I am wrong about that. When we couple these facts with the fact that we have the usual undertaking about the form of the bill, it seems to me that the bill should receive second and third reading today—second reading for the reasons I have mentioned, and third reading because the present plan is to adjourn later this week; and it is understandable that the government will want to have supply before we do so. If Royal Assent can be arranged, this will be a convenient day to have it.

I take it from the question asked by Senator Stewart that he is content to have that information appear in due course, having notified the sponsor of the bill of his desire to have that information.

Senator Stewart: Honourable senators, the answer to Senator Frith's question is "yes." Perhaps I should add that I think it is desirable, when the Treasury Board makes a commitment to give additional information, that it should endeavour to get that information to the committee and to honourable senators just as quickly as possible. I realize that the Treasury Board has to deal, in certain instances, with departments, which tend to be contemptuous of questions from the Treasury Board; nevertheless, I think it is a good principle that the government should move as quickly as possible to satisfy these questions. It would be highly desirable if that could be done before the consequent bill is given third reading. However, I realize that there are cases when it is not possible to move as rapidly as that, and certainly in this instance I have no thought that the bill should be delayed until the information has been produced.

Senator Doody: Honourable senators, I wish to thank the Senate for its concurrence in the passing of this bill. As I have said, I will make every attempt to obtain the information for Senator Stewart. I agree that it would be much better if the information were available before the supply bill arrives. However, time constraints sometimes make that impossible. It is our hope that we will have Royal Assent later this afternoon, and, in view of that, we would also ask for third reading. We are getting very close to March 31, the end of the fiscal year. We have certain events scheduled for tomorrow and the following day which make it perhaps more convenient and less awkward to have Royal Assent today and will enable us to proceed without that complication to our business tomorrow and Thursday.

Motion agreed to and bill read second time.

THIRD READING

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

Hon. C. William Doody (Deputy Leader of the Government), with leave of the Senate and notwithstanding rule 45(1)(*b*), moved that the bill be read the third time now.

Motion agreed to and bill read third time and passed.

APPROPRIATION BILL NO. 1, 1988-89

SECOND READING

Hon. C. William Doody (Deputy Leader of the Government) moved the second reading of Bill C-120, for granting to Her Majesty certain sums of money for the Government of Canada for the financial year ending March 31, 1989.

He said: Honourable senators, this bill is the appropriation bill No. 1 for 1988-89, the annual interim supply bill, which covers the first three months of the new fiscal year. The 1988-89 estimates were tabled in the Senate on March 9 and immediately referred to the Standing Senate Committee on National Finance, where they are being studied at the present time. At least one meeting has been held with the minister, the Honourable Don Mazankowski, and I am sure that other meetings will be held as the year goes on.

This appropriation bill contains $1,152 million of "voted" items, which are required to meet government expenditure requirements to the end of June, while the Main Estimates are being reviewed by the various committees—in our case mostly by the Standing Senate Committee on National Finance. We have had estimates referred, this year at least, to the Joint Committee on Official Languages and we have had the reference vote referred to that committee.

A second appropriation bill will be tabled prior to June 30, 1988, to secure release of the balance of the estimates.

The bill contains a general proportion of three-twelfths of all votes, plus additional proportions for some 33 votes. The additional proportions are required mainly to meet payments of a seasonal nature in some programs, to meet payments in accordance with certain agreements, and the need in other instances to make major payments before the end of June.

I should point out that, as usual, in no case is Parliament being asked to pass the entire amount of the vote.

Honourable senators, the proportions requested in the bill are intended to provide for all necessary requirements of the Government of Canada up to June 30, 1988. In no instance is the total amount of an item being released by the bill.

The form of the bill is the usual one for interim supply bills, and, of course, the passing of this bill will not prejudice the rights and privileges of members to criticize any item in the estimates when it comes up for consideration in committee; and the usual undertaking is hereby given that such rights and privileges will be respected and will not be curtailed or restricted in any way as a result of the passing of these estimates.

● (1540)

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, with those undertakings, and recalling that this is interim supply that is being requested, and since clause 5 of the bill states that:

> Amounts paid or applied under the authority of this Act shall be accounted for in the Public Accounts in accordance with section 55 of the *Financial Administration Act*.

[Senator Doody.]

I believe we should deal with this bill as we did with its immediate predecessor.

Senator Doody: Honourable senators, in closing the debate on second reading, I should like the schedules setting out the amounts for each deparatment, the three-twelfths, eleven-twelfths, ten-twelfths, and so forth, appended to the proceedings of today for the information of all honourable senators.

Senator Frith: Are you referring to the schedules to the bill?

Senator Doody: Yes.

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

Hon. Senators: Agreed.

(*For text of documents, see Appendix "B", p. 2972.*)

Motion agreed to and bill read second time.

THIRD READING

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

Hon. C. William Doody (Deputy Leader of the Government), with leave of the Senate and notwithstanding rule 45(1)(*b*), moved that the bill be read the third time now.

Motion agreed to and bill read third time and passed.

ROYAL ASSENT

NOTICE

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

RIDEAU HALL
OTTAWA

29 March 1988

Sir,

I have the honour to inform you that The Honourable Gerald Eric Le Dain, Puisne Judge of the Supreme Court of Canada, in his capacity as Deputy Governor General, will proceed to the Senate Chamber today, the 29th day of March, 1988, at 4:45 p.m., for the purpose of giving Royal Assent to certain Bills.

Yours sincerely,
Léopold H. Amyot
Secretary to the Governor General

The Honourable
The Speaker of the Senate
Ottawa

IMMIGRATION

DEPORTATION OF TURKISH NATIONALS—DEBATE CONCLUDED

On the Order:

Resuming the debate on the inquiry of the Honourable Senator Hébert calling the attention of the Senate to the fate of 1500 Turkish nationals threatened with deportation from Canada.—(*Honourable Senator Argue, P.C.*).

Hon. Hazen Argue: Honourable senators, I want to speak about Canada's immigration policy and the government's attitude towards immigration.

Canada has benefited over the years from the arrival on its shores of large numbers of people from many countries of the world. I think it is time once again that, as a nation, we take a broad look at Canada's need for immigrants. We have a wonderful country, a huge country, and a country with a relatively small population. I think we should be looking at a major increase in the population over the next number of years, and that plans should be undertaken to see that that happens.

Much of Canada is virtually uninhabited. Our resources are great. My judgment is that if we double the population of this country over the next number of years we will not only accommodate the increase in population but will also improve our own standard of living.

It seems to me that the government's general attitude on immigration at this time is one of restriction, of making it more difficult for people to come to Canada, of having a long, complicated and time-consuming administrative process. Immigration applications are greatly delayed. Ottawa and Nepean have already benefited from the presence of people who have come from many lands. They are our good neighbours and friends.

I say we should double the number of immigrants. We should raise our sights. When we do that, and when we accept people from many countries of the world, we will enrich our culture. We will add people who have tremendous technical qualifications. They will help increase Canada's production and increase its prosperity. In my judgment, the history of Canada shows that during times of high immigration we have had high levels of prosperity.

Senator Haidasz: Right!

Senator Argue: It is fine to say to prospective immigrants, "We welcome you if you have capital. We welcome you if you are highly professional." We should go beyond that and say that we welcome people in the trades, such as bricklayers and plasterers, we welcome people with general technical qualifications, and we should go even further and welcome large numbers of rank and file citizens from other countries who desperately need to improve their circumstances.

I think we should be very generous and open and quickly process applications from prospective immigrants who have families in this country and who, by coming to this country, reunite with their families. If we do that we will not only help give opportunities to others coming into our country but we will increase our own prosperity and well-being.

We need immigrants for another reason; Canada's birth rate is declining. It is projected that if one does not take into account immigration—if one leaves that aside—and one projects the population of this country based on the trend in birth rates, by the year 2050 Canada's population will shrink from 25 million to 18 million. So there are many reasons for Canada to increase its immigration quota.

If we allow our population to shrink while that same population is aging, fewer and fewer people in Canada will be in their productive years, and it will be more and more difficult for the country to maintain reasonable pension levels and health and other services for an aging population.

I congratulate Senator Hébert on bringing forward this inquiry. This has afforded me an opportunity to point out to honourable senators that it is time the government of this country and the people of this country looked at increasing immigration quotas. That would enrich the cultural life of Canada, increase productivity, and make it possible for many citizens from other parts of the world to have a better life and improved opportunities.

● (1550)

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

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

THIRTY-FOURTH REPORT OF COMMITTEE ADOPTED

On the Order:

Resuming the debate on the motion for the adoption of the Thirty-fourth Report of the Standing Committee on Internal Economy, Budgets and Administration.—(*Honourable Senator Frith.*)

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, we have circulated copies of this report, as we undertook to do earlier this afternoon. I have only a couple of comments to make about Parts I and II. On Part I, I want to assure Senator Roblin and others that there is budget for the amounts contained in paragaph (1) for Salary and Benefits Revision for Unrepresented Senate Employees on Fiscal year 1988-89. There was an increase of 3.5 per cent—senators will notice that the increase here is 4 per cent—up to 1988-89, and the budget is adequate for those increases also.

Next, on the Taxi Regulations, there has been an increase in taxi fares. Senators have found that even the amount here provided for—namely, $18—may not always be enough to avoid requiring a receipt. The committee felt, however, that $18 was a sensible and reasonable adjustment. Of course, as I implied earlier, this is only the amount that can be claimed without a receipt.

Honourable senators, that is the background and the explanation. I would be glad to answer questions.

Motion agreed to and report adopted.

THE ESTIMATES, 1987-88

CONSIDERATION OF REPORT OF NATIONAL FINANCE COMMITTEE—DEBATE CONCLUDED

Leave having been given to revert to Order No. 8:

Resuming the debate on the consideration of the Eighteenth Report of the Standing Senate Committee on National Finance (Final Report on the 1987-88 Main Estimates), presented in the Senate on 15th March, 1988.—(*Honourable Senator Marsden.*)

Hon. Lorna Marsden: Honourable senators, I wish to thank Senator Leblanc for his courtesy in adjourning in my name this debate on the eighteenth report of the committee. Senator Leblanc, as Chairman of the Standing Senate Committee on National Finance, is so economical, effective and efficient that the report slipped by without review, and there are three aspects of it on which I would like to comment briefly.

Honourable senators will recall that the Eighteenth Report of the Standing Senate Committee on National Finance had to do with our study of comprehensive auditing. It is the aspect of value-for-money auditing on which I would like to comment. There are clearly some benefits to value-for-money auditing, but, on the other hand, in some respects it represents an additional devolution of legislative surveillance to an administrative level of government. In relation to financial and legislative accounting, the role of auditors is clear within the public and the private sector. However, in the value-for-money aspect of auditing, the distinction between the public and private sectors represents a difficulty. It is that difficulty which our report addressed.

Profit making is a clear "bottom line" in the private sector and in many of the crown corporations that are profit oriented, but such is not the case with respect to government departments and agencies. By allowing comprehensive auditing, which has been in the Auditor General Act for a decade now, we have opened public finance to a potential struggle between public officials and auditors over the definition of the limits of policy in departmental activity. The question is where that struggle may end. In similar situations—for example, in the control by experts in law and medicine—it has largely been the relatively powerless groups and members of our society and minorities who have lost out. There was no evidence whatsoever in that evidence brought before the National Finance Committee that auditors dealing in the public sector have taken into consideration the need for sensitivity to the concerns of Canadian minority groups—those defined in terms of language, culture, gender or disability. The definitions of efficiency, economy and effectiveness, which form the bedrock of the value-for-money component of comprehensive auditing, appear to be culture-bound, and the culture they represent is that of white, able-bodied males. As Judge Abella provides in her report "Equality and Employment", they tend to impose their definition of the situation on everyone else.

None of the evidence we received showed that auditors are sensitive to the obligations on federal departments and agencies to comply, for example, with employment equity or pay equity. There is no evidence that they understand or see the complexities of multiculturalism or the culture of Canada's aboriginal peoples. I am not suggesting for a moment and I do not believe that this is deliberate, any more than I think employment practices are, by and large, deliberately discriminatory. On the contrary, this acceptance of the values and beliefs of the majority is systemic—it is built into the daily round of the daily practices at work and it forms part of the subculture of auditing. I suggest, therefore, that this problem has been misinterpreted in our committee report, at page 2041 in the top paragraph. I would like to clarify the report, or, at least, to give my view of the situation on this feature of our report.

[Senator Frith.]

First, I do not agree with the report that middle class values are synonymous with those of white, able-bodied males. As Abella points out, white, able-bodied male values come in all class categories, and are not confined to the middle class. Further, I was not one of those committee members who felt that "the element of equity should be considered when establishing criteria for economy, efficiency and effectiveness." I dissent from that statement. I would argue, rather, that public sector commitments to a wide range of policies cannot be considered under the current terms of value-for-money auditing, which is, by definition, narrow, ethnocentric and controlling in its definition and, therefore, must be open to suspicion in its application to public sector goals. Aspects of this problem were addressed by witnesses such as Professor Sharon Sutherland. Indeed, our witnesses—the Auditor General and the Comptroller General in particular—are sensitive and sophisticated in their appreciation of the problem. However, it is their mandate which shows some confusion on the part of Parliament about the meaning of accountability and responsibility.

The decision in the Canadian Institute for Comprehensive Auditing concerning value-for-money auditing standards to allow the auditor to select his own suitable criteria or limit the scope of the examination to those areas in which agreement can be reached is, in my opinion, misleading. Such disputes should be referred to the level of political accountability, and not resolved at the level of auditors and public officials.

Apart from these three specific points of contention I have made, I am in agreement with the conclusions of this report, and have found the study most interesting and edifying. My criticisms of auditors in general, and the Auditor General and Comptroller General in particular, are not intended in any way as comments directed toward them personally. All the witnesses were most helpful and most searching in their comments about their ambiguous situation.

I am grateful for the opportunity to clarify my views on aspects of the eighteenth report of the committee.

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

The Senate adjourned during pleasure.

At 4.45 p.m. the sitting of the Senate was resumed.

The Senate adjourned during pleasure.

ROYAL ASSENT

The Honourable Gerald Eric Le Dain, Puisne Judge of the Supreme Court of Canada, in his capacity as Deputy Governor General, having come and being seated at the foot of the Throne, and the House of Commons having been summoned, and being come with their Acting Speaker, the Honourable the Deputy Governor General was pleased to give the Royal Assent to the following bills:

An Act to amend the Unemployment Insurance Act, 1971 (*Bill C-116, Chapter 8, 1988*).

The Honourable Andrée Champagne, Acting Speaker of the House of Commons, then addressed the Honourable the Deputy Governor General as follows:

May it please Your Honour:

The Commons of Canada have voted certain supplies required to enable the Government to defray the expenses of the public service:

In the name of the Commons, I present to Your Honour the following bills:

An Act for granting to Her Majesty certain sums of money for the Government of Canada for the financial year ending the 31st March, 1988 (*Bill C-119, Chapter 9, 1988*).

An Act for granting to Her Majesty certain sums of money for the Government of Canada for the financial year ending the 31st March, 1989 (*Bill C-120, Chapter 10, 1988*).

To which bills I humbly request Your Honour's assent.

The Honourable the Deputy Governor General was pleased to give the Royal Assent to the said bills.

The House of Commons withdrew.

The Honourable the Deputy Governor General was pleased to retire.

The sitting of the Senate was resumed.

The Senate adjourned until tomorrow at 2 p.m.

APPENDIX "A"

(*See p. 2965*)

ESTIMATES TABLED TO DATE FOR 1987-88

	TO BE VOTED	STATUTORY	TOTAL
		(in thousands of dollars)	
Main Estimates			
Budgetary	$37,826,901	$72,314,176	$110,141,077
Non-Budgetary	59,184	(128,545)	(69,361)
	$37,886,085	$72,185,631	$110,071,716
Supplementary Estimates (A)			
Budgetary	$ 700,000	-	$ 700,000
Non-Budgetary	-	-	-
	$ 700,000	-	$ 700,000
Supplementary Estimates (B)			
Budgetary	$ 583,110	-	$ 583,110
Non-Budgetary	110,000	-	110,000
	$ 693,110	-	$ 693,110
Supplementary Estimates (C)			
Budgetary	$ 1,871,808	$ 999,557	$ 2,871,365
Non-Budgetary	8,889	14,500	23,389
	$ 1,880,697	$ 1,014,057	$ 2,894,754
Supplementary Estimates (D)			
Budgetary	$ 803,903	-	$ 803,903
Non-Budgetary	-		-
	$ 803,903	-	$ 803,903
Supplementary Estimates (E)			
Budgetary	$ 729,079	$ 872,880	$ 1,601,959
Non-Budgetary	$ 31,488	$ 10,000	$ 41,488
	$ 760,567	$ 882,880	$ 1,643,447
TOTAL ESTIMATES TABLED*			
Budgetary	$42,514,801	$74,186,613	$116,701,414
Non-Budgetary	$ 209,561	$ (104,045)	$ 105,516
	$42,724,362	$74,082,568	$116,806,930

*Does not agree with "Supply to Date for 1987-88" statement due to rounding.

SUPPLY TO DATE FOR 1987-88

Five Appropriation Acts have been approved in respect of Estimates for 1987-88:

Supply Approved to Date:

Appropriation Act No. 1, 1987-88 which granted Interim Supply for April, May and June including 31 additional proportions, based on the Main Estimates for 1987-88	$10,458,957,258.08
Appropriation Act No. 2, 1987-88	
The whole of Supplementary Estimates (A), 1987-88	$ 700,000,000.00
Appropriation Act No. 3, 1987-88	
Supply for the balance of Main Estimates for 1987-88	$27,427,132,310.92
Appropriation Act No. 4, 1987-88	
Supply for the whole of Supplementary Estimates (B) for 1987-88.	$ 693,110,000.00
Supply for the whole of Supplementary Estimates (C) for 1987-88.	$ 1,880,696,428.00
	$41,159,895,997.00
Appropriation Act No. 5, 1987-88	
Supply for the whole of Supplementary Estimates (D) for 1987-88	$ 803,903,000.00
	$41,963,798,997.00
Awaiting Approval	
Supply for the whole of Supplementary Estimates (E) for 1987-88	$ 760,566,783.00
TOTAL	$42,724,365,780.00

APPENDIX "B"

(*See p. 2966*)

Interim Supply for April to June, 1988

The Proposed Bill will provide:
In respect of the Main Estimates, 1988-89

(a)	Three-twelfths of all items to be voted in the Estimates, other than the items included in Schedules A, B, C, D, E, F and G.		$ 8,469,890,735.75
(b)	Schedule A - twelve-twelfths less an amount of five million, three hundred and seventy-nine thousand, six hundred and sixty-seven dollars of		
	Agriculture	Vote 45	$ 292,096,333.00
(c)	Schedule B - eleven-twelfths of		
	Transport	Vote 15	
	Treasury Board	Vote 10	$ 169,355,083.33
(d)	Schedule C - ten-twelfths of		
	National Health and Welfare	Vote 60	$ 1,605,833.33
(e)	Schedule D - nine-twelfths of		
	Treasury Board	Vote 5	$ 270,000,000.00
(f)	Schedule E - six-twelfths of		
	Agriculture	Vote 35	
	Public Works	Vote 25	
	Regional Industrial Expansion	Vote 30	$ 22,148,000.00
(g)	Schedule F - five-twelfths of		
	Energy, Mines and Resources	Vote 35	
	Indian Affairs & Northern Development	Vote 15	
	National Health and Welfare	Vote 55	$ 754,282,583.34

(h) **Schedule G - four-twelfths of**

Communications	Votes 30, 45 & 60	
Consumer and Corporate Affairs	Vote 1	
Employment and Immigration	Vote 30	
Indian Affairs & Northern Development	Votes L20, 40, 45 & 50	
Justice	Vote 15	
National Health and Welfare	Votes 10 and 15	
Public Works	Votes 10 and 30	
Science and Technology	Votes 1 and 5	
Solicitor General	Votes 1 and 35	
Supply and Services	Vote 1	
Transport	Votes 1 and 30	
Veterans Affairs	Vote 5	$ 1,473,584,233.32
		$11,452,962,802.07

Estimates Division
March, 1988

THE SENATE

Wednesday, March 30, 1988

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

Prayers.

EMERGENCY PREPAREDNESS BILL

REPORT OF COMMITTEE

Hon. Henry D. Hicks, Chairman of the Special Committee of the Senate on National Defence, presented the following report:

Wednesday, March 30, 1988

The Special Committee of the Senate on National Defence has the honour to present its

FOURTH REPORT

Your Committee, to which was referred Bill C-76, An Act to provide for emergency preparedness and to make a related amendment to the National Defence Act, has in obedience to the Order of Reference of Thursday, March 24, 1988, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

HENRY D. HICKS
Chairman

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

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

IMMIGRATION ACT, 1976

BILL TO AMEND—REPORT OF COMMITTEE PRESENTED, PRINTED AS APPENDIX AND ADOPTED—MESSAGE TO COMMONS

Hon. Joan Neiman: Honourable senators, the Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its nineteenth report, respecting the motion of the Honourable Senator Nurgitz dated February 11, 1988, and the Message from the House of Commons dated February 3, 1988, relating to certain amendments to Bill C-84, an act to amend the Immigration Act, 1976 and the Criminal Code, in consequence thereof.

I ask that the report be printed as an appendix to the *Minutes of the Proceedings of the Senate* and *Debates of the Senate* of this day and form part of the permanent records of this house.

The Hon. the Speaker: Honourable senators, is it agreed?

Hon. Senators: Agreed.

(*For text of report, see Appendix "A", p. 3024.*)

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

Senator Neiman: With leave, now.

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

Hon. Senators: Agreed.

Senator Neiman: Honourable senators, I do not intend to speak at great length about this report of the committee, because I think you will find fairly full explanatory notes in the report itself. However, because of the type of report it is, one which includes amendments and amendments to amendments, it may be rather incomprehensible to most people, as it was to members of the committee. We had to take quite some time to work our way through the amendments to really appreciate the different areas with which we were dealing.

I should like to point out to you that this is a response to the message from the House of Commons which dealt with our earlier amendments to Bill C-84. As honourable senators undoubtedly know, the committee took some weeks to hear from various people and organizations—not a great number, but a few of the most significant witnesses whom we had heard previously, who wished to come back to comment not only on the amendments which we had originally proposed but also on Minister Bouchard's response to them.

That was completed, and since then we have had some time to consider the position that we would take.

As honourable senators will note, the committee is recommending in this report that the minister again consider certain provisions in Bill C-84.

We were grateful—as I believe was indicated before—that the minister was very flexible in his response on a previous occasion; but I think it is obvious that a majority of the members felt that there were still certain elements, certain provisions, of Bill C-84 which required further careful consideration.

The minister himself made some amendments; he also made amendments to some of those which we had proposed and he rejected others.

In brief, what we have done here is to ask him to look again at three different clauses of the bill which we considered to be the most important. The first deals with the provisions in the bill relating to turning around at sea ships suspected of containing illegal claimants for refugee status.

The committee continues to feel that even though we wish to deter, as does the minister, any type of abuse of the refugee

determination system, this particular provision is so Draconian and so in contrast to Canada's humanitarian traditions that we should not support it. Indeed, our feeling on this has been supported again and again by the various groups who appeared before us and who have got in touch with us by letter and telephone since our first report to ask us to remain firm in this particular area.

The other two provisions that we felt were important were those which a large number of witnesses also felt were of extreme importance to Canada's humanitarian traditions and, indeed, to our Charter obligations. The first of those is the one that covers the threat of prosecution to refugee organizations and other groups that try to assist genuine refugees. The threat was still there and the concern was still there that, in spite of the minister's assurances, these groups which were acting in good faith could be prosecuted.

The minister rejected our amendments to that clause for reasons which, I am sure, he considered sufficient. However, the committee continued to be aware of the implications, especially with regard to refugee-assistance organizations. I think we have arrived at what I consider to be a very good and workable compromise, and that is that we have differentiated between the two clauses that cover possible penalties for aiding and abetting individuals, or groups up to nine in number, and groups of ten and more. We have continued to insist, with some modification, that the minister should not treat humanitarian acts respecting the first group as criminal acts, provided the assistance given was not given in a clandestine manner, and it was done with the conviction on the part of the refugee-assistance organizations or individuals that the claimant had a credible basis for his claim. Therefore, we have modified our original amendment somewhat, but we have agreed that for groups of ten or more the minister's original provision should stand.

The minister has said on numerous occasions that he was very concerned with large groups or hordes of people with bogus claims arriving on our shores or arriving by airplane. So, for groups of ten and over we have agreed that the minister's original criminal sanctions should remain as he formulated them.

There was one other area that caused concern to refugee-assistance organizations and the United Nations High Commissioner on Refugees, and that had to do with the determination of security status for certain persons who wanted to claim refugee status. There, again, the minister rejected the amendment that we had proposed, but we have reached what I think is a reasonable compromise. We have simply said that we would accept the minister's reasoning for rejecting our proposal, but we ask that the minister himself sign the security certificate, as he is required to do in similar circumstances for other security matters.

There were other areas in the bill regarding search and seizure about which the committee felt very strongly. However, after considerable discussion in committee, we decided that we would not insist on the amendments we had originally proposed, because we are confident that other provisions in the Criminal Code will serve as, at least, a partial deterrent to using the powers which will be given in this bill, and which a majority of the members of the committee continue to feel are excessive. The thinking is that at least there are provisions in the Criminal Code which will moderate the use of those powers.

Honourable senators will notice that the report is not unanimous. However, I have to say that the majority of the members of the committee felt confident that there is a spirit and conviction within the Senate—a spirit not confined to members on this side—that the minister should reconsider those portions of the bill which we have stressed in this report and which we are asking him to think about again. We hope that perhaps he may be persuaded by the arguments we have put forth.

● (1410)

Hon. Jerahmiel S. Grafstein: Honourable senators, I would like to add a few comments with respect to this report. I would first like to commend the chairman of the committee, Senator Neiman, the deputy chairman of the committee, Senator Nurgitz, and all of its members for their very lively and active participation in the review of the minister's suggestions and proposals with respect to Bill C-84. The intent as set out in this report is very clear. I would like to quote a few sentences, if I may, which appear at page 4 of the report:

> We commend the Minister for his flexible response to the Committee's prior Report on this matter. We recognize that significant improvement in the Bill has already taken place. The Committee continues to believe, however, that certain other changes remain essential, particularly if Canada is to adhere to its international obligations. In the past, Canada has been a world leader in refugee matters; those now coming to our shores seeking sanctuary must not face *refoulement*.

That paragraph concludes with these words:

> The Committee wholeheartedly supports the objective—

that is, the minister's objective,

> —of deterring abuse and we feel that the amendments we propose will give the government an effective legal tool to that end, while at the same time preserving Canada's humanitarian traditions.

Honourable senators, there was a very positive consideration of the evidence in our second round of hearings on Bill C-84, which was both strong and sweeping in support of the Senate's amendments. We on the opposition side believe that these amendments are transmitted to the minister and to the other place in a very good spirit in the anticipation that they will be given the positive support that they were given by groups from all across Canada and from one end of the country to the other. Once again, I want to thank all honourable senators who travelled across Canada and who participated in all aspects of the study leading to this report. I think it will be of benefit to the Senate, the government and the people of Canada.

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have little to add to what has already been said in this regard. The general problems regarding refugees/immigration and the response of the government to them are of urgent national importance and interest at this time. I think it imperative that the government, through the House of Commons and the Senate, be given the tools it requests to try to deal with these problems. To that end, I commend the committee for its report on this bill and for getting it to us so that we can pass it and send it to the House of Commons for its action.

I would be lax if I did not say that the government side of the Senate would have preferred to see the bill in its original condition. However, the majority of the members of the committee felt otherwise, so we would much rather let the House of Commons deal with the report as it is.

Having said that, honourable senators, I would ask that we send this message to the House of Commons this afternoon and let them deal with it as they deem appropriate.

The Hon. the Speaker: With leave of the Senate and notwithstanding rule 45(1)(*f*), it is moved by the Honourable Senator Neiman that this report be adopted now. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Motion agreed to and report adopted, on division.

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

Senator Doody: With leave, now.

The Hon. the Speaker: With leave of the Senate and notwithstanding rule 45(1)(*b*), it is moved by the Honourable Senator MacDonald (Halifax) that this bill, as amended, be read the third time. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Hon. Royce Frith (Deputy Leader of the Opposition): I wish to ask the chairman of the committee a question. I take it that the burden of the report is to say that the Senate is accepting the report, recommending that we insist on the amendments, and that a message be sent to the House of Commons accordingly. Is that what the report effectively says?

Senator Neiman: Yes. We are only insisting on certain amendments. We have accepted other amendments that were in the Message from the minister.

Senator Frith: We will work the procedure out, but I am not sure that we now pass the bill the third time, as amended. I think what we do is simply send the message to the House of Commons telling them that the Senate, on division, is insisting on these amendments. In any event, it will be worked out and done the proper way.

The Hon. the Speaker: I believe the bill has to be sent back, as amended.

[Senator Grafstein.]

Senator Doody: No, a message and the bill.

Senator Frith: There is a debate in jurisprudence on the question that if a message comes to us from the House of Commons, and there is a motion here that we do not insist on our amendments, that motion then goes to a committee. If the committee says that we should insist on our amendments, and the Senate accepts that report, the question at that point is: Where is the bill?

The Hon. the Speaker: As amended.

Senator Frith: There has not been a motion to amend the bill. There has been a motion adopted to send a message back to the House of Commons saying that we have told you what we want to do with this bill and we are insisting on certain of these amendments.

I just raise that question to ensure it is done the right way. If the bill itself does not have to go back, as I suspect it does not, that is the way it should read.

The Hon. the Speaker: Honourable senators, this bill, originating in the House of Commons, intituled "An Act to amend the Immigration Act, 1976 and the Criminal Code in consequence thereof", has been read the third time and passed, as amended. It is ordered that a message be sent to the House of Commons to acquaint that House that the Senate has passed this bill, on division, with amendments, to which they desire their concurrence.

ADJOURNMENT

Hon. C. William Doody (Deputy Leader of the Government), with leave of the Senate and notwithstanding rule 45(1)(*g*), moved:

> That when the Senate adjourns today, it do stand adjourned until Thursday, March 31, 1988, at 11 o'clock in the forenoon.

Motion agreed to.

QUESTION PERIOD

[*English*]

THE SENATE

ABSENCE OF GOVERNMENT LEADER FROM CHAMBER

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I draw to the attention of the Senate the obvious, that is, that Senator Murray is detained elsewhere on other business and therefore will not be with us today.

• (1420)

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BILL C-60—REQUEST FOR CORRESPONDENCE BETWEEN COUNCIL OF MINISTERS OF EDUCATION OF CANADA AND FEDERAL-PROVINCIAL RELATIONS MINISTER

Hon. Ian Sinclair: Honourable senators, my question is really directed to the Honourable Senator Murray in his capacity as Minister of State for Federal-Provincial Relations and Leader of the Government in the Senate.

I understand that Mr. Roland Penner, on behalf of the Council of Ministers of Education of Canada, wrote to the Honourable Senator Murray in the second half of February and raised with him significant problems that the council felt were in Bill C-60, particularly as they relate to the fair-dealing section of the Copyright Act. Could that letter be shared with the Senate, together with the reply that I am sure Senator Murray gave to Mr. Penner?

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I will certainly pass that message along to Senator Murray. Senator Sinclair was kind enough to mention this to me as I came into the chamber this afternoon, and there was not sufficient time for me to get any information on it between then and now, but I will certainly pass on the content of the question to Senator Murray. I am sure that he will supply an answer.

POST-SECONDARY EDUCATION

FEDERAL GOVERNMENT SCHOLARSHIPS—ALLOCATION OF FUNDS

Hon. John B. Stewart: Honourable senators, I too, would like to ask a question addressed to the Minister of State for Federal-Provincial Relations. It is a question concerning the announcement of a federal government program of scholarships. This announcement bears the date March 28, 1988. It states that there is to be a program of Canada scholarships, and that these scholarships are designed to recognize and encourage outstanding students to pursue undergraduate degrees in natural sciences, engineering, and related disciplines. In the first year there are to be 2,500 scholarships worth $2,000 each.

My question for the minister is: Will this scholarship money be transmitted directly by the Government of Canada to the several universities, or will the money go to the appropriate departments in each of the several provincial governments? Or, to put it another way, will these scholarships be made available under the banking clause of section 91 of the Constitution Act, as was necessary in the case of the Canada Student Loan Program?

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I am sure it will come as no surprise to Senator Stewart that I just do not have the answer at the tips of my fingers, not being all that familiar either with the duties of the Minister of State for Federal-Provincial Relations or, indeed, with scholarships. Nevertheless, I will do what I can to get an answer as swiftly as possible.

Senator Stewart: Honourable senators, I have a supplementary question. I hate to think that the minister has been put under detention, but perhaps when he is no longer detained he will deal with the question that I have just now asked, and he will establish the distinction between the Canada Student Loans, a program that has been in effect for over 20 years, and these scholarships. In what way will they be treated as different—if, indeed, they are treated as different—from a constitutional viewpoint?

Senator Doody: Honourable senators, I will try to find out.

LABOUR

ALLEGED UNFAIR APPLICATION OF RAILWAY BACK-TO-WORK LEGISLATION

Hon. Hazen Argue: Honourable senators, I have a question for the Deputy Leader of the Government in the Senate arising out of a report that certain railway workers in Vancouver feel that the back-to-work legislation of last year is being unfairly applied at this time. The back-to-work legislation passed last August that ended a railway strike at that time is being used to lay charges against union members at CP Rail who are now honouring legal picket lines set up by other unions. There is a rotating strike in effect by some 3,500 shop workers. However, when the current railway employees honour the picket line, they are threatened with the penalties that were provided for under the legislation that was passed in August directed towards getting the railway workers back to work.

Honourable senators, at that time the workers went back to work; the operation of the railway resumed. However, the threat has been made that under this legislation fines of from $500 to $1,000 per day will be levied against those railway workers who cross a legal picket line.

My question to the deputy leader is: Would he take up this matter with the Minister of Labour and suggest to him that this matter be looked into, since it does seem to be a wrongful use of legislation that was originally directed towards getting railway workers back to work? Since that primary purpose has been accomplished, this legislation should not now be used in a retroactive manner.

Hon. C. William Doody (Deputy Leader of the Government): I, obviously, will not comment on the last part of the honourable senator's question as to whether it is proper or improper. However, I will certainly send the content of his question to the appropriate minister and request an answer.

[*Translation*]

OFFICIAL LANGUAGES

REPORT OF COMMISSIONER—REACTIONS

Hon. Jacques Hébert: Honourable senators, my question is directed to the Deputy Leader of the Government in the Senate and concerns the Prime Minister's attitude to the

emotional and irresponsible reactions to the Report of the Commissioner of Official Languages, Mr. D'Iberville Fortier.

Actually, it was not the report, a balanced and well-written document, that upset Quebec's ultra-nationalists and their followers but a single sentence, I would almost say a single word, and I quote:

> ... the salvation of French, in Quebec or elsewhere, must surely lie in positively asserting its own demographic weight, cultural vigour and innate attractiveness, and not in humbling the competition.

The false impression was given that Mr. Fortier meant the English-speaking community in Quebec had been humbled, while he was, in fact, referring to the language.

Do English-speaking Quebecers feel humbled by the excesses of the legislation and other impositions? I cannot speak on their behalf, but before going any further I want to make myself quite clear: I feel humbled; humbled by the fact that no one in the Quebec National Assembly had the courage to defend the commissioner's right to say what he said and especially by the fact that the Prime Minister of Canada, by his failure to speak out, fuelled the flame of controversy in Quebec and undermined the authority of the Commissioner of Official Languages.

I therefore want to ask the Deputy Leader of the Government in the Senate to tell us whether the Prime Minister intends to stand up for the commissioner and support him when he criticizes certain unfair practices imposed on the English-speaking minority in Quebec, as he did so eloquently in the case of the French-speaking minority in Manitoba.

● (1430)

[*English*]

Hon. C. William Doody (Deputy Leader of the Government): I certainly will pass that question on to the Prime Minister, and as soon as I get an answer from him I will pass it on to the honourable gentleman.

REQUEST FOR ANSWERS

Hon. H.A. Olson: Honourable senators, I want to direct a question to the deputy leader, mostly because he is the only person here to whom we can direct questions.

Hon. C. William Doody (Deputy Leader of the Government): That is not very flattering.

Senator Olson: I ask the deputy leader to do what he usually does, which is diligently pursue answers to the questions we raise and bring them here. As I said, I do not have any complaint with him, but today I do have a very serious complaint in relation to Senator Murray, the Leader of the Government, because over the past three weeks or so I have raised questions which cover three separate and very important economic areas to western Canada, and particularly to that part of western Canada from which I come, and I have not received any answers.

[Senator Hébert.]

Yet the Leader of the Government in the Senate did, in fact—and I can give you chapter and verse—give an undertaking that he would take the questions as notice and come back with replies. For example, on March 2 I asked him about the Western Economic Diversification Agency, because we wanted to know and to be able to advise people out there as to where they should make application, and so on. I realize that from time to time we can read the comments made in the press about the activities of this agency. In fact, my office receives a communiqué from the minister's office almost every day about some new grant that has been approved by his office. However, honourable senators, that is a wrong way of pursuing this. This matter has not been passed by Parliament as yet. The whole policy has been worked out to such an extent that it is now being administered—which is what appears from the communiqués—so, surely, Parliament ought to know. But they have not yet been advised of the questions I asked about this, and we have not yet been provided with an answer. I think that is some kind of discourtesy, and, if not, it amounts almost to contempt of Parliament to proceed with this without even answering questions.

The second matter I raised, honourable senators, deals with the initial prices that will be paid for cereal grains by the Canadian Wheat Board in the coming crop year. There has been a long-standing practice of announcing these prices early in March so that farmers can make plans to seed whatever they are going to seed, based on this extremely important information, which is part of the information that goes into the management plans. Now, near the end of March, no announcement has yet been made.

I can understand the situation somewhat, because once or twice, when I was in the government, my colleague, Senator Argue, was responsible for the Canadian Wheat Board, and it was somewhat later than early March when this announcement was made, but, at least, a reason was given as to why that was the case. Usually the reason was that there were rather significant variations in the international market for wheat. That is going on now to some extent, and the price has gone up 40 cents or 50 cents from its low late last year. Yet the minister gave an undertaking that he was going to come back with an answer. It is fairly important to deal with these matters on the floor of the chamber, because there are no members of the opposition in the other chamber to ask questions directly of the minister responsible for the Wheat Board or the Minister of Agriculture. Therefore, I think the government, and especially the minister, has an obligation to come forward with these answers.

The other area I asked about concerned whether or not they were ready to announce government endorsation of a new processing plant for tar sands. Claims are being made by some people that 15,000 person-years of employment would result from this. The minister undertook to come back with the answers as to what stage this was at so that people could make plans. Yet, we do not know when and we do not know what the terms and conditions will be. We know that there is quite a lot

of slack in the oil industry, and particularly in the construction sector. It is, therefore, important that we have those answers.

I complain because tomorrow, as I understand it, we will be adjourning until April 18. My experience has been that we do not receive answers from this government during adjournments. I have never yet received from the government during an adjournment an answer to a question that I raised. Therefore, I hope the minister will come in here tomorrow with full and complete replies to all of these questions to which he promised to bring back answers.

I come back to the point that I have to direct this to the messenger, because he is the only person here who can carry that message to the people who, hopefully, have and will provide the answers to these questions.

Hon. Hazen Argue: Before the deputy leader rises in his place, I want to support my colleague.

Senator Doody: I might forget the other question.

Senator Argue: There is no danger of that. In any event, it would have the same result if the questions were forgotten—we probably will not receive any answers in any event. However, we keep trying.

What Senator Olson has been asking of the government is for an announcement of an increase in the initial prices for grain.

Senator Doody: Oh, that is what he was saying. Now I get it.

Senator Argue: There has been a large increase in the price, because the American price on the international market is going up, and that affects the Canadian price. The farmers think that now, when the international price is going up, this government should recognize that and take action to put that money into the pockets of the farmers, come the new crop year. Things are tough out there.

All we have got out of this government in the last few weeks is some new banking legislation which guarantees banks 95 per cent of every loan they make to every farmer.

Senator Perrault: Shame!

Senator Argue: That applies even to the consolidation of debts. The act has become a great act for the banks, but it is not of much value to the farmer. It protects the banks against loss. I am sure the farmer would like to see an act which would protect him up to 95 per cent of his income. That would be really wonderful. However, the banks now have that, and we would like a spin-off for the farmers.

My further question is: Why does the Prime Minister of this country not include a demand of the President of the United States that they cease the subsidies on grain on the market? When our Prime Minister is speaking in the United States about the evils, as they are, of acid rain, why would he not include something in that statement in protest for western farmers?

Senator Doody: Another one?

Senator Argue: We have another 12 minutes!

Senator Doody: Oh, I see, we are just filling in time. I am just a preliminary for the main event.

Senator Argue: I would not even put it that high.

Senator Doody: In that case, I am not expected to score any points.

I have to admire the gall of Senators Argue and Olson to stand up there and talk about the lack of action by this government in terms of assistance to farmers. I, a little boy from Newfoundland, sit here next to the minister and I hear about $1 billion for a particular grain assistance program and another $1 billion for another grain assistance program. I wonder how much political clout they must have in the West.

Senator Argue: It is an insurance policy.

• (1440)

Senator Doody: I just sit here and wonder at how much political clout they must have in the West. I must say that it is very interesting to hear Senator Olson say that there is no one in the House of Commons who can ask a question on behalf of the farmers in the West. I find that a very interesting and telling tribute to the western members of the House of Commons, and I am sure that it will go down in the record. Nevertheless, I appreciate fully Senator Olson's concerns. He says that he never gets an answer from the government while this place is adjourned. I am not sure if he is absolutely accurate on his April 18 date. I have not yet heard that verified; but I can take it from him that it may be a possibility. I would not bet on it if I were you, senator, because we have some important legislation left on the order paper.

In any event, I will note the various questions that were buried under that mélange of verbiage and try to pull out the wheat.

I have ten minutes to kill yet. As a practitioning senator, the least I can do is to add something to the record. Whether or not it is of any value is irrelevant. However, senator, I fully understand your concern. The farmers who have been represented so poorly by whomever will certainly get all the attention they need from this government, as they have done during the past few years. I will certainly try to get the information he needs. Now, if you want to fill up another seven minutes, the floor is yours.

OFFICIAL LANGUAGES

TEACHING OF SECOND OFFICIAL LANGUAGE IN QUEBEC—FUNDING PROVISIONS OF FEDERAL-PROVINCIAL PROTOCOL

Hon. Dalia Wood: Honourable senators, my question is for the Leader of the Government in the Senate, and in his absence I address it to the deputy leader. Can he tell me if there is any change in the amount of money for the teaching of a second language in the province of Quebec in the new federal-provincial protocol which has just been signed?

Hon. C. William Doody (Deputy Leader of the Government): No, senator, I cannot; but I will certainly try to get that information for you.

THE CONSTITUTION

TIME LIMIT FOR CONSIDERATION OF AMENDING RESOLUTION BY THE SENATE

Hon. Gildas L. Molgat: Honourable senators, my question is to the Deputy Leader of the Government. It is one which I do not expect him to answer today; but perhaps he could get the research going, because we will require the answer by the third week of April.

As the Deputy Leader of the Government is aware, section 47 of the Constitution Act, 1982 provides that amendments to the Constitution:

> ... may be made without a resolution of the Senate authorizing the issue ... if, within one hundred and eighty days after the adoption by the House of Commons of a resolution authorizing its issue, the Senate has not adopted such a resolution ...

The question is: What is the deadline date, because there appears to be some possible hesitation? When the resolution was passed by the House of Commons, I proceeded to make a calculation, which gave me April 23. Subsequently, I saw in writing some comment that it was April 19. I then asked our legal counsel to verify the date for me. There could be some contention as to whether the day on which it is passed by the House is day one, or is day one the following day? That could have an effect on when our deadline is, and I think we should have a clear understanding in this house as to what the deadline is so that there can be no possibility of disagreement at the final stage.

We might also note that April 23 is a Saturday. If we had not completed our work here by the Friday, would we be able to sit on the Saturday and report on the Monday? What exactly would be the situation?

Senator Bonnell: Three days' grace!

Senator Molgat: I ask my honourable friend if he would undertake to check that and report back to this house so that there can be no possibility of any disagreement when we come to the final stage.

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I will certainly make inquiries from my side; but I think it might be advisable if Senator Molgat were to consult with the law officers of the Senate and get an interpretation from them. Certainly our own legal counsel and his assistants would be in a position to comment and advise us. April 23 is the date that I have heard mentioned most often, but whether or not it is accurate I cannot say at this point.

Senator Molgat: The interpretation I have is April 23; but the proviso is made that some people could argue that it might be April 22.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, on a point of order, it is important, as Senator Molgat has said, to obtain an answer about the date. However, he has—I am sure inadvertently—used the word "deadline." There is no deadline on Senate consideration of constitutional amendments under the 1982 formula. No door slams after 180 days. There seems to be an impression that the Senate lacks capacity to deal with constitutional amendments 180 days after the House of Commons passes an amending resolution. That is not what section 47 of the Constitution says. It simply says that after 180 days, if a resolution is not passed, the House of Commons is then free to re-pass its resolution.

So I think it would be useful if we all stopped using the word "deadline." We should remember that the origin of the word "deadline" is a line that was created, I believe, on Devil's Island. If someone crossed that line he was shot. That is, I think, the origin of the word "deadline."

Senator Doody: I didn't remember that.

Senator Frith: Well, there you are—a little parenthetical edification for the benefit of Senator Doody. But I think it is quite important that we remember to pick a metaphor other than "deadline." What happens is that 180 days afterwards no door slams on the Senate. But it is then possible for the House of Commons to open a door and detour the Senate.

So let us not have a misunderstanding that 180 days after the House of Commons passes its amendment we are no longer able to deal with an amending resolution.

EXTERNAL AFFAIRS

REVIEW OF CONVENTION ON CONSULAR RIGHTS

Hon. Sidney L. Buckwold: Honourable senators, my question, which is for the Deputy Leader of the Government, concerns the disastrous fire which occurred yesterday in the Cuban Consulate in Montreal. I am aware of the 1963 Vienna Convention on Consular Rights, ratified by Canada in 1974, which provides that authorities such as police and firemen in the host country cannot enter consular premises without permission. However, in view of the history of disasters in consular offices in various parts of the country, I wish to inquire whether there might be a review of that convention. For example, I gather that the fire which occurred in Montreal yesterday resulted in the death of three people. That fire could have spread. Interestingly enough, in the report on the fire which appeared in the Montreal *Gazette* it indicated that the fire occurred across from the residence of our former Prime Minister, Mr. Trudeau.

Some Hon. Senators: Oh, oh!

Senator Buckwold: Last year there was a five-alarm fire in the Soviet Consulate. In 1972 the Cuban Trade Mission was bombed. The *Gazette* of March 30 says:

> ... the Cubans held firemen and policemen off with submachine-guns.
>
> The Cubans were reported to have used the time to destroy documents with acid as one Cuban lay dying of his wounds.

I think that all of us share a concern about this. My question is: Will the Deputy Leader of the Government take up with

the Department of External Affairs the possibility of reviewing this particular convention in order to protect Canadian property and possibly Canadian lives?

• (1450)

Hon. C. William Doody (Deputy Leader of the Government): I appreciate Senator Buckwold's concerns, and I will certainly see that they are passed on to the Secretary of State for External Affairs.

ABORTION

RIGHTS OF UNBORN—INTRODUCTION OF LEGISLATION

Hon. Stanley Haidasz: Honourable senators, I should like to ask the Deputy Leader of the Government in the Senate whether the government will table in this place or in the other place legislation or proposals, before Easter, regarding the rights of the unborn?

Hon. C. William Doody (Deputy Leader of the Government): I am not sure I heard the question. I think the honourable senator asked me if I intended tabling in this place or in the other place—

Senator Haidasz: Or the government.

Senator Doody: Not to my knowledge.

Senator Haidasz: It has now been two weeks since the Minister of Justice met with his provincial counterparts. Could the Deputy Leader of the Government tell us whether there was any consensus reached at that meeting regarding the rights of the unborn, and, if no consensus was reached, then what is the policy of the government today? What is the government doing to prevent the killing of 60,000 potential Canadians a year?

Senator Doody: My understanding is that the government is attempting to formulate a policy that is acceptable to Canadians. I am not in a position to say where that stands at this particular time.

FOREIGN AFFAIRS

SENEGAL—PRESIDENTIAL ELECTION—SAFETY OF OPPOSITION CANDIDATE—ATTENDANCE OF OBSERVERS

Hon. Jerahmiel S. Grafstein: Honourable senators, I have a question for the Deputy Leader of the Government in the Senate. The Deputy Leader of the Government can refer this question to the Leader of the Government in the Senate. My question follows questions I have asked previously with respect to the safety of Maître Wade, the Leader of the Opposition in the Republic of Senegal.

Back in 1983 the President of Senegal, President Diouf, made representations that the election that was recently held in Senegal would follow democratic forms and be free of electoral abuses. It now appears that, based on widespread reports, there were widespread electoral abuses, including the incarceration of Maître Wade and the leadership of the opposition in Senegal.

A number of parliamentarians in Europe have protested to the Republic of Senegal and, through their representatives, to President Diouf that he should release immediately Maître Wade and his colleagues in the opposition party in order to conform to democratic practices.

I understand as well—and this is different from the answer given to us by the government—that impartial international observers were not permitted to scrutinize this election, which makes it reasonable now to assume that election abuses were such that they could not bear the scrutiny of independent observation.

Therefore, I ask the government to make a protest to the Republic of Senegal for the release of Maître Wade and his colleagues, joining other parliamentarians from Europe in this cause.

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I was just groping through *Hansard* of the past few days trying to find an answer to that question which I tabled in Delayed Answers. I do not know if Senator Grafstein has seen that answer. In any event, if that is not the information he was seeking, I will attempt to get an update on this for him, but he can let me know.

Hon. Lorna Marsden: Honourable senators, the answer to which Senator Doody referred is not an answer to the question Senator Grafstein is now asking.

Since the acting leader is following up on Senator Grafstein's question, would he also inquire of the Secretary of State for External Affairs—

Hon. Gildas L. Molgat: Honourable senators, I rise on a point of order. The Senate is scheduled to rise for other business at 3 o'clock.

The Hon. the Speaker: Honourable senators, I was just about to raise that point.

[*Translation*]

Honourable senators, pursuant to order of your honourable Chamber, I do now leave the chair and Senator Molgat will chair a Committee of the Whole.

[*English*]

THE CONSTITUTION

FIRST MINISTERS' ACCORD AND AGREED TEXTS—REPORT OF SUBMISSIONS GROUP TABLED AND PRINTED AS APPENDIX—CONSIDERATION IN COMMITTEE OF THE WHOLE CONTINUED

On the Order:

> The Senate again in Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to.

The Senate was accordingly adjourned during pleasure and put into a Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to, the Honourable Gildas L. Molgat in the Chair.

The Chairman: Honourable senators, prior to calling in our witness for today, I wish to table the first and final report of the Submissions Group on the Meech Lake Constitutional Accord.

Senator Doody: The first and final?

The Chairman: Yes, the first and final report of the Submissions Group.

Honourable senators will recall that the Submissions Group was established on February 2 in order to give an opportunity for more witnesses to be heard. The order of reference called for a report on March 30. Therefore, I present the report.

The report itself is fairly brief. I suggest that it be printed as an appendix to today's *Debates of the Senate* and to *Minutes of the Proceedings of the Senate.*

In addition to the report itself, I am tabling five copies of the proceedings for the five days on which the committee sat.

Documents tabled.

Senator Olson: Honourable senators, I move that the report be printed as an appendix to the *Debates of the Senate* and to the *Minutes of the Proceedings of the Senate* of today.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

(*For text of report, see Appendix "B", p. 3037.*)

Pursuant to Order adopted on June 18, 1987, the Right Honourable Pierre Elliott Trudeau, P.C., was escorted to a seat in the Senate chamber.

[*Translation*]

The Chairman: Honourable senators, our first and only witness today is the Right Honourable Pierre Elliott Trudeau.

Mr. Trudeau, I would like to welcome you on behalf of all my colleagues.

[*English*]

I need to say no more about our distinguished witness for today. We are very pleased that you are able to take the time to come and share your expertise in this field with us, Mr. Trudeau. The normal procedure of our committee is to hear an opening statement from the witness and then have questions from the members of the committee. We are prepared to proceed.

[*Translation*]

So when you are ready, Mr. Trudeau, please proceed.

Right Hon. Pierre Elliott Trudeau, P.C.: Thank you, Mr. Chairman. Just a minute to get my papers, and I will be ready to proceed.

I would like to say, first of all, that today I intend to speak mostly in English, since before the special joint committee of the Senate and the House of Commons I spoke mainly in French. Of course during question period, if there is one, I should be happy to use either official language.

[*English*]

I would like to say, first of all, that I am extremely happy to appear before the Senate for a variety of reasons. I have been given by you, Mr. Chairman, a generous amount of time. Discussion of the Constitution can sometimes be tedious, but can also be interesting. For my part, I thought rather than get into legal technicalities, which I did, to a certain extent, when I appeared before the joint committee, I would try to put the discussion in historical perspective and show the dynamic forces which are at work in building a country, and try to draw conclusions as to where this particular 1987 Constitutional Accord might lead us.

I am also happy to be in the Senate, because it is the place for sober second thought, and it is my impression that neither the First Ministers nor the members of the House of Commons, for reasons of their own, were able to go into that sober second thinking, the First Ministers because there was a certain amount of euphoria at having brought Quebec into the Constitution, as the expression goes. Therefore, they had a reluctance to look back and say, "Well, we might have made some mistakes and we should correct them"—something, mind you, that was done after the agreement of November 5, 1981. Senators will recall that in the negotiations we had dropped a clause on the protection of equality of the sexes and a clause on the aboriginals. After the thing was signed, it was still possible to put those clauses in without destroying the agreement. As to the House of Commons today, well, it is well known that the three political parties, lest they be accused of offending Quebec, did not want to re-open the accord. Therefore, the second thought, though it might have existed, was not translated into action in the House of Commons.

● (1500)

Incidentally, I think that in itself is a reason to argue that special status or distinct society, or whatever you want to call it, is not really necessary for Quebec. Politically, the importance of Quebec in making or breaking governments is so great that the three political parties did not dare vote the slightest amendment to the accord lest the Government of Quebec, and, perhaps, the people, would not like it. In that sense, then, Quebec has a special status under its place in the Constitution by its electoral force. It was, I think, also slightly futile, since I have no evidence that in the polls, at any rate, there was a surge of support for those who had initiated the Meech Lake Accord. Since then the premiers have gone, and I guess the federal government is not in the best of positions. But the danger of not having second thoughts is that that can bring Parliament into disrepute. That is why I am glad that the Senate will compensate for any second thought that hasn't been in evidence in the House of Commons.

Legislators by profession, if I can say that, are supposed to look at the bills or resolutions, the projects that are put before them, with a view to improvement, if they see faults. It is not expected that they should vote them as they are. If legislators see contradictions or inconsistencies, it is their role to move and vote on amendments. It is a laughable proposition to think that a legislator could be told, "Well, pass the bill, imperfect as it is—you will get some other chance in some other bill to correct it." Yet, in a constitutional matter, where the second chance is very unlikely ever to arise because of the rigidity of

the amending procedure, this is what the House of Commons has decided to do—pass a resolution with its known imperfections, its known contradictions or known vaguenesses, which still have to be interpreted, and make no effort to correct them. In that regard, I must say that in reading the joint committee report I was surprised to see at page 51 that that committee calmly envisaged that minority rights under the Charter might be diminished, yet made no recommendations for clarifying or changing that. The report says:

> In law, the distinct society clause is unlikely to erode in any significant way the existing extended constitutional rights of the English-speaking minority within Quebec.

Well, as far as reassurances go, that is not the strongest one I have ever heard—"unlikely in any significant way to erode." It would seem to me that this is a clear case where, at least, every party would have been able to agree or, perhaps, not to agree, but then we would know that the accord was built on a misunderstanding.

The third reason I am happy to be here is that it is the role of the Senate to guarantee a balance in a federation. That is usually understood as protecting the provinces. That is the role of the second or upper chambers in most federations. In that regard, many of you will recall that that was what was done in this chamber in 1978, when Bill C-60 purported to make some changes to the Senate. The Senate really threatened obstruction until we had a clarification of whether that could legally be done by the federal government alone. The government complied, and we sent Bill C-60 to the Supreme Court on a reference. We saw that, in fact, the Senate had been justified in casting doubts on that proposal.

I suggest that in the case of the 1987 accord we are also in a situation where the Senate should be ensuring balance in the federation. This is an accord which transfers large amounts of power from the central government to the provinces. I think I will have time to go into that later on, but since no signing premier is prepared to speak for Canada, nor is any federal political party, and even the Queen herself is forced to say that the accord is a good thing, it seems to me that if balance is to be brought, it should be brought by this house. This Senate can become a focal point for the most important constitutional debate, or certainly one of the most important, in this period of our history.

Finally, the reason I am happy to be here is that the father of the accord, the Minister for Federal-Provincial Relations in this government, sits in this place. I am not sure if he is here or not, but I feel that the debate can be joined in this house between those who support and those who do not support the accord. So far we have had something like a dialogue of the deaf. Some experts have appeared before the joint committee and before this house, arguing that this was good or bad, that this was clear or not clear, and that this had effect or did not have effect. But here is a place where I think we can discuss the thing together, where we can ask each other questions—I hope there will be time for that. If Senator Murray is not here today, he might be here tomorrow, and, in a sense, it will be another dialogue of the deaf, but I feel he and I have already begun our dialogue. I did publish a letter in *Le Devoir* and in the English press on May 27, 1987. Senator Murray, on May 30, just three days later, replied to my letter, in the *Globe and Mail*. I had expressed some mild reservations about the accord, and the senator answered in kind with, I must say, a very good letter. I say this without any sarcasm. I have, really, no disagreement on facts that he used in his letter and very few though perhaps major disagreements on opinions. So it was a good letter, and I think I will use it as a theme for the rest of the discussion.

In a sense, Senator Murray alleged that the November 5, 1981, agreement was flawed because it had a dark side, or "un côté ténébreux" is what he said in French, arising from three points. First, obviously, Quebec had not signed that agreement. Second, there was an opting out provision in the amending formula, which I, myself, had denounced as bad, yet here it was. Third, there was a notwithstanding clause, which I also believed was bad and which remained in the Charter. I want to show in the rest of this presentation how those flaws came about. That means going into the history of the negotiations to a certain extent. I then want to show how those clauses, far from being corrected in the 1987 accord, were made infinitely worse. Finally, towards the conclusion, I would like to suggest what can be done by the Senate, by the provinces and by the people to prevent irreparable damage to Canada's integrity.

Dealing with the history of this whole matter, I will not say anything about the earlier years, except to remind everyone of what they know. From John A. Macdonald's day on the history of federal-provincial relations in Canada has been one of frequent disputes and discords between the two levels of government. That is a constant of our history, as it probably is of most federations.

Rather than go into any detail, I will start, as the joint committee did itself, with the Balfour Declaration of 1926, which, you will recall, set Canada on its path to full nationhood.

Essentially, one thing was missing for Canada to achieve that status, and that was the fact that, through no fault of the British government, but because it was a self-imposed obstacle, Canada had not agreed on an amending formula which would permit it to bring back the Constitution and so to have a Constitution of its own. Therefore, in 1927, the year after the Balfour Declaration, MacKenzie King convened a federal-provincial conference—Dominion-provincial conference, as they were then called—and asked the provinces to try to seek an agreement on an amending formula.

I will not read the whole story, of course. I will only read from Professor McNaught's *History of Canada*, at page 246:

> The decade's surge of provincialism was symbolized by a Dominion-Provincial Conference in 1927 at which the Tory Premier Ferguson of Ontario and Liberal Premier Taschereau of Québec joined in proclaiming the "compact theory" of Confederation—a position which would give near autonomy to the provinces and which saw federal

powers as being merely delegated to Ottawa by the provinces.

So that ends in failure, and exactly 60 years and eight prime ministers would pass into history before the provinces were able to find a prime minister of Canada who was prepared to capitulate to that view of Confederation—that is, a compact between the provinces to set up a federal government.

I intend discussing that today, but before I do I want to say that during those 60 years federal governments were very active in trying to create a national will, a sense of national identity that would lead Canadians to believe that Canada was more than the sum of the wills of the provinces, but that it had a will of its own—"une volonté générale," as Rousseau said, or "un vouloir-vivre collectif" is the less heathen way of explaining things. There is some national will which is more than the sum total of the provincial wills.

Various prime ministers attempted in various ways to create this body of values to be shared by the Canadian people. MacKenzie King did it by establishing a network of social security that would bind the people together. Mr. St. Laurent, you will recall, did it, first, by amending section 91, or having the British Parliament amend it, so that Canada, at least in things which did not involve the provinces and language and education, could amend its Constitution.

Mr. Diefenbaker and Mr. St. Laurent also, of course, stopped the appeal to the Privy Council so that we had a supreme judicial tribunal of our own. Mr. Diefenbaker brought in the Bill of Rights. He was unable to constitutionalize it, because his minister, Mr. Fulton, had not been able to get the provinces to agree to a formula for amending. Therefore, Mr. Diefenbaker's Bill of Rights, which was certainly a nomenclature of values which bound Canadians together in the sense that they all shared certain basic beliefs, was never put into the Constitution, but it remains as an important law.

Mr. Pearson attempted, with the B and B Commission, to seek ways in which the dissatisfaction of the French-speaking people in Canada—and, to a certain extent, some ethnic groups—could be met in a way which would not divide Canada but which would, rather, create dualism, which, as we shall see later, is what the 1987 accord does. Dualism, by definition, is a division of people. Mr. Pearson was proposing bilingualism, which is a quality of individuals or institutions which tends to unite them rather than separate them. Of course, one of the more recent prime ministers brought in the Charter of Rights and Freedoms, which was entrenched in the Constitution and which was meant to create a body of values and beliefs that not only united all Canadians in feeling that they were one nation but also, in a sense, set them above the governments of the provinces and the federal government itself. So, they have rights which no legislative body can abridge, therefore establishing the sovereignty of the Canadian people over all our institutions of government.

But all of them—indeed, all of us failed in our attempts to assert the national will by patriating the Constitution. The reason is very simple to explain. Every attempt was predicated on the idea that patriation and an amending formula—and, even more, a Charter—could only proceed with unanimous consent, that is, the consent of each and every province. So there was no national will possible beyond that defined by the 11 First Ministers. Of course, that permitted every province to hold the country to ransom by saying, "Well, I will agree to patriation which is, perhaps, good for the Canadian people. It's the way to express ourselves as a nation. But I will only do it if you give me some rights in exchange." I do not like to use the word "blackmail," but certainly there was a process of leverage being used which ended with the result that Canada could only exist as a full and complete nation by leave, not of its people but by leave of each and every one of the ten provinces.

The story goes on and time goes by, which it does in this place also. I have figures from National Accounts-Income and Expenditures, July 1965, table 37. There was a period in the early 1950s to the middle 1960s where there was an extraordinary amount of growth in the provinces for reasons which everyone knows—new areas of legislation were coming into play, and the provinces say that it was within their jurisdiction. They were acting to replace the private concept of schools and hospitals. In a sense, there was a complete reversal of the proportion between federal and provincial spending. From 60/40 federal-provincial, it had gone to 40/60 federal-provincial during those years. The provinces were not only spending a lot and taxing a lot, although some of it was tax from the federal government and they got it by way of remissions, but the provincial governments grew proudly; they developed expertise; they had competent bureaucracies; and they felt they could manage their own affairs and also manage all of the affairs that, until then, had been managed by the federal government.

This is just a continuation of the tensions which, I recall, had begun in John A. Macdonald's day of a struggle for power, a struggle for money, and generally a struggle for both between both levels of government.

In post-World War II a whole new operation was put into place. The provinces began acting collectively to force the federal government to transfer powers to them in exchange for their consent to patriation. We start with the Fulton-Favreau formula of 1964. The repatriation process came unstuck, because Premier Lesage and his principal minister, René Lévesque in those days, both backed out of an agreement that they had not only agreed to but they had also begun to publicly defend. They were made to understand that they might have a good amending formula, but they had not won more powers for Quebec in the process and, therefore, they backed out.

Two years later Premier Daniel Johnson, whose slogan was "Equality or Independence!"—presumably, equality between the two nations or independence of one from the other—was demanding all the powers needed to safeguard Quebec's identity "in the preparation for what was to be the Robarts Conference—Confederation For Tomorrow" held in Toronto in 1967.

• (1520)

It then came to June 1971, when Premier Bourassa withdrew from the patriation agreement that he had proposed—a formula that he had actually worked out, in which he got a lot of other things for the provinces, including some role in the nomination of judges, and so on—alleging that in exchange he should get something of substance in the social area. In concrete terms, that meant, for instance, that in Family Allowances the federal government, which taxes the money in order to pay them out, would hand the money to the provinces and they would hand them out, courtesy of the provincial government, in a way which might be different for socio-economic reasons in that province. We had a minister, Marc Lalonde, who had worked out an administrative arrangement whereby that might be done without actually transferring power and money, just permitting the province to decide how it should be distributed. That worked well, but it was not a constitutional amendment, and therefore it was not enough. We will have the same story later on when we come to immigration agreements. It is not enough that the provinces get to manage their own affairs; they want it to be put into the Constitution so that the federal government actually gives up its power forever rather than just signing a contract.

By 1976 Mr. Bourassa had added cultural sovereignty for Quebec, but by then every other premier had caught on, because every premier realized that his consent was needed to patriate the Constitution. Therefore, he would trade his consent for as much power as he could get in whatever area he thought was important for his province. In other words, each province was in the position to exact its own price for permitting the Canadian people to have a Constitution of their own.

So that I am not talking too abstractly, at this point I will read the provincial demands put together at the interprovincial conference in the summer of 1976, chaired by Premier Lougheed. This is the list taken from the 1976 consensus. You will see a familiar number of items in this particular list, which dates back to 1976. It covered the following areas: immigration; language rights—they were dealt with in the accord of 1987; resource taxation—that was dealt with in 1982; the federal declaratory power—that is section 92(10)(c) of the Constitution, which could only be used with provincial consent; annual conference of First Ministers—that was dealt with in the 1987 accord; creation of new provinces—we get that in the accord, too; culture, which really was saying provincial paramountcy in culture and all the arts, literature and cultural heritage. The federal government could deal with it, but there would be federal-provincial paramountcy. That was dealt with also in 1987. Then there was communications. I will read you some speeches later on from Mr. Bourassa and Mr. Rémillard, saying that in culture and communications they feel they have achieved what they want with the "distinct society" clause. The Supreme Court of Canada was included in the 1976 list; the federal spending power—also in the 1976 list; and regional equalization, which we had dealt with in the 1982 accord.

You can say one thing for the provinces: they are bloody consistent! I do not mind saying, as a Quebecer, that Quebec's hand is clearly seen behind all of this. After all, it was Quebec's five demands at the 1987 accord, which proves that we Quebecers are quite consistent in our opinions—and I am one of them! That is the story of 1976.

Let us go to the summer of 1978. The interprovincial conference was chaired this time by Premier Blakeney, a Social Democrat. The first one I mentioned was chaired by a Conservative; this one was chaired by a Social Democrat, but he had been joined by a Separatist, Premier Lévesque. As he came to the conference, Quebec made a declaration. Quebec said that, while committed to its option of sovereignty association, it could generally go along with the 1976 consensus and most of the other constitutional points raised in Regina. We will come to those. Quebec went on to state that "this approach falls within the mandate of the Quebec government to reinforce provincial rights within the present system and also illustrates some of the minimal changes required to make the federal system a serious alternative in the forthcoming Quebec referendum"—forthcoming, but some four years later.

What were these "minimal changes"? Here is the 1978 consensus: "In addition to the 1976 list"—that I have just given to you—"the premiers, in the course of their discussion in Regina, have reached agreement on a number of additional substantive matters on which federal views are invited. First, abolition of the now obsolete federal powers to reserve or disallow provincial legislation."

Well, obsolete, but maybe some people sitting in Ottawa some day will be glad that they are still in the B.N.A. Act, in the Constitution Act, because it may be the only way that at some point you will be able to disallow some provincial acts which attempt to destroy the federal government. Nevertheless, in 1978 the provinces were asking for the abolition of that.

"Second, a clear limitation on the federal power to implement treaties so that it cannot be used to invade areas of provincial jurisdiction." We are hearing about that nowadays.

"Third, the establishment of an appropriate provincial jurisdiction with respect to fisheries." Well, we have that in the agenda of the next conferences.

"Fourth, confirmation and strengthening of provincial powers with respect to natural resources." That was done in 1981, and, incidentally, for those who say that the provinces got nothing out of 1981—and I will come back to that later—quite a bit of power was transferred from the federal government to the provinces by the November 1981 accord, which became the Constitution Act of 1982.

"Fifth, full and formal consultation with the provinces in appointments to the superior, district and county courts of the provinces." That would be the next step.

"Sixth, appropriate provincial involvement in appointments to the Supreme Court of Canada." This is a modest agenda, as you will see.

"Further, there was a consensus that a number of additional matters require early consideration: the federal emergency power; the federal residual power dealing with peace, order

and good government; the formal access of the provinces to the field of indirect taxation; amending formula and patriation"—I am prepared to discuss that—"and the delegation of legislative powers between governments. All premiers expressed grave concern that section 109, concerning provincial ownership of natural resources, had not been carried forward into the proposed new Constitution."

So, after this modest beginning in 1976 and 1978, so it went until we reach September 1980.

● (1530)

What happened in September/October of 1980? By that time it had become obvious that the greed of the provinces was a bottomless pit, and that the price to be paid to the provinces for their consent to patriation with some kind of an entrenched Charter—which had been requested as far back as 1971 in Victoria—was nothing less than acceptance by the federal government of the "compact" theory, which would transform Canada from a very decentralized, but, yet, a balanced federation, into some kind of a loose confederation. That is when our government said, "Enough. We are going to move unilaterally and we are going to give the people their Constitution and their Charter of Rights. You can like it or lump it, but this is what we intend to do," and honourable senators know the rest of the story: The matter went to the courts—and I will come to that in a moment.

Quite frankly, the reason we were determined, and almost desperate, to move without paying this enormous price that the provinces had brought to me in September of 1980 was that we had promised renewal of the Constitution when we were fighting the referendum. At that time we had said we would put our seat at stake, that we would bring renewal. However, I will come to that in a moment.

Honourable senators, let me just read the somewhat immodest agenda that was put before the federal government in September of 1980 by all of the provinces. Quebec had made a proposal and it became a common stand of the provinces. It was discussed by the provincial ministers on September 11, and then by the premiers at breakfast on September 12; it was then brought over to the Prime Minister of Canada the same day, and here is what the Prime Minister of Canada was told would need to be done to the Constitution if we were to proceed some day with patriation:

> The provinces of Canada unanimously agree in principle to the following changes to be made to the Constitution of Canada. It is understood that these changes are to be considered as a global package and that this agreement is a common effort to come to a significant first step towards a thorough renewal of the Canadian federation.

I do not intend to read all of the details of it, but on the list there is natural resources; communications; Upper Chamber; Supreme Court of Canada; judicature, which repeals section 96 which permits the federal government to appoint judges of superior and provincial courts; family law; fisheries; offshore resources; equalization. Then when we come to item 9, "a Charter of Rights;" at last I was getting something, but it had to be brought in with a *non obstante* clause, and with a clause that all existing laws would be deemed valid. In other words, it was grandfathering government rights over the people.

Under item 10 we would get patriation, but with the Alberta amending formula, which, in the event, was the one that we ended up with. Item 11: powers over the economy; item 12: a preamble. That is a Quebec proposal, which I might take time to read to you, but you will not like it.

The document that I was handed at that time goes on to say:

> If a satisfactory interprovincial consensus is reached in this way, it must be accompanied, when tabled, by announcement of the following measures:
>
> As soon as the federal government has given its assent to this consensus, the matter will be returned to the ministers for drafting;
>
> Another list of subjects must be established to be covered by the constitutional discussions at the ministerial level in the following months. These subjects are: The horizontal powers of the federal government—spending power; declaratory power; power to act for peace, order and good government—culture; social affairs; urban and regional affairs; regional development; transportation policy; international affairs; the administration of justice . . .

And so on. Therefore, I do not think history will blame us for having said, "Enough; we are not going to trade all of these things just so that the people of Canada can be sovereign in their own land." After all, we had won the 1980 referendum by making a promise of renewal, and it had become obvious that the rule of provincial unanimity, particularly with a Separatist premier heading the government of Quebec, would continue to render impossible the first step towards renewal, as it had, indeed, without interruption since the 1927 conference.

Therefore, in a sense, we were in a Catch 22 situation. The federal government was told that it must renew the Constitution, and that had begun with Premier Robarts' meeting in 1967. I am not saying that he was saying that, but that is what the meeting was saying. Therefore, the federal Government of Canada must renew the Constitution, but, on the other hand, they must be prevented from renewing the Constitution until the federal government gave the provinces all the power they were asking for. In other words, the renewing of the Constitution could only mean one thing: transferring more powers to the provinces.

There is an allegation that is frequently made not only by Quebec nationalists but by more serious people such as academics. It was made by the Prime Minister of Canada; it was made by Senator Murray in an article that he sent to *La Presse* and to the *Globe and Mail* on June 15. I only have with me today the French copy, but let me read it:

[*Translation*]

> The solemn promise made to Quebecers during the referendum that federalism would be renewed and the Constitution amended to reflect the distinct identity and aspirations of Quebec was unfortunately not kept.

[*English*]

Mr. Mulroney said the same thing on October 21 of last year, which is quoted in *Hansard*. At that time he said that the federal forces—and I know who he means—had promised that we would renew the confederation, and, in order to prove our good faith as reformers, the allegation is made that we would have had to bring in renewal of a kind that would carry the assent of the very premier, Mr. Lévesque, who was taking his province out of Canada.

If the absurdity of the circular reasoning contained in that proposition is not obvious, let me state it otherwise: I had been writing, speaking and publishing for some 20 years against any form of special status, such as two nations or the two-Canada concept. Of course, I never said that I would renew the confederation or renew federalism by giving Mr. Lévesque what he wanted and by giving the provinces what they had asked for in this enormous list of September 1980. I said we would renew the federation, and anyone who had listened to my campaign speeches or the debates on federal/provincial affairs could not possibly assume and, in turn, write in good faith that we had promised to give Quebec some form of "distinct society."

[*Translation*]

"distinct identity and aspirations of Quebec, unfortunately that promise was not kept."

[*English*]

Honourable senators, how could it reasonably be inferred that I was attempting to win the referendum by setting Canada on a course that I consistently had denounced as deleterious to the integrity of Canada; as deleterious as even losing the referendum itself would be? I really take objection to not only Senator Murray but to the Prime Minister and the devil of a lot of academics in implying that, somehow, we had made promises to give the Province of Quebec, in a reformed Constitution, what the Separatists and some ultra nationalists were asking. There was no point in winning the referendum if we were going to give to those who had lost it everything they were trying to get by winning it.

● (1540)

We proceeded unilaterally and the resolution we introduced on October 10, 1980 contained none of the flaws which Senator Murray says "tainted" the November 1981 agreement with the provinces. There was no opting out; there was no notwithstanding clause; and, of course, Quebec would have been in on the same basis as every other province. I have here the October 2 proposed resolution for a joint address, but, of course, I will not read it. However, let me point out two things. Sections 1 to 30 set people above governments. They were getting a Charter with no notwithstanding clause in it. That was the first step in our history to recognize the sovereignty of the people, but, through the amending procedure, it was done even more clearly, because what it says in this resolution is that if we cannot get unanimity on an amending formula—we were hoping it would be the Victoria formula—then we would ask the people to decide what amending formula they wanted. We would give them a choice. Either the people would vote for an amending formula put forward by the provinces—and to make it a serious one there had to be eight provinces agree on an amending formula, and there was a "gang of eight" which was developing, so it was not a figure taken out of thin air—or an amending formula put forward by the federal government which, in our view, was going to be the Victoria formula—it says so in the resolution. However, it could have been changed as a result of negotiations. The people would have had a clear choice.

This was recognizing the sovereignty of the people over the fundamental act of the Constitution, but, better still, we had a section 42, which also set up a referendum process in a free-standing way so that at any time, if there were a deadlock in Canada, the people, as in most democratic countries, could be called upon to express their views. That is what we put before the people and the Parliaments in October of 1980.

You will remember what happened. Three provinces asked for a reference to the Supreme Court, saying that we could not do it unilaterally. A lot of Indians and premiers went and had dinner in London. There was a House of Lords committee saying that we were very nasty, but, until the Supreme Court judgment in the middle of spring, we were doing what seemed, at least to me, what circumstances had forced us to do after 54 years, that is, from 1927 to 1981.

If Canada could not give itself a constitution of its own, perhaps we should ask Britain to give it to us. Margaret Thatcher, God bless her—I do not say that on everything—told me, "If the Canadian Parliament asks me for something and it has a majority supporting a resolution, there is nothing much I can do to prevent it." I think the Britons had in mind—and, I think, wisely—no independence without majority rule in Rhodesia, which became Zimbabwe.

However, the courts decided otherwise; they decided that what we were doing was legal, but, you will recall, they decided it was not conventional by virtue of a convention which was so obscure that they could not define it. They knew that it did not have to be all provinces, but they knew that, somehow, two provinces was not enough. However, they did not know how many in between. That was a vague convention, to say the least. They said it was legal, but it was not nice. Since I was known to be a person who liked to do things nicely, I met with the provinces again and we hammered out the November 5, 1981 agreement. It had the flaws in it that Senator Murray deplores. It had other flaws. I note that Professor Tony Hall was before you recently saying that aboriginal rights had been left out in the bargaining with the provinces. I could add, too, that women's rights had been left out, not in our draft of September, 1980, but in the negotiations with the provinces. Two of them wanted Indians and women excluded; so, in order to get our Constitution and the rest of the Charter, we took them out.

They, too, were put back in after the signature of November 5, and that is why I return to the Meech Lake and Langevin Block agreement. Everybody signed that original accord on November 5, 1981, but, still, we were able to improve it to

help women and the aboriginals. Something like that happened between Meech Lake and the Langevin Block. If that could happen, one wonders why other amendments, which were necessary, could not have been brought in.

I think it is important to say here that the November 5, 1981 agreement, which became the Constitution Act, 1982, gave a lot of new powers to the provinces, including Quebec. Apart from the Charter and patriation which we were getting, that agreement of 1981 was based essentially on the Alberta amending formula and on various agendas that I read to you which did several things to transfer powers to the provinces.

Remember that the November 1981 accord did not give any power to the federal government. In a sense, it limited the power of all governments, federal and provincial, by a charter, but it actually transferred a lot of power from the federal government to the provincial governments. It did so in the area of natural resources, giving the provinces the power of indirect taxation and the power of external trade. It entrenched equalization payments. These are all things that Quebec had been asking for since 1976 and beyond. I am sure you will remember the list I read to you. It included more power over natural resources, equalization and the right to opt out of certain constitutional amendments, which I had not offered in the Victoria formula, but which the provinces demanded. Well, they got it. They got the right to opt out of certain constitutional amendments, which was something that, until then, they had not had under the British North America Act.

More important still, under section 41 they gained the right of a constitutional veto that no province alone had until then. That is the famous section that gives a veto to each and every province over everything federal: the Supreme Court, the Territories, the House of Commons, the Senate, and God knows what else. Every province can stop the federal government and a national consensus from reaching reform on those areas. Until then, under section 91, the federal government could, at least, amend all those things.

There was a vast amount of new power given to the provinces from the list drawn up by the "gang of eight," of which Quebec was one of the more notorious members, so, to those who say that Quebec got nothing I would point out that they did not say, "Thank you," but they got a lot.

I can come back to that, but I know that time goes on. That is how we get to Quebec's five demands. They had not got everything in November of 1981. Quebec came up with five demands, and that was called the "Quebec Round." Mind you, on every one of those demands the federal government had made some concessions and offered some concessions in the past, during the 1968-1980 negotiations. Therefore, I completely understand Premier Bourassa saying, "Well, this is our package. We were offered something before. We got a lot in 1981, but we would like some more, since you offered it in the past. Let's get it now." The situation was different from our point of view, because we had offered a lot, bargaining to get a Charter of Rights in the Constitution. No, Quebec was not offering anything in exchange that I know of, but it was bargaining for five more powers in five more areas.

[Mr. Trudeau.]

• (1550)

I want to examine them in detail, because frequent allegations have been made that the 1987 process flowed naturally out of the 1968-80 negotiations. I have the quotes of Mr. Mulroney, Senator Tremblay and practically all of the members of the joint committee of the Senate and the House of Commons. I have all of these quotes, which I can get into, but they all say, "Well, after all, the Trudeau government had offered all of these things. What is the big fuss, that they are objecting now to the fact that we are giving them at Meech Lake and in the Langevin Block?"

I want to go into some detail with each one of these five demands to show that the way they were met in 1987 brought Canada diametrically into an opposite direction to the way in which Canada would have gone in each of the other cases. In other words, when, between 1968 and 1980, we were offering certain concessions to the provinces, it was always in a way which was not destructive of the national will, of the reality that there was a Canadian "vouloir vivre collectif" which would bind everyone, even if everyone and his brother had not said, "Yes, okay." In other words, we were never doing it in a way that unanimity would have to prevail.

I will take the demands in turn. I will start with the veto on constitutional amendments. Well, of course, before Meech Lake—that was the first demand—there was no veto for Quebec; and the Supreme Court made that quite clear—when the matter was brought before it in 1982; and the judgment was in early 1983—that there never had been a veto for Quebec or for anyone else. There was some kind of convention, that you needed more than a couple of provinces, but none had an absolute veto.

We offered a veto to Quebec in the Victoria Charter. It was a formula—I will not go into details again—which essentially called for the federal government and six provinces. Quebec had a veto, and everyone agreed, except Quebec! But Quebec had proposed it. It was Quebec and six provinces; but the idea of a national will was defined at least in a way which did not permit every province to exercise some form of blackmail.

We offered that formula throughout the 1970s, including in the October 10, 1980 draft. But it was rejected by Premier Bourassa in 1971, and it was rejected by Premier Lévesque and the "gang of eight" in 1980 and 1981. What they were asking for was something not unheard of but something that had been offered to them and all the rest of Canada. But they did not want it. Why? Because as soon as they said "Yes" to something, then we would have a Constitution and they would not be able to use that leverage to get more.

So I take exception to Senator Murray's saying that I proposed unanimous consent on March 31, 1976. On the page that I am looking at, it says, "Senator Murray says that . . ." Senator Murray, in his testimony on August 4, at page 286 of the proceedings, said:

> I should note that applying unanimity to this narrow range—

He is talking about section 41:

> —is much more modest than the March 31, 1976 proposal of Prime Minister Trudeau, which would have required unanimous consent for all major amendments.

I never proposed that. Senator Murray or his people misread the letter that on March 31, 1976 I sent to Premier Lougheed, with a copy to all premiers. I will not read it all. It comprises several pages. Let me sum it up, and I challenge Senator Murray to contradict it tomorrow—if someone wants to work all night to look that up.

What I suggested was three methods of getting patriation with an amending formula. One called for unanimous consent, in which I say, "This approach would introduce a rigidity which does not now exist." Then I suggested two other methods: "The second and preferable alternative would be . . ." and so on. Then I said that "A third and more extensive possibility would be to include . . ." and so on. So there are three possibilities there. I sum it up by saying:

> As you can see, in my letter to Premier Lougheed, there are several possibilities as to the course of action now to take. So far this is clear. So far as the federal government is concerned—

My preference:

> —our much preferred course would be to act in unison with all of the provinces. Patriation is such an historic milestone and it would be better if we could get unison.

I read on:

> But if unanimity does not appear possible, the federal government will have to decide whether it will recommend to Parliament that a joint address be passed seeking patriation.

What I am saying, in essence, is that we would like unanimity to get the thing back with an amending formula, and we are prepared to wait for unanimity to get it back with an amending formula; but the amending formula itself will not call for unanimity.

So, for Senator Murray to say that Trudeau's proposal would have required unanimous consent for all major amendments is wrong. I was still saying in 1976 that we need to get everyone in in order to get it back from Great Britain. But, once it is back, no unanimity rule; the Victoria rule.

With Meech Lake there is no national will left. Any province can opt out of a constitutional amendment transferring power to the federal government and get full compensation. So a province can opt out in the matter of powers. But then, more importantly, under section 41, any province has a veto; any province can prevent a constitutional amendment wanted by nine other provinces and the federal government on all federal institutions of government—as I said, the Senate, the House of Commons, the Supreme Court and the Territories.

When you remember that some of the western provinces are not, shall we say, all that cooperative with the desire of natives to achieve some of the aboriginal and native rights, it is, I think, wrong to have given each province the right to prevent the Government of Canada—and perhaps six or seven other provinces—from exercising the right to agree, for instance, that the Territories should be established into provinces so that in some way the place where the majority of the native people live could achieve some form of self-government, as the provinces themselves had.

So that is why I say that with Meech Lake, on the first Quebec demand, the solution was not like our solution, which respected the idea of a national will binding all; but it was a solution which destroyed the existence of a national will and submitted it to the unanimous consent of every province.

● (1600)

The second Quebec demand was on limitation of the federal spending power. Before Meech Lake we had made a proposal in June of 1969 which, once again, was predicated on the existence of a national will, and we defined it then as "an affirmative vote on a majority of senatorial divisions," which could mean five to seven provinces plus the federal government could establish a shared-cost program in areas of provincial jurisdiction.

Under that proposal, if a premier did not want to go along, he was not forced to go along, but, rather than have compensation, as we have in the Langevin formula, the federal government would give the money back to the people so that provincial popular sovereignty would have been respected in the sense that the people would not have been penalized because some premier wanted to thwart the national will.

That is a lot different from what came out of Meech Lake, where there is no effort to seek to establish a national will. On the contrary, there is encouragement given to provinces that want to opt out of national programs by compensation, providing the province carried on "a program or initiative that is compatible with the national objective." Who sets national objectives? Is it Parliament, or is it the 11 First Ministers? That is something that should be clarified before the members vote on this, and what does "compatible" mean? Is it something which is not a complete denial of the federal program, or what?

The third Quebec demand was a provincial role in appointments to the Supreme Court of Canada. Before Meech Lake, the B.N.A. Act, of course, in section 101, stated that all aspects of the Supreme Court were under the jurisdiction of Parliament.

In the 1971 Victoria Charter, article 27 provided for, as Quebec was asking in its third demand, a provincial role in appointments to the Supreme Court of Canada. That did not work out with Quebec and the other provinces and it had been agreed to. What was it? It was that the Attorney General of Canada would always consult with the attorney general of a province from where he proposed to appoint someone to the Supreme Court of Canada. If there was no agreement, the Attorney General of Canada would set up an electoral college, appointed in agreement by both sides, and chaired by someone, if they could not agree, appointed by the Chief Justice of Canada. So there was a proposal for an electoral college to which the federal government would submit three names that

had been tested with the province, and that college would choose one.

This was provincial involvement; it might not have been enough, maybe it was too much, but, at any rate, it was provincial involvement of a kind that had been rejected by the ten provinces at Victoria. What we did in Bill C-60 in 1978 repeated somewhat the same scheme.

What is in Meech Lake? The federal government gives up its absolute power under section 101 of the B.N.A. Act by having to select judges exclusively from a provincial list. The Meech Lake Accord, in section 101C.(1)—and I am sure you have all read it again and again—states that the government of each province "may" submit names, and the federal government "shall" appoint a person whose name has been submitted. That is what I call remote control of the Supreme Court by the provinces, but it may mortally wound the Supreme Court because of the not unheard of proposition where a province wants to break up Canada and be a spoiler. It says the province "may" submit names, but what if it does not? Is there some emergency power that will permit us to break the Constitution and fill the vacancies on the Supreme Court anyhow? Or does it mean that, for instance, in the example I have in mind, if Premier Lévesque were operating under this and there were to be six out of nine Supreme Court judges all named by the Anglos, with many cases coming on from Quebec—and they would be judged fairly, I am sure—but to the extent that the judgments were not favourable to the Quebec government, you can imagine the kind of mess it would make, apart from the fact it is doubtful whether the court could operate legally if it had, over a long period of time, only six out of nine judges sitting. So there is no provision for breaking that kind of logjam.

As you know—and I will not go into it, because it is not one of Quebec's five demands—the same applies to the Senate. Some of us in this place—if I can say I am in this place, at least, for this afternoon—were in the House of Commons when one man, Gilles Grégoire, was able to cause a devil of a lot of obstruction by refusing unanimous consent on a lot of things. He really slowed down the work of Parliament. So what would it be if a province sent up twenty-four or six or ten senators? It would be something like when the Irish Home Rulers disrupted the work of the British Parliament.

So I do not think it is a satisfactory way of respecting or establishing the national will. Certainly it is not fair to say, since I had proposed something on the Supreme Court, I should not object to this particular way of appointing judges. That is like saying: You do not mind if something is white. Why object if something is black?

The fourth demand of Quebec was for a greater provincial role in immigration. Before Meech Lake, section 95 of the B.N.A. Act said that Parliament may make laws in relation to immigration with all and any of the provinces, and provincial laws shall have effect only as far as they are not repugnant to any Act of the Parliament of Canada.

But we recognized that the provinces, though in a subordinate position, had particular demands as to what kind of immigrants they would need for work purposes or language purposes, so we made contractual arrangements. We made them with Quebec, and we made them with other provinces. Otto Lang began in 1971, Robert Andras in 1975, and Bud Cullen in 1978. They were agreements which were renegotiated from time to time to meet different circumstances, but there was no transfer of constitutional power. In fact, because they were contracts they could be changed and renegotiated, but an immigrant who comes to a province is also an immigrant who comes to Canada. You don't cease to come to Canada just because you are going to a province. Most immigrants come to a province because they want to be Canadians.

Some Hon. Senators: Hear, hear!

Mr. Trudeau: Therefore, our contracts were in respect of the national will of Canadians.

What do we have with Meech Lake? Well, the federal government gives up much of its paramountcy, but it gives it up irreversibly. Once a contract has been signed it will be constitutionalized, so the accord says, and it can only be changed by using the constitutional amending formula, which means that any province can prevent an accord which is favourable to it from being amended in the slightest way.

There are some funny provisions in there, but I will not go into them in detail. Again, there is a guarantee in the Langevin Block agreement that Quebec will be guaranteed a share of immigrants proportionate to its share of the total population of Canada. What happens if people don't want to go to Quebec? Presumably, that means the other provinces cannot take the immigrants they want, because they will be diluting Quebec's share, but, also, Quebec has a right to have 5 per cent more, and similar agreements may be signed with all other provinces. How you can guarantee 5 per cent more to all of the provinces is something I cannot work out.

These are silly things drafted in haste, and the people were told that they could not ever change them no matter how silly they were, because the whole thing might fall apart.

The most offensive clause is the one that says Canada will withdraw services for the reception and integration, including linguistic and cultural, of all foreign nationals wishing to settle in Quebec with reasonable compensation.

Well, we are all grown-ups. I do not have to make many drawings to get you to understand that if you have government and immigration officials who are determined to make sure that everybody coming into Canada has a conception of Canada as being a pact between provinces, as being a country where only French should be spoken in one province and only English in all of the others, you could have a situation where the national will is thwarted. I keep coming back to the same expression, because I have to answer those who say: "Well, I proposed something on immigration in Cullen-Couture, therefore, why am I objecting to this particular proposal in the Constitutional Accord?" It is completely different, because once the provinces have got into that area of reception and

integration of all foreign nationals, and are being paid to get into that area, they are not going to get out even if the federal government says, "Tut, tut, tut, now, you are not teaching the love of Canada to these people, you are teaching the love of western alienation, or whatever it is."

Once again, I think that if immigrants are going to be taught the theory of provincial sovereignty, it will not make for a strong Canada. We are having trouble enough now to try to build a nation with common values without starting to work on immigrants. We can already work on children, since children are under provincial jurisdiction in schools. But are we now to start to work on immigrants so that they have a conception of Canada which corresponds to that which we defined in the Chateau consensus of September 1980? I repeat that an immigrant to a province is an immigrant to Canada, and that Canada has no moral right to give up its jurisdiction in that area.

Some Hon. Senators: Hear, hear!

Mr. Trudeau: Finally, as to the recognition of Quebec as a distinct society, it is a tough one, but, in essence, what is federalism? It is a form of government where the exercise of sovereignty is divided into two levels of government so that each can legislate, tax and spend in areas of its jurisdiction concerning people within its territory. That is what federalism is. When the Fathers of Confederation discussed the B.N.A. Act in 1867, that is what they had in mind. They gave to the provinces all of the powers outlined under section 92, which were, as jurisprudence tells us, generously interpreted by the Privy Council and by the Law Lords in favour of provincial rights. They gave all of this to the provinces so that they could develop as distinct societies. So what is the big deal?

Of course, Quebec is a distinct society with its own language and its civil law, which it has a right to have under section 92.13. Of course, it became even more distinct with the "quiet revolution," when Premier Lesage began to use the organs of a modern state to mould that society as a distinct one. And, of course, it became even more distinct when a Separatist premier was elected and tried to move the people of that province and that society in a completely different direction. It is a distinct society, and nobody is denying that. Nobody would probably even deny that, if you want, we can put it into a preamble somewhere. That might cause some pique with the Newfoundlanders, though, who only came into Canada in the lifetime of most of the people in this room. They could certainly say, "Well, why not us? Newfoundland and Labrador are a distinct society." There might be some dissatisfaction, but, at least, it would be doubtful that any legal confusion would arise. So you have distinct societies, some more distinct than others. I agree, if you like, that I am more distinct than Senator Marchand here—no, no, that's right, he was distinct before I was.

All right, we are all distinct. But particularly after people have been discussing preambles for a long period of time, when you deliberately do not put it into a preamble but put it into an interpretative clause, that can mean only one thing—you are giving to the government of that distinct society powers that it did not have before. If you are entrenching the distinctiveness as a special provision, you can only be doing it because you want to give special powers. That is why every time Quebec asked our government for special status or the recognition of its distinct society or sovereignty associations, we would resist. It was not a fight for the distinctiveness of the Canadian people—they had that. It could only be a fight for more power for the provincial politicians, which might or might not have been an arguable thing, but no more arguable for the one than for the other. This is particularly true in view of the fact that Quebec's distinctiveness, I am proud to say, was probably served as well, if not better, through organs of culture like Radio Canada, the CBC, the Film Board and the Arts Council, who rewarded equality of production, equality of French and equality of artistry, which was not always found in Quebec institutions.

So why not put distinctiveness in a preamble? If that is what you want, you can encapsulate it there. We had drafted several preambles, one in Bill C-60, which I will not bother reading to you. There was one drafted in June 1980, which I will bother reading to you, but I will not get far, you will see. I see that the first I mentioned was not in Bill C-60—it was in the prologue to Bill C-60. On June 10, 1980, which can be found in the House of Commons *Hansard* at page 1977, I was tabling in the House of Commons an appendix. I suggested an agenda for a meeting of the First Ministers on the Constitution. This reads:

A STATEMENT OF PRINCIPLES FOR A NEW CONSTITUTION

We, the people of Canada—

I do not have time to read it all, but I wish I did, because it was not bad prose. It was panned by the press and by the premiers, but it is a good preamble.

Some Hon. Senators: Read it!

Mr. Trudeau: All right, for those who want to feel nostalgic:

> We, the people of Canada, proudly proclaim that we are and shall always be, with the help of God, a free and self-governing people.
>
> Born of a meeting of the English and French presence on North American soil which had long been the home of our native peoples, and enriched by the contribution of millions of people from the four corners of the earth, we have chosen to create a life together which transcends the differences of blood relationships, language and religion, and willingly accept the experience of sharing our wealth and cultures, while respecting our diversity.
>
> We have chosen to live together in one sovereign country, a true federation, conceived as a constitutional monarchy and founded on democratic principles.
>
> Faithful to our history . . .

I think it was pretty hard to beat, but, look, it was panned by the English-speaking columnists, and do you want to know what happened in Quebec? It did not get beyond the fifth

word. When we said, "We, the people of Canada," one hullabaloo broke out in Quebec.

(*Interruption by individual in gallery*)

Senator Cools: They can't speak in here!

[*Translation*]

Mr. Trudeau: In response to what I just heard, I don't have it in French, but I can translate. I can speak French if you prefer. I just want to say that I spoke in French before the special joint committee of the Senate and the House of Commons, and as far as I know, the French-speaking media did not appear that anxious to report what I said before the committee.

I speak here to a press which, I hope, will be less reluctant to report opinions contrary to their own.

[*English*]

So there was one great scandal, because we started the preamble with the words, "We, the people of Canada." The outrage of not only Premier Lévesque but of Quebec intelligentsia and the Quebec media was enormous. Somehow we could not even talk about the people of Canada. Of course, we could not talk about the Canadian nation, but we found that we could not even mention the people of Canada without offending the Premier of Quebec. Now, I ask you: Do you expect that we could have reached an agreement with the government of that province when we were trying to get a constitution for the Canadian people?

Unfortunately, I go back to Senator Murray, at page 2A:2 of his testimony of August 4. He says:

> . . . in September 1980, Prime Minister Trudeau was willing to recognize "the distinctive character of Quebec society with its French-speaking majority" in a preamble to the Constitution, and a "best-efforts" draft to achieve this end was produced.

Prime Minister Mulroney goes a step further, and is even more wrong. He says the same things in his October 21 speech to the House of Commons, but he leaves out the words "in a preamble." The allegation is made by these two distinguished gentlemen that I had offered to recognize the distinctive character of Quebec's society with its French-speaking majority. Therefore, what was wrong with doing it in an interpretative clause of the Langevin accord?

I will ask historians to go back to the record on this one, because I have a lot of papers here and I will not pretend to sum them up. However, they are available for anyone who would like to follow it up. They are papers that were distributed to the provinces and, therefore, are not secret. They can be found, I am sure, by asking in the House of Commons. I inquired of the officials in Ottawa where Senator Murray had obtained his information. All the evidence they were able to dig up—and I have a letter here from the secretary to the cabinet sending it to me—is a document entitled "Federal-Provincial Conference of First Ministers, being a report of the continuing committee of ministers on the Constitution, to first ministers."

In the preamble, which is not a very good one, there are square brackets between two phrases, which are obviously phrases where no agreement had been reached and they were referred to the First Ministers for a decision. One phrase is "recognizing the distinct French-speaking society centred in, though not confined to, Quebec." The other phrase is "recognizing the distinctive character of Quebec society with its French-speaking majority." In the first case, "recognizing the distinct French-speaking society centred in, though not confined to, Quebec," if it is a sociological fact, if it is a historical reality put in a preamble, I might not have objected. I probably would not have if it had bought a Charter of Rights in the Constitution. But I am nowhere on record saying that I accepted that. It is in brackets, so it is something to be decided by the First Ministers.

The other phrase, "recognizing the distinctive character of Quebec with its French-speaking majority," that is the one phrase that I never would have put in a preamble, let alone an interpretative clause. Of course, that is the one that comes up in the Meech Lake Accord.

For greater surety, I got a copy of *The Summary Record of Proceedings* of the First Ministers' Conference between September 8 and September 13, 1980. There is an agenda item entitled "The Preamble of Principles." There are three pages dealing with it. It is mainly a quarrel about the people of Canada and whether or not the provinces are freely united. Mr. Lévesque does go on to say that he objects to the preamble, because it did not, in his view, "accurately reflect the duality which lay at the base of Confederation." Consequently, the Quebec government suggested the following wording:

> Recognizing the distinct character of the people of Quebec which, with its French-speaking majority, constitutes one of the foundations of Canadian duality.

Now, perhaps, we know where the idea of duality came from for the 1987 accord.

As far as the chairman is concerned—that is me—I raised two items of concern, which I have just quoted to you. In the conclusion I do not draw any concerns, because there is no agreement among anyone. To draw out of that the authority to say that Trudeau was willing to recognize the distinctive character of Quebec society, with its distinctive French-speaking majority, is really going a bit far.

I would like to deal with the difference between the five Quebec demands as met in the 1987 accord and the way they were met before in various attempts, always trying to trade something in exchange for something else, something the federal government did not do, which I will get into if I have time. Over a period of ten years we were trying to negotiate. We would offer one thing. If it would not work, we would try something else. We would take the first one back and put something else on the table, always trying to trade to get a patriation of the Canadian Constitution.

To take all those things as a whole and say, "You were prepared to give them all when they were completely different.

Why are you objecting to the 1987 accord now?" is really now an operation of duplicity or ignorance. There is a great difference, because what do we have with the Meech Lake Accord?

In paragraph 2(1)(a) there is linguistic duality. In subsection 2(2) there is the role of Parliament and legislatures to preserve the duality. Duality divides groups. We did not use the expression "French-speaking Canadians" and "English-speaking Canadians" in any of our constitutions. We used the concept of bilingualism. Bilingualism unites people; dualism divides them. Bilingualism means you can speak to the other; duality means you can live in one language and the rest of Canada will live in another language, and we will all be good friends, which is what Mr. Lévesque always wanted. You speak English, we will speak French, and we will be friends. That is an option. It was a respectable one, one that I fought, but we knew what it meant.

I think we should know what it means also in the Meech Lake Accord. That is subsection 2(2) on linguistic duality and the role of Parliament and the legislatures to preserve that duality. No wonder the French-speaking minorities in the rest of Canada and the English-speaking minorities in Quebec do not like it, and some of them are humiliated.

Paragraph 2(1)(b) says that Quebec constitutes within Canada a distinct society. Subsection 2(3) mentions the role of the legislature and government to preserve and promote that distinct society, including, as I will read to you later, the right to self-determination, which is part of the deal, according to Mr. Bourassa. I am anticipating myself.

What does Meech Lake mean? First, it is amusing to notice that subsection 2(4) says that this section does not derogate from powers, rights or privileges of Parliament or legislatures. Of course, the sections where the federal government is giving up its authority over the Senate, over the courts, and over the spending power does derogate from federal powers. But this particular subsection does not. The politicians are protecting their turf. It happens again in paragraph 101E(2), where there is no derogation from powers of Parliament over the Supreme Court. After Parliament is given away in paragraph 101A to E, it says, in paragraph 101E(2), "except for what we have just given away on the Supreme Court, it will not derogate from our powers."

Paragraph 106A(2) says that nothing extends the powers of Parliament or the legislatures on the spending power. After it had just reduced the power of Parliament, it says, "nothing extends the powers of Parliament or the legislatures." Politicians are very generous with themselves when they are in power, but what is the effect of these clauses on the Canadian people? Well, we do not know. Because it was not put in the preamble, but it was put in an operative clause, in an interpretative clause, we do know that it is a clear instruction to the court as to how they should interpret every other part of the Constitution.

● (1630)

Since the business of the court is to interpret laws, we must ask ourselves: How will the courts interpret this particular section? Opinions are divided. You have had experts, as have the House of Commons, saying, "Well, it is an interpretative clause; it does not mean anything," or, "It is an interpretative clause; it can mean a lot." We have different opinions even among people around here. I will read Senator Murray again on 2(A)(2) of the same date. He states:

> Let us be clear on two points. Nothing in the proposed amendment changes the distribution of powers between the federal and provincial governments.

Nothing changes distribution of powers.

> Nor does anything in the proposed amendment override the Canadian Charter of Rights and Freedoms, including women's equality rights.

If I can read English, it means that the proposed amendment of "distinct society" and French and English duality does not change anything. It is there to make Quebec feel good, I suppose, but nothing changes. The joint committee is a little less categorical.

First, you have read what they say on page 51. I am reading from the 1987 Constitutional Accord report of the Special Joint Committee of the Senate and the House of Commons at the top of page 51. It states:

> . . . in law the "distinct society" clause is unlikely to erode in any significant way the existing entrenched constitutional rights—

It shows a little less certainty than Senator Murray, but then you get to the "Distribution of powers", on page 45, paragraph 64, and there is even more uncertainty. Quite frankly, I do not like it, because, although it goes in my direction, the joint committee is not taking the responsibility for saying something. It states:

> It might therefore appear difficult to see how the "linguistic duality, distinct society" clauses could affect the division of powers without derogating from the powers, rights or privileges of one level of government in favour of the other.

They are protected by the famous section 2(4). They go on to say:

> Nevertheless, the Joint Committee was advised—

"We are not taking responsibility for this and we are not doing anything about it, but we were advised that:"

> The definition of the scope of the legislative power is an ongoing process of allocating subject matters to heads of jurisdiction. Take, for example, the regulation of markets for financial securities. Would such a law be classified as an aspect of the federal "trade and commerce" power, as some say, or of "property and civil rights" within exclusive provincial jurisdiction, as others contend? And what about a new law purporting to regulate the content of radio or television broadcasting?

Yet, there is nothing in the Constitution about broadcasting. The Fathers of Confederation had not read Jules Verne, and there is nothing in there about aviation as well as a lot of other

things that they have not thought about. What about a new law on those matters? It goes on to state:

> As new laws are made and challenged before the courts this process of classification of laws into federal or provincial jurisdiction continues. The court docket is limited only by the imagination and productivity of Canada's legislators and lawyers. The ongoing process of the constitutional "classification" of laws by the courts is one of the important areas where the interpretative provisions of the "linguistic duality" and "distinct society" clauses will come into play.

This is not a preamble. These are "interpretative provisions of linguistic duality" and "distinct society" which will come into play. Indeed, if this were not so, then the "linguistic duality" and "distinct society" interpretative provisions would be meaningless—a result that can hardly have been intended by its framers, except, of course, Senator Murray!

Really, the joint committee was advised of this and came to no conclusion, but they were honest enough to say it. Other people were even more honest. Read Premier Bourassa. This is from June 18, and is on page 8708.

[*Translation*]

—proceedings of the National Assembly.

I hope the guy who wanted it in French hasn't left. Here is the French, and this is what Mr. Bourassa had to say, and I quote:

> —the entire Constitution, including the Charter, will be interpreted and applied in the light of this section on the distinct society. The exercise of legislative authority—

[*English*]

So, not only the Charter but also legislative powers.

[*Translation*]

> The exercise of legislative authority is included, and we will thus be able to consolidate existing positions and make new gains.

[*English*]

Page 9031 also elaborates on that.

Mr. Bourassa's Minister for Federal-Provincial Relations, Senator Murray's counterpart, was quite clear, also on June 19, at page 8784. He states:

[*Translation*]

> —the distinct society gives us a tool with which to interpret and give real significance to this sharing of legislative authority, because there are grey areas and ambiguities.

[*English*]

In other words, sections 91 and 92 do not say it all. The courts will use the "distinct society" clause to say, "Well, because Quebec is a 'distinct society' it can extend its rights in this or that direction." Mr. Rémillard goes on and gives examples where Quebec's powers can be extended into broadcasting, banking—the very example of the joint committee report about the economic matters—and international relations. On that matter he says:

[Mr. Trudeau.]

[*Translation*]

> The possibility of expressing our views very clearly on the international scene in terms of our specific identity.

[*English*]

I suppose we can say that there is disagreement. At best, this clause is a prescription for discord, but, at worst, it says that Quebec will evolve under a different constitutional rule than the rest of Canada, because only Quebec is a "distinct society." Therefore, when it comes to a matter of interpreting the Constitution for Quebec, there is more than the possibility, there is a probability that the Constitution will be interpreted differently for Quebec than for the rest of Canada. I will come back to that in a moment when I talk about the consequences of this, but I want to draw a conclusion now. Quebec's five demands were all met in ways which weakened the fabric of Canada by denying the existence of a national will over and above the will of the provinces. The 1970 accord brings us back to the "compact" theory of the 1927 conference, that Canada exists as a country not by the will of its people but by the leave of ten provincial governments. To those who say that what we proposed in the 1970s had this consequence, I say that they did not go back to read what we said, or when they went back they made things up.

I come now to the negotiations. I would like to leave time for questions also.

It is important to point out that not one of the five demands was correcting some injustice that had been caused to Quebec in 1982. I am not blaming Quebec—I have always said that it is the job of provincial premiers to try to get more powers. It is the nature of politicians to think that they can do things better than politicians at the other level. However, Quebec was making five demands—not, once again, because it had suffered injustices in the 1981 deal, but because it wanted completely new powers. The proof that Quebec was not badly treated in 1981 is that it was not attempting to correct the things that happened in 1981; the whole operation was one of leverage; of trying to tell Canada that it could have its Constitution if it gave the Province of Quebec more power. That was the sole grievance after 1981 and the Constitution Act, 1982. Quebec had not succeeded in using its leverage to acquire more power. That is where Mr. Lévesque went wrong. He had ganged up with the other seven and had tried to bargain; he was ditched by his partners, and therefore he was not able to bargain for all that he wanted.

● (1640)

However, what he had bargained for within the "gang of eight" was, as I said earlier, largely given to him, so, I repeat, it was not that Quebec was short-changed; it was that Quebec did not get as much power as it was hoped it could have had if it had found in Ottawa a Prime Minister who believed in the "compact" theory.

Therefore, Bourassa was perfectly justified in trying to get more power, because Mr. Mulroney had declared during the 1984 election, and I quote:

> We will have to make commitments to convince the Quebec government to give its consent to the new Canadian Constitution.

It was really up to Mr. Bourassa to trade in that consent for the most power he could get for his province. I always thought he would get some. After all the things we offered in the 1970s, he should be able to get some. I did not think he had much hope for the veto, because he, himself, had thrown it away in 1971, and then Mr. Lévesque threw it away in 1981 and had added that all provinces were equal. Therefore, I thought Mr. Bourassa would fight for it, get, perhaps, four out of the five demands, and grudgingly rejoin the constitutional family.

However, I knew one thing: I knew that the Prime Minister of Canada was in a superb negotiating position. He had campaigned on a program of national reconciliation; he had won with the largest majority in history; he could have convened a federal-provincial conference to end constitutional squabbles, and told all of the premiers that they had better cooperate or else the Canadian people would conclude that the past ten years of bickering were not Trudeau's fault after all, since, even with a nice, new Prime Minister, the premiers were proving to be as quarrelsome as ever. Instead of doing that, he made it clear that he was the one who needed peace at all costs.

Then, I think, everyone must have watched in disbelief, because he proceeded to throw away all of the trump cards he had: Premier Lougheed wanted the abolition of the National Energy Program; he got it. Mr. Peckford wanted administration of the offshore that we had only offered to share with him; he got it. Mr. Johnson wanted to sit in at international summits; he got it, and then it was inherited by Mr. Bourassa. Mr. Peterson wanted to be involved in the free trade negotiations; he got that, too. Even President Reagan got the dismantling of FIRA and the abolition of the National Energy Program even before they were sitting down to discuss acid rain.

Therefore, in such circumstances, the Prime Minister of Canada and his entire cabinet were absolutely no match for Bourassa and his able Minister of Intergovernmental Relations, Mr. Rémillard, because soon after the 1987 election Mr. Bourassa really judged with whom he was negotiating, and he moved in for the kill. When Meech Lake was all over, Mr. Bourassa was able to say—and I quote from the *Toronto Star* of May 4, 1987, under the byline of Robert McKenzie. This quote is en anglais, I am sorry, but it is contained in the *Toronto Star*:

> We didn't expect, after 20 years, to reach an agreement. Then suddenly without warning, there it is—an agreement . . .
>
> We could have waited until next year; we could have waited until after the next federal election. We were under no pressure. I was serene, but when I saw that it was falling to us piece by piece, I said to myself "Bien voilà! There it is."

So much for the federal government's argument, picked up by many of the provinces, that there was and still is a great urgency to the whole matter. Bourassa could have waited until after the next election; why shouldn't we? As for Mr. Mulroney's so-called negotiating skills, I think they should be assessed in the light of Mr. Bourassa's further comment, made at the same press conference, to the effect that he had obtained more in the field of immigration and in the appointment of Supreme Court Justices than he had been seeking. At that point in the press conference Mr. Rémillard chimed in and said that Mr. Bourassa, at the meeting table, successfully argued for even tougher wording, which made the "distinct society" clause more powerful than Quebec had originally dared hope. In short, on three of Quebec's five demands—namely, immigration, Supreme Court and the distinct society—Quebec got more than it was asking for. Yet, for good measure, the Prime Minister throws in two items not asked for: the Senate, which we know about, and federal-provincial conferences, of which there were to be two per year, with an agenda which is fixed until the end of time—or, at least, until there is an agreement between Parliament and seven legislatures to change it. However, until the end of time, you will have on the agenda—with no sunset clause—fisheries and the Senate.

It is no small wonder that Premier Pawley could say—and I am quoting now from the Winnipeg *Free Press* under the byline of Francis Russell:

> The Prime Minister did a very good job of mediating. He was fair and sensitive throughout. He did not try to bully or pressure us at all.

No, he did not try to pressure the provinces into accepting more powers; no sir, he would not do that.

Premier Pawley goes on:

> Mulroney never once defended the national government's powers, but I felt he was not unhappy that Peterson and I (Pawley) were doing it.

That is, defending the national government's powers.

> The Prime Minister wanted to find an accommodation. He put pressure both ways. While he never really came out, I felt he was sympathetic to us.

That is, Peterson and Pawley—

> After all, we were trying to maintain national power.

Very helpful, Mr. Pawley. When the future of this country is decided at a conference of 11 First Ministers, when no one speaks for Canada except a couple of provincial premiers, encouraged by a little wink from the Prime Minister, that is a pretty sombre day.

So Prime Minister Mulroney gave Quebec much more than it had asked for in its Quebec Round. What did the federal government get in exchange? I will have to leave that for my next appearance, because I have a lot to say on that subject.

The federal government certainly did not trade in what the provinces gave to correct the flaws with which I was reproached in the article in *Le Devoir*, namely, the opting-out

and the notwithstanding clause. Certainly, even in the agenda you would think that the federal government would have put in one or two items, such as native rights, to be discussed at the next conference, or, at least, something payable to the federal government. Or was it to be another agenda, where Mr. Mulroney would give the provinces their choice?

I now refer you to Senator Murray's testimony, at page 210:

> I have heard it said that the federal government gained nothing in these negotiations, and that it gave but did not get.
>
> I reject these contentions totally. Canada is the clear and undisputed winner in the current round of constitutional negotiations.

I think it is good to have Quebec in. It would be better if we had it in on better terms. In the short run, it is good; in the long run—I will talk about that in my conclusions.

● (1650)

What did the federal government gain? I will read on. He says, "The strengthening of our country. The reconciliation of Quebec. Opportunities for economic policy coordination and future constitutional reform." You could always have federal-provincial conferences. That is not a great gain in terms of a bargain. You could always call them, so that was not a gain for the federal government. The reconciliation of Quebec? We will see. In terms of the strengthening of our country, I just want to ask the question: How do you make a country stronger by weakening the only government that can talk for all Canadians? That is the story of the 1987 negotiations.

Mr. Mulroney's government of national reconciliation was able to bring temporary peace to federal-provincial relations by negotiating a sweetheart constitutional deal whereby enormous amounts of power were transferred to the provincial governments, and particularly to the premiers—powers over vital institutions of the federal government and power over the people of Canada through a weakening of the Charter.

Viewed in perspective, that involved much more than the struggle that we had between two levels of government over the past 20 years. It was a struggle to establish the sovereignty of the people over all levels of government, and, by the proclamation of the Constitution Act, 1982, the battle for the people's rights was won. The war was not over, the Charter was not perfect, and we still have no referendum process, but the legal community was seeing to it that the Charter was having a real meaning, and the media was reporting the rights of the people over the rights of government, and people began to discover that they had a community of values, that the bonds of Canadian nationhood existed, and so on.

But that process of constitutionalizing the people of Canada, which had begun in 1982, was stopped in its tracks by the 1987 accord. Eleven heads of government were to meet in secret, in the dead of night, transfer unconscionable amounts of power from the national government to the provinces; submit the whole of the Constitution to an interpretative clause which entrenched the primacy of two collectivities, and, finally, decreed that no amount of participation by the people of Canada could ever lead to a modification of that accord or of the Constitution itself.

In 1982 the Quebec government was not in, because that government had stood for the division of Canada, but the people of Quebec were in. I refer you to a nice article by one of your colleagues, Senator Stollery, in *The Globe and Mail*, dated February 11, 1988, where he makes a tally of those who voted against the 1982 agreement. I do the additions, but the figures are his. Seventy-one Quebec members of Parliament voted for the 1982 Constitution; four of them voted against, and in the National Assembly, on December 1, 1981, there was a vote as to whether we would condemn Ottawa's and the nine provinces' accord or not, and 38 courageous Liberals voted against the Péquistes. That is for a total of 109 Quebec elected representatives for the 1982 accord, against a total of 74 against it, four in Ottawa and 70 in Quebec City. That is just tossed out for the benefit of some of those professors who teach that, somehow, Quebec was not in in 1982. It was in legally, and everyone knows that it was in legally and constitutionally. It was not in "morally" or "politically"—I think those are the words of the former President of the Canadian Bar Association, Mr. Yves Fortier. It was in legally, but not morally. Let us count heads of elected representatives and you will see that the Quebecers voted in favour of the 1982 accord.

Some Hon. Senators: Hear, hear!

Mr. Trudeau: In 1987 the Quebec government is in, but the Quebec people stand divided between themselves and from the rest of Canada as a distinct society. In 1980 there had been a victory of people over power; 1987 was a triumph of power over people.

The Supreme Court, at some point, is going to have to decide, does "distinct society" mean something or does it not? By the time they will have decided it will be too late, either the Quebec nationalists will have been had or the Canadian people will have been had, because if it is decided that "distinct society" and "duality"—linguistic duality—do not mean anything, then the province of Quebec will revert to the position it was in after 1982. It will be bound legally by the accord. But do you think it will be in politically and morally? Do you think Quebec is going to accept that it has been fooled by this phoney drafting, and that it will accept a decision by some five, six or seven judges of the Supreme Court—whatever is a majority—named by Ottawa, centralizers, anglos for the most, that "distinct society" has no meaning? Do you think that is a prescription for peace?

If the courts decide that "distinct society" has no meaning, won't we be in exactly the position we were in after 1982, where Quebec was bound legally, as it will be by the 1987 accord, but it is not bound morally and it is not bound politically?

We have Senator Murray again saying that he could not vote for the 1982 accord because, in conscience, he thought it was not right. I hope that some of you feel that, in conscience, this is not right, either. Senator Murray said, "Without Quebec's participation in our constitutional family, Canada's

future would remain in doubt." It will remain in doubt now, believe me, if the Supreme Court goes against it in a deal it thought it made, in a deal that Bourassa and Rémillard spelled out in so many words in the legislative assembly of Quebec. They may say, "He said it meant this and now the courts are saying we were fooled, we were had, we were tricked." Yves Fortier said, "Politically and morally the Constitution Act, 1982 does not apply to Quebec. Those who claim it does are guilty of constitutional heresy." This brings the matter back to the Supreme Court in 1981 where it was decided it was legal to go to Westminster, but it was not nice.

But it will not be nice if Quebec has been had in this deal. "Distinct society" would not have any force in law, but it would have tremendous force in the politics of separation, because already Mr. Bourassa, in the quotes I was reading to you, was warned by the then opposition leader, Johnson:

[*Translation*]

You will have to pay for this.

[*English*]

"You will have to pay for this . . ." if you don't get from Ottawa what you were supposed to get. I do not think Mr. Parizeau will be any more gentle than Mr. Johnson.

What if, on the other hand, the courts decide that "duality" and "distinct society" do have meaning? I think Canadians would discover, to their surprise, that the accord has empowered one provincial government to subordinate the rights of every individual Canadian living within its borders to the rights of a chosen community, presumably, the French-speaking majority. I know what that would do to French-speaking Canadians in other provinces, and I think they know. You cannot go around saying that the anglos will not have a right to put English even on the French signs in Quebec, but, in the rest of Canada, we are asking you to be good, and bilingualism is the way of the future. So we will have what? The possibility of building one Canada will be lost forever. Canada henceforth will be governed by two Constitutions, one to be interpreted for the benefit of Canada and one to be interpreted for the preservation and promotion of Quebec's distinct society—two Constitutions, two Charters, promoting two distinct sets of values, and eventually two Canadas—well, one Canada and something else; and lest the mistake be made of assuming that the Quebec Round gave Quebec everything that it wanted, we already have Mr. Bourassa in the Legislative Assembly on June 23, reported at page 9031, telling the Leader of the Opposition:

[*Translation*]

May I remind the Leader of the Opposition there will be a second round?

[*English*]

No. That staunch federalist, Premier Bourassa, had made his position very clear in the Legislative Assembly on June 18, at page 8709. He said:

[*Translation*]

. . . the Liberal Party recognizes Quebec's right . . . to freely express desire to maintain or put an end to the federal union with Canada. Basically, it recognizes the right of the people of Quebec to determine their future as they see fit.

[*English*]

He had just got Meech Lake and Langevin—the works, but, "We still have a right to be independent. We have just signed a marriage contract, but clause 1 says I can divorce at any time."

● (1700)

So our government on national reconciliation will have bungled its way into a no-win situation for Canada. There will be a showdown if this thing goes through. I know what is going to happen; but, as I was saying earlier, there are still some blunt tools left in the B.N.A. Act: disallowance, taxation—all modes of taxation; the declarative clause; expropriation for federal purposes, and so on. I would not like to be here to have to use them, but I can tell you one thing: It will be the end of the "peaceful kingdom;" and it is in vain that hundreds of thousands of French-speaking Canadians will have settled in the rest of Canada and tried to preserve their identity; it will be in vain that Acadians will have fought for generations against indifference and frequent hostility; and it will be in vain that many generations of Quebec politicians will have fought for the establishment of the French fact in Canada—not in Quebec, in Canada. I refer to Henri Bourassa, the great Bourassa; and *Le Devoir*, in those days fighting for Maillardville and fighting for Rivière de la Paix—

An Hon. Senator: Even L'Abbé Groulx.

Mr. Trudeau: —and maybe even L'Abbé Groulx. That dream will be gone; and even those who thought they could show that "French power" could exist in Ottawa, that it was not such a forbidding place to French Canadians who wanted to exercise their own, will find it to have been in vain. It will be in vain also that many thousands, and even hundreds of thousands, of Canadian children will have learned French across the provinces in immersion courses, and everything else, because they thought that this could be a country working on the basis of two official languages, bilingualism rather than dualism; that they could be united. So, in vain, we would have dreamt the dream of one Canada.

So what do we do with the conclusion? Well, the 1987 accord is unlike the parson's egg; it is not only bad in part, it is completely bad. I think it should be put out in the dustbin. And of course the Quebec nationalists will be pretty mad, and there will be some wishy-washy federalists who will be pretty mad, too—those who want to eat their cake and have it too. We should simply remind them of two things: First, that provincial governments have been holding up the process of constitutional reform for 80 years, and, in particular, that Premier Lesage of Quebec backed out of a deal in 1964, Premier Bourassa backed out of a deal in 1971, and Mr. Lévesque was left on the corner by his seven partners in 1981. But no-one broke down and wept. Once again, these experts from Queens or Toronto, or elsewhere, say that "Quebec is in a state of anguish since the 1980 accord because it wasn't in."

Life went on in the provinces. Sure, the Quebec nationalists will be a bit frustrated if the accord does not go through. That's the real world: "You don't always get what you want. You were offered it before, but you didn't take it. Now we are not offering it to you."

But more important, the second point is that Mr. Bourassa himself said that he could have waited until after the next federal election. Well, my conclusion is that we should do precisely that. In the meantime, what can be done by the people, by the provincial legislatures and by the Senate? Well, the people should demand that every candidate in every federal or provincial election or by-election should state his or her position on the accord. The Meech Lake Accord had not been debated in any Parliament or legislature before being agreed to in April 1987 by the 11 First Ministers. Therefore, the people should ensure that the same mistake is not made again, that it will be debated. And if a majority of federal MPs want to campaign in favour of the accord, and if they win their seats, then the governments of Canada and the provinces can put Meech Lake into the Constitution by using the amending process that exists.

That is what the people can do. They have the right to vote, and they have the right to know what their members of Parliament or the legislatures stand for from here on in. It has been done in New Brunswick already, and it is being done now in Manitoba—and I admire the courage and the independence of mind of a Premier McKenna or a Sharon Carstairs, who have the courage to stand up, not against Quebec, but to ask what the Meech Lake Accord means; and they want to make sure that they stand up for Canada after they have been told what it means.

So in the provincial legislatures, where the accord is not yet passed, members should consider that any amendment to the Constitution of Canada imparts a new orientation on Canada's destiny. So, voting on it should be a matter of conscience and not of partisanship. Members of those legislatures should force the government to ask for a reference to the Supreme Court, as was done by three provinces in 1980-81.

Some Hon. Senators: Hear, hear!

Mr. Trudeau: Before voting on constitutional amendments which will bind Canada for all time, the members have a right to know what will be the effect of the "distinct society" clause on women, or on the Charter in general, or on the linguistic minorities. They have a right to know. You don't vote when it is obvious that even the experts don't agree; and when negotiators in Quebec say one thing and senators in the federal government say exactly the other. They have the right to know what is the meaning of such phrases as "programs or initiatives compatible with national objectives." They have a right to know if the doctrine of necessity can be invoked if there is a paralysis of the Supreme Court.

So, in provinces where there might be an election of a new premier who had not signed the accord, and in those that have not yet decided, they should make a reference to the Supreme Court. That is in the law; that is in the practice; and I say, once again, that it is to the dignity of a member of the legislature not to vote on something the meaning of which he does not know; and if ever there was a case where the meaning of the Constitution was not clear, it is in the case before us now. So before they vote, let us get a reference. One was obtained in the 1980-81 period. It took something in the order of three or four months, and then we knew. On this occasion we still have another two years or more before time runs out.

• (1710)

What can the Senate do? Well, it is too late to use tactics, as you did on me in 1978, to threaten obstruction in order to get a reference, which we gave you. I do not think you have the time between now and April 23 to obstruct in any sensible way or any meaningful way. I suggest that the Senate pass amendments that will ensure that the resolution is corrected so that it means, if you believe in it, what Senator Murray says it does mean, that "distinct society" has no effect on the Charter or on the distribution of powers. That is the minimum amendment that you can make, but there are many others that, for a fee, I would be prepared to suggest to you.

Unless you fear that you are offending someone, remember the Langevin accord, paragraph 1 of the operative sector, which states:

> The Prime Minister of Canada will lay or cause to be laid before the Senate and House of Commons, and the first ministers of the provinces will lay or cause to be laid before their legislative assemblies, as soon as possible, a resolution, in the form appended hereto—

So they did that. They did not say the Senate could not amend it. They did not say the members of the House of Commons could not amend it. They tried to amend it. The Liberal Party proposed amendments that were not carried, but nothing in the accord says that the Senate cannot amend it.

I would suggest that if you want to know what you are voting on, you should make it clear and say what you think "distinct society" means, and maybe even within this chamber you will find that some Quebecers do not agree with some Ontarians on what it means—I do not know—but the stock-in-trade of legislatures, from time immemorial, has been to vote on something the meaning of which they assume they know, and then, when they realize they do not know, they clarify it with an amendment.

Therefore, I conclude that the Senate can and must send an amended resolution back and ask the House of Commons to vote on that.

There is nothing in the Constitution of 1982 that says the Senate has to believe exactly the same thing as the members of the House of Commons. So, if you want clarification, you should amend it and send it back, and the members of the House of Commons can discuss whether the clarification has made it worse; but, at least, the people will have been enlightened as to the real meaning of Meech Lake and the real direction in which the country is going.

I think we should take our chances. Let the people decide once they know what it means. If the members of the House of

Commons and senators and legislators of the provinces want to vote against the accord because they do not want it, then the accord should be discarded. The Quebec government might be a bit disappointed, but, then, it set the rules. In 1981 Premier Lévesque agreed that all provinces were equal. That is what they would get: They would get no Meech Lake, but everybody would be equal.

On the other hand, if the people of Canada want this accord, and that is not beyond the realm of possibility, then let that be part of the Constitution. I, for one, will be convinced that the Canada we know and love will be gone forever, but, then, Thucydides wrote that Themistocles' greatness lay in the fact that he realized Athens was not immortal. I think we have to realize that Canada is not immortal; but, if it is going to go, let it go with a bang rather than a whimper.

Some Hon. Senators: Hear, hear!

The Chairman: Thank you, Mr. Trudeau, for a very detailed exposé of your views on this most important subject. Your exposé has created a long list of questioners. At present there are 20 names on the list. I will have to ask my colleagues how they wish to proceed, or if they will simply control themselves so far as time is concerned. There is a 6 o'clock rule in the Senate.

The first name on my list is that of Senator MacEachen, to be followed by Senator Marsden.

Senator MacEachen: Mr. Chairman, before I put the question, could we agree that if we are not finished at 6 o'clock we will continue for a while? That would make it easier for me to begin my questioning.

The Chairman: If it is the wish of the committee, I will not see the clock at 6 o'clock.

Senator MacEachen: That is what I am suggesting.

The Chairman: Is it the wish of the members of the committee that the chairman not see the clock at 6 o'clock?

Senator Frith: The alternative, under our rules, is that at 6 o'clock you would leave the Chair and return at 8 o'clock. If we continue, that will avoid that two-hour period in between.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

[*Translation*]

Senator Tremblay: Mr. Chairman, you said you already had twenty names on your list.

The Chairman: Yes, I do.

Senator Tremblay: Were all twenty names handed to you during the speech or before this afternoon's sitting?

The Chairman: I received some names before the speech by our witness and others were added during this speech. Yours is on the list.

Senator Tremblay: That is because I just gave it to you. I waited until the end of the speech. I thought that was the usual procedure.

The Chairman: Yes.

Senator Tremblay: Mr. Chairman, one usually asks questions after the person has finished speaking.

The Chairman: Senator Tremblay, I can assure you I had your name on my list before we started.

Senator Tremblay: Mr. Chairman, in that case somebody else gave you my name. So I am more or less in limbo.

The Chairman: I don't want to inconvenience anyone, and I think we can manage something. First on my list is Senator MacEachen, followed by Senator Marsden.

[*English*]

Senator MacEachen: Thank you, Mr. Chairman, and thank you, Mr. Trudeau, for your presentation and your presence in the Senate. I certainly want to add my voice to the voice of the chairman in welcoming you to the Senate.

I know that in your presentation, which was very thorough, you dealt with the views of the Prime Minister, Senator Murray, Premier Bourassa and other people who might be regarded as actively partisan or biased in their views. I should like to put before you views expressed before the joint committee by someone I might say is a more unbiased witness, namely, Mr. Gordon Robertson, who is not involved in government now, and who is knowledgeable and experienced in this field.

I want to put my question in two parts, one being a series of tests which Mr. Robertson applied to the Meech Lake Accord, and which he found the accord had passed satisfactorily, and the second being a description which Mr. Robertson put on the record with respect to events around the referendum and what has happened since.

Now, to the first part. Mr. Robertson asked, and I quote:

> Are the proposed arrangements damaging to other fundamentals of the Canadian Constitution: the Charter of Rights, various protections for groups such as the aboriginals, multicultural groups, and that kind of thing? I cannot see that the accord is damaging in those senses.

That is the first test. The second is, and I quote:

> Another question is whether the agreement weakens the federal government in any significant and important way. Here one has to note that the accord does not change the distribution of powers in any way; nothing is changed in sections 91, 92, and 93.

Then the third test is put as follows, and I quote:

● (1720)

> Another question is whether there is a reasonable prospect of getting a better arrangement than the present one.

Mr. Robertson answered his own questions in these words:

> From my own experience in constitutional negotiations, I would think it is most improbable that it would be possible to get any arrangement significantly better than the present one.

That is the end of that quote and the three tests which he applied.

I then want to read what I described as an observation on the political scene in Quebec at the time of the referendum and later:

> In 1980, at the time of the referendum, a promise was made to the voters of Quebec that a "no" vote in the referendum would not be a vote for the status quo; it would be a vote for renewed federalism. What that renewed federalism was to be was not spelled out, but I think virtually everybody understood that it was to be something along the lines of what had been sought by Quebec governments over the years.
>
> So in effect what we have now is a situation in which the province that was the source of the constitutional negotiations has received none of the arrangements and adjustments it sought at the outset and those who thought there was going to be renewed federalism have received nothing of the kind that I am confident they thought was going to be produced. I would think it is an extremely dangerous situation for the future if we leave it one in which there is that sense of grievance, frustration, even perhaps of betrayal.

Mr. Chairman and Mr. Trudeau, I know that some of these matters have already been addressed broadly, but I wanted to put them in a pointed way because of the authoritative source of these comments made before the joint committee.

Mr. Trudeau: Mr. Chairman, I will try to answer briefly. The first question asks whether the arrangements of 1987 are damaging to the Charter or to certain groups. I would say offhand that they probably will not be helpful to the aboriginal people, but they will not be damaging, because section 16 has an exclusion that says that the Charter and other sections will continue to operate towards aboriginals and multiculturals. As I indicated earlier, however, the clause on the Yukon and the Northwest Territories certainly can have some very deleterious effects on the possibility of those Territories ever becoming provinces in places where the aboriginals, if they are larger in number, can exercise a role in government.

As to the rest of the Charter, from what has been advised to the joint committee people, as it appears in their report, it is quite clear that the Charter will be affected by the "distinct society" clause. It is quite clear that Mr. Bourassa says it will, that Mr. Rémillard says it will, and that the experts, in whom the committee believed in their report, say it will. I give a different answer from that of Mr. Robertson. He says no; I say yes, the arrangements are damaging to the Charter.

Will the accord weaken the federal government? Mr. Robertson says no, because there is no change in the distribution of powers. That is true, because sections 91 and 92 have been protected under section 2, paragraph (4). But it seems to me that the joint committee did not follow Mr. Robertson's argument. It followed that of Mr. Rémillard and Mr. Bourassa, who said that the list of items under section 91 will not be changed, but as to those things that are not listed—things such as aeronautics, communications and external affairs—it is the interpretation of the courts which will determine whether they are exercised by the federal or provincial governments. So far the courts have said that aeronautics and communications fall, generally, under federal jurisdiction. Now, however, the Supreme Court will have a new interpretative clause, which was put in there, presumably, for a reason. Constitutional authors do not constitutionalize something unless they want it to have a meaning. So the authors of this constitution have said to the Supreme Court, "You must henceforth interpret a judgment on aeronautics or on external affairs in the light of the 'distinct society' clause." That is the job of the courts. They must interpret laws as they are told to interpret them by the legislators. Once again, that is what Mr. Rémillard and Mr. Bourassa think this means.

Mr. Rémillard even gave an example of banking, which is something clearly defined under section 91; he argues—and I have not read all of it, but it is contained in the pages from which I quoted—that federal jurisdiction over banking may be all right, but, obviously, so far the caisses populaires have been authorized by judgments of the court, because they are not quite banks. He argues that they will be able to extend their powers. How far they will go is something the courts will decide. But it is not right to say there have been no changes in the distribution powers. There has been no change in the black letters of 1867, but there has been change in everything that flows from them in what has happened since.

Senator Frith: Even those black letters, under section 16, might be subjected to the distinct society interpretation.

Mr. Trudeau: Exactly; you have a point, because who knows? If ever we want to invoke section 92.10(3) on the declaratory power, the courts may well decide that the declaratory power is something the federal government has but should not use against a distinct society. For all I know, the courts might even say that reservation or disallowance should not be used against a distinct society. That is why I was arguing that, if these words have any meaning at all, they mean there will be a different constitution for Quebec than there is for the rest of Canada. Hence, Canada will be two nations.

Third, as to the prospects of better arrangements, here I agree with Mr. Robertson. It is not probable that there will be better arrangements than those contained in this accord—certainly not in the short run, anyhow. But the Portuguese have a proverb that goes like this: The worst is never certain. Some day there may be a party running for election in Quebec which would be prepared to take its chances with the rest of Canada. It could say, "OK, we Quebecers are as good as anyone else. We have a lot of powers under section 92. We do not need those distinct society powers. We have economic rights; we have rights over natural resources; we have rights over education; we have rights over our laws; we have rights over property; we have rights over a whole gamut of social legislation. It would be nice, because we are so great, to have more rights than the other provinces, but we are not that immature that we have to have some toy that the other guy does not have; we are prepared to make a go of Quebec with the rights we have. We are not asking for more than Ontario,

because we are just every bit as good as the people of Ontario, and we can run our business without getting special status or special power." Maybe. I know some people who, if they had gone into provincial politics, probably would have argued in that way. I think they probably would have been elected just as easily as those who asked for special status for Quebec.

Naturally, it is nice to be treated as special, and that is why the Quebec intellectuals have been so silent on the Meech Lake Accord. The people couldn't care less, but Quebec writers, intellectual thinkers, lawyers, and so on, have been silent on this agreement. Why should they refuse something given to them for free?

From the point of view of the ordinary Canadian, whether he lives in Quebec or British Columbia or anywhere else, what is important is the way the federal government spends its dollars and makes its laws and the way the Quebec government spends its dollars and makes its laws. It is not important whether a little more power resides in Quebec City and a little less in Ottawa, or vice versa, or a little more in Quebec than in New Brunswick. People want to be well governed.

Remember that the people of Quebec always voted against separatism when the Parti Québecois was asking for it in 1970 and 1973. In 1976 the PQ did not ask for separatism. They said they wanted to give good government, and the people voted for that. They went back to separatism in 1984-85 and the people voted against it. They want to be well governed. They don't care whether or not politicians have a few more powers.

The rising bourgeoisies do—the political elites. It is nice to be able to say that we are speaking for Quebec people, and those guys who get elected to Ottawa from Quebec are really not our gang. These are rivalries which exist amongst elites everywhere.

I think that a good writer, a good artist, a good musician, a good poet in Quebec is very much likely to succeed whether or not Quebec has special status. But if he is a bad writer, a bad poet, a bad artist or a bad musician, then he has more chance to succeed in Quebec, because he does not have to compete with the rest of the country. That is why I always thought federalism was such a great system, because it forces Quebecers to do what they are darn good at doing—competing with the other guys, competing with those people in Nova Scotia who think they are everything. He can show them, "We are as good as they are." That is what makes people better. If you lock yourself up with special statuses and special powers, then you only have to compete amongst the members of a clan, and it is easier.

Back to whether there ever will be a better arrangement, from the point of view of the Quebec people, I am prepared to take my chances, as I did in the referendum. I did not say, like Abe Lincoln, "You will break up this country and you will have war on your hands." If the people of Quebec want to vote yes for some fuzzy-minded question about the possibility of eventually separating, I will resign and somebody else can deal with how it will be separated.

I think that is what I would say to Gordon Robertson. Let the nationalists take their chances; let them try to get elected as Separatists again; let them—as I suggested after they won in 1976 and they said they would have a referendum—have a referendum soon; let it be clear and let it be final. I do not mean final for 100 years, but final perhaps for a generation. But, no, the PQ, and the separatist, plays the game of "heads we win and tails you lose." If they had won the referendum, they would have been all right; but they lost it, so they will have another one soon.

If the people who want Quebec to be a separate country really believe that, let them campaign quite clearly on that. It is not my option, but I respect those who have it. So far we have not had anybody able to go above 15 or 20 per cent of the vote when they talk about separation. Quebecers like to see the fight between the federal government and the provincial government, and sometimes it is as good as hockey.

You were talking about 1980, when Mr. Robertson was arguing that we would have said that if Quebec voted "no" they would get something along the lines of what the Quebec government wants. Let me remind you that Quebec got a lot of what Réne Lévesque wanted. He was part of the "gang of eight." Although he was not there on the fatal day, he had been there for eight or ten months. They are the people who put together what Quebec wanted, what Alberta wanted, and what Nova Scotia wanted. So Quebec was there for all but the signing ceremony. As I pointed out earlier, Quebec got a lot out of the November 1981 agreement. It got a right to control its natural resources in a way it had never had before, including indirect taxation and including negotiating externally. It had a veto which it had never had before. It now has a right to get out of the Constitution. By opting out under the 1981 agreement it did not have compensation, except in cultural matters, but then you ask yourself, "Why should Quebec get compensation on economic matters?"

You can understand the language problem, and perhaps those guys in Ottawa cannot deal with it too well. Next it will be that if you want to operate on somebody for appendicitis you will have to have special status, because Quebec appendixes are not like the rest of the country's. It is not right to say that Quebec got nothing, but it is worse to say that it had been implied that they would get some of their promises along the lines of what the Quebec government wanted.

I read you everything that the Quebec government wanted and what Alberta wanted and what Blakeney from Saskatchewan wanted and what Bennett wanted. I gave you the list of the September 1980 demands. Sure, they wanted more, but when November 1981 arrived the "gang of eight" had reduced it to a certain number of things, because they saw that we were prepared to go unilaterally if they were completely unreasonable, and Quebec was part of that. It is wrong to say that Quebec got nothing. It got a veto on all the articles contained in section 41, which it had never had before.

Whether or not it will be a dangerous situation in Quebec I do not know. Somehow I do not think that Mr. Robertson is all that qualified to say that. If, for some reason, Meech Lake

does not go through because of Frank McKenna in New Brunswick or Sharon Carstairs in Manitoba, I do not think any of us here who live in Quebec will be afraid to go home, and I do not think we will see people weeping in the streets. Will it be dangerous? Life is a dangerous business—dangerous, but not beyond the limits of all imagination.

Senator MacEachen: Thank you, Mr. Trudeau.

The Chairman: Next on my list is Senator Marsden, followed by Senator Olson, followed by Senator Doyle.

Senator Marsden: Mr. Trudeau, your statement this afternoon has been very helpful, not least because you referred to the fact that women's equality rights were added in 1981 after the agreement had initially been signed. The bringing out of that fact is very helpful.

You know, as everyone else here does, that the struggle put up by Canadian women and many sympathetic men, against some of the premiers and in favour of section 28 and other equality rights, gave the women of Canada—both anglophone and francophone, and from all the provinces and territories—a sense of being stakeholders in the Constitution and in the future of the country.

In current times we are being told three things.

The first thing we are being told by witnesses appearing before this committee—constitutional lawyers and others—is that there is a hierarchy of rights being created by provisions of section 16 that indirectly weakens the access to the Charter in the courts and, therefore, threatens the Charter of Rights with respect to women's equality rights.

The second thing we are being told is that if you come out and say there is a possibility that women's equality rights will be abrogated through this clause, somehow or other you are against Quebec. There is a "divide and conquer" strategy going on there.

The third thing we are being told by premiers and other politicians is, "We didn't mean to weaken your rights, or we didn't think we'd weaken your rights, but you should trust us, because somehow or other there will be a political solution that will overcome the situation which is being put in front of the courts."

This afternoon you have commented on the Meech Lake Accord from the points of view of political, historical and legal frameworks. Would you comment on those three messages that are being sent out to the women and the people of Canada?

● (1740)

Mr. Trudeau: Well, I would agree with your words "hierarchy of rights." It is quite clear that if "distinct society" means something—and I have argued that in the intention of its most important framers, those who are asking for it, it does mean something—then the protection women have under the Charter will be somewhat lessened. I may not argue exactly the way you would want, because, in a sense, I think that women, under section 28, are not as privileged as the aboriginals and the multi-ethnics under section 16, but they are more privileged than the rest of us males and other—no, I shouldn't talk about males, because section 28 talks about equality of the sexes.

If you read section 28—and the women were very clever when they made us put it in in that form—notwithstanding anything in this Charter, the rights and freedoms referred to it are guaranteed equally to male and female persons. So "notwithstanding anything in this Charter" could mean notwithstanding even section 1, which talks about reasonable limits prescribed in free and democratic societies. So perhaps there is equality of the sexes which will stand even that test, and no provincial government or federal government will be able to invoke "reasonable limits" in order to put women or men in their place because of the "notwithstanding" of section 28. That is a "perhaps."

It is amusing, and perhaps interesting, to realize that Quebec chose the words "distinct society," I guess because if they had said "distinct nation" they knew they would have a fight. But they could have said "collectivity," or they could have said "people," or whatever. However, they used the word "society," because here will be one distinct society using section 1 of the Charter to say, "Well, our 'distinct society' is a democratic society, and these limits are demonstrably justifiable. Therefore, we can trample on freedom of conscience or freedom of peaceful assembly because it is a 'distinct society.' But maybe we cannot trample on women or men under section 28, because it has a 'notwithstanding' claim." It is a chance you must take, but in the hierarchy I would say that women are perhaps a bit better off than those who think that freedom of association will not be able to be touched under it. However, they are certainly worse off than they were under the 1982 accord.

I know the tendency among the Quebec intelligentsia is often to say, "Well, we have our own Charter of Rights in Quebec and women will be every bit as well protected by our Charter. We do not want to be told by these people in other provinces that we cannot look after our sexual equality as well as they can." But there is a misunderstanding there. No one says that Quebec cannot have more progressive laws than anyone else. What one is saying is that that should not be used as an excuse to escape from the fundamental Charter of Rights and Freedoms, which should be Canadians' birthrights whether they are Quebec or Ontario residents or not. In other words, what I do not like about the Quebec argument is the suggestion that "we can look after justice in our own way and it will be every bit as just." I believe that with the kind of governments we have been having in the past years it can be every bit as just, but, to me, as a Canadian, that is not enough, because that is the argument that we would hear from everyone, and which we heard for years against the Charter: "Ah, the legislators can make good laws, so why do you need a Charter?" Well, the courts and the bar are showing us now why we need the Charter. A lot of Canadians are beginning to realize that it is important to have it. If we follow the Quebec reasoning, then we will say, "Well, the 'distinct society' will deal with women fairly, but in its own way."

Your other point was about being against Quebec. I think I have answered that. It is not because we are against Quebec's potential to be just and fair in the matter of human rights. On the contrary. It is not being against Quebec to oppose this; it is being for Canada. If Quebec wants to do even better than the Charter provides, so much the better for the women there.

The Chairman: The next questioner is Senator Olson, followed by Senator Doyle, followed by Senator Frith.

Senator Olson: Mr. Trudeau, I want to ask you one question about the prospects of finding a remedy some time with respect to the veto or the unanimity requirement in the amending formula, because it may be that after April 23 the Senate's 180 days will have expired and the process will be able to go on to circumvent this chamber. But governments do change from time to time, and it may be that another federal government will have a different attitude about that and many of the other things that you have referred to, and there may, at least, be the possibility of their happening.

Based on your experience, having been at perhaps more negotiations and federal-provincial conferences than anyone else, at least that I know of, can you tell us what the prospects are of getting out of some of these problems and the straitjacket of the unanimity requirement in the amending formula?

Mr. Trudeau: The irony is that we had gone pretty far in 1982 in giving a veto to the provinces. We did it somewhat reluctantly, but in section 41 of the 1982 accord we had amendment by unanimous consent for the Office of the Queen; Governor General; Governor of a province; right of a province to the number of members in the House of Commons being not less than senators; the use of English and French languages; the composition of the Supreme Court, and an amendment to this part. So we had gone a short distance towards giving everyone a veto. It was a concession, and, returning to Mr. MacEachen's question on Gordon Robertson's remarks, it was something that the provinces had never had before under the Supreme Court judgment, but now they were getting it. But for most of the other things which now have been put in "unanimity" by the Meech Lake accord, we put them under section 42(1).

That section said that what is needed is seven provinces, the federal government, and a majority of 50 per cent. I will not read all that this accord contains, but it covers the whole lot of all federal institutions and throws in the Territories to boot. So, in that sense, there was a veto before; but now it is so unconscionably wide and so completed by the fact that in the changing of powers from one level of government to the other there is an opting-out that we will never have the national will or the volonté générale; we will always have one province that either can be out or can prevent everyone else from being in.

• (1750)

You say to me: "Can that be remedied?" Here again I sort of quarrel with the negotiators, because Quebec was never asking for everybody to have the veto; it was asking for a veto for itself, and, as I pointed out, under the Victoria formula the provinces were prepared to give it. We never mentioned it, but we said that any province now having more than 25 per cent of the population will, in effect, have the veto. But here is an important point I want to draw to your attention: If the other provinces were so willing and so anxious to bring Quebec in—and they still are today, because they are still using that argument: "Don't turn out Meech Lake, because then Quebec won't be in." Quebec did not need Alberta, British Columbia, Manitoba and the rest of them to have a veto in order to get Quebec in. So if these provinces are such good Canadians; if they are so interested in getting Quebec in, I think you and I could probably have lived with a veto for Quebec, because of historic reasons, and size, and everything else.

However, all of these generous premiers who were fighting for Canada and finally let Quebec in said: "Me too." That is why we now have such a universal veto. You say to me: "Can we back out of that?" My reply is that I think we can; I think the electorate and the members of the various legislatures can take the attitude that, I think, is being taken by Mr. McKenna, the Premier of New Brunswick. He is saying: "I will have the right to name senators under this accord, but I do not have it yet. It is probably illegal to tell me that I have that right, because I do not think the federal government can delegate that right to me until the Constitution is really amended and until Meech Lake is part of the Constitution." He is saying: "I am not going to use this privilege; why do we not ask the rest of Canada, the Gordon Robertsons, and so on? You want to be generous to Quebec; you think there will be a tragedy if Quebec is not in—so let's let Quebec in." Okay. I would not give it special status, but I would give it something more on a veto; I would give it something more, perhaps, on the Senate. I would not give it very much, but someone generous like Mr. Mulroney could give it quite a bit—but not to the rest of Canada. Therefore, that is my answer.

Now that Quebec has said: "We are all equal—" and that was what Mr. Lévesque said in the spring of 1981, and that was what Bourassa signed at Meech Lake—"We are all equal, but somehow we are going to have a veto and you will not." It would take a lot of staunch Canadianism on the part of the other premiers to go that distance, so I am not giving you much hope.

However, it is a thought. If it is so important to get Quebec, why did they fill their pockets at the same time, and why did Mr. Mulroney fill their pockets at the same time?

Senator Olson: Thank you, Mr. Chairman.

The Chairman: Thank you, Senator Olson. Next is Senator Doyle, followed by Senator Frith, who will be followed by Senator Stewart (Antigonish-Guysborough).

Senator Doyle: Thank you, Mr. Chairman. Mr. Trudeau, I do hope that you have been impressed by a typical afternoon in a Senate committee.

I have only one question. We have heard at length this afternoon your views on the roles played in this debate by the Prime Minister and by the Leader of the Government in the Senate. We also heard a question by the Leader of the Opposition in the Senate, to which you replied. What we have

not heard this afternoon is your view of the position of the Leader of the Opposition in the other place.

I have a quotation here from an interview with Mr. Turner, which appeared in *Macleans* on January 11, 1988. In that interview Mr. Turner said:

> The Meech Lake Accord achieved the overwhelming purpose of bringing Quebec fully into the Canadian family. I would in no way re-open Meech Lake. Meech Lake is closed.

What are we to make of that?

Mr. Trudeau: You can make what you want of it, senator. Mr. Turner is a public figure; he stated his position; I take it you agree with him. I have, as you say, pointed out my disagreements with members of the government. I was not shy to do so. It would be even easier for me to do it with mere opposition leaders, but why bother? I am dealing with the people in power; the people who made Meech Lake; the people who can unmake it, if they want, and I do not have to express my opinion on leaders of the opposition or other parties. It is the governments I am after.

Some Hon. Senators: Hear, hear!

The Chairman: Thank you, Senator Doyle. Next is Senator Frith, followed by Senator Stewart, followed by Senator Argue.

Senator Frith: Mr. Trudeau, I want to ask you about something relating to the powers of the Senate arising out of a comment that you made twice about addressing the question as to what the Senate could do. It is a constitutional point, but it seems to be a bit of a heresy. However, if I am right, it would have quite an important political consequence. You are both the former Prime Minister who was, of course, very much engaged in the amendments in 1982, and you are also a professor of constitutional law. Therefore, I would like to take about three or four minutes with you, if I may, on this point.

Mr. Trudeau, do you have with you the Constitution Act, 1982?

Mr. Trudeau: Yes, I do.

Senator Frith: Do you have the amending formula, section 47?

Mr. Trudeau: Yes, sir.

Senator Frith: With respect to section 47, first, the understanding or the conventional wisdom is that the Senate has only a six-month veto; that is to say, that some people think there is a deadline, that the Senate cannot do anything after six months; but, of course, that is not so.

It is generally accepted that the Senate, because of section 47, can do nothing to amend the Constitution; that its powers are more limited than the powers of the House of Commons or of the other amending partners.

However, let me pause here. Up to section 47, it is quite clear that the Constitution cannot be amended except by a resolution of the House of Commons, of the Senate and of the necessary numbers of provincial legislatures. Without section 47, the Senate has an absolute veto over constitutional amendments. What does section 47 say? To attempt to reduce that power, it says:

> An amendment to the Constitution of Canada made by proclamation under sections 38, 41, 42 or 43 may be made without a resolution of the Senate authorizing the issue of the proclamation if, within one hundred and eighty days after the adoption by the House of Commons of a resolution authorizing its issue, the Senate has not adopted such a resolution and if, at any time after the expiration of that period, the House of Commons again adopts the resolution.

• (1800)

To put that in practical terms, and to put it into the context of the amending resolution that has been proposed to us here and that has been passed by the House of Commons, for section 47 to operate and limit our otherwise absolute veto 180 days will have had to pass without the Senate's adopting such a resolution. What can "such a resolution" mean? What is the antecedent of "such a resolution"? People assume it means a resolution in the same words as the resolution of the House of Commons, but it does not say that. It simply says, "such a resolution." The only antecedent to "such a resolution" can be a resolution authorizing the issuance of a proclamation.

If we pass a resolution authorizing a proclamation we will have blocked the operation of section 47. It is even clearer, Mr. Trudeau, in the French version, which you may not have before you. In the French version, if I read it correctly, it does not even say, "such a resolution." It says:

[*Translation*]

> 47.(1) Dans les cas visés à l'article 38, 41, 42 ou 43, il peut être passé outre au défaut d'autorisation du Sénat si celui-ci . . .

"Celui-ci" refers to the Senate.

> . . . n'a pas adopté de résolution . . .

It does not even say "une telle résolution" but only ". . . de résolution dans un délai . . .", and so forth.

[*English*]

I would be interested in your observations. It seems to me that if section 47 is intended to have the effect that people seem generally to assume it will have, namely, that we will have no absolute veto, then it has not succeeded in doing that, except in one circumstance, namely, if we have not passed such a resolution. Therefore, if this week or next week—that is, before the expiration of 180 days—we pass a resolution authorizing a proclamation—that is what the section says—we will have paralyzed section 47, knocked it out, and we will have an absolute veto.

Mr. Trudeau: That is pretty revolutionary, senator.

Senator Frith: I said it was a heresy, but I like "revolutionary" better.

Mr. Trudeau: Getting back into the context in which section 47 has been put in there, I think it is pretty fair to say—and I am talking as a political practitioner rather than as a constitu-

tional teacher—that what was envisaged was a process whereby the Senate could not frustrate forever the House of Commons in passing a resolution, but whereby it was intended that the Senate would still have a role to play. I think I can say without any doubt at all in my mind that those who adopted this section in November of 1981 and passed it into law in December, both in the provinces and here, envisaged that, ideally, an amendment to the Constitution of Canada—which calls for this difficult amending process, unanimity and so on, unanimity of the provinces, presumably—would need, hopefully, unanimity on Parliament Hill too.

That is why I was urging you so much to pass amendments to this resolution. I would rather throw the thing out, but, if you can improve it with many amendments, I am bold enough to hope that members of the House of Commons, now that they have had time to think it over, will hear witnesses, reflect, and perhaps talk to their electorate, will be prepared to accept your amendments, and therefore the framers of this amending process will have achieved not only the consent of all provinces but the consent of both houses of Parliament. I think that is the framework in which we should put it.

Therefore, let us take the peaceable way. You amend it, hopefully, considerably; send it to the House of Commons; they look it over; they accept many of your amendments; they have doubts on others; they want to reject some; the usual processes of consultation and so on take place and the wisdoms of both houses are put together and you come up with a much improved resolution. I think that would be the normal situation.

Suppose the House of Commons does not want to play ball, and says, "No, no, we cannot reopen it. We said we never would. We know there are mistakes. We really know there are egregious errors, but we don't want to say so. We know that once it is done, because of the unanimity thing, we are unlikely to be able to correct it forever without giving more powers away, but we just cannot do it." Some of them might be thankful for the interpretation you will give them.

Let us see if, in law, it stands up. You quite correctly quoted the words ". . . the Senate has not adopted such a resolution . . ." There is only one other place where the word "resolution" appears in that paragraph. It is ". . . resolution of the Senate authorizing the issue of the proclamation . . ." Except for one word, I would say your case is airtight. If you issue a resolution authorizing the issuance of a proclamation, then the 180-day rule does not give any power to the House of Commons, because you have done that.

The one fly in the ointment is the definite article "the." It says, ". . . issue of the proclamation . . ." I do not know what a court would judge. I would hope it would judge along the lines I have just argued, that in equity, perhaps, there are two houses of Parliament and they should try to agree. When you say issue of "the" proclamation, then you come back to the word "proclamation" that appears in line 2. It says, "An amendment to the Constitution of Canada may be made by proclamation . . ." Does "the" proclamation mean that particular one, or does it really mean the proclamation of what we are talking about when we bring in constitutional amendments? I think you can argue both ways.

I will get to the French version in a moment. You could say, "the" proclamation can mean the one that the House of Commons made, or it could mean "the" proclamation called for under section 38, which calls for ". . . a proclamation in order to . . . ," and so on. The "the" may refer to section 38 or to the beginning of section 47. Therefore, you are in doubt. But for greater surety we go to the French, which, you are quite right in pointing out, has no definite article. It has an indefinite article.

[*Translation*]

. . . n'a pas adopté de résolution . . .

[*English*]

It does not say "la résolution." It says "de résolution."

[*Translation*]

Senator Frith: —or "une telle résolution".

Mr. Trudeau: —or "une telle résolution".

[*English*]

It really says "any resolution." In reality, if you read the French, you could go ahead and adopt any old resolution talking about—well, Charles Dickens and something about the Constitution. But if you adopt a resolution which—

• (1810)

Senator Frith: Authorizes a proclamation.

Mr. Trudeau: —authorizes a proclamation, I think the House of Commons is stuck with it; and the 180 days will cease to run until they work on theirs and send something back, and then you accept it or you send it back again, and so on.

Senator Frith: May I ask one further question, and then I will stop?

Mr. Trudeau: I think that is an interesting point. I wish I were in my office.

Senator Frith: Make me an offer. For the record—and I know that you are rushed for time and there are others who wish to speak—I recognize the point you made on the English "the," and I appreciate your pointing out that if there is doubt about that the French helps by not using the definite article. Also, in the English text, something that might argue for an indefinite rather than "the" proclamation, in the sense of the proclamation undertaken by the House of Commons, is the fact that we do not send anything back. Under your formula, under the 1982 formula, anyone can start it. In other words, a province can start it; Prince Edward Island can start it—and they do not send it anywhere. I take it that in administrative ways they circulate it; but they do not formally have to send it along; and, similarly, we do not treat it like a bill. That is why I was against the idea of a joint committee—because a joint committee made sense under the previous system, which was a joint resolution. But we now have separate resolutions, everyone does his own resolution, and it seems to me that that would be an additional argument—although I like the comparison

with the French best—that it might be any proclamation, since so many resolutions, and resolutions authorizing proclamations, are possible under the new formula.

Mr. Trudeau: I would think that that does not strengthen your case, although I wish it did. It might weaken it slightly, because you would then have to argue that the legislator did not intend anything when he put in the 180-day rule; and, presumably, if it is in there, there is the beginning of an argument that the House of Commons wants to have some leeway against the Senate; that they are not, as you argue, too independently linked. Technically, you are right, and when I say, "referred to the House of Commons," I am not saying "referred" as you would refer a bill that you ask to be amended, but, rather, "Here is what we have done; and you have done that. Now, we have discharged our duty and you have discharged yours. Let us get together, fellows, and try to do something." So I think your case is very strong on the first point, reinforced by the French.

Senator Frith: Thank you.

The Chairman: The next questioner will be Senator Stewart, followed by Senator Argue and Senator Marsden.

Senator Stewart (Antigonish-Guysborough): Thank you, Mr. Chairman. My question for Mr. Trudeau concerns the spending power. I am a senator from Nova Scotia, one of those provinces that have not been enriched by extension into territories well endowed with natural resources.

Consequently, we have a strong interest in shared-cost programs. So I am interested in what you will say on the proposed new section 106A. As I read it, that section would permit a provincial government to opt out of any new shared-cost program and to receive reasonable compensation if it carried out a program or initiative compatible with the national objectives.

I remember what you said in your initial presentation. You felt that there was a good deal of uncertainty as to the meaning of compatible and national objectives. On March 2 of this year the Canadian Nurses' Association appeared before this committee. They told us that because of progress in the medical sciences, if health care in Canada is to be kept up to date, there will have to be new and reformed programs in the health care fields. They went on to say that the experience of the Canadian Nurses' Association was that even without the proposed new section 106A the ability of the Government of Canada to ensure that money transferred to the provinces for the purposes of shared-cost programs is used for the intended purpose is less than they would like it to be.

They did not disagree with the position you are now asserting, but they went beyond it. They said that they were certain that section 106A would have the effect of endangering, first, future health care programs and, second, reformed versions of existing health care programs such as hospitalization and Medicare. They told us, for example, that they were quite sure that the uniformity and portability of health care programs in these fields, under 106A, would be a thing of the past.

[Senator Frith.]

As a Nova Scotian representing Nova Scotians, the thought that the people of that province, a have-not province, would not be assured of uniform treatment in other provinces is really unacceptable. What I want to ask you is this: On the basis of your long practical experience with shared-cost programs, is there merely a sort of legal dubiety, or is there, as the Canadian Nurses' Association suggests, almost certainly that the possibility of new or reformed health care programs will be frustrated by the proposed new section?

Mr. Trudeau: Well, thank you for referring to my expertise. I wish I had the expertise of Al Johnson, the former Deputy Minister of Health and Welfare, who testified before the joint committee.

Senator Stewart: And here.

Mr. Trudeau: And here also?

Senator Stewart: Yes.

Mr. Trudeau: I did not see his testimony here, but I think he would very categorically have said that your pessimism was justified. I would say the same thing. Just thinking in terms of politics, other provinces might say, "Well, what are you complaining about? In Nova Scotia, if you want to have your health care thing, we will give you the money to have it. You will have full compensation if you opt out of the national program. Therefore, you won't get universality and portability, but you will have the diversity which is Canada, and you should be prepared to live with that."

• (1820)

That is probably an unsatisfactory argument for you, but I have to go on and say that it would not even be that good, because in a matter such as health care, without even trying to improve it in the way you say, we know from experience and from the fights we had with several provinces during the 1970s and the 1980s that we would not have the same system in Alberta or in Ontario or in Quebec. Quebec has a better system in that there are no extra taxes, but there is no portability, and that is the price one pays for living in a distinct society.

It would be worse than that, because federal politicians would say: "Why should we do the taxing and bear the problem of being the tax collector simply to give the money to Nova Scotia or Alberta, or to a rich province like Ontario, just so they have their own system"? That defeats the whole purpose of using the spending power—as Mackenzie King used it and as everyone else since him has used it—to create a feeling among all Canadians that they belong to the same country and that the federal government is not just a tax collector; that the federal government is not something that is going to remain strong and vigorous by being identified in the citizens' minds as that "far away power that takes our taxes but never gives us any benefits, except in wartime when it gives us guns, but we get Medicare and other programs administered by the provinces."

Family Allowances, of course, is a case that is not in provincial jurisdiction, because those moneys are given directly

as grants, but, as I was about to say, that is the way Premier Bourassa and Premier Levesque wanted to operate.

I am drifting a bit, but getting back to your question, shared-cost programs within areas of provincial jurisdiction just will not happen if the federal politicians only get to tax and do not get to ensure some form of Canadianization and portability and national will, which would underlie that.

You gave one example, but I think as we go on we will realize, for instance, that in the future we will have to integrate a lot of our welfare and social assistance programs. Unemployment insurance benefits are under federal jurisdiction, workplace accidents are under provincial jurisdiction, and other social benefits are under municipal administration. At some point it would be important to integrate all of those programs and, perhaps, to reform the Unemployment Insurance Act by not giving power back to the provinces but making sure the provinces legislate in the same way.

If each province can say: "No, we are going to take the money but not pass the laws," then you would be damaging the whole area of social programs that benefit all Canadians.

The Chairman: Are you finished, Senator Stewart?

Senator Stewart (Antigonish-Guysborough): It may well be that other senators want to pursue this.

The Chairman: Honourable senators, I think we should stop for a moment and see how we wish to proceed.

We have had questions now for one hour, and we have only gone through six names on the list. There are another 12 names on the list. On that basis, we would be two more hours. I think it is unfair to the witness—who has been in the stand for three-and-a-half hours—to continue.

There are two ways we can proceed; we can go on for another half hour and then break, or we could break now for three-quarters of an hour and return at 7.15 p.m. to complete the list then.

What is the wish of honourable senators?

Mr. Trudeau: Mr. Chairman, I can undertake to answer much more briefly, if that is of help, provided you hold me to it. I am sometimes afraid of being insolent if I just answer in a few sentences, but if you order me to do so—

The Chairman: No. I have deliberately not attempted to interfere with the questions or answers, because I think it is important that there be an opportunity for full questioning and that you have an opportunity to give full answers. It is not my intention to limit the questioning or the answers, or, indeed, the questioners, except that I would propose to close the list now and not add any more names.

Senator Frith: Mr. Chairman, as you have implied, there are two considerations, the consideration of the Senate and senators, and also the convenience of the witness.

Mr. Trudeau: I am okay.

Senator Frith: Can we have your reaction, Mr. Trudeau, to our continuing for three-quarters of an hour and then finishing at 7.15, or would you rather break for 15 minutes now and go until 8 o'clock?

Mr. Trudeau: I would rather go right through, if I am given a choice, but I can come back in 45 minutes.

Senator Frith: If the witness is prepared to go straight through, I think we should do so.

The Chairman: I gather the consensus is to continue.

Senator Pitfield: Mr. Chairman, some of us have not asked that our names be put on a list because we wanted to ensure that there was a full opportunity for others to ask questions. There is another possibility that I would ask you to consider, and that is whether or not the witness could return at a later time, perhaps tomorrow. Do we have to finish in three-quarters of an hour?

Mr. Trudeau: It would be difficult for me to return tomorrow, but thank you for the suggestion.

Senator Frith: If the witness is prepared to continue, I think we should.

The Chairman: I hear no objection.

Senator Doody: Mr. Chairman, I think it would be better to go right through. Perhaps we should try to abbreviate this a little, although we do not want to miss a syllable. Nevertheless, if things were a little more concise, perhaps we might get more opportunity to ask questions.

The Chairman: I hear you, and I hope that others have heard you as well, Senator Doody. I gather that the consensus is to continue.

Next on the list is Senator Argue, followed by Senator Marchand, to be followed by Senator Fairbairn.

Senator Argue: Once again, this has been a first-class performance.

Since the Meech Lake Accord was announced, and since the discussion has gone on, do you think that within that period of time there has been any strengthening of the separatist element in the province of Quebec or elsewhere in Canada?

I bring to your attention quotes from a *Globe and Mail* article which reports the Speech from the Throne in British Columbia. The article is in the *Globe and Mail* of March 16, and I quote:

> Mr. Vander Zalm indicated his Government will study areas of federal jurisdiction with British Columbia and determine which would "more appropriately be administered by the province."
>
> "We will target our actions towards key sectors of economic growth, such as communications, airports, port facilities, boards and commissions and other agencies."

The article goes on to state:

> Mr. Vander Zalm then made clear that he intends to put Canada on probation.
>
> "We will develop ways and means . . . and make public on a regular basis, an evaluation of our status and treatment within Confederation."

• (1830)

Since that was announced, do you think it has kept Canada more united or amicable, or has it added to separatist elements in various places?

Mr. Trudeau: I think the expression in French is l'appétit vient en mangeant, which means that if you eat, you get hungrier. I used the expression in my presentation that the demands of the provinces were really a bottomless pit.

The reason I went through the 1976 Premiers' consensus, the 1978 Premiers' consensus and the 1980 Premiers' consensus is that the longer they discussed things with me, every time I gave a package, the greater was the possibility they would say, "Oh, but we have thought of something else we want." I think that is where Premier Vander Zalm is going now. He is saying, "Well, it was Quebec's round, and they did get a pretty nice deal"—forgetting that British Columbia also has the opportunity to name senators and judges and has opting out powers—"but now it is somebody else's turn." This government of national reconciliation has a lot of reconciliation ahead of it to bring about, as you can see.

In Quebec, I do not think anything has happened. The people care very much, but, in terms of political parties, what we have seen is the replacement of a somewhat moderate leader of the Péquistes by a hardliner. Obviously, Meech Lake has not had the effect of creating what used to be called "fédéralisme rentable ou le beau risque du fédéralisme." That is the expression Réné Lévesque brought out after Mr. Mulroney became Prime Minister. Federalism under Trudeau was not a good risk for Quebec, but under Mulroney it was a beautiful risk. The people of Quebec could see what they could get out of Canada and maybe they would not have to leave. Mr. Johnson told Mr. Bourassa that he did not get enough, to which he replied, "Well, there will be more rounds. I got a lot this time, but I have more up my sleeve. I always have the threat of separation, because it is part of my party's program, too, the ultimate self-determination of Quebec."

I think what is happening is they have got a soft Prime Minister and they will try to get as much as they can out of him in the next round. Mr. Peckford was given the offshore, but now he wants fish. Mr. Vander Zalm wants to have his share of the next round. I do not think it would really mean anything if Mr. Mulroney decided to stand tough and say, "The bar is closed, there are no more free drinks. You guys can line up if you want to, but I ain't pouring any more." I would not think that that is a serious threat of separation, but it certainly proves that you do not quench thirst of drinkers by giving them a few free drinks. You cannot think that they are going to stop there.

Senator Argue: I want to project something that has a lot of assumptions attached to it. You asked some time ago why you should comment particularly on the position taken by the Leader of the Opposition in the other place. But the Liberal Party in the House of Commons put forward a number of amendments that were supported. I read the papers and my impression is that if Mr. Turner is elected as Prime Minister in the next election, his position will be—and I believe he has stated it publicly—to try to get certain amendments made to the present accord, amendments having to do with native rights, the rights of the northern Territories, and so on.

If Mr. Turner, as the next Prime Minister, put forward all of his proposed amendments and nothing is changed, perhaps that government will take the attitude that it cannot accept Meech Lake as it now is and that, therefore, it will say no to the present Meech Lake Accord. My question is this: What will that do to Canada? What will that do to the possibility of separation? Could a new government taking that attitude deal with all of the strife that would follow and come out with a Canada that is in fairly good shape?

Mr. Trudeau: What do you mean by "all of that strife that would follow"? What strife?

Senator Argue: Well, arguments.

Mr. Trudeau: I have had arguments and they never made me lose elections, except for one. I was attacked all of the time in much of the Quebec media and, I would say, even much more by the British Columbia media. You take your chances. I do not want to comment on Mr. Turner for the reasons I stated earlier, but I spring to attention when I hear somebody threaten strife.

Senator Argue: All right, that is the wrong way to put it. I did not mean strife in a physical way. I meant arguments, strong arguments and difficulties.

Mr. Trudeau: Sure, that is the stock in trade of federalism. Strong arguments started with John A. Macdonald. For heaven's sake, we had British Columbia going to Westminster directly in 1904 to get more money. There were terribly strong words used all of the time—that is what politicians do. The people do not cause strife because the government suddenly does not have a little bigger share of the pie.

Senator Argue: So if we revert to the current Constitution rather than the proposed accord, you would think that Canada could be strong and that, perhaps, other amendments could be made after that?

Mr. Trudeau: I am saying that if Meech Lake goes through, Canada will be weaker. I do not see how you could make a country stronger by making it weaker, particularly in today's world. It has always been a tough game out there, but now nations are cutting things pretty close to the bone. If you want to bargain out in the world, whether it be with a free trade agreement or bilateral agreements or fisheries agreements or anything, you have to have a pretty strong federal government. Put yourself in the situation in which the provinces can triangulate between Ottawa, Paris and Washington, for example. Canada will not be a strong country under the Meech Lake Accord. That is why, basically, Canadians, with all their gripes against the federal government, still go to the polls and elect and change governments. Nobody wants to change the federal system. I do not think the Vander Zalms really mean it any more than the western separatists did in the seventies when they were threatening separation.

As I said in my concluding remarks, however, if the people want to go that way, I will probably go on living in Quebec and you will probably go on living in Saskatchewan, Ottawa or wherever. It will be a worse country for it, but I do not think you can worry about possible dissatisfaction or strife in a way that prevents you from doing what you think is right for the country. You take your chances. I have great faith in the Canadian people and also in the people of the provinces, particularly my province. They play a beautiful game of checks and balances. They voted for Lévesque; they voted for our party. If the Prime Minister of Canada gets tough, they will probably vote for him more than they would if he gets soft, whether this Prime Minister or another one.

The Chairman: The next senator on my list is Senator Marchand, followed by Senator Fairbairn and Senator Lucier.

Senator Marchand: Mr. Trudeau, the aboriginal peoples of this country are pretty angry about the Meech Lake Accord. They are left off the agenda. They are not even as important as fish.

When the last amendments were passed in 1982, perhaps you will recall that I had a conversation with you, and I told you about the amendments that were put in. Section 35, I thought, was some of the most important legislation brought forward on behalf of our peoples since the Royal Proclamation of 1763, and I still believe that.

Do you believe that agenda items can only be added by unanimous consent, especially relating to aboriginal issues? The other question I have is this: What are the implications of the distinct society for Quebec in relation to our people, especially in the province of Quebec where there is a lot of despair in the groups who have appeared before us? Perhaps you can comment also on people outside Quebec.

Mr. Trudeau: In answer to your first question, senator, I would say that you do not need unanimous consent either to add or subtract agenda items. I am looking at subsection 50(2), which says:

> The conferences convened under subsection (1) shall have included on their agenda the following matters:

The word "shall" is imperative. They name "the Senate, fisheries and such other matters as are agreed upon." The last clause, "and such other matters as are agreed upon", is one of those vague clauses. Who will agree? Does it have to be ten provinces, or can it be seven, or only the federal government?

I would say that in order to subtract amendments you need to go through the amending process. Part VI, Constitution Conferences, is sloppy drafting because of haste. It says, "shall have included on their agenda," and it does not have any sunset clause. The Senate and the fisheries will be there forever. To take them off you would not need unanimous consent, but you would have to use the amending procedure provided by section 38, where you need seven provinces, 50 per cent of the population, plus the federal government.

To take fish off you need to have the agreement of seven provinces. You could probably manage if you gave Mr. Peckford everything he wanted. I do not know what some of the other provinces might say, but to take something off you need to make a constitutional amendment to change the agenda.

To put something on the agenda, it is not defined. It says, "such other matters as are agreed upon." I would guess that if that had to be interpreted by the courts they would say, "We will presume it is agreed upon by the same number as needed to take it off." So you need seven provinces to add aboriginal rights to the next constitutional conference. You had better start lobbying!

Regarding your question about what the distinct society would do to aboriginals in Quebec, one of the things that the Quebec government did when it decided to boycott the constitutional conferences was not to be there when we were discussing aboriginal rights. They were there as observers, but did not participate. Obviously, that was not good for the Indians, because Quebec is more favourable to the recognition of some form of aboriginal rights than some other provinces that we know of. It would have been better had they been there, and I think they did not attend in order to make the Indians feel that the 1982 accord was not such a great thing after all, because Quebec was not there.

I should not be talking to an expert on the matter, but, by and large, Quebec has dealt, and will deal, with the aboriginal people as fairly as any other province in Canada. That does not mean that that is what the aboriginal people or the native people want. They want a specific deal, and I think they are right in wanting it in the Constitution when they ask for some form of self-government—not self-determination, but that is another subject.

I think they would have to have it on the constitutional conference agenda, and Quebec being in on the Meech Lake Accord would give you one more vote to get it on the agenda. On the other hand, being in the accord means that there is a distinct society, and here I come to your second question.

The distinct society is not defined anywhere, but, at first blush, I would not think it includes the aboriginal people, because subsection 2(1) talks about French-speaking Canadians concentrated in Quebec but present elsewhere in Canada. It does not say much about Indians or anything like that. The Indians and aboriginal people would be protected under the Charter rights. As I argued earlier, Charter rights can be weakened by the "distinct society" clause. I am not saying that they will be; I am not even saying that the English-speaking Canadians will be worse treated after Meech Lake than before, but I am saying that they will not be as protected under the Charter.

I think it is safer to stick with the protection you have rather than to try and get some hypothetical improvement by going for an amendment which does not give you any special rights.

Senator Marchand: Thank you, Mr. Chairman.

The Chairman: Thank you, Senator Marchand. Honourable senators, I will give you the list of names that I have. Some senators are asking for supplementary questions and I have not accepted them. I have the following names on my list: Senators

Fairbairn, Lucier, Adams, Cogger, LeBlanc (Beausejour), Bosa, Ottenheimer, Grafstein, Tremblay and Hicks.

Senator Fairbairn: Thank you, Mr. Chairman. Welcome, Mr. Trudeau. At the beginning of your remarks earlier this afternoon you talked about correcting mistakes and you talked about some of the flaws of 1982 being made infinitely worse in 1987.

From our hearings, particularly in the North, we would conclude that what was seen as a flaw in 1982 in terms of the establishment of new provinces in the North in the future has been made infinitely worse in 1987, because you may remember how angry northerners were when their future came within an amending formula in 1982. Now it is locked into the unanimity clause.

● (1850)

First, I would like to ask you why the change had to be made in 1982. Was that one of the compromise trade-offs? What hope do you see with the unanimity formula, if this thing goes through, for the future of provinces in the North with all that implies in terms of sovereignty?

Mr. Trudeau: To answer the 1982 question first, it was a trade-off based on the fact that there are sort of conflicting interests between the provinces and the federal government. From the point of view of the federal government, theoretically, the more provinces there are the easier it is to divide those provinces into groups, or clans, or conflicting groups of interest.

To take an obvious example, the United States, with 51 states, has a situation where the states have considerably less power than if they only had ten states down there. Ten states the size of New York and California would be a big threat to Washington. But the more there are, the less the central power is subject to being ganged up on. Now, the provinces have the opposite view. They would rather be few in number. Adding a couple of new provinces—perhaps two or three by carving out the Territories—would dilute the powers of the other ten, and dilute it all the more seriously, so that you would be getting provinces with interests, particularly in land, which are not the same as, for example, the normal attitude of, say, the Government of Alberta or British Columbia. Also, there is the fact that those provinces have drawn hypothetical maps where they see themselves stretching up into the Yukon and stretching up from Alberta to the North. They would like to get that some day. It is that kind of thing where they say, "We said unanimity never, but, okay, we will rely on my old saw and national will. If seven of us representing 50 per cent of the population cannot agree to have new provinces, then we will wait a while."

Do not put me in the position of defending the 1982 amending formula. I think it was much too rigid and had the opting-out position, but there it was. When we talked about the Victoria formula, my recollection is that we did not even mention the Territories in that it was understood throughout the seven days that the Territories were under federal jurisdiction until the day that the federal government would establish new provinces under the rules, under the concept of the provinces themselves, or under the two new frontiers. You have to get the agreement with the other side and do some work. It was a bad compromise, just like the opting-out thing was, but it permitted us to get a Charter, entrench aboriginal rights, and patriate the Constitution. We had no choice once the Supreme Court said, "You cannot go it alone without giving the Lords in Britain a chance to review it." This is all water under the bridge, but there is the explanation. That is why it happened in 1982.

Why it happened in 1988 is even more of the same. The provinces had taken a giant step in 1982. Honestly, I think those provinces are worse than the federal government ever was in that they will never be in a hurry to give provincial status to the Territories. The federal government, at least, had the precedents of 1905, or 1911, when it gave Quebec and Ontario the great North, and it had the precedent in 1931 when the federal government gave resources to the western provinces. They had been erected as provinces since 1905, but only got their resources 25 years later, while in the case of the central provinces they were provinces in 1867, but only got their resources in the North more than 30 years later. That is what is going on in the minds of the provinces. They want to stave off the day forever where those Territories will become provinces, particularly if there will be a majority of native people in some of them. It will then give the native people a government which will be sitting at the interprovincial conferences and can get into the game of bargaining fish against rights, and so on.

The Chairman: Thank you, Senator Fairbairn. Next is Senator Lucier, followed by Senator Adams and Senator LeBlanc.

Senator Lucier: It is nice to see you, Mr. Trudeau.

We have heard a lot of talk today about special rights. I would like to start out by saying that the people from northern Canada do not ask for more rights than other Canadians; they just want the same rights that are enjoyed by a Canadian who lives in a province, and that will not be the case under Meech Lake.

A task force of this committee travelled to the Yukon and the Northwest Territories to hear submissions on Meech Lake, and, believe me, we got an earful. We were told that since the Senate and Supreme Court appointments shall now be made from provincial lists supplied by premiers, and since future provincial status has now virtually been denied to them by the "unanimity" clause, they would now be second-class citizens and that that status would be entrenched in our Constitution. It has been stated repeatedly by the elected leaders of both northern Territories that at no time were they involved in the discussions that led to the Meech Lake Accord. They were not invited to Meech Lake; and they were not invited to the Langevin conference. We feel that we were denied the same privileges as other Canadians of being represented when the accord was being drawn up. Our position is not that we lost the argument, it is that we were never permitted to argue.

[The Chairman.]

The Constitution Act, 1982, which you have before you, on page 12, section 37.1(1), dealing with constitutional conferences, states:

> In addition to the conference convened in March 1983, at least two constitutional conferences composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada, the first within three years after April 17, 1982 and the second within five years after that date.

Section 3 is the key to the question that I want to ask you, Mr. Trudeau. It states:

> The Prime Minister of Canada shall invite elected representatives of the governments of the Yukon Territory and the Northwest Territories to participate in the discussions on any item on the agenda of a conference convened under subsection (1) that, in the opinion of the Prime Minister, directly affects the Yukon Territory and the Northwest Territories.

Mr. Trudeau, as you know, I was involved in the joint committee at the time. I remember that clause being put in there, and I remember why it was put in there, because we really felt that if any meeting should be convened to deal with anything that affected the Territories, we, at least, wanted to be there. My question, sir, is: How could Meech Lake have happened when that section is there? Is Meech Lake not a contravention of that section of the Charter?

• (1900)

Mr. Trudeau: As you point out, it does say "shall invite" when it affects the Yukon Territory and the Northwest Territories. There is no doubt that the Meech Lake Accord and the Langevin accord affect those Territories in the way we have been talking about in discussions with Senator Marchand and Senator Fairbairn. So that "shall" is imperative.

Senator Frith: Except for the "in the opinion of the Prime Minister."

Mr. Trudeau: Yes, "in the opinion of the Prime Minister." However, as we know, in the courts, when they talk of opinions, unless the clause is spelled out otherwise, they are always interpreted as reasonable opinions. In other words, an opinion that can reasonably be held.

It would be hard to argue that when you are affecting the Northwest Territories, as does the Meech Lake Accord, it could reasonably be held that they do not fall under this clause. Therefore, I agree with Senator Lucier that those meetings were held in contravention of section 37.1(3). However, there were amendments on further conferences, which I do not have. I have the earlier text here.

However, to return to my argument, you read subsection (1)?

Senator Lucier: Yes, subsection (1), I think, is important.

Mr. Trudeau: I have:

> . . . within one year after this part comes into force.

However, later that year that was amended to spell out certain dates.

Senator Lucier: Mr. Trudeau, in dealing with constitutional conferences, it says:

> In addition to the conference convened in March 1983, at least two constitutional conferences composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened . . .

It does not say that there will be only two; it says that there will be at least two. Therefore, I would think that subsection (3) would apply to any future conferences.

Mr. Trudeau: Senator, my answer is yes and no. That is why I wanted you to mention the dates to me. I did not remember them exactly. In subsection (3) it says:

> . . . of a conference convened under subsection (1) . . .

And subsection (1), as amended, puts in these new dates. It also mentions at least two constitutional conferences, but it does not mention further conferences. So I am not sure you could argue that subsection (3) applies to any other conferences but the ones specifically pointed out in subsection (1).

Regardless of that, even if you were right, the question is: What kind of redress is there for this?

> The Prime Minister of Canada shall invite . . .

However, he did not invite. I do not think a court would invalidate the decisions taken at Meech Lake or Langevin because the Prime Minister did not discharge his duties. There may be some damages that should be paid, but I do not think the decisions would be invalidated by the fact that people were not invited, provided that the amending process was followed. That is the operative element, provided the Senate, the House of Commons and the provinces do it.

However, you have been left out, and you probably could have taken a mandamus against the Secretary to the cabinet or the Minister of State for Federal-Provincial Relations, or something like that.

Mr. Chairman, I think it is interesting, but I am on my own time now and I do not think I can add anything further.

Senator Lucier: Just one more question, Mr. Chairman. I do not think it is any secret, Mr. Trudeau, that I, as a northerner and as a Canadian, would love to see this Meech Lake Accord go down the tube, which is what it deserves. I am wondering if you have ever considered going to other parts of Canada, other than around here, and explaining to Canadians what is really contained in the accord. I think if a person such as yourself were to go to other parts of Canada, such as the West, and tell them what was contained in the accord, they would listen to you. I do not think there is anyone else doing that, and I wonder whether or not you would be interested in doing that if you were asked.

Mr. Trudeau: Senator, I suppose the simple answer is that I have been invited at various times to participate and I have always refused. I wanted to appear before the Senate and before the joint committee because of my relationship with those places in a former avocation. However, I am not in the business of politics any more. As I told Senator Doyle, I am trying to influence governments, but I am not on the campaign

trail trying to influence people, including Leaders of the Opposition.

Senator Lucier: Thank you, sir.

Mr. Trudeau: Thank you, anyway, for the invitation.

The Chairman: Thank you, Senator Lucier. Next is Senator Adams, followed by Senator LeBlanc.

Senator Adams: Thank you. Mr. Trudeau, it is nice to see you again, and especially here, appearing before the Senate Committee of the Whole. Most of the questions I wanted to ask have already been asked by other senators. However, I have one question I would like to put to you.

Since the signing of the Meech Lake Accord on the last day of June, as Senator Lucier has said, some of the people in the Yukon and Northwest Territories feel kind of left out, especially since we consider that our Territories are also a part of Canada.

However, under the Meech Lake Accord, the ten premiers now have a veto. When you were Prime Minister some negotiating was under way with the native peoples as to their aboriginal rights, and I believe that you yourself took part in some of those negotiations. Now, since the signing of the Meech Lake Accord, if the subject of the territorial rights of the people in the North is even mentioned, especially to some of the premiers, it is quite clear that they would like to acquire parts of those two Territories.

In the meantime, we who have lived up there in the North for a long time would like to see ourselves gain control of that part of Canada so that, in turn, we are able to control our environment and any kind of activity that might endanger that environment. Mr. Shultz, the Secretary of State of the United States, said that he would come to Ottawa and make an agreement with Mr. Clark on Arctic sovereignty, but we who live in the North have nothing to say about the matter.

I hope that the premiers and the Prime Minister have further negotiations at the table, because, according to the Meech Lake Accord as it is presently worded, if one premier says no, then the Indian people will have no more rights.

• (1910)

Mr. Trudeau: I do not see the direct connection between the land claims, commonly understood, and these particular agreements. I think what concerns me, and probably you, is the possibility that there will be, some day, in the Territories, an electorate composed of a majority of native people, whether Inuit or Indian. That concern is really justified, because the unanimity rule seems to be pushed very far into the future. That is not to say that land claims existing in the provinces as they exist now or in the Territories as they exist now have, in any sense, been diminished by these acts. From that point of view, you are no better and no worse off, but, from the point of view of ever thinking that you can have a province up there where, perhaps, the proportion of native people will be infinitely higher than it is in Ontario, Quebec or Manitoba, that is pushed a long way into the future.

[Mr. Trudeau.]

The Chairman: Thank you, Senator Adams. The next questioner will be Senator LeBlanc (Beauséjour).

[*Translation*]

Senator LeBlanc (Beauséjour): Mr. Chairman, I will try to be very brief.

Mr. Trudeau, during a debate in the National Assembly, I think it was Mr. Rémillard, and not Mr. Bourassa, who stated clearly there would be only one distinct society, not two or three.

You spoke earlier about language minorities, and I would like to ask a simple question: Aside from New Brunswick, where we seem to have resolved our problems, and possibly Ontario, where there is a critical mass, do you think that francophone minorities outside Quebec might as well give-up trying to survive?

Mr. Trudeau: Senator, I know them too well to ever believe they would give up. They have survived in extremely difficult circumstances. They always stayed, and they always came back. And I am certainly not about to tell others to give up hope or stop surviving.

I agree that if your question points to a trend, it will be much harder for them. They will have to work harder still to protect the little they have gained.

That is why the concept of duality as defined in the first paragraph of section 2 is regrettable. I am told that francophones outside Quebec like that concept. I think there is a misconception here.

As I said earlier, duality means that you divide the population in two. To divide means to weaken. If Quebec is a distinct unit and if we want Quebec to preserve and promote the rights defined in section 2, all it means is that there is a majority of francophones in Quebec. That is all it says in section 2 to explain why the society is distinct. There is a majority of francophones.

So one could not be faulted for interpreting this as an excuse for increasing the concentration of francophones in Quebec. This means that if people from the other provinces want to come to Quebec, they will have a better chance of survival.

This is rather odd, and besides, the English and French texts are different. I am sure you noticed that. In English it says:

[*English*]

> the recognition that the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec, . . .

One is centred, but, to the English reader, we are telling him he is concentrated outside of Quebec, but, to the French reader, only—

[*Translation*]

You are centred in Quebec if you are French-speaking but you are centred in the rest of the country if you are English-speaking.

I don't know whether the translation will get us anywhere. For all practical purposes, section 3 maintains that the role of

the legislature and the Government of Quebec is to preserve and promote the distinct identity of Quebec referred to in paragraph (1)(b). If we read (1)(b), it says that Quebec constitutes a distinct society.

So one wonders what a distinct society is. There is no definition anywhere, except that (1)(a) tells us that the French are centred in that province.

So the legislature and the Government of Quebec would be perfectly justified in saying it is their role to preserve and promote the concentration of Francophones in Quebec.

So what is the English-speaking population in the other provinces going to do? It will promote the concentration of Anglophones. They will not try and threaten the existence of Francophones in the rest of the country, nor, I assume, will Quebec do so with respect to the Anglophones in that province, but for all practical purposes, their mandate is to preserve and protect their majority.

When we have sensitive issues like the signage case, and aside from what the Supreme Court is going to say or what the Government of Quebec is going to do, I simply want to make the point that, according to the law of simple political dynamics, if signs in English are gradually prohibited—I am not talking about French being compulsory. I think it makes sense to make French compulsory on signs. After all, it is a province with a francophone majority.

However, prohibiting the use of English in one province will inevitably make Canadians in the other provinces start thinking about the fact that in Quebec they don't even have the right to put up a sign in English, not even in tiny letters at the bottom of a sign. So why should Alberta or British Columbia try and make people realize this is a bilingual country, and so forth?

That is why I make a distinction between bilingualism and duality. When we talk about duality, we are saying there are English-speaking Canadians and there are French-speaking Canadians. We promote English and French. But we don't want that. We want to promote bilingualism so that people in New Brunswick or Quebec can deal with the federal government in either official language, and eventually—and in New Brunswick that is already the case—receive provincial services as well. As you know, New Brunswick had the vision and foresight to adopt sections 16 to 20 in the Charter.

We would like to see this happen in Ontario and Manitoba, so that at least in those four provinces francophones will be able to deal with both the federal and provincial governments in French.

But if that is what we want, we don't want duality in Ontario. We want bilingualism, not duality.

Does that answer your question, Senator LeBlanc?

Senator LeBlanc (Beauséjour): Thank you very much.

The Chairman: Thank you, Senator LeBlanc.

• (1920)

[*English*]

Senator Bosa: A witness who appeared before the Committee of the Whole, Professor Williamson from British Columbia, suggested that if one or two provinces did not give their approval to the Meech Lake Accord the Prime Minister had the prerogative of invoking the present amending formula. I am not sure if I am repeating his words accurately, but I think that is the thought he wanted to express.

You are the father of the policy of multiculturalism, the policy that you announced on November 8, 1971; and also the policy which found a reference in section 27 of the Canadian Charter of Rights in the Constitution Act of 1982. That policy gave millions of Canadians of neither English nor French background a great feeling of comfort, a feeling of cultural equality, if I might use that expression. Some of the leaders of the ethno-cultural communities are now concerned that the reference to section 27, which is contained in section 16 of the Meech Lake Accord, says that nothing will affect section 27. But does it mean that multiculturalism will remain where it is now, and that it will not be enhanced; and how will it fare in the province of Quebec where the "distinct society" clause is very prominent?

Mr. Trudeau: Well, you see, the "distinct society" clause, if we agree with the report of the House of Commons, can affect—perhaps not in a significant way; I read the text to you earlier—the rights of minorities in that distinct society. I cannot predict how a government, or succeeding governments, of Quebec would treat the multicultural question. I remember that the PQ government did quite a bit with multicultural groups. They had a minister who was very active in that area. So, on general questions, excepting that of language, they might fare just as well under the Meech Lake agreement as they have in the past. There might not be any significant change.

But, then, I do not know for sure; and, in connection with the language that multicultural peoples—non-French, non-English-stock peoples—use, I do not think they can expect to make any progress. French will tend to be more and more the language in Quebec, and English more and more the language elsewhere.

For instance, in the area of education there are two things which still have to be corrected in the 1981-82 agreement. One has to do with the phrase "where numbers warrant." That was put in after the premiers had made an agreement at a meeting, in 1979, in Montreal, where they said, "We will have deals among ourselves to protect that we are English and you are French, or to educate that we are English and you are French." Then there is the other clause on education, where Quebec is exempted—the thing we call "the Canada clause." It has to favour English for children of English families coming from the rest of Canada. But if you are an English family, or even an English-speaking family, coming from Italy, from Barbados or from somewhere else, you do not get the

protection that English-speaking Canadians get if they come from Manitoba to Quebec. In that sense, new Canadians will not be treated as well. But that is something that was put in the 1982 agreement.

What I was arguing earlier is that if the federal government can give all of these things to the provinces, it should at least have asked, in exchange, for a few concessions like that, such as "where numbers warrant" and on the "opting into" the education clause, which applies to the rest of Canada. Quebec should have opted into that, too.

So there will be some differences. But I think that Quebec people are as tolerant as most, and perhaps even more than most, in terms of dealing with ethnic people—provided they bloody well want to learn French.

Senator Bosa: What about my first question?

Mr. Trudeau: Yes. Your question is a very interesting one. I thought about that. You see, some of the 1987 accord would be possible under the 1982 amending formula. On section 38, with two-thirds of the provinces and 50 per cent, you could make some amendments. I see no reason why you could not make the amendment on immigration. But there are some on which you could not. You could not, under that rule, take things in section 41, such as the composition of the Supreme Court of Canada. You need unanimous consent for that; you need the legislative assembly of each province. You could not touch the lieutenant governor and the Governor General. But there is a lot in Meech Lake that could be done under the normal amending process. But they agreed that it must be unanimous; and I am not sure, but maybe it is something that the Senate could put to them. If you want to change the powers of the Senate and the method of selecting senators, you need two-thirds of the provinces. But you don't need ten of them. I don't know which professor you named—

Senator Bosa: Professor Williamson.

Mr. Trudeau: Yes, he has a point. There are some things in the Meech Lake Accord that you could have done by the normal amending process. But that is not the way they decided to operate, you see. They wanted to do it in secret, quickly, and get a package deal. I think that if they had followed the normal amending process you would have had a normal conduct by the House of Commons and by the provinces. They would have said, "Well, okay, we have some time to do it, and we are going to debate this amendment on education or that amendment on the spending power. Give us time and it will come through."

● (1930)

But they wanted a package. We wanted to be able to embrace Quebec quickly and finally, and especially before the election.

The Chairman: Thank you, Senator Bosa. Next on the list is Senator Ottenheimer, followed by Senator Grafstein.

Senator Ottenheimer: Thank you, Mr. Chairman. I know it is getting late, so I will be brief. I should like to address a question with respect to the "distinct society" concept. I believe you made some reference to that in a certain context.

We in Newfoundland feel that we are a distinct society. That comes as no surprise to you. We do not think that makes us better or worse; that is just a fact. I think that is true in a fair range of values or activities. Historically, our development has been different from that of other provinces, not that they have all been alike. Newfoundland is distinct culturally and psychologically, but not linguistically, obviously.

In Newfoundland there has never been, with the various demands that Newfoundland does make, any desire that this reality should be given a constitutional expression. I do not think people in Newfoundland would feel that their identity, or their distinct society, would be enhanced by a constitutional reference, nor is it diminished by its exclusion.

With respect to Quebec, obviously the situation is quite different, at least according to the elected representatives in Quebec provincial governments, the current government and former governments, not only the Péquiste government but those before that. There has been a fairly consistent request for constitutional recognition of Quebec being a distinct society.

I think it is fair to say, Mr. Trudeau, that you intimated that if this were only to be referred to in the preamble it might be acceptable to you and others. I believe you suggested, as well, that in a preamble it would probably be no more than rhetoric and that that could well be interpreted as an insult to the intelligence of the people of Quebec. Therefore, if it is to be given an expression, it would have to be in an interpretative clause, which this is.

If it is accepted—and this is where I have particular difficulty—that Quebec is a distinct society, whatever that means historically, sociologically, linguistically and culturally, how can it not be appropriate or logical that it be given a constitutional reference in an interpretative manner? How can one not interpret a Constitution in light of the factual or real situation?

I would appreciate your views on that.

Mr. Trudeau: That is certainly a good argument. It is the one that I think most Quebec politicians and intellectuals make. It is something you can decide to do, but I want you to make sure you know what you are doing when you do that.

When you put that in a preamble you are no longer saying that Quebec is distinct sociologically, politically and historically, and Newfoundland is distinct sociologically, and that we will put one in because it pleases them and not put the other in because they did not ask for it.

If it is in a preamble, I still would not like it, but if you are saying that you are precisely putting it in a sociological and political sense, then the courts read this preamble and they say: "Well, as courts we sometimes deal with morals, but sociology is not law and morals and politics are not law. What does the law say?"

If it is in a preamble, the courts will say: "Well, it is an effort to get some political kudos, so it is all right."

But if you put it in an interpretative clause, and you do that in such a way as to say that that distinct society is imperative in every interpretation of the Constitution, then you are saying something else completely. You are giving the Government of Quebec—and it says so explicitly in section 2(3)—an explicit mandate to legislate in a way which is conducive to the promotion of that distinct society. You are giving it a mandate to legislate to promote that society, whereas, in Newfoundland, you have not given the Government of Newfoundland and Labrador a mandate to legislate to promote its identity. The Government of Newfoundland and Labrador can promote its distinctness under section 92, as it has been doing since it entered Confederation, but Newfoundland is not a distinct society in the sense of the Constitution; Newfoundland is a distinct society in terms of sociology, economics and, perhaps, language, with their particular accents, and so forth. Newfoundland is distinct in all of those ways, but, from the point of view of the Constitution, judges do not interpret a Constitution to permit laws to legislate that distinction. In the case of Quebec, the Constitution must be interpreted so that the Government of Quebec, under section 2(3), can pass laws to promote that distinctness.

That is the difference, and that is what Mr. Bourassa says, and that is what the report of the joint committee said when it talked about interpretation and the division of powers, and that is, of course, what Mr. Rémillard says.

Would the courts say that? I do not know. Why do we not have a reference? You and I will then be able to know what we are talking about. But until we have a reference all we know is that if the courts say it means something, Quebec is happy, and a lot of people in the rest of Canada are unhappy, and if the courts say it does not mean anything any more for Quebec than it would for Newfoundland, then you have a fight on your hands, because then we are *status quo ante*. Quebec may be in legally, to quote the former President of the Canadian Bar Association, but it is not in morally, and anyone who says that Quebec is bound by that Constitution is, to use his words, "committing a constitutional heresy."

Senator Ottenheimer: I certainly assure you that I will not be seeking any reference. Newfoundland has not done very well, historically, in references to the Supreme Court of Canada.

Let me pursue this with one additional question or observation, and it is difficult to distinguish between the two.

Respecting the opponents of the Meech Lake Accord and the "distinct society" reference in the Constitution in an interpretative manner, obviously a very strong aspect of their argument, and one which you have developed, is the possible scenario of judicial interpretation and the effect that that would have on fragmentation? I will stop there, but the shorthand, I think, is descriptive. Can you not say that Canada functions, perhaps exists and continues to exist, because of a lot of goodwill, give and take, patience, pragmatism, empiricism and political reality, however one characterizes it? If those basic elements are not there, or, perhaps, if they are there, quite irrespective of certain legal documents, is that not what really counts? Can one not say that the future viability of Canada is going to be much more dependent on that pragmatic goodwill and experience we have gained together over the decades? Do you not think that perhaps we should have more faith in that kind of a collective political goodwill?

• (1940)

Mr. Trudeau: Well, perhaps you did not quote him exactly, but a great French philosopher said that in different terms. He said that the nation is a plebiscite of every day. That does not mean people will vote every day, but that every day they have to act as though they are in that nation. If they are not well treated, either because they are very poor or are oppressed in some sense, they are not going to vote for that nation, and the nation will experience strife and eventually can have civil wars and break up. In that sense, then, you are right. The feeling of the people is much more important, really, than the laws.

That is what I was trying to establish when I said that, since 1927, every federal government has tried to create a feeling of nationality, of nationhood. But Canada is a people. Mackenzie King did it one way, Diefenbaker did it another way, and so on. But there were all of the other things—we have the national flag; we have the words to a national anthem; we have Canada Day; we have celebrations on the Hill; we bring children to Parliament so that they will feel part of a whole. One of the things we did was to make the French-speaking people of Quebec and the French minorities elsewhere feel that the Government of Canada was really their government, because it could send out their Family Allowance cheques in French and their taxation forms in French. We asked for more bilinguals on the Hill, and so on. All of these things create a feeling of nationhood.

But how do you deal with a province, the government of which says, "But there is no Canadian people—there is the Quebec people and there may be something else, but do not start even a preamble with the words 'the Canadian people,' because you are offending us." What do you do? This was not a law, it was a preamble we were trying to write. Not only the premier of the province but much of the intelligentsia and the media were saying, "The Canadian people—they are trying to say that we are not two nations and we are not going to let them get away with it."

There are some people who do not want Canada to be united. Some of them do not want it because they want to separate; others want to be united, but they want Canada to be a pact between the provinces. They want the Premier of Newfoundland, the Premier of Quebec and the Premier of Manitoba to get together to decide what Canada should do as a country. But don't ask the people—ask the premiers. The federal government, which is elected by all of the people of Canada, will be the result of a pact between the provinces. This is historic. The federal-provincial conferences turned around who speaks for Canada—is it 11 First Ministers or is it one government elected by and responsible to all of the people? The answer is that in matters such as education the premier speaks for the people of his province. In matters such as foreign affairs—theoretically, at least, until recently—the

Government of Canada spoke for all of the people. In matters of property and civil rights the provinces speak for the Canadian people. But when there is a conflict of laws, you go to the courts and they will decide, "Well, in aeronautics, it is the Government of Canada that speaks for the Canadian people, not the provinces."

But what do you do when there is not a conflict of laws but a conflict of interest? You cannot go to the courts to know whether you should build a penitentiary in Quebec or the Chantier maritime in Nova Scotia. At some point there has to be a government which speaks for all Canadians and takes the credit—and the blame—for it.

You are quite right, senator, there is such a thing as a feeling and there is another thing that is a law, but some people have feelings which do not have the make-up of a strong Canada. That is all I am arguing. We can have a different kind of Canada; there is no doubt that after Meech Lake, if it becomes law, we will have a different Canada—one that is much more decentralized. The premiers have said that themselves. The report of the joint committee makes that clear—it will be a much more decentralized Canada. Mr. Kierans thinks that that is what was there in the first place; I think that is what he believes. I do not think all historians would agree with him, but that is a choice. Maybe that is why I try to promote the other choice. I have tried to promote a strong central government, but one under which there would be equality of the people, all sharing under the Charter certain rights which put them over and above all governments. I felt that in this century, particularly at the tail end of this century, a country needs a strong government. Newfoundland discussing with France is not as strong as Canada discussing with France.

Senator Ottenheimer: Nobody has ever suggested that, sir.

Mr. Trudeau: That is why there are two views of Canada. The premiers have one view; I have another. Canadians are free to choose. But I think we are entitled to draw the line when we get into governments whose mandate is to govern particularly for one linguistic community. It would be the same if they were to govern for one religious group or one race. That is why I never thought it would be a great idea if, in the Territories, there were a province composed only of Indians or only of Inuit. I think the country is much richer when there is a pluralistic society living within it. We have seen examples in history where governments become totalitarian when they think they are governing only for one race, and the others can go to concentration camps. That, however, is obviously an exaggeration of what is happening in Canada.

What is liberal democracy? It is a system where the people are the ultimate value. Each individual person or human being is the ultimate value and they have rights protected under a charter or given to them by the common law. They have rights. They can get together and form collectivities, whether the collectivities be called a trade union or a provincial government or a school commission. What democratic liberalism means as opposed to social democracy, if we make philosophical distinctions, is that the community is always second to the individual in our societies. We give rights to the individuals—rights of freedom of association, and so on—so they can get together and protect their collective rights, but the community itself is not a bearer of rights. The community receives rights from the individual, just as that largest community of all, the state—the national state—has rights given to it by the people under the Constitution.

Senator Frith: Or loaned to it, as Harry Truman used to say.

Mr. Trudeau: Or loaned to it, yes. They are mandated, and we can beat them at the next election. But when you say that the community itself will have rights, because it is a distinct society, I tremble for the freedom of everybody. If all the people of Quebec were to get together and use their rights under the Charter to say, "We want this kind of a government which is going to do whatever it wishes," they will elect it and that is fine. But if there is a government there that says, "Look, we are the custodians of the future of the French fact in North America and we want to govern this province in a way that that French fact is strengthened," so far so good. If they go on to say that they will use their mandate to make that French-speaking society the main aim of government rather than the freedom of the individuals in that society, I say they are making a mistake.

It is the individuals who come first. There is a majority of French-speaking individuals in Quebec and, therefore, they have a right to have a majority of signs in French. Charters are made not to protect majorities, whether in Quebec or Canada, but to protect minorities—the French in the other provinces, the English in Quebec, the multiculturals, the Indian and the Inuit in the whole of Canada. When there is a right to override the Charter, because you are a distinct society, you are no longer in a small "l" liberal society.

Some Hon. Senators: Hear, hear!

The Chairman: The next senator on my list is Senator Grafstein, followed by Senator Tremblay.

Senator Grafstein: Mr. Trudeau, I am curious about something that does not relate to the specifics of Meech Lake but relates to the run-up to Meech Lake. You have discussed the beautiful game you say Quebecers have always played by playing off the federal government against the provincial government to their natural benefit. You are also a believer in countervailing powers. Somehow there has been an absence of this in this exercise.

My question is this: What happened to the other strong francophone federalist voices in Quebec to counter the dualist ideology, the provincialist voices, that were shaping public opinion that led up to Meech Lake? If I can put it in your words, where were the francophone voices in Quebec that chose to speak for Canada? This phenomenon has obviously had absolutely devastating constitutional consequences.

You mentioned it in passing in response to a question. You partially explained this by suggesting that the Quebec intelligentsia—the intelligent people of Quebec—wanted more, and, therefore, if more was offered, they snapped it off the table.

They wanted more for Quebec, but why would Quebecers not want more in Quebec as Canadians?

That is the issue that has been bedevilling me since this started and the frustration that many of us here have suffered from. Where are those strong francophone federalist voices from Quebec, present company excepted?

Mr. Trudeau: I had them in mind when, earlier, I said that there are those federalists who want to have their cake and eat it too.

There is a certain unreality or, I am inclined to use the words, "lack of sophistication" in the arts of political sciences which makes you think you can be a strong federalist and, at the same time, have a special status. I am not the originator of the bon mot. It was a very well-known and well-liked French comedian in Quebec who said, "Really, what Quebecers want is an independent Quebec in a strong Canada." That sums it up.

I have had this argument about the so-called political elites. We can talk about the business elites and the artistic elites in another phrase, but I do not think the political elites have studied very profoundly—and it is true in English Canada also—the workings of a symmetrical federalism. At first blush it seems nice if Quebec can get more powers than every other province, with special status or a "distinct society" status, and still be good federalists and still have that French power in Ottawa. Politics do not work that way.

Let us take the area of foreign affairs. If you are a prime minister and you say, "When I go to an international conference, whether it be Summit Sevens or whether it be Commonwealth Conferences or NATO conferences, I go and speak for Canada." However, when it comes to conferences of French-speaking Canada, although my name is Trudeau and I come from Quebec, I cannot go there on my own. I have to go with the French-speaking Premier of Quebec, because we have given a special status to Quebec under the item of foreign affairs.

What happens? First of all, I am telling my power base, which is Quebec, that I can speak for it when I go to English-speaking conferences and international conferences, but I am not a true Quebecer when it comes to francophonie conferences. I need the Premier of Quebec, who can check me up, correct me, check my agenda, and so on. Incidentally, this is in the accord between Quebec and Ottawa. Ottawa's working papers will be shown to the Premier of Quebec so he can ensure everything is on the level.

I have weakened myself in Quebec and I have strengthened the international power in the government of that province. What will the result gradually be? The bright young men and women who would like to be ambassador of their country some day will want to work in External Affairs. Bit by bit, as the francophonie becomes more important and as Quebec opens bigger quasi-embassies in Paris, London, Rome and Milan, there will be a good job to be had there. Why should they go and work in Ottawa, where they are surrounded by a lot of anglos and they have to speak both languages? Bit by bit, the working of the dynamics of politics will mean the best and the brightest will go to the place where the real power is.

● (2000)

Eventually, it will be to the provinces, if we have immense decentralization, or to one province if we have a "distinct society" there which can do things in communications, banking, aeronautics and immigration, which are really important to that province. You want to be where the action is. You go up to Ottawa and you are in this kind of multinational group there, and you have to learn the other language, and so on. Why should we not be at home, if we can have our cake and eat it too? If we can develop as a province, then we will be in Ottawa and Quebec, but only if it works. That is why I think a symmetrical federalism is hard to demonstrate as a case unless it is limited in time and in space. This is it, as we did with sections 133 and 93 of the B.N.A. Act, and so on. But if it is creeping separatism, then, at some point, there is a winner and a loser, and the winner takes all. It will not happen by a war or a revolution, it will happen because anyone in Quebec who is interested in promoting himself politically will go to the place where the action is and where he can be someone in external affairs, in communications or banking just as much as he can by entering the Department of Finance or the Department of External Affairs in Ottawa.

So then, what will you have? You will have an Ottawa which will have the brightest and the best from the rest of Canada, but not from Quebec. I do not have to go on with the dynamic on that. When the Quebec people are not in great number and strength in Ottawa, they will say, "Well, why should we be part of the country at all? We can do it all in Quebec City; we are as smart as they are. Only the losers go to Ottawa, or the traitors,"—which is worse—"let's have our own province." That is the dynamic. I am not preaching the apocalypse, I am just trying to look at it in terms of political science. I am prepared to argue it on that basis. That is why I think every prime minister—French, English or of other origin in Canada—has always refused constitutional special status. Sure, agreements were made on immigration; Mr. Pearson made an agreement on the Canada Pension Plan, the Quebec Pension Plan, and so on, but you can overdo that, too, and do too many of those. But within limits, it is all right.

However, you ask: Where are those who should be speaking this way? If you are looking among the people, they are the people who voted no on the referendum. If you are asking about the intelligentsia, the political intelligentsia either want to have their cake and eat it too or they want to have their cake, period. For many of those in between it is a question of, "Why should we look ahead? If we can get more powers today, why should we want Meech Lake? We will settle tomorrow." That is perhaps the hope that your Newfoundland colleague is singing. It will all come out in the wash.

I took all the time I did to go through the escalating provincial demands so that you would understand that there is a constant in the history of this country. It is a constant fight for power between the provinces and the federal government. It started with Macdonald and it will finish only when federal-

ism finishes. If you do not realize that that never-ending appetite for more power is there, and you give it, particularly in a special way, to a "distinct society," you will not satisfy it.

Senator Grafstein: Let me ask a whimsical question, then. What if Meech Lake is adopted and we are confronted with the apocalypse as discussed? The first item on the constitutional priority list is the Senate. Do you think it is realistic for the next generation—it certainly will not be for any of us in this room—to fight the battle for the repatriation of these powers back into the federal sphere by suggesting that a reformed and elected Senate should have much larger powers which would include some of the powers that have been frittered away, if you will, through this process? Can you see that as a realistic end game when this is all done? In other words, that the Senate may be the saviour of the state.

Mr. Trudeau: It could be, if you could reform the Senate. I think all those who talk of Senate reform in the context that we are doing today do it in the hope that, much like in that giant federation to our South, the debate on national issues can be fought in Washington, because there are a lot of state people sitting in the Senate, and, therefore, you have the debate on Capitol Hill, as it were. I think that has been in the back of the mind of those who have, in one way or another, preached reform of the Senate.

Give the people of the provinces, or give the provinces themselves, if need be, a role in the Senate so that the country will be governed from Parliament Hill in Ottawa, but do not do both. At the same time as you give the provinces power in the Senate, do not decentralize the country to the extreme, because you are then getting the worst of both worlds. You are getting the provinces in your national Parliament and you are getting them at the federal-provincial conferences, where they are asking for more all the time. They did not make that mistake in Washington; they have a much more centralized country than we have here. But the states, even the smallest ones, feel that they have two men on the Hill there who look after their interests. There is a choice to be made, which, obviously, has not been made in Meech Lake. You give the provinces the Senate, but, at the same time, you give them much more federal powers than they have ever had.

Your question is: Will it ever happen? Well, the cycles of history are something that I cannot possibly predict. With the acceleration of history, I think it is unlikely to turn those things back. If we had enough time, and if we were living in the middle of the nineteenth century, it would be different. But people change. We have had the pendulum swing one way towards centralization and then swing away towards decentralization. We have also had oscillations in Canada, because the Constitution was not rigid, but now that you have rigidified it and given a veto to each province you cannot have it swing towards more decentralization without unanimous consent. I think it would take something of a miracle for the ten premiers to say at the same time, "Let's give up these powers that we had; we want to make Canada stronger." I think they will go in some other direction.

[Mr. Trudeau.]

This is not the place to talk about the Free Trade Agreement, but I liked what Professor Breton said at one point. Raymond Albert said some good things, too. He said, "At the same time you are devoluting power to the provinces and you are devoluting economic power to the continent you will end up with a weak central government. The least you can do is not do both at the same time. If you want to negotiate tough with Washington, you should have a strong central government and tell the provinces they better toe the line. Or you better start to establish a common market in Canada and tell the provinces that we should stop having tariff barriers between provinces before we try to do that with the United States." In other words, you strengthen the country and then you negotiate. If you weaken the country and then you negotiate, it does not only apply to Washington, it applies to the rest of the world. That is why I am terrified of Meech Lake. I think it is a Rubicon: Once you have crossed it, you cannot go back. You march on to Rome.

• (2010)

The Chairman: Thank you, Senator Grafstein.

[*Translation*]

I will now proceed with the last two names on the list. I had Senator Hicks on my list but I see he has left. So the last person on my list is Senator Tremblay.

Senator Tremblay: Mr. Chairman, please thank Senator Hicks on my behalf!

Mr. Trudeau: On mine as well!

Senator Tremblay: Mr. Trudeau, while I was listening to you speak, I had the impression you missed Parliament, a place where people can talk for hours! I hope I am not sticking my neck out too far by giving you another opportunity for learned discourse.

At the beginning of your speech this afternoon, you referred to the compact theory. You went back to the years of Taschereau, and so forth, and you referred to this period again a few moments ago. If I understood correctly, there is no basis for this interpretation that sees the Canadian federation as the result of a compact between the founding provinces.

Perhaps we should take another look at the first "whereas" of the British North America Act with which you are, of course, familiar and which may have been just an oversight. It says quite clearly:

> Whereas the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom

I agree this is a "whereas", a preamble. Apparently, preambles do not carry much weight.

Mr. Trudeau: It is important.

Senator Tremblay: This one seems to be particularly important, especially since, if I am not mistaken, it contains the only reference to the word "Federation" in the entire Constitution.

Nevertheless, that is what we thought we were since 1867 and what we still are. This was just a reminder. Since you took

a historical approach, this particular point bothered me when you brought it up.

In fact, you continued the historical perspective in your speech when you recalled the events following November 5, after the provinces signed the Accord that subsequently lead to the Constitution Act, 1982. First we had what happened on November 5, and you very properly reminded us that amendments were made between the time the Accord was signed and the adoption of the draft resolution by the House of Commons and the Senate.

These amendments included the one about financial compensation in the event of opting out on educational and other cultural matters, as it says in the text. I think it was also during that period of time that amendments were made concerning women and native people. I do not remember very well this series of amendments.

The point which has always troubled me, and perhaps you can clear this up for me, referring to the process leading to a consensus between the federal government and the provinces, as far as I know there was no federal-provincial meeting between November 5 and December 7 or 8.

How did you reach a consensus, if that is what happened? Was it by phone, by correspondence? Who carried out the negotiations which led—unless there was no consensus—to amendments and enrichments as important as that of financial compensation? This is a historical question to which I never got an answer but which I often asked myself.

I would add a small detail. In the accord signed on November 5, there is a note in the margin which was written by the Manitoba representative concerning Section 23 where he indicated he signed the whole document, but the marginal note, initialed by the then Attorney General, I believe, says that it is subject to subsequent approval by the Manitoba legislature.

During those few weeks, did the Manitoba legislature give its consent, or was this caveat quite simply ignored?

These are historical elements which are of interest to me. That is my first question.

Senator Frith: How many do you have, Senator Tremblay?

Senator Tremblay: I will have one more after that.

Mr. Trudeau: If you have more, I will take notes.

Senator Tremblay: Well, I will ask only one more.

I think you have suggested specifically that some matters should be referred to the Supreme Court for clarification. If we put together all the matters requiring clarification which have been raised here and there, the list would be rather impressive.

This might serve as an argument in favour of a reference in that there are so many of these matters. You know better than anyone that when the Canadian government refers a matter to the Supreme Court, it is generally a very precise question. That is what happened in 1981: Is it constitutionally possible to act unilaterally?

On what specific point and how would you phrase the question you would want to refer to the Supreme Court? That is my only question.

Mr. Trudeau: First, Senator Tremblay, you asked me if I miss Parliament. If I gave you that impression it is wrong. As I said, I am pleased to be here, but I would not want to be here every day or even every week.

Senator Frith: It is boring!

Mr. Trudeau: Indeed, I find the discussion I am having here quite pleasant and useful to me. But I have other friends with whom I have discussions and also my children with whom I have a great many discussions.

I appreciate your concern, but do not worry about me: I am not sorry I left this place however hospitable it might have been.

Senator Tremblay: So you deny what was only deductive reasoning on my part.

Mr. Trudeau: Definitely.

Senator Tremblay: I stand corrected.

Mr. Trudeau: When you referred to the pact, I assumed that you were going to talk to me about this first preamble. I was thinking about it. I have even a quotation which I am almost tempted to read to you.

It is about the history of our federation, of colonies wishing to get together to form a country, following which, the colonial power created a country in which they were united as provinces; in other words, the colonies stopped existing and became provinces in a different entity.

The British North America Act therefore created Canada and at the same time what had formerly been Lower Canada and Upper Canada, with their institutions as well as and especially Nova Scotia which had well developed parliamentary and legislative institutions. A country was created and provinces were created at the same time. That is what happened historically.

That is also what happened in the United States, but in a different way, because they had first been involved in a revolution. There was no longer any motherland. They created a Confederation. As you know, the original states were extemely autonomous, much more than the Canadian provinces today and of course much more than the states are today.

When they got together to rewrite the clauses of the Confederation, through a subterfuge which Jefferson complained about a lot because he was in Europe at the time as a minister; they did not rewrite the clauses of the Confederation, but created a real federation. That was the end of their Confederation. They kept certain things, for instance, the senators which had to be appointed by the constituting states. They were not picked out of a list which was sent to Washington but the states themselves did the picking. They wanted to create a more centralized power, but the states refused to budge on this.

My point is that in Canada, our Founding Fathers created a federation. Whatever existed before that, whether a sort of pact in a confederative power, this had nothing to do; now that we have a federation rather than a confederative power, the idea of a pact is maintained. The pact disappears when a new country is created.

Now, this is history, so I should like to indulge and perhaps give you the pleasure of listening to a remark made by Abraham Lincoln who was commenting on the tragic events which occurred at the time under his presidency. Dealing with that, he said:

[*English*]

> This issue embraces more than the fate of these United States. It presents to the whole family of man the question whether a constitutional republic or a democracy, a government of the people by the same people, can or cannot maintain its territorial integrity against its own domestic foes. It presents the question whether discontented individuals can always, upon the pretense made in this case, or in other pretenses, or arbitrarily without any pretense, break up their government and thus practically put an end to free government upon the earth. It forces us to ask: Is there in all republics this inherent and fatal weakness? Must a government, of necessity, be too strong for the liberties of its own people, or too weak to maintain its own existence?

● (2020)

Senator Frith: What is the source of that quotation?

Mr. Trudeau: I was quoting from Abraham Lincoln. I will have to look up the specific quotation. It is the sort of quotation you have in your files and you think that if Lincoln said it it might be helpful to you at some time. I did not know Senator Tremblay would ask me that specific question. It fits in well.

[*Translation*]

Lincoln was speaking as the President of a true federation. Around 1862, the pact had been broken for a long time. Therefore, its seems to me that the historic background, and I say so with a lot of modesty, of course, has nothing to do with what the Act says today. This is a quarrel which will lead me to other confrontations.

You speak about the consensus which followed November 5 and ask how it was achieved, by telephone or otherwise. I think that you wanted me to speak mostly about financial compensation.

Senator Tremblay: Something else was mentioned, but I do not recall the list precisely.

Mr. Trudeau: The native people and women protested very loudly.

"How dare you remove this? It was in the original draft. How dare you do such a thing!" There were a few indiscretions. Someone said: "In the case of aboriginal rights, we took out the relevant clause at the request of the premier of this province. As for the other clause dealing with women, it was the premier of this other province who asked us to remove it. Instead of bothering us, you should talk to them directly." The women went to see one premier and the Indians went to see the other one, and they made such a fuss that, a few days later, my Minister of Justice, Mr. Chrétien, called the premiers and told them: "We are having a lot of trouble with that. Would you be willing to back up a bit on the amendment that you wanted us to make?" This was done on the telephone. I do not think that Mr. Chrétien went to the provinces. It was done by telephone and by mutual agreement.

In the case of financial compensation, you asked me how come this clause survived or why it is there now, because it was already there, or, rather, no, in the beginning there was no provision for financial compensation. A few days later, I phoned the Premiers and told them: "I believe that in the particular case of education and culture, we would not be creating an overly asymmetrical federalism if we granted compensation." As I said earlier, I did not want to do it in all cases because it was an incentive to withdraw: "Withdraw from this program and you will be paid."

For instance, for universities, as this is what I had in mind and it is certainly the area in which you are most interested in view of your past, I understood that the provinces could have decided to transfer the jurisdiction for university education to the federal government under the power of amendment. In that case, Quebec could have said: "We understand that you want a university system where English Canadians will be able to go from one province to another and where certain standards will apply everywhere, but as we are mostly French speaking, we do not want to be part of that; we want to keep control over our universities."

I considered it normal in such a case for the province to be able to say: "Since you are spending money in the other provinces for their universities, give us the equivalent in financial compensation."

I suggested that it was not the same if an amendment were made to transfer from the provincial level, or to clarify, the regulatory power related to securities legislation, for instance. I did not agree that it should be possible for such a power to be transferred under Section 80.

Quebec, which has its own securities commission, could have said that they were perfectly capable of managing those things as well as anybody else. As for me, I would have told them to go ahead, to opt out but that they would not receive a penny from the federal government since it is in the nature of securities to come under the whole country's jurisdiction, rather than being scattered among various provincial securities commissions. We must follow the example of the United States with their Securities Commission if we are to have a strong country. Therefore, there was no question of granting any kind of compensation. That was my argument to the Premiers who did agree with me. So, I offered to the Government of Quebec financial compensation but coupled with an opting-out provision.

Mr. Lévesque, grumbler as he was, said that they did not want that. Some of my ministers were saying that if it was needed to have him sign, perhaps we should agree. We were prepared to go a little further for Quebec. I must admit that I was prepared to go that far, but it is an old story now. I have my files, as Senator Frith put it earlier, and, as a matter of fact, I wrote to Premier Lévesque in answer to a letter he sent me on November 25, in which he dwelt mostly on the veto power.

I explained to him that that power never existed in practice, a position which was to be confirmed later on by the Supreme Court. There was a paragraph about the veto power that concerns you and the issue under discussion now. I wrote:

> On November 5, 1981, you have maintained that you would accept the constitutional amending formula presently under consideration in Parliament if it did contain provisions for financial compensation. Yet, I have indicated to you on a number of occasions that I would be prepared to discuss that point with you but you turned down my invitation.

That is significant.

Senator Tremblay: Yet he did sign the agreement of April 16.

Mr. Trudeau: With respect to a certain area, I was ready to discuss the possibility of granting it elsewhere, but I knew him as he knew me. I knew that it was not only for that reason that he had not signed on November 5. It was because he wanted additional power. When I suggested that the issue could be reopened, he was unwilling to do so.

Pardon me, I interrupted you, you wanted to make a commment.

Senator Tremblay: It is merely a comment because in connection with the agreement that he signed with the seven other provinces on April 16, 1981, two days after his re-election, it seems to me that the financial compensation was included in that agreement but for the entire areas exclusively under provincial jurisdiction. You have just said that your proposal was restricted to education and other cultural matters.

Mr. Trudeau: Yes, such was the proposal effectively incorporated in the agreement for which I obtained the consent of other provinces. What I read was a proposal made much later in a letter dated December 1, 1981. The compensation for education had already been included. I was then prepared to grant the financial compensation—

Senator Tremblay: Extending it to all jurisdictions?

Mr. Trudeau: Yes, this is what I wrote in December.

Senator Tremblay: This is what the Meech Lake Accord does, after all.

Mr. Trudeau: This is what it does, it is true.

Senator Tremblay: On this point.

Mr. Trudeau: On this point.

Senator Tremblay: Everything is not bad in the Meech Lake Accord, is it?

Mr. Trudeau: This is like the egg of the minister I alluded to earlier. He was polite, and he said the egg was just partly good, but try to eat an egg which is only partly good. You will realize that you had better throw it in the garbage.

I say it is all bad, and Senator Murray will agree with me; ask him tomorrow. He said that the "opting out" formula was one of the flaws in the Accord, that I made on November 5, 1981. It was "one of the flaws". So I agree fully with him, and this is why I would have preferred to correct this through negotiations. But at that time I was prepared to pay a price to make a bad situation slightly worse so as to avoid that one day some weakling Prime Minister gives out the whole package to the province of Quebec.

Senator Tremblay: You will allow me to mention it. I had given you the opportunity of course, but—

Mr. Trudeau: You have the perfect right to defend your leader, and I admire you for it. Let me answer two of your other questions. In the case of Manitoba, I say with some reservation, and this is history—fortunately my memory is still good. What happened—

Senator Tremblay: We are not as old as all that, Mr. Trudeau, neither you nor I.

Mr. Trudeau: What happened is that a few days later you forgot it because you were not yet at that time a senator—

Senator Tremblay: One forgets more when not a senator?

Mr. Trudeau: No, but because you were not involved in the discussions. What happened, surely people in Manitoba will remember, is that Premier Lyon, who had written that, was defeated at the time of the election.

Senator Tremblay: Yes, that I remember.

Mr. Trudeau: Really? Well, then why are you asking me this question?

Senator Tremblay: Would a change of Premier or government eliminate this clause?

Mr. Trudeau: No. But the Premier who replaced him said: Well, I accept.

Senator Tremblay: Did he say so or did he simply let things happen?

Mr. Trudeau: No, he said it to me.

Senator Tremblay: He said that to you?

Mr. Trudeau: Yes indeed. There was that clause and, as a lawyer, I wanted to know if he would invoke it.

That's all. And your last question was about the reference. There you are right. It would make up an impressive list if we were to take all the suggestions the witnesses have put forward. The Supreme Court, you are right too, does not care very much for references; they would rather have a specific case upon which to decide, like A is suing B for a specific reason: either he is right or he is not. With references, one is

always dealing in abstract. But still, by law they have to give an answer. You ask me which points I would include in the reference. If we had to choose only one, I think I would choose the distinct society and what is known as linguistic duality.

Senator Tremblay: Both of them, really? Because both are in balance in a way.

Mr. Trudeau: Yes, they are in balance, in a very stable balance unfortunately since they reinforce each other. If we have a distinct society, chances are we will have a duality, that is two nations, and we should know. Well, it is only one point of view.

Senator Tremblay: We could go on for some time—

Mr. Trudeau: Yes, but we will eventually have to take leave of each other.

Senator Tremblay: Anyway, I thank you for having so obligingly answered my questions.

The Chairman: Well, that completes the list I had. Mr. Trudeau, I wonder if I may ask you a question.

You have mentioned Professor Breton. When he came here on February 10, we asked him the following question: "What will happen if the Meech Lake Agreement is not approved?" Here is his answer and I quote it in English since he delivered it in English:

● (2040)

[*English*]

> We are placed in the position where, if we say no, in a way we are saying no to the federalist forces in Quebec, or to those who are not generally interested in separatism.

And later:

> We are really in a fix. We have put ourselves in the box, where to say no . . . would be a terrible thing at this point in time, because it will be badly taken in Quebec, even by people who do not give great emphasis to constitutional matters. It will be seen as a rejection of Quebec, and it will be exploited as such.

Mr. Trudeau: Which of the two Professors Breton are you referring to, Raymond or Albert?

The Chairman: Professor Albert Breton.

[*Translation*]

It is Albert Breton. Do you see any danger in such a situation in Quebec?

Mr. Trudeau: Yes, there is a danger, and I referred to it when I said there would be quite a fuss if Meech Lake were defeated. It is unquestionable. I do not think people would lose sleep over it. I think that for a while the provinces opposed to the agreement would not be very popular with the media and the Quebec intelligentsia. But in my opinion that would please a lot of people who are keeping very quiet about it and probably do not want to attract any attention or trouble.

I think Laurent Picard said something similar before the Joint Committee. He said that we do not have the choice of having the Meech Lake Agreement or not, that things will never be the same. If what has been offered is withdrawn, it will be much harder for Quebec to accept than if those offers had never been made. That is why the signing of that document in such an irresponsible way was very serious.

So I am not trying to minimize what the reaction would be if the 1987 agreement did not become part of the Constitution.

[*English*]

I am weighing two undesirable situations one against the other. I think in the short run there would be a lot of indignation in Quebec, and not only among the so-called opinion leaders; even the people would say: "What the heck! They gave us something and now they are taking it away. What is the matter with these guys? What did they do that for?" There would be a lot of angry people.

But I think somebody should tell them—I would tell them, and I hope the media would tell them, too—that it was done before. Don't forget that this was done by Mr. Lesage and Mr. Lévesque in 1964. I remember they did that at the University of Montreal where I was teaching in those days. They came and very courageously defended the Fulton-Favreau formula, but the students did not like it and many nationalists did not like it. Finally, Mr. Lesage and Mr. Lévesque had to phone Mr. Pearson and say: "Sorry. We gave our word, but we just can't deliver."

That happened again in 1971 in Victoria. I do not want to go into details, because a premier who attended that conference is in office. I think he will remember well that the thing had been not only cleared by but proposed by his top official and our top official, and he was asking for a few days to go home and think it over. But the understanding was that we had reached a deal, and he had to change his mind for a variety of reasons I do not want to go into now. There was some welshing, if I can use that bit of slang, on deals that Quebec had made and did not live up to.

Now, on the hypothesis that we are looking at, it would not be a welshing by the Mulroney government, or by the House of Commons, or by any of the signing premiers. So far none of them has welshed, but Premier McKenna did not sign, and the next premier of Manitoba will not have signed, and you cannot force them to sign. They would not be welshing if they just said: "Sorry, we are not going to sign until we know what it means."

I think if you said that to the people of Quebec, and they were told that by the media rather than just reading about great cries of indignation and tearing of robes, I think they would turn the page and see who won the last hockey game.

So what would be done in this case would not be as bad as was done before by the Province of Quebec itself. I think, in the end, fairness would calm tempers and people would say: "Well, who wants to discuss the Constitution anyhow?"

I think that was a big mistake that Mr. Mulroney and Mr. Bourassa both committed. I laugh when I hear those academics, again from Ontario, who say—and I have read this in their testimony—that Quebec was in a terrible state after it had been left out in 1982. That is not true. There has never been

any poll taken on Quebec's feelings, but I gave the figures of those who voted in favour of it who were from Quebec in the House of Commons in 1971 and those who voted for it, or who refused to vote against it, as Mr. Lévesque was moving a motion in his house, supported by, I must say, the then leader of the opposition, who was to be bounced from his party a few months later. If you add up the numbers, more elected representatives of Quebec—well, I am repeating myself.

Therefore, I think it is a bum rap when experts from Kingston tell us that Quebec was in a terrible state after they had been left out. That is not true. There were a lot of angry people among the nationalists, but the Quebec people were not upset. I can ask Senator Tremblay if he has any evidence of that widespread indignation? I remember the Leon Dions:

[*Translation*]

—the slap to Quebec and the night of the non-stars. But who was saying that? Was Mrs. Grégoire on Panet Street greatly concerned about that?

[*English*]

I think it would be the same thing. After a time dust goes up and then it settles.

[*Translation*]

The Chairman: I want to thank you, Mr. Trudeau, on behalf of all my colleagues.

[*English*]

This has been a very historic occasion. I think it is the first time a previous Prime Minister has come to address the Senate in this way. I think it has been a very useful exercise. Mr. Trudeau, you have given us a great deal of your time—almost six hours now without moving from the witness stand. We are pleased to see that you are in such excellent health.

• (2050)

Mr. Trudeau: Thank you for your hospitality, Mr. Chairman and members of the Senate, and thank you for a very generous allocation of time. I was speaking a little for the record, as you might have suspected, because I am a bit distressed about the way that people—particularly people from other provinces—rewrite the history of Quebec. I lived through a lot of that history, and I think it is important to put my recollection on the record, so thank you very much.

Hon. Senators: Hear, hear!

The Chairman: Honourable senators, this concludes the work of the committee for today. I will entertain a motion.

Senator Frith: Mr. Chairman, I move that the committee rise, that the chairman report progress and ask for leave to sit again.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Acting Speaker: Honourable senators, the sitting of the Senate is resumed.

REPORT OF COMMITTEE OF THE WHOLE

Hon. Gildas L. Molgat: Honourable senators, the Committee of the Whole, to which the Meech Lake Accord and texts subsequently agreed to were referred, reports progress and asks for leave to sit again.

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

Hon. Senators: Agreed.

The Hon. the Acting Speaker: Honourable senators, when shall this committee have leave to sit again?

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I move that the Committee of the Whole be given authority to sit again at the next sitting of the Senate.

Motion agreed to.

BUSINESS OF THE SENATE

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, speaking to any orders that remain standing in the name of senators on this side of the chamber, they all stand, and that goes for any inquiries and motions.

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have no hesitation at all in saying that that is true for those orders, inquiries and motions standing in the name of senators on our side.

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

Hon. Senators: Agreed.

The Senate adjourned until tomorrow at 11 a.m.

APPENDIX "A"

(*See p. 2974*)

IMMIGRATION ACT, 1976

REPORT OF STANDING SENATE COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
RE AMENDMENTS TO BILL C-84

WEDNESDAY, March 30, 1988

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

NINETEENTH REPORT

Your Committee, to which was referred the motion of the Honourable Senator Nurgitz, dated 11th February 1988 and the Message from the House of Commons dated 3rd February 1988 relating to certain amendments to Bill C-84, An Act to amend the Immigration Act, 1976 and the Criminal Code in consequence thereof, has examined the said motion and Message and now reports as follows:

PART I

Your Committee recommends that a Message be sent to the House of Commons to acquaint the House that, with respect to its Message to the Senate dated 3rd February 1988 regarding Bill C-84:

(i) the Senate does not insist upon the following amendments:
Amendments 9, 10, 11, 12 and 13(a);

(ii) the Senate concurs with the following amendments made by the House of Commons to the amendments made previously by the Senate:
Amendments 1, 2(a), 3, 7, 13(b), (c) and (d);

(iii) the Senate does insist upon the following amendment:
Amendment 5(a), (b) and (c);

(iv) in lieu of other amendments with which the House of Commons has disagreed, the Senate adopts the following amendments and requests that they be concurred in by the Commons:

AMENDMENTS

EXPLANATORY NOTES

To avoid ambiguity, the following amendments are numbered sequentially from the last amendment referred to in the Message from the House of Commons.

16. *Page 7, clause 5*: Strike out lines 15 to 26 and substitute the following:

"19(1)(*j*);

(*b*) a person
(i) described in paragraph 19(1)(*c*), or
(ii) who has been convicted in Canada of an offence under any Act of Parliament for which a term of imprisonment of ten years or more may be imposed

who the Minister has certified constitutes a danger to the public in Canada; or

(*c*) a person described in paragraph 19(1)(*e*), (*f*) or (*g*) or 27(1)(*c*) or (2)(*c*), if the Minister is of the opinion that the application of sections 45 to 48 and 70 and 71 to that person would be contrary to the public interest."

This amendment would provide that the decision to exclude a person from the refugee determination process would be made by the Minister personally, in view of the potential seriousness to the individual of the consequences of the exclusion. It is intended that the Minister will weigh those consequences with the degree of risk the person might pose to Canada.

17. *Pages 9 and 10, clause 9:*

(a) Strike out lines 21 to 28, on page 9, and substitute the following:

"95.1 Every person who

(*a*) knowingly counsels, organizes, induces, aids or abets or knowingly attempts to counsel, organize, induce, aid or abet a person to make a claim to be a Convention refugee that is without a credible basis, or

(*b*) knowingly brings or attempts to bring or otherwise knowingly organizes, induces, aids or abets or knowingly attempts to organize, induce, aid or abet any other person to come into Canada in a clandestine manner

is guilty of an offence and liable"

Part (a) of this amendment consists of two offences. It would be an offence to counsel or otherwise assist an individual to make a refugee claim that lacks a credible basis. The credible basis test will become part of Canadian law once Bill C-55 is in force. It would also be an offence to knowingly aid or abet the entry of an individual into Canada if this were done in a clandestine manner. The purpose of this part of the amendment is to protect the valuable work performed by churches and other humanitarian groups on behalf of refugees.

AMENDMENTS	EXPLANATORY NOTES
(b) Strike out lines 37 to 45 on page 9, and line 1 on page 10, and substitute the following: "95.2 Every person who (*a*) knowingly counsels, organizes, induces, aids or abets or knowingly attempts to counsel, organize, induce, aid or abet a group of ten or more persons to make claims to be Convention refugees that are without a credible basis, or (*b*) knowingly brings or attempts to bring or otherwise knowingly organizes, induces, aids or abets or knowingly attempts to organize, induce, aid or abet the coming into Canada of a group of ten or more persons who are not in possession of valid and subsisting visas, passports or travel documents where such visas, passports or travel documents are required by this Act or the regulations is guilty of an"	Part (b) of this amendment also consists of two offences. It would become an offence to counsel or otherwise assist groups of ten or more people to make refugee claims that lack a credible basis. It would also be an offence to aid or abet the coming into Canada of groups of ten or more people who do not possess the required documents.

(v) with regard to the further amendments made by the House of Commons to clause 11 and clause 16 which, to avoid ambiguity, will be referred to as amendments 14 and 15 respectively, the Senate does concur in amendment 14 and proposes the following as an amendment to amendment 15:

AMENDMENT

18. *Page 24, clause 16:* Strike out line 16 and substitute the following:

"48.1(c), 82.1(2) and 83(1), and any such power,"

EXPLANATORY NOTE

This amendment would ensure that a decision to preclude a person from making a refugee claim on the grounds that the person is a security risk would be taken by the Minister personally.

PART II

Your Committee recommends that a further Message be sent to the House of Commons as follows:

The response of the government to the Senate's message of December 1987 with regard to Bill C-84 was referred to the Standing Senate Committee on Legal and Constitutional Affairs. Since then, the Committee has heard further witnesses who commented on the Senate amendments and the Minister's response. We have heard no evidence to convince us that the amendments we proposed were based on erroneous assumptions or faulty reasoning. On the contrary, we have been reinforced in our view that our arguments are valid. This is not to say that the remaining issues are without difficulty. We acknowledge the explanations of the Minister and have given his statements full and careful consideration. We realize that reasonable legislators may differ on matters of legal and public policy and so we have chosen to insist only on those amendments that are fundamental.

We commend the Minister for his flexible response to the Committee's prior Report on this matter. We recognize that significant improvement in the Bill has already taken place. The Committee continues to believe, however, that certain other changes remain essential, particularly if Canada is to adhere to its international obligations. In the past, Canada has been a world leader in refugee matters; those now coming to our shores seeking sanctuary must not face *refoulement*. The Committee wholeheartedly supports the objective of deterring abuse and we feel that the amendments we propose will give the government an effective legal tool to that end, while at the same time preserving Canada's humanitarian traditions.

TURNING SHIPS AROUND

In its previous Report, the Committee analyzed the various issues relating to turning ships around in our territorial sea or internal waters. After examining the law, the questions of deterrence and punishment, the safety of the passengers and Canada's international reputation, we concluded that, from every perspective, the wisest course was to bring a ship to port and ensure that the organizers of the scheme receive swift and sure punishment. We understand that the Minister feels that the lack of authority to direct a ship to leave or not to enter Canadian waters is a significant gap in Canada's ability to

control its borders. With respect, we disagree. It is the difficulty of monitoring or patrolling our extensive borders and shorelines that leaves us vulnerable. No law can deter effectively if it cannot be enforced. The success or failure – from the perspective of deterrence – of either the power to turn a ship around or to bring it in to port and punish those responsible ultimately lies in our ability to find and then to closely monitor a ship in Canadian waters. Without that ability, neither provision will deter. With it, either will do the job. That being the case, we chose the alternative that carried the least risk to human beings.

We have heard nothing in the intervening weeks to cause us to change our view. Indeed, two events have taken place that have convinced us to continue to recommend this course of action. In our previous study of the Bill, witnesses reminded us of the positive example Canada set for the rest of the world in 1979 and 1980 when we urged the countries of Southeast Asia not to turn away boatloads of refugees. Recent events have again reminded us not only of the role played by Canada in the past but of the role we continue to play. In February, only a few weeks ago, Canada urged Thailand not to turn away Vietnamese boat people when that country was faced with an increase of arrivals. How can Canada exhort other countries to do that which we are not prepared to do ourselves?

The second reason we believe that it is best to bring a boat in to shore results from our study of Bill C-55, the Bill that will replace the existing refugee determination system with a new one. While we as a Committee have come to no conclusions yet about the various details of that Bill, we have been assured by the Minister and his officials that the measures proposed will result in fast decisions for refugee claimants processed by the new system. Assuming this to be the case, we are reinforced in our view that bringing boat arrivals in to port to have their refugee claims dealt with in the same manner as other claimants would not cause irreparable harm to the system and would not lead to undue delays. For these reasons, we recommend that the Senate insist on amendment 5.

PRECLUDING FROM THE REFUGEE SYSTEM PEOPLE FOUND TO BE SECURITY RISKS

In its previous Report, the Committee recommended that people found to be security risks should nevertheless be given a right to have a determination made on their claim to be a Convention refugee. We had very serious concerns that returning a Convention refugee to his or her country of origin could have consequences seriously out of proportion to any actual threat to Canada caused by the refugee's presence here. We singled out security risks for this special consideration for a number of reasons. We had doubts about the trustworthiness of the evidence leading to the decision that an individual is a

threat to the security of this country because much of that evidence originates in the person's country of origin. That country may have a variety of motives for supplying false information.

We noted that the representatives of the United Nations High Commissioner for Refugees could assist people to relocate in third countries in cases such as these, but only following determination of their status. We observed that, of Western countries, only Belgium excludes such people from a refugee determination. Finally, we believed that both our commitments under international law and the standards of our own *Charter* required the proposed amendment.

The Committee continues to have these concerns. However, we also understand the Minister's fear about possible delays and we recognize Canada's right to ultimately expel these people in any event. We believe that the Minister would only make the decision to return a person to a situation of persecution for the gravest of reasons. We propose, therefore, that the decision to exclude these people from the refugee process should be made by the Minister personally.

Our complex system of government requires that most day-to-day decisions be delegated to officials. The less significant the decision, the lower the level of delegation. Important decisions are reserved for senior officials, the most important for the Minister personally. In this Bill, for example, clause 16 specifies that the power of the Minister to file a certificate that, in the Minister's opinion, a person is a security threat, cannot be delegated. The Committee believes that the decision to exclude an individual from the refugee process is no less important than the filing of a certificate. We do not fear that the Minister will have an inappropriate number of cases to consider. Public testimony has revealed that there have been only a handful of cases of this nature in the past. For these reasons we propose amendments 16 and 18 so that the Minister would be required to make the exclusion decision personally.

AIDING AND ABETTING

In our Report in December, the Committee recommended that sections 95.1 and 95.2 of Bill C-84 be amended so that the offences created by those provisions would be to aid and abet people to come into Canada in a clandestine manner rather than to aid and abet people to come into Canada without proper documents. We believed that change to be essential in order to protect the valuable work performed by church and other humanitarian

groups when they assist people in danger to come to Canada to make their refugee claims. By force of circumstances, these people very often cannot have the required documents.

We continue to believe that these groups should be protected. Even if they are never prosecuted, the Committee does not think that their work should be clouded by the apparent illegality created by these provisions. The government has disagreed, citing the necessity of avoiding loopholes and curbing abuse.

In order to help clarify and perhaps resolve these differences, the Committee wishes to review certain events and statements surrounding Bill C-84. First and most basic is the fact that this Bill was tabled in response to one specific event: the arrival of an organized boatload of people off Canada's shores. In explaining, in August 1987, why a new law was necessary, Minister Bouchard stated that another boat arrival "could happen in British Columbia tomorrow morning. Just ask what the reaction of Canadians will be at that time and you will have the answer of why we are here today" (emphasis added). He also stated, "We are going to put a stop to the large-scale trafficking of illegal migrants by smugglers" and "the intent of this Parliament is to prosecute those who organize large-scale abuse." His officials referred to "large-scale smuggling by sea in unsafe conditions and in unsafe vessels." Again and again, the government stressed that the particular targets of the Bill were those who organize large groups of people.

At the same time, the Minister assured church and humanitarian groups that they did not risk prosecution under these sections if they continued to abide by the principles and policies of immigration legislation as they had in the past. He insisted that the government was not targeting those who act solely out of a genuine humanitarian concern for other human beings. Church groups and others, however, continued to be concerned that they could be prosecuted. The language of the provisions was very clear to lawyers, law professors and lay critics alike. All reacted to the provisions in the same way, despite the assurances of the Minister. One group felt that it might be compelled to stop its work; others believed that to continue their work would be to engage in civil disobedience.

The Committee has concluded that it is possible to accommodate the explicit and repeated intentions of the government with regard to large-scale abuses but at the same time protect the valuable humanitarian work of our churches and other organizations. This can be done by retaining the words "in a clandestine manner" (added to both sections in our previous Report) in section 95.1 only. It would thus be an offence to aid and abet individuals to come into Canada if this were done in a clandestine manner. Openly helping individuals or a family to come into Canada would not be an offence under section 95.1. For groups of

ten or more people, the offence in section 95.2 would be to aid and abet people to come into Canada without proper documents.

We have reviewed the evidence given by church and humanitarian organizations and believe that this compromise would allay their fears, and would target the offence in a way that fits the reality of the present situation. It is clear to the Committee that they help individuals and families in immediate need. They do not organize large-scale group movements. Repeatedly, the examples they gave of the kind of work that would be criminalized by these provisions concerned individuals at risk. Often the people they helped were in danger because our consulate processing in the United States had not responded adequately or in time.

It is part of the public record that church workers advise people to apply first to our consulates abroad; only if people are in imminent danger do they advise them or assist them to report to immigration officers in Canada. None of this is done in secret. Indeed, the church groups themselves urged the Committee to focus on clandestine activity as the essential element of the offence.

For these reasons, we continue to believe that the offence created by section 95.1 should consist of aiding and abetting individuals and small groups only when the entry is clandestine. With regard to section 95.2, we accept the Minister's statements that the activities to be deterred and the very reason for this Bill relate to the organizing of groups of ten or more people to come into Canada without proper documentation.

With regard to the "purposes" clause, we do not insist on amendment 1 because we feel the Minister's stated purpose will have been achieved if he accepts our proposed wording in sections 95.1 and 95.2.

The Committee had also proposed an additional offence for sections 95.1 and 95.2 to punish those who encourage people to make refugee claims knowing that the individuals in question have spurious cases. The problem of organizers or consultants who advise claimants to make false or misleading statements in connection with refugee proceedings is already addressed in the Bill by the offence "counselling false statements." That offence, however, does not reach people who encourage entrants to make unfounded claims, but without advising those claimants to lie. In such cases, the person makes a claim but offers no evidence to back it up. We suggested that it should be an offence to aid or abet a person to make a manifestly unfounded or fraudulent refugee claim. In response, the government stated that such language was vague and that the offence would be very difficult to prove. The Committee accepts that its earlier wording might cause difficulties

but, because we continue to feel that encouraging unfounded refugee claims should be an offence, we propose a more precise formulation.

In the weeks since our Report in December, the Committee has commenced its study of Bill C-55. In it, there is a provision that claimants whose claims have no credible basis will be denied access to the system. In most cases, that decision will be made at an early stage in the process. The Committee believes that if that credible basis test were to replace the test described by the words "manifestly unfounded or fraudulent," the meaning of the offence would be quite clear.

Furthermore, problems of proof could be minimized. The law could provide for a certificate to be issued by the appropriate authority stating that a finding had been made that a person's claim had no credible basis. This would serve as conclusive proof of that fact for the purposes of the prosecution of the person who had counselled the claim. Unfortunately, this addition to the procedure cannot be made at this time because it relates to Bill C-55, but would be possible in the future. The proposed changes to sections 95.1 and 95.2 will be found in amendment 17.

SEARCH AND SEIZURE

Amendments 8 to 12 of the Committee's Report related to the search and seizure provisions of the Bill. The Committee is pleased that the Minister accepted amendment 8, which will bring the standard for obtaining a search warrant into compliance with the *Charter*. The Committee regrets that the Minister did not accept the other proposed amendments since they too are based on principles important to the protection of the rights of individuals. The Supreme Court of Canada noted in *Hunter* v. *Southam*, [1984] 2 S.C.R. 145 at 169, that: "Without appropriate safeguards, legislation authorizing search and seizure is inconsistent with s. 8 of the *Charter*." The Committee was of the view that the search and seizure provisions as they appeared in the original Bill did not contain the appropriate safeguards. The Committee continues to have concerns that these powers are excessive and unnecessary. There was no evidence before us, other than the Minister's statements, to support the need for warrantless searches in circumstances involving destruction of evidence, an explicit "breaking open" power, and searches by night without specific judicial authority.

On the other hand, the guarantees in the *Charter* and the provisions of the *Criminal Code* regarding the use of force should operate to restrain excessive use of these

powers and therefore, in these circumstances, we do not recommend that the Senate insist on amendments 9, 10, 11 and 12.

DETENTION FOR IDENTIFICATION OR SECURITY PURPOSES

Some of the most serious reservations of the Committee concerning Bill C-84 were centred on its detention provisions. When we first examined the Bill, we felt sure that deprivation of liberty for a period of up to 28 days without the right to have the reasons for detention and the circumstances of the case assessed by an independent decision-maker would violate the *Charter*. We are pleased that the Minister agreed. Although the Committee would prefer to see the initial review of detention take place within 48 hours as is currently required under the *Immigration Act, 1976*, we accept that certain circumstances may well justify the longer period of seven days and we accept the Minister's judgment in this regard. For these reasons we do not recommend that the Senate insist on amendment 13(a) and we recommend concurrence with the proposed changes to 13(b), (c) and (d).

DISSENTING OPINIONS

Members of the Committee who support the Government do not approve of the aforementioned amendments.

This Report represents the views of a majority of the Committee. The members who support the Government are in disagreement with the Report.

Appendix A

List of Witnesses

Tuesday, February 23, 1988: (Issue No. 58)

From the Association of Airline Representatives in Canada:
Mr. Peter van Westrener, Chairman;
Mr. Gordon J. Stringer, Ottawa Manager.

Wednesday, February 24, 1988: (Issue No. 59)

Professor David Beatty, University of Toronto.

Thursday, February 25, 1988: (Issue No. 60)

From the Canadian Bar Association, Immigration Law Section:
Mr. Carter Hoppe, Chairman;
Ms. Barbara Jackman, Chairman (Ontario).

Thursday, March 17, 1988: (Issue No. 68)

From the "Table de concertation des organismes au service des réfugiés de Montréal":
Ms. Rivka Augenfeld.

From the Social Centre to Aid Refugees:
Ms. Mathilde Marchand.

From the Association of Lawyers of Quebec:
Mr. Denis Racicot.

From B'nai Brith Canada:
Mr. David Matas;
Ms. Rebecca Zucherbrodt.

From the Criminal Lawyers' Association:
Mr. John Rosen.

Tuesday, March 22, 1988: (Issue No. 69)

From the Toronto Refugee Affairs Council:
Ms. Ninette Kelley, Secretary;
Ms. Stephanie Thomas, Co-Chairperson.

From Amnesty International:
Mr. Michael Schelew, Refugee Coordinator;
Mr. Michael Bossin.

Respectfully submitted,

JOAN B. NEIMAN

Chairman

MEMBERSHIP OF THE COMMITTEE

The Honourable Joan B. Neiman, *Chairman*

and

The Honourable Senators

Buckwold
Cogger
Doyle
Fairbairn
Grafstein
Hébert
Lewis
* MacEachen, P.C. (or Frith)
* Murray, P.C. (or Doody)
Robertson
Rossiter
Spivak
Stanbury

* ex officio Members

Note: The Honourable Senators Anderson, Asselin, P.C., Balfour, Barootes, Cools, Corbin, Gigantès, Hastings, Hays, Macquarrie, Molgat, Nurgitz, Perrault, P.C., Stanbury and Tremblay also served on the Committee at various stages.

Research Staff (from the Research Branch, Library of Parliament):
Ms. Katharine Dunkley, Law and Government Division;
Ms. Margaret Young, Law and Government Division.

Paul C. Bélisle

Clerk of the Committee

APPENDIX "B"

(*See p. 2982*)

REPORT OF SUBMISSIONS GROUP ON MEECH LAKE CONSTITUTIONAL ACCORD TO COMMITTEE OF THE WHOLE

WEDNESDAY, March 30, 1988

The Submissions Group on the Meech Lake Constitutional Accord has the honour to present its

FIRST AND FINAL REPORT

INTRODUCTION

On 2 February 1988, the Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to (wherever Accord in used in this Report it shall mean the Meech Lake Constitutional Accord and texts subsequently agreed to) created the Submissions Group to give more Canadians the opportunity to voice their opinions on the 1987 Constitutional Accord, known as the Meech Lake Constitutional Accord.

This Report deals with witnesses comments on both the Meech Lake Accord reached on April 30 and the Langevin Accord signed on 3 June 1987. The Group held 5 meetings and heard from 43 groups and individual witnesses. As instructed, the Submissions Group now reports a summary of what it heard without commenting upon the testimony.

LINGUISTIC DUALITY AS A FUNDAMENTAL CHARACTERISTIC OF CANADA AND QUEBEC AS A DISTINCT SOCIETY

The Accord proposes that the Constitution Act, 1867 be amended by a clause which states in part:

> 2. (1) The Constitution of Canada shall be interpreted in a manner consistent with
>
> (a) the recognition that the existence of French-speaking Canadians, centered in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec, constitutes a fundamental characteristic of Canada; and
>
> (b) the recognition that Quebec constitutes within Canada a distinct society.
>
> (2) The role of the Parliament of Canada and the provincial legislatures to preserve the fundamental characteristic of Canada referred to in paragraph (1)(a) is affirmed.
>
> (3) The role of the legislature and Government of Quebec to preserve and promote the distinct identity of Quebec referred to in paragraph (1)(b) is affirmed.

The recognition of Quebec as a distinct society is an aspect of the Accord commented upon by a great number of witnesses. Most of them do not oppose this provision of the Accord. However, many who testified before us, even those who approve of this specific provision, say other parts of the Accord must be amended before it comes into force.

Many Canadians fear that the rights accorded to them by the *Canadian Charter of Rights and Freedoms* will be diminished by the linguistic duality and distinct identity clause. Women's groups, French-speaking Canadians living outside Quebec, English-speaking Canadians living in that province, to name but a few groups, want the Accord amended to ensure that their Charter rights will not be diminished by the "linguistic duality - distinct society" clause.

Women's groups argue that what constitutes discrimination under section 15(1) of the Charter would be affected by an assumption that the "linguistic duality - distinct society" clause entrenches a very important constitutional principle.

They also referred to the opinion of Madam Justice Wilson in the Supreme Court of Canada decision on the Ontario Bill 30 case (Separate School funding); she found constitutional provisions (in that instance section 93 of the *Constitution Act, 1867*) that were part of the fundamental constitutional compromise would not be subject to the Charter.

Some groups said that clause 16 of the Accord would create a hierarchy of rights. This clause provides that nothing in the "linguistic duality - distinct society" provision affects, among other things, "section 25 or 27 of the *Canadian Charter of Rights and Freedoms*". Clause 16, they say, suggests that some rights are more important than others.

French-speaking Canadians living outside Quebec and English-speaking Canadians living in that province said how important it is to them that minority language education rights provided for in section 23 of the Charter are not weakened in any way. Furthermore, the former group made representations to the effect that at least the federal Parliament should have a constitutional duty to promote the fundamental characteristic of Canada that the Accord proposes to enshrine in the Constitution. Francophones living outside Quebec made the point that Canadian duality should refer to the French and English communities instead of the individuals they comprise; such a definition of the fundamental characteristic of Canada would mean, in their opinion, that the Constitution recognizes that they have collective rights.

Aboriginal organizations stated that they are left out of the description of Canada given in this clause of the Accord. While they support the recognition of Quebec's distinctiveness, they stress that there is no doubt of the distinctiveness of aboriginal people.

Aboriginal people asked to be recognized as distinct societies. Some organizations pointed out that this would have a positive effect, from their point of view, on the interpretation to be given to section 35(1) of the *Constitution Act, 1982*. Others, while acknowledging that such recognition would be beneficial, maintain that it still does not clarify their rights.

Aboriginal organizations want constitutional negotiations on aboriginal issues to resume and seek guarantees in this regard. They want their Treaty and other rights, including aboriginal self-government, affirmed and entrenched in the Constitution.

Some witnesses say the Accord does very little to promote multiculturalism. They requested that it also be recognized as a fundamental characteristic of Canada, with duties imposed on the legislatures and Parliament to preserve and promote the Canadian multicultural heritage.

Finally, many groups suggested that before the Accord is adopted it should be referred to the Supreme Court of Canada. Such a reference, would, in their opinion, clarify the legal meaning of the expression "distinct society" and settle the issue of the relationship between the Charter and the Accord.

NATIONAL SHARED-COST PROGRAMS

The establishment of national shared-cost programs covering, for instance, health services, is one way in which the federal Parliament uses what is known as its spending power.

The Accord proposes to add a new section to the *Constitution Act, 1867* stating:

> 106A.(1) The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the Government of Canada after the coming into force of this section in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that is compatible with the national objectives.

The testimony shows witnesses see national shared-cost programs as an important element of Canadian unity and identity. These programs, we were told, should form the major part of a social contract that binds all Canadians.

Aboriginal organizations say that the opting out provisions may lead provinces to set up programs or initiatives that deny treaty rights of aboriginal people, for instance, their treaty right to fish.

Witnesses did not oppose the principle that reasonable compensation be paid to a province that opts out of a future national shared-cost program. However, they criticized the vagueness of the key terms of the clause.

Many witnesses stated that this clause refers to "national objectives," while the clauses of the Accord on immigration use the expression "national standards and objectives." The witnesses recommended that the clause on national shared-cost programs be amended so that there will be some guarantee of equality in services provided to Canadians across the country. Otherwise, witnesses predicted those programs will differ considerably from one province to another.

Witnesses recognize the need for flexibility, but also believed that inequities should be eliminated by the establishment of national minimum standards for these programs by the federal Parliament. They want to make sure that federal standards, such as universality, comprehensiveness, portability and accessability which the *Canada Health Act* sets out as conditions for making payments to provinces, will also govern future social programs.

Some witnesses suggested that there should be a monitoring mechanism and a system of redress for non-compliance by the provinces with the conditions of the programs. Also, some would like the governments of this country to commit themselves to public consultation before they undertake to formulate national objectives and standards.

IMMIGRATION

The Accord proposes that the *Constitution Act, 1867* be amended to provide that, at the request of the government of any province, the Government of Canada shall negotiate an agreement relating to the immigration or the temporary admission of aliens that is appropriate to the needs and circumstances of the province requesting such negotiations.

The preamble of the Accord contains a commitment from the Government of Canada that it will conclude such an agreement with Quebec as soon as possible: this agreement, among other things, would guarantee that Quebec will receive a number of immigrants in proportion to its share of the population of Canada, with the right to exceed that figure by 5% for demographic reasons. This agreement will also deal with withdrawal of Canada from Quebec's reception and integration services, and for reasonable compensation. The Constitution of Canada would state that these agreements will be compatible with any provision of a federal Act that sets national standards and objectives relating to immigration of aliens.

One general comment we heard about this aspect of the Accord is that agreements like the one to be negotiated between Ottawa and Quebec may allow bigger provinces to grow bigger and smaller provinces to decline in relation to the population of Canada.

Another group told us the Accord would necessitate a shift in our immigration patterns. This group is of the opinion that the Accord would militate against all our immigration objectives, frustrate family reunification, make support for refugees more difficult, and weaken the performance of the Canadian economy.

In the opinion of some witnesses, the role of the federal government with regard to immigration would shrink to the point where such a fundamental matter could be dealt with solely at the provincial level. A Black organization was concerned about monitoring ten immigration policies to detect discrimination in provincial legislation and practices.

We were also told that the application of agreements such as those envisaged by the Accord would result in a further erosion of women's limited rights to reception, integration and other services.

THE SENATE

By virtue of the Accord any amendment in relation to the powers of the Senate and the method of selecting Senators may be made by proclamation

issued by the Governor General only where authorized by resolutions of the Senate and House of Commons and the legislative assembly of each province. The Senate has a suspensive veto of 180 days on such amendments.

Two other parts of the Accord also affect the Senate.

Reform of the Senate is on the agenda for future First Ministers' Conferences on the Constitution.

As well, until an amendment to the Constitution is made in relation to the Senate, the Accord contains a transitional appointment process. Under this arrangement "any person summoned to fill a vacancy in the Senate shall be chosen from among persons whose names have been submitted by the government of the province to which the vacancy relates and must be acceptable to the Queen's Privy Council for Canada".

Many witnesses who addressed the sections of the Accord dealing with the Senate expressed the view that the unanimity provision dealing with amendments to the Senate combined with the transitional appointment procedure, if adopted, will effectively terminate any hope of meaningful Senate reform.

Some witnesses pointed out that the Premiers will be reluctant to relinquish this power of appointment. One also indicated that the fact of having Senators appointed from provincial lists may disturb the federal balance in Canada.

At least one witness maintained that the question of gender equality should be addressed when the lists of Senate nominees are drawn up by the provinces.

PARTICIPATION IN THE PROCESS: THE CONSTITUTIONAL CONFERENCES

(i) The Meech Lake Process

We heard a great deal of evidence concerning the process used to arrive at the Accord. Those who commented on the process articulated the concern that there was no provision for public involvement prior to the signing of the Accord.

As well, witnesses also expressed dismay at the statements made after the Accord was finalized which indicated that no changes would be made except if egregious errors were found in the Accord. This contributed, in the view of the one witness to a lack of interest among members of the public in the Accord.

We also heard concerns expressed over the timing of the hearings before the Special Joint Committee on the Constitution held during the summer of 1987 and the fact that many provincial governments may not hold public hearings.

Another witness when commenting on the Meech Lake process, stated it was his feeling that although the Accord may become a legal constitutional document, the lack of public input means that it lacks legitimacy.

Other witnesses were concerned that representatives of the two territories had been completely excluded from the process. They noted as well that women and the aboriginal people were also excluded and termed the method by which the Accord was reached as undemocratic.

A witness stated that there should be a country wide debate on the Accord. He claimed that the people were promised full and open debate and they have not received it.

Several witnesses suggested that the Accord should be put to the people for discussion and decision in plebiscite form. They noted the constitutional amendment process in Australia where proposed amendments are submitted to the people for approval.

(ii) Constitutional Conferences

The Accord not only entrenches yearly First Ministers' Conferences on the Constitution but it also establishes an agenda. Some witnesses expressed concern over the subject matters which are on this fixed agenda Another section of the Accord entrenches an annual First Ministers' Conference on the economy.

The proposed entrenching of First Ministers' Conferences in the Constitution was criticized by those who commented on the process. For example, one witness stated that this would "institutionalize the repugnant process of Meech Lake".

Another witness felt the institutionalizing of First Ministers' Conferences would limit meaningful public discussion on constitutional change. It would result in the "interposition of a new governing instrument. . . superior to parliament".

Some witnesses stated the institutionalizing of these conferences means that Canada would be governed by a First Ministers' Conference held once a year.

Others felt that if these conferences were going to be held they should at least contain aboriginal self-government as an agenda item.

One witness said that there should be a five year sunset clause on agenda items. It was also his opinion that a constitutional requirement to hold an annual conference on the economy unnecessarily cluttered the constitution. It may also be construed as indicating that the economy is to be run by Committee, rather than allowing the federal government a strong leadership role.

THE SUPREME COURT OF CANADA

While the Accord deals in a number of sections with various aspects of the Supreme Court of Canada, by far the most controversial change in the view of many witnesses is the proposed method by which future court vacancies will be filled.

When a vacancy occurs the government of each province is to have the opportunity to submit names of persons who are members of the bar of that province and are otherwise qualified to sit on the Court to the Minister of Justice for Canada. The Governor-in-Council would be required to make the appointment from the names on the provincial lists. Territorial governments do not have the right to submit such lists.

A witness pointed out that the *1982 Constitutional Amendments* greatly increased the role of the Supreme Court of Canada. The 1987 Accord would give the provinces the right to nominate judges and it would follow that only those who favour decentralization or provincial rights would receive nominations.

Witnesses were also concerned that there is no mechanism in the Accord to resolve the problem if the provincial nominees are unacceptable to the federal government.

Some representatives of women's groups feel that it will now be difficult to have those who support the women's movement appointed to the Supreme Court of Canada. They also are of the opinion that the lists of nominees of potential Supreme Court justices presented by the provinces to the federal government should reflect gender equality.

Some witnesses could see no reason for this proposed change in the nomination system and therefore were suspicious of the change. One witness wondered what motivated the provinces to want this power.

One group suggested that both the federal and provincial governments submit an equal number of names to an independent neutral body which would be charged with the responsibility of choosing the most acceptable nominee. It was the opinion of this group that the proposal under the Accord had a built-in potential for bias towards the provinces.

A witness stated that as these provisions of the Accord deny the elected governments of the North the opportunity to nominate Supreme Court judges they should be eliminated.

THE AMENDING FORMULA - UNANIMITY

The general amending formula for changes to the Constitution contained in the *Constitution Act, 1982* requires the approval of the Senate and the House of Commons and of the legislative assemblies seven provinces with at least fifty percent of the population of the provinces.

The part of the amending formula contained in the Accord, addressed by witnesses was that which makes certain matters now subject to the seven

province formula become subject to amendment only with unanimous consent of all governments. These matters are representation in the House of Commons, certain aspects of the Senate, the Supreme Court, the extension of existing provinces into the territories and the establishment of new provinces.

Witnesses claimed the unanimity provisions would make it difficult to adapt the constitution to the realities of Canadian life. They felt that even among reasonable people unanimity is hard to achieve and it may result in deadlock in federal-provincial relations.

Witnesses said the unanimity formula showed a lack of respect for the Territorial governments in that it will preclude the Territories from attaining provincial status. Another witness felt that the aboriginal people should be involved in any constitutional amendment which affected them.

A witness stated that unanimity would reduce the ability of the federal government to make decisions. It will lead to government through bargaining by First Ministers.

In fact one witness claimed this was not an amendment formula at all, but a prescription for deadlock.

APPENDIX A
List of Witnesses

Monday, February 29, 1988: (Issue No. 1)
Professor Theodore Geraets, Private Citizen.

From the National Association of Women and the Law:
Ms. Beverley Baines;
Ms. Nicole Tellier;
Ms. Wendy Atkin.

From the Canadian Council on Social Development:
Mr. Ralph Garber, Past President;
Mr. Richard Weiler, Policy Associate.

Mr. Henri Laberge, Private Citizen.

From Freedom of Choice:
Dr. R. A. Forse;
Mr. Donald Fletcher.

Mr. John Fullerton, Private Citizen;
Ms. Tina Laur, Private Citizen;
Mr. Connor McDonough, Private Citizen.

From the Quebec Federation of Home and School Association:
Ms. Helen Koeppe, President;
Dr. Calvin Potter, Past President and Chairman of the Rights Committee;
Mr. Rod Wiener, Co-Chairman of the Rights Committee and Chairman of the South Shore Protestant Region School Board.

From the Canadian Teachers' Federation:
Ms. Sheena Hanley, President;
Dr. Stirling McDowell;
Mr. Jean-Marc Cantin.

From the National Action Committee on the Status of Women:
Ms. Louise Dulude, President;
Ms. Noëlle-Dominique Willems, Vice-President;

Ms. Roblin Ledrew, Member of the Executive from British Columbia.

From the National Union of Provincial Government Employees:
Mr. Larry Brown, Secretary Treasurer.

From the Ad Hoc Committee of Manitoba Women's Equality-Seeking Groups Concerned About the Meech Lake Accord:
Ms. Jeri Bjornson.

Mr. J.B. Giroux, Private Citizen.

From the "Association canadienne-française de l'Alberta":
Mr. Georges Arès, President;
Mr. Denis Tardif.

Wednesday, March 2, 1988 (Issue No. 2)
From the National Association for Canadians:
Mr. Victor Paul.

From the Charter of Rights Coalition (Vancouver):
Ms. Renate Bublick.

From the Association of Liberals to amend and reform the Meech Lake Accord (ALARM):
Mr. Howard Levitt;
The Honourable John Roberts.

Mr. Guy P. French, Private Citizen.

Mr. Michael MacDonald, Private Citizen.

From the Canadian Association of Social Workers:

Ms. Marion Walsh, President;
Ms. Mary Hegan, Executive Director.

Friday, March 4, 1988 (Issue No. 3)
Mr. Robert Baragar;
Dr. Walter Fahrig;
Dr. Peter Thompson;
Mr. Earling Stolee.

From the National Council of Women of Canada:
Ms. Pearl Dobson, Executive Secretary;
Ms. Marianne Wilkinson, Convenor, Economics Committee.

From the B.C. Women's Liberal Commission:
Ms. Jane Shackell.

From Quebec for All:
Ms. Carol Zimmerman,P.S.W., President;
Mr. David Sadovnick.

Mr. Michael White, Private Citizen.

From the West Coast LEAF Association:
Ms. Suzanne Frost, Member.

From the Townshippers Association:
Ms. Heather Keith-Ryan, President;
Ms. Marjorie Goodfellow, Member of the Executive.

From the National Federation of Nurses' Unions:

Ms. Kathleen Connors, President.

From the Ontario March of Dimes:
Mr. Randall Pearce, Director of Public Affairs;
Mr. Larry Wigle, Past Chairperson, Advisory Committee.

From the Disabled Women Network of British Columbia:
Ms. Jillian Ridington.

From the Ontario Metis and Aboriginal Association:

Mr. Charles Recollet, President;
Mr. Chris Reid, Legal Counsel.

From the Ontario Black Coalition for Employment Equity:
Mr.Roy Williams, President;
Mr. John Cordice, Chairperson, Research and Education.

Wednesday, March 16, 1988 (Issue No. 4)

From the Algonquins of Barriere Lake:
Chief Jean-Maurice Matchewan;
Mr. Michel Thusky, Administor;
Mr. Russel Diabo, Consultant;
Mr. David Nehwegahbow, Legal Counsel.

Professor Michael Behiels, Department of History, University of Ottawa.

From the Indian Association of Alberta:
Mr. Gregg Smith, President.

From the Kettle Point and Stoney Creek Indian Band:
Chief Charlie Shawkence.

Friday, March 18, 1988 (Issue No. 5)

From the League for Human Rights of B'Nai Brith Canada:
Mr. David Matas, National Legal Counsel;
Ms. Rebecca Zuckerbrodt, Intergovernmental Liaison.

Mr. Harry Daniels, Private Citizen.

Professor Michel Bastarache, Faculty of Law, University of Ottawa.

From the Canadian Advisory Counsel on the Status of Women:
Ms. Sylvia Gold, President;
Ms. Tina Head, Legal Analyst;
Ms. Judith Nolte, Senior Advisor.

Mr. Paul Wintemute, Private Citizen.

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Professor Tony Hall, Department of Native Studies, University of Sudbury,

From Four Nations of Hobbema:
Ms. Dale Montour, Co-ordinator;
Ms. Judy Sayers, Legal Counsel.

Mr. Bryan Schwartz, Private Citizen.

Respectfully submitted,

GILDAS L. MOLGAT
Chairman

THE SENATE

Thursday, March 31, 1988

The Senate met at 11 a.m., the Honourable Rhéal Bélisle, Acting Speaker, in the Chair.

Prayers.

BUSINESS OF THE SENATE

ADJOURNMENT

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, before we ask for leave to proceed to Committee of the Whole I should mention the adjournment plan which I shall put later today. Perhaps I should read the motion now, and if there is some discussion we should have it at this point.

Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*g*), I move:

> That when the Senate adjourns today, it do stand adjourned until Tuesday, 12th April, 1988, at two o'clock in the afternoon.

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

Hon. Senators: Agreed.

Senator Doody: Honourable senators, it is our hope to have the Senate sit on the date mentioned in order to deal with various pieces of legislation that are before us. As the Senate is aware, the message amending Bill C-84 went through this place yesterday and has been sent to the House of Commons. That will be waiting for them when they return on April 11, and it could very well be that they will deal with it expeditiously. I think it would be appropriate for this chamber to make itself available to deal with that important bill when it comes back—if it comes back.

I do not need to emphasize the importance of the immigration legislation at this particular time in the history of Canada. Immigration seems to be a major item of public concern, and the government is most anxious to have the tools necessary to deal with it.

We also have before us, in committee, Bill C-55, the other immigration bill. This has been moving along, perhaps not as rapidly as we would have liked, but it certainly is a complicated bill and deserves quite a bit of attention. However, in the event that the committee is in a position to report that bill the week of April 11, it would be appropriate for us to be here for that purpose.

As well, we have Bill C-60, the Copyright Bill, on the order paper. That is worthy of our attention should we get into the debate on the amendments on it.

So, honourable senators, for these reasons and because we have a full order paper, I think it appropriate that we come back on the date I mentioned.

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, I must say that I am surprised at the decision of the government to suggest that we come back on April 12. It had been my understanding that it was the intention to return on April 18. Certainly, today I would consider returning on April 12 if the Deputy Leader of the Government had given any convincing reason why we should come back on April 12.

The fact of the matter is that we have completed the order paper insofar as government business is concerned, and what is there can be moved ahead today, with the exception of the Copyright Bill, which will not be dealt with and probably would not be dealt with even if we came back the week of April 12.

I think the deputy leader has put his main case on Bill C-84, which has been the subject of a message from this body to the House of Commons. The House of Commons will not return until April 11. I believe it is very unrealistic to expect that the House of Commons will deal with the message from the Senate on that Monday. It is probably more realistic to believe that it is unlikely that the message will be dealt with in that full week, particularly in view of the fact that yesterday the Deputy Prime Minister, who is also the President of the Privy Council and the President of the Treasury Board, announced that on Monday, April 11, the House of Commons will be completing Bill C-121, which will be followed by Bill C-117, C-110 and C-30. No mention whatsoever was made of Bill C-84.

Senator Murray: Perhaps they had not yet received our message at that point.

Senator MacEachen: I will not go into any further understandings I may have arrived at from previous discussions, but in order to ensure that we take a decision quickly and not delay the appearance of the Leader of the Government in the Senate before the Committee of the Whole, I would like to move that the motion be amended to read "April 18" instead of "April 12", in accordance with our previous understanding.

I am sure that honourable senators opposite, and particularly the leadership, will agree that the chances of having Bill C-84 returned expeditiously will be as great when we return on the 18th.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I do regret if there has been any misunderstanding in regard to discussions that I or Senator Doody have had with

various honourable senators opposite concerning the schedule. Several weeks ago when I participated in some of these informal discussions there was an understanding that I would open debate on the constitutional resolution on Monday, April 18. That is true, and I must confess that I had assumed at that time that the Senate would adjourn until that date.

However, I had also assumed, based on the progress that Bill C-84 was making and the deliberations of the committee and discussions that I have had with senators on both sides, that Bill C-84 would long since have been disposed of. Unfortunately, we are in a situation where late yesterday Bill C-84 cleared the Senate and was returned to the House of Commons. Mr. Mazankowski, the Deputy Prime Minister and President of the Privy Council, indicated yesterday the business that the House of Commons would be dealing with on April 11, but at that point he had no idea that the message was coming from the Senate with respect to Bill C-84.

It seems to me that it behooves the Senate to be here during the week beginning April 11 against the possibility that the House of Commons will deal with our message on Bill C-84 and might return that bill to the Senate.

Bill C-84 is no ordinary bill and the circumstances in the country with which Bill C-84 and Bill C-55 attempt to deal are far from ordinary. It is very important for the country that these bills be enacted into law, so that a chaotic situation, which we inherited from our predecessors in this respect—

Some Hon. Senators: Oh, oh!

Senator Perrault: Where were you yesterday?

Senator Murray: It is not our law; it is not law introduced by this government that is being subjected to such abuse and for which a legislative remedy must be brought to bear by Parliament.

I do believe that it is the responsible course for us, under the circumstances, to come back here during the week of April 11 to await the pleasure of the House of Commons with regard to this very important legislation so that we shall be here to deal with it if we receive another message during that week from the House of Commons.

However, as always, we are in the hands of the majority in this chamber.

Senator MacEachen: And it is a lucky thing!

The Hon. the Acting Speaker: Honourable senators, you have heard the motion that the adjournment shall be until April 12. You have also heard the motion in amendment by the Honourable Leader of the Opposition. Is it your pleasure, honourable senators, to adopt the motion in amendment?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

The Hon. the Acting Speaker: Will those honourable senators who are against the motion in amendment please say "nay"?

Some Hon. Senators: Nay.

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

Motion in amendment agreed to.

THE CONSTITUTION

FIRST MINISTERS' ACCORD AND AGREED TEXTS— CONSIDERATION IN COMMITTEE OF THE WHOLE CONTINUED

Leave having been given to proceed to Order No. 9:

> The Senate again in Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to.

The Senate was accordingly adjourned during pleasure and put into a Committee of the Whole on the Meech Lake Constitutional Accord and texts subsequently agreed to, the Honourable Gildas L. Molgat in the Chair.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Mr. Chairman, as I have indicated to the Senate on several occasions in the past, I shall have with me several officials this morning and I would ask that the committee permit those officials to enter at this point.

The Chairman: Honourable senators, the committee is now in session. There is a quorum. There is a request from the Leader of the Government that officials be allowed to enter the chamber. Is it agreed, honourable senators?

Hon. Senators: Agreed.

Pursuant to Order adopted on June 18, 1987, Dr. Norman Spector and Mr. Frank Iacobucci were escorted to seats in the Senate chamber.

The Chairman: Honourable senators, I understand the officials who have been allowed into the chamber are Dr. Norman Spector, Secretary to the Cabinet for Federal-Provincial Relations, and Mr. Frank Iacobucci, Deputy Minister of Justice and Deputy Attorney General.

It is a little difficult to say that we have a "witness" this morning in view of the fact that he is one of our colleagues—the Leader of the Government in the Senate and Minister of State for Federal-Provincial Relations. He is not exactly a witness but, Senator Murray, I am very pleased that you are prepared to address us on this most important subject. I would now ask you to proceed.

Senator Murray: Thank you, Mr. Chairman. When I appeared before the special joint committee of the Senate and the House of Commons on August 4 last and again on September 1, Dr. Spector and Mr. Iacobucci accompanied me. They will be available today, as they were then, to assist me in responding to questions that members of the committee may have. When I appeared before the special joint committee I

spoke about the signal achievement of the Meech Lake Constitutional Accord: namely, to end the constitutional isolation of Quebec, which resulted from the agreement of November 5, 1981.

• (1110)

I also suggested that even if that fundamental objective were not at the heart of the accord the amendments would merit our support. This is so because what underlies the accord is a coherent and sensible vision of Canada.

While not all share this federalist vision, as was demonstrated in this committee yesterday afternoon, the present government strongly believes in it, and we consider it well suited to the nature of Canadian society.

In its report last September the special joint committee, on which this chamber was represented, concluded that "The Accord represents a reasonable and workable package of constitutional reform", and the joint committee recommended its adoption to both houses.

Last December this committee placed an advertisement in newspapers inviting submissions from "Canadians who may have concerns with any aspect of the Accord". In response to that advertisement your committee has heard from 28 individuals and organizations. You have received 88 submissions. The Submissions Group of your committee has heard from 43 witnesses; and the task force set up by the committee on the North has heard from 59 individuals and organizations.

Understandably, then, in view of the advertisement calling for people who had concerns to appear, the critics have outnumbered the proponents of the accord at those hearings. Today I would like to focus on a number of the questions and issues that have been raised before the committee. I shall, as I indicated earlier, be opening the debate on the resolution when we return after Easter.

Mr. Chairman, a number of critics have claimed that the "linguistic duality-distinct society" clause will override, supersede or take away Charter rights and freedoms, and that, in particular, sexual equality rights will be infringed.

I remind the committee that in 1982 the First Ministers agreed that it was reasonable that the substantive provisions of the Charter should be interpreted in the light of our multicultural heritage and in the light of aboriginal rights.

At Meech Lake they agreed that it was equally reasonable that the Charter should be interpreted in the light of Canada's linguistic duality and Quebec's distinctiveness. Together those recognitions reflect, in the words of the joint committee, "Canada as it is".

As an interpretation clause, the "linguistic duality-distinct society" clause will not override, take away or supersede the substantive rights set out in the Charter, including those in section 15. Indeed, if I followed correctly the testimony of the Right Honourable Pierre Trudeau yesterday, he seemed to agree with this point of view. In reply to a question from our colleague Senator Marsden, he underlined the strength of the sexual equality rights in the Charter, indeed their virtual invincibility—my word, not his—their virtual invincibility because of section 28.

[Senator Murray.]

During his testimony yesterday afternoon Mr. Trudeau also suggested that there is or has been some serious disagreement on this point between the federal government and the Government of Quebec, some serious disagreement about the meaning of the "distinct society" clause; in particular he referred to the Minister of Intergovernmental Affairs in Quebec, Mr. Gil Rémillard.

I have here a letter which I will table in a moment—copies of which I will have sent across to honourable senators—that Mr. Rémillard wrote on October 5 last to a women's group in the province of Quebec. As I said, I will table the entire letter, but I want to place on the record now a couple of short paragraphs which state quite clearly that Quebec's interpretation of the effect of the "distinct society" clause on the Charter of Rights and Freedoms and ours are at one. Let me quote this couple of paragraphs for the record. This is Mr. Rémillard, in a letter to Madame Brigitte Morneault of the Association nationale de la femme et le droit:

[*Translation*]

> However, I would like to point out that the clause relating to the recognition of Quebec's distinct identity is neither meant to have, nor will have, the effect of threatening the equality rights of Quebec women, any more than it would allow Quebec to pass legislation that might infringe on the rights of Quebecers under the Canadian Charter of Rights and Freedoms.
>
> In fact, this clause, together with the other parts of the 1987 Constitutional Accord, will allow Quebec to recognize and fully consent to the application of the Canadian Charter, while at the same time ensuring that both the Charter and the Constitution as a whole are interpreted in such a way as to consider those factors that together make Quebec a distinct society.
>
> Our legal advisers have again assured us that the fundamental equality rights guaranteed under Sections 15 and 28 of the Charter are in no way threatened or compromised by the Constitutional Accord.

[*English*]

As I said, Mr. Chairman, at this point I will table this letter and have copies of it distributed to honourable senators.

Document tabled.

On this issue, Mr. Chairman, I would recall the testimony before the special joint committee of Professor William Lederman, one of Canada's leading constitutional law authorities. He told the committee:

> It has been alleged that the proposed Constitutional Accord of 1987 would reduce the effect of the Charter in some vital respects, to the detriment of certain rights and freedoms. I respectfully think this is wrong.

I might add that the Right Honourable the Leader of the Opposition in the other place has stated:

There is no conflict between the distinct character clause and the Charter of Rights and Freedoms.

[*Translation*]

In this respect I would like to point out that under section 1 of the Charter, the Government of Quebec is already able to stress its distinct identity before the courts, even without the interpretation clause.

If the Charter had been exempted from the application of the distinct society clause, Quebec would have lost that possibility and been left with less than it had before the accord was signed. It would have had less than sections 25 and 27 of the Charter provide with respect to aboriginal rights and Canada's multicultural heritage.

I am firmiy convinced that the fact that Quebec accepts the Charter without exception or amendments should be seen as enhancing the Charter and the values it represents.

● (1120)

[*English*]

Yesterday, Mr. Trudeau waxed eloquent and passionate—and impressively so—about the community of values represented by the Canadian Charter of Rights and Freedoms of 1982. But, Mr. Chairman, what kind of community of values was it when Quebec refused to subscribe to that Charter? What sort of community of values was it when the National Assembly of Quebec repeatedly exempted the laws being passed by that assembly from the Canadian Charter of Rights and Freedoms by using the "notwithstanding" clause? What a tragedy it would have been to perpetuate that situation in this country, but what a great achievement it was—a great achievement for the people of Quebec, of whom Mr. Trudeau spoke so passionately yesterday, and for the people of Canada—what a great achievement for the community of values that at Meech Lake we obtained the adhesion of Quebec to the Canadian Charter of Rights and Freedoms without exception and without amendment.

Honourable senators, yesterday in this discussion of the distinct society Mr. Trudeau suggested that I had somehow misread or misinterpreted positions that he and his government had taken on this question in the past. Let me try to complete the record on this point. Mr. Trudeau did acknowledge that in 1980 there had been a continuing committee of ministers on the Constitution that had put forward several options for the recognition of the distinct society in a preamble to the Constitution. I will quote those options into the record at this point. The first option read:

[Recognizing the distinct French-speaking society centred in though not confined to Quebec];

Senator MacEachen: Could the minister tell us what document he is reading from?

Senator Murray: Yes. This is another document I will table. This is from the Federal-Provincial Conference of First Ministers on the Constitution and it contains the relevant legal texts that were on the table at that time. I will table it and send copies to my honourable friend and to other honourable senators. It contains the two options that were brought forward to that conference by the continuing Committee of First Ministers on the Constitution. These are two of the options in the preamble and, as Mr. Trudeau pointed out yesterday, each of them was within square brackets. The first option was "[Recognizing the distinct French-speaking society centred in though not confined to Quebec]". The second option was: "[Recognizing the distinctive character of Québec society with its French-speaking majority]".

Mr. Trudeau, I believe, acknowledged that his government was prepared to accept either of those options, recognizing the distinct society in a preamble to the Constitution. Yesterday he did not quote an exchange that he had with Premier Lévesque on this point at the federal-provincial conference on September 11, 1980. At that time Quebec had proposed a form of preamble that spoke of:

[*Translation*]

"Recognizing the distinctive character of Quebec people which, with its French-speaking majority, constitutes one of the foundations of the Canadian duality".

[*English*]

Premier Lévesque then said:

[*Translation*]

—but I repeat that, as far as we are concerned, our best effort until now, that is the best project we have been able to produce to take that reality into consideration, is the following paragraph:

"recognizing the distinctive character of Quebec people which, with its French-speaking majority, constitutes one of the foundations of the Canadian duality."

[*English*]

Then, a little while later, "le président", who was Mr. Trudeau, said the following—and I would ask the committee to pay particular attention to this passage:

[*Translation*]

The Chairman: Only two words in reply. A conciliation gesture. Your text may be outstanding; it is not bad and if you substituted the word "society" for the word "people", I would probably find it acceptable, but if you insist on the term "people", let us also talk about the Canadian people, the Quebec people and the Acadian people.

[*English*]

Those are the passages that I wish to quote. As I said, I will table them with the committee and send copies to honourable senators.

Document tabled.

Those passages demonstrate that the Government of Canada was prepared to accept one or the other of the options put forward by the Continuing Committee of Ministers on the Constitution, recognizing Quebec's distinct society. Mr. Trudeau, himself, as the Prime Minister of Canada, committed his government to such recognition in the course of the discussions at that conference.

Mr. Chairman, some have also raised questions about the "linguistic duality" clause.

Senator MacEachen: Just on your previous point, I have not examined the *Debates of the Senate* since Mr. Trudeau's presentation, but I have more than a faint recollection that, in connection with those two formulations, he stated he might have been prepared to accept one but not the other. However, we can check that later. Perhaps my recollection is not only faint but incorrect.

I take it that the minister is referring to the preamble in all of this?

Senator Murray: I am referring to the preamble. We can later discuss the reason why the matter was placed in the text of the Constitution in 1987. However, the federal government made it clear that they were willing to accept either one or the other of the formulations put forward by the Continuing Committee of Ministers on the Constitution. In any case, Mr. Trudeau further committed himself by suggesting a change in Premier Lévesque's draft in the passages that I have just quoted from the verbatim transcript of the Constitutional Conference of 1980.

With regard to the "linguistic duality" clause, as with the "distinct society" clause, this is an interpretative clause and, thus, cannot override or supersede substantive rights in the Charter such as sexual equality rights. It is ludicrous to suggest that a clause recognizing Canada's linguistic duality and affirming the role of legislatures to preserve this fundamental characteristic could be used in any way to authorize or justify sex-based discrimination in legislation or other government action.

• (1130)

A number of groups have said that the government has not explained why aboriginal and multicultural rights were included in clause 16 of the accord. Others have said that they do not accept the explanation given and have asked why substantive provisions—that is, section 91(24) of the 1867 Constitution Act and section 35 of the 1982 act—were included in addition to the two interpretation clauses.

First of all, may I say for the record that I addressed this issue during both of my appearances before the special joint committee. But let me recapitulate. Aboriginal and multicultural provisions of the Charter were included in clause 16 of the accord because they are interpretation clauses, like the "distinct society" clause and the "linguistic duality" clause, and because they also share with those clauses a linguistic and cultural dimension. It would have been illogical to have added the sexual equality rights provisions of the Charter to clause 16, as some now suggest, because they share none of these characteristics with either the multicultural and aboriginal provisions of the Charter or the proposed new "linguistic duality-distinct society" clause.

In this respect I would like to remind the committee of the view expressed by Yves Fortier, former President of the Canadian Bar Association, when he appeared before the special joint committee last August, where he said:

> I don't see at all how the rule of interpretation to be entrenched in section 2 of the Constitution would supersede the substantive sections of the Charter, including sections 15 and 28.

It is true that clause 16 includes substantive as well as interpretative clauses of the Constitution. Sections 35 and 91(24), which, as a point of fact, are outside the Charter, were added for completeness since they also relate directly to aboriginal peoples.

[*Translation*]

Mr. Chairman, certain witnesses and other people have suggested that if no understanding could be reached on recognizing that the provinces have a role to play in promoting linguistic duality, we should at least amend section 2 to include a commitment by Parliament to promote official languages in the areas under its jurisdiction.

First of all, I would like to say, and I think it is now public knowledge, that attempts were made by Prime Minister Mulroney at the Meech Lake and Langevin talks to obtain a commitment to promote duality. Unfortunately, no understanding could be reached on a commitment that would have been binding on a few governments only.

Actually, it may be much easier to make this change once the accord is ratified, since we cannot reopen the accord now without the unanimous approval of the signing parties.

As far as Parliament and the federal government are concerned, they have already recognized through the new Official Languages Bill, Bill C-72 which I will have the honour of tabling and introducing in this chamber very shortly, that they have a role to play in promoting duality and are ready and willing to do so in all areas under their jurisdiction.

In his latest report, the Commissioner of Official Languages stressed that the accord was:

> a confirmation of the fundamental importance of linguistic duality.

I think we have more to gain by adopting the accord as is, while reserving the option of further enhancing the cause of language minorities during the second round.

[*English*]

Mr. Chairman, witnesses before the committee, and others, have suggested that the Meech Lake Accord jeopardizes the constitutional rights of English-speaking Quebecers. The clause recognizing Quebec's "distinct society" is an interpretation clause and it neither creates governmental powers nor overrides substantive rights such as minority language rights in the Charter. Nothing alters section 133 of the Constitution Act, 1867, which protects rights and obligations respecting the use of English and French in the National Assembly and before the courts of Quebec, or section 23 of the Charter, which protects minority language education rights. Under the accord English-speaking Quebecers are explicitly recognized as an integral part of Canada's linguistic duality. All legislatures, including Quebec's, will have their role in preserving that duality.

As William Tetley, the former Quebec cabinet minister and professor of law at McGill, has underlined, "no danger to English-speaking Quebecers arises from the concept of a distinct society." Furthermore, the Honourable Warren Allmand, the former federal cabinet minister, the member of Parliament from Montreal for the past 23 years, has expressed the view that the accord will not harm or reduce the rights of anglophones in Quebec. The Right Honourable the Leader of the Opposition in the other place has said that the English minority in Quebec "will not lose their rights" under the "distinct society" clause. Taken as a whole, the accord represents a net gain for English-speaking Quebecers and for linguistic minorities generally, a fact pointed out some time ago by the Commissioner of Official Languages.

Mr. Chairman, the committee has heard claims, some of them rather extreme, that the accord weakens federal powers and grants provincial governments an inappropriate role in Supreme Court and Senate appointments. In the view of the government this accord proposes a balanced set of changes which respond to provincial interests while safeguarding federal authority.

Let me say a word about immigration. The federal government will continue to set annual immigration levels in this country. The accord clearly recognizes the paramount role of Parliament to establish national standards and objectives relating to immigration. This is not explicitly stated in existing constitutional provisions which provide, as honourable senators know, for concurrent jurisdiction over immigration as between federal and provincial governments, subject to federal paramountcy. However, national standards and objectives, which remain with the federal Parliament, are defined in the accord as including general classes of immigrants, levels of immigration and classes of individuals who are inadmissible to Canada. The accord also ensures that the immigration agreements are subject to the Charter of Rights and Freedoms. It provides that Parliament will retain its authority to provide citizenship services. We continue to set the rules for citizenship in this country for all immigrants to Quebec or elsewhere in Canada.

● (1140)

Finally, of course, any agreements reached on immigration matters with any of the provinces will be brought before both chambers of this Parliament, as well as before the provincial legislatures concerned.

The accord recognizes that it is constitutionally acceptable for Parliament to establish new national shared-cost programs in areas of exclusive provincial jurisidiction. Money will only be provided to non-participating provinces if they carry out a program or initiative that meets the national objectives. As Professor Donald Smiley testified before the Ontario Select Committee on February 4:

> The Accord is a much less radical break with the Canadian past than most of its opponents claim.

He added:

> It does not strip Ottawa of the power to act decisively in respect to a very wide range of matters important to Canadians as members of a national political community.

[*Translation*]

As far as appointments to national institutions are concerned, Mr. Chairman, I should like to point out that Canada is somewhat of an anomaly among federations. It is exceptional that the federal government should be under no legal obligation to consult the governments of the member states or any other authority when the time comes to appoint Supreme Court judges or senators.

The accord reinforces the federal character of the Supreme Court and the Senate by acknowledging the legitimate role played by the provinces in the choice of candidates who must nevertheless have the approval of the federal government which continues to make the appointments.

Twice already, in the 1971 Victoria Charter and in 1978 Bill C-60, the federal government gave its support not only to the principle of the provinces' participation, but also to the notion of a college responsible for choosing Supreme Court judges, if the Minister of Justice and the Attorney General of a province could not agree. This mechanism would have entrusted the decision making authority to a non-elected third party.

I suggest that this provision of the accord will lead elected governments to agree on mutually acceptable candidates.

As for the Senate, the Trudeau government subscribed in 1969 to the principle that the provinces could appoint a number of senators, and not only suggest a list of candidates as is the case in the Meech Lake Accord. In 1978, Mr. Trudeau suggested that half of the members of the new Chamber of Federation be appointed by the provinces and that their mandate should coincide with that of the provincial legislative assemblies. I say that the Trudeau formula of 1978 would have certainly made of these senators mere delegates of their respective provincial governments.

Finally, I should like to repeat that the temporary provision dealing with Senate appointments should not replace an overall reform of the Senate. The accord guarantees that this issue will be addressed as a priority at future yearly constitutional conferences.

You have heard witnesses state that it will be difficult to set up new jointly-financed national programs and that if some are developed, the opting-out power which the provinces will have will sound the knell of the national nature of these programs and replace them with a collection of ill-assorted measures.

The purpose of the accord provisions dealing with the spending power is to civilize the use of the spending power and clarify the fact that it cannot be used to force the provinces to act against their will in the areas of exclusive provincial jurisdiction.

The accord recognizes, however, that it is constitutionally acceptable for Parliament to set up new jointly-financed programs in areas of exclusive provincial jurisdiction, a point which some might actually dispute. Mr. Pickersgill empha-

sized this point when he testified before our Committee of the Whole. As professors Peter Leslie and Richard Simeon pointed out to the joint committee, the spending power provision makes it possible to set up, between the two levels of government, a healthy negotiation process which should lead up to a wide consensus and reduce the possibility for the provinces to decide not to participate in new jointly-financed national programs.

Moreover, the Canadian Council on Social Development indicated that:

> in its opinion, the notion of national objectives would enhance national and social programs.

This provision on the spending power is much less rigid than what the Trudeau government had offered in 1969 and 1979. In both cases, the creation of new jointly-financed programs would have been subjected to the agreement of the majority of the provinces. There is no similar provision in the Meech Lake Accord.

The Meech Lake provision also protects the national interest better than the previous offers to which Mr. Trudeau referred yesterday afternoon, and which provided for the granting of compensation to the residents of non-participating provinces, and these provinces were not required to implement a similar program or initiative compatible with the national objectives.

[*English*]

The spending power provisions of Meech Lake do not require the consent of the provinces for the federal government to establish new shared-cost programs. There is no majority consent mechanism, as Mr. Trudeau proposed when he was Prime Minister. Meech Lake does require, as Mr. Trudeau's proposal did not, that compensation will be paid only if a province brings in a program or initiative compatible with the national objectives.

● (1150)

Mr. Chairman, this committee and the Task Force on the North heard a good deal about northerners' views on the accord, particularly the "new provinces" rule and the Senate and Supreme Court appointments provisions. Under the accord, certain items, such as the creation of new provinces and Senate reform, are added to the list of those now requiring unanimity. The general amending formula of at least seven provinces representing 50 per cent of the population will, of course, continue to apply to most other major matters. I stress this because the point is often overlooked. The general amending formula, Parliament plus seven provinces with 50 per cent of the population, remains.

Underlying the proposed change to the amending formula is a conviction that these matters—the Senate, the Supreme Court appointments process, and the creation of new provinces—are so central to the federation that all provinces should have an equal voice in them.

Mr. Trudeau objects, as he objected yesterday afternoon, to the unanimity rule for this limited but very important list of subjects. He objects to giving the veto over this limited but very important list of subjects to every province. But he was willing, as he repeated several times yesterday and as he indicated at Victoria in 1971, to give the veto to Quebec. What is that, if it is not special status?

As for the creation of provinces, some, including the majority of this chamber's own Task Force on the North, had suggested that the accord be amended to provide that a new province would be created by a bilateral agreement between the territory and only the Government, not even the Parliament, of Canada. I believe it is unrealistic to suggest that consensus could be achieved among First Ministers on an amendment that would give the provinces no role at all in the creation of new provinces—a role they sought and obtained in 1982 when the so-called 7-and-50 rule was established.

I remind the committee also that expert commentators have termed the "new provinces " rule an appropriate response to the fact that the creation of a new province will have an impact on both the operation of the general amending formula and basic financial arrangements of the federation such as equalization.

Under the amending formula, Professor Hogg has said that "since any direct amendment of the amending formula now requires unanimity it is arguable that other amendments having the same effect ought to be subject to the same requirements."

As for the impact on equalization, Professor Tom Courchesne of York University has said:

> Introducing a northern province may strain the federal government's ability to finance the increased demands on the equalization formula.

As he put it:

> Three traditional "have" provinces of the federation, Ontario, British Columbia and Alberta, ought not to have a veto on new provinces if the three "have-not" Maritime provinces do not have a veto, particularly if the level of equalization payments is at stake.

The special joint committee confirmed that territorial residents continue to be constitutionally eligible for appointment to the Senate and to the Supreme Court.

Finally, as the Prime Minister indicated in his speech on the constitutional resolution last October 21, First Ministers might wish to examine certain territorial concerns at future constitutional conferences—a conclusion that premiers had reached at their August 1987 conference after a discussion with territorial leaders.

Mr. Chairman, before I leave this matter of the amending formula I want to refer briefly but, I hope, thoroughly to Mr. Trudeau's intervention yesterday at this point because he indicated that I had somehow misread, perhaps misinterpreted, the letter that he had sent to Premier Lougheed and to all the premiers on March 31, 1976. Mr. Trudeau said yesterday that in the letter he had suggested three methods of getting patriation with an amending formula. An examination of the correspondence—and I will table this letter also in a moment and send copies to honourable senators—shows pretty clearly that Mr. Trudeau had not suggested three methods of getting

patriation with an amending formula. What he had outlined were three possible amending procedures that could become part of the Canadian Constitution once patriated. And his first proposal was as follows:

> One could provide in the address to the Queen that amendment of those parts of the Constitution not now amendable in Canada could be made on unanimous consent of Parliament and the legislatures until a permanent formula is found and established. In theory, this approach would introduce a rigidity that does not now exist.

Mr. Trudeau concluded this ten-page letter—and honourable senators can read it for themselves—by saying that the federal government, in seeking patriation preferred "to act in unison with all the provinces" but if that were not possible "the federal government will have to decide whether it will recommend to Parliament that a joint address be passed seeking patriation of the BNA Act." In short, Mr. Trudeau was prepared to proceed unilaterally to Westminster, but he was prepared to accept unanimity as the amending formula until something better came along or if something better did not come along, unanimity indefinitely.

I think that fact becomes pretty clear from the letter of Prime Minister Trudeau of March 31, 1976 which was released on April 9, 1976. That is the letter from Prime Minister Trudeau to Premier Lougheed as chairman of the Conference of the Premiers.

Mr. Chairman, I would table that letter and I have copies ready for distribution to honourable senators.

Document tabled.

[*Translation*]

Mr. Chairman, aboriginal leaders have requested that aboriginal issues be placed on the agenda of future constitutional conferences provided for the Meech Lake Accord, although some people have claimed that it is impossible. The Native Council of Canada has proposed a draft complementary resolution in this respect.

The government shares and recognizes the disappointment of aboriginal people of Canada who feel that the constitutional consultations on aboriginal issues have failed since they were terminated in March 1987 without any agreement on self-government having been reached.

However, I am not sure that it is wise or necessary to institute a new consultation mecanism of the same type with fixed deadlines, as suggested by the Native Council of Canada.

In fact, it could even prove harmful if we compel ourselves to negotiate without a reasonable chance to come up with an agreement. Indeed, it is not at all obvious that the respective positions of governments and aboriginal leaders have evolved to the point of ensuring minimal chances of success.

● (1200)

[*English*]

Aboriginal constitutional matters are not being displaced or ignored in the second round of constitutional reform. The Prime Minister has said that he stands ready to convene another First Ministers' Conference on a self-government amendment when a proposal emerges that offers reasonable prospects for agreement. Nothing in the accord prevents him from doing so, or rules out preparatory discussions between governments and aboriginal representatives.

In this regard I believe that we would not be well served by constitutional deadlines. Rather, we remain committed to developing the necessary ground work for achieving such an agreement.

The aboriginal leaders have submitted a joint proposal which sets out a set of principles and a process with a view to renewing aboriginal constitutional discussions. The Minister of Justice will be responding to that proposal.

The Nova Scotia Leader of the Opposition, Mr. McLean, suggested to you that including roles and responsibilities in relation to fisheries on the agenda for the second round will inevitably lead to a transfer of jurisdiction to Newfoundland but would harm the interests of Nova Scotia. This claim fails to take into account that the term "roles and responsibilities" is much broader than jurisdiction.

The special joint committee noted in its report that including this item on the agenda "could result in federal-provincial agreements or other cooperative arrangements benefiting all fishermen without disadvantaging any of them."

It has been alleged that Newfoundland could well be able to encourage other provinces with little interest in the outcome to agree to a change of jurisdiction to benefit Newfoundland. This assumes that provinces "with little or no interest" in the outcome would willingly gang up with other provinces to deprive one or two particular provinces of access to key resources. To put it mildly, this is highly unlikely—not least because provinces are aware that the tables could turn during future constitutional discussions on other issues.

Furthermore, it is completely unreasonable to presume that the federal government would agree to a proposal favoured by seven provinces with 50 per cent of the population but fiercely opposed by one or two provinces that would be directly affected and would suffer hardship.

We have had enough of isolating provinces in constitutional processes. We have had enough of running roughshod over concerns that are vital to a province's interests. While the inclusion of this item on the agenda of the second-round conference does not guarantee an amendment, the government believes that there can and should be a full discussion of the issues, as there has been with regard to fisheries at most constitutional conferences over the past decade.

Mr. Chairman, taken together, the criticisms and amendment proposals I have addressed, though put forward sincerely, clearly would require virtually every major provision of the accord to be reopened for renegotiation. Mr. Trudeau is at least candid about where all this leads. He would have the Meech Lake Accord consigned to the dust bin. Still others would like to see action now on issues that were not on the

agenda for this round and which do not figure in the Meech Lake Accord.

For example, Mr. I. H. Asper and Dr. A. W. Johnson, when they appeared before this committee, proposed that Triple-E Senate reform be achieved before the Meech Lake Accord proceeds. Apart from the breadth and complexity of the issue, they seem to forget that Senate reform is specifically identified as a second-round item, and that since the Premiers' Conference of 1986 governments have been agreed that discussions on it should be deferred until Quebec once again is a full participant in the constitutional process. Once the accord is ratified, I can assure honourable senators that the reform of this chamber will be a priority issue for governments.

[*Translation*]

Mr. Chairman, you have also been told that the accord should have contained a better constitutional acknowledgement of multiculturalism. I must recall that the purpose of this round of constitutional discussions was to bring Quebec back into the constitutional fold, not to eliminate the other alleged flaws of the 1981 accord.

As I said earlier, the section 2 acknowledgement of the distinct character of the Quebec society is in addition to the other constitutional acknowledgements in the Constitution Act, 1982, particularly that of section 27 pertaining to our multicultural heritage.

One of the reasons why this round was successful is that there was a limited number of issues on the agenda. That made it altogether different from prior constitutional exercises when 12 or 14 issues were raised at the same time.

[*English*]

In this connnection, Mr. Chairman, I could not help but reflect yesterday—listening to Mr. Trudeau reciting this endless litany of provincial demands, with which he was confronted during the late 1960s, the 1970s and the early 1980s—what a very good deal we did at Meech Lake on the basis of a limited agenda of the five conditions posed by Quebec and agreed to from August 1986 by all of the partners in Confederation. The premiers had agreed, at their conference in 1986, that the first round of constitutional reform would be limited to the five conditions put forward by Quebec; and attempts to go beyond that were firmly resisted up until the time that the First Ministers met at Meech Lake and at Langevin.

Senator McElman: Did you say that you were listening to Mr. Trudeau?

Senator Murray: Yes. The honourable senator will be aware that I followed very carefully everything that Mr. Trudeau said yesterday, and I watched the marathon that took place—and I congratulate Mr. Trudeau and honourable senators on their endurance. I do not believe that we heard from the Honourable Senator McElman during the question period yesterday, but perhaps we will hear from him today.

Senator MacEachen: We would have welcomed you into the chamber yesterday and you could have made your points directly to Mr. Trudeau.

[Senator Murray.]

Senator Murray: I thank the Leader of the Opposition for that. He will be aware that the purpose of the Committee of the Whole is to enable honourable senators to hear all these points of view. I have not attended any of the meetings of the Committee of the Whole.

An Hon. Senator: Shame!

Senator Murray: You heard, as you have a right to do, from, I think, 27 witnesses before Mr. Trudeau appeared yesterday, and you heard from them in my absence. I am the responsible minister and I knew that I would be the final witness before this committee, and I have every opportunity to put forward the point of view of the government, and to vote—as I hope all honourable senators will have the occasion to vote—on the Meech Lake Accord before the end of April.

[*Translation*]

The second round of discussions provides all sorts of opportunities to examine other issues and improve our constitutional arrangements. In the meantime, it is useless to ask that the governments reopen the accord in an attempt to settle major issues which were not on the agenda of the discussions which led to the Meech Lake Accord.

Mr. Chairman, I shall repeat here what I have said many times before. The federal government firmly believes that the accord must not be reopened to negotiation. No egregious error has been found, and this was the only condition under which the premiers had agreed that the accord should be reopened for negotiation.

Moreover, several of the amendments proposed have already been discussed and rejected by the governments, including those on the relationship between the accord and the Charter, the promotion of the linguistic duality of Canada and several provisions concerning the Territories and appointments to the Supreme Court.

[*English*]

Furthermore, as the joint committee underlined in its report, reopening the accord to renegotiate one proposal would inevitably lead to pressures to renegotiate other provisions. Some commentators have implied that the one or two changes they favour could be made with no difficulty. A telephone call would suffice, they say. This, honourable senators, is a delusion. If First Ministers were to revisit one or two provisions of the accord, advocates of other changes would object that their proposals had been ignored and would demand that they be placed on the table. It is impossible to know where this would end, and whether the necessary political consensus could be reconstructed.

Finally, it should be noted that reopening the accord to consider such amendments would require the unanimous agreement of the signatories. In contrast, many of the proposals for changes would in future require the approval of only seven provinces with at least 50 per cent of the population.

● (1210)

Mr. Chairman, yesterday you were told that Quebec was not badly treated in 1981. Other witnesses have suggested that Quebec was legally bound by the 1982 Constitution Act and

that it should not have been necessary to deal with the range of issues covered by the Meech Lake Accord. In the May 27 article in *La Presse*, Mr. Trudeau went so far as to suggest that the 1982 Constitution Act would last a thousand years, even with Quebec's isolation.

[*Translation*]

In my mind, the settlement forced upon Quebec in 1981 could not be the proper base on which to build the Canada of tomorrow. That is why I voted against the constitutional resolution tabled in this House on December 8, 1981.

Quebec was of course duly bound by the Constitution Act of 1982. But as Mr. Trudeau pointed out yesterday, that province in fact disputed the political and moral legitimacy of that Act as well as of the Canadian Charter of Rights and Freedoms.

The Parti Québécois government systematically resorted to the notwithstanding clause in an effort to make the Charter practically inoperative in Quebec and it made that a condition of Quebec's support for the Constitution.

Quebec later announced its intention not to take part in the constitutional process as long as no solution could be found to its specific concerns.

Such a situation could only be harmful for Canada. On the one hand, the fact that Quebec was isolated only made it harder to have changes adopted through the general amending formula and impossible to adopt changes requiring unanimous consent.

On the other hand, and more importantly, there was a danger that the situation might deteriorate and that a future generation would be left to solve a difficult problem in possibly more troubled circumstances.

[*English*]

With Quebec's willing assent to the 1982 Constitution Act, we now have a Charter of Rights which fully expresses pan-Canadian values and is accepted as legitimate throughout all parts of the country.

The Meech Lake Accord will help transform our Constitution, a document which, with limited change, has served us for 120 years. It will help transform it into a more authentically federalist document. In so doing, the accord will not revolutionize our constitutional arrangements. Rather, it reaffirms the view of the federation held by a broad spectrum of Canadians. This view is not based on mistrust, a pugilistic vision of competition between the partners of the federation. Rather, it assumes the interdependence of the federal and provincial governments and provides a better reflection of what Canadians want Canada to be—a generous, tolerant and united society which respects diversity and which believes that governments should work cooperatively within their respective spheres of jurisdiction.

[*Translation*]

Mr. Chairman, for the moment however, our objective is fundamental and it is clear. We are called upon to ratify an agreement which is aimed at putting an end to Quebec's isolation and at making constitutional change possible in Canada.

This ratification will allow us to move forward with the knowledge that we are entering a new era in the history of our country. In those coming years, we shall have the opportunity to further refine our constitutional process.

[*English*]

I thank the committee for its attention. I invite honourable senators to put their questions to me. I will do my best to reply to them. I will refer questions which properly can be referred to my officials, the Secretary to the Cabinet for Federal-Provincial Relations and the Deputy Minister of Justice.

[*Translation*]

The Chairman: Thank you, Senator Murray. The first senator I have on my list is Senator MacEachen.

[*English*]

Senator MacEachen: Mr. Chairman, first, I would like to ask the minister whether or not he can table for us the full text from which these expressions relating to the character of Quebec were drawn. In his statement the minister argued that Mr. Trudeau was prepared to agree to two versions of a preamble, with the inclusion of Quebec's distinct society. I wish to have the full text in which these expressions would have appeared, because they would not simply be words living in isolation.

Senator Murray: I thought I had done that, Mr. Chairman. If the documents that I have tabled are not sufficient, there are more. What I had tabled were the texts that came from the Continuing Committee of Ministers on the Constitution. There, in square brackets, were the two options that the Government of Canada was prepared to accept, and, further, the exchange between Prime Minister Trudeau and Premier Lévesque, in which Prime Minister Trudeau suggests some changes in Premier Lévesque's draft which would have recognized the distinctiveness of Quebec society, though not of the "peuple quebecois", the phrase to which he took objection.

• (1220)

If my friend finds that these are incomplete, I can table the entire transcript—the verbatim report exists both on paper and on videotape—and, of course, the full report, which I have, of the Continuing Committee of Ministers on the Constitution.

Senator MacEachen: I will examine these documents. I see that the full text is available. I do not think that the document I have does contain the full text in which these expressions are situated.

Senator Murray: Has my friend looked at page 2? There is a document here entitled "CCMC, Best Efforts Draft, Preamble and Statement of Purpose of the Constitution". There are then various items suggested by the federal government and various provinces. Then, proceeding to page 2, the first line reads: "The fundamental purpose of the Federation", and so on.

Senator MacEachen: Yes, I have that. I take it that that section on page 2 is the complete statement?

Senator Murray: That is the full best efforts draft put forward by the Continuing Committee of Ministers on the Constitution. If you look at lines 17 and 18, you will see the two clauses that are in square brackets. The first reads:

> Recognizing the distinct French-speaking society centred in though not confined to Quebec;

and the second reads:

> Recognizing the distinctive character of Québec society with its French-speaking majority;

That formulation was from the Continuing Committee of Ministers and was supported by the Government of Canada.

Later, as I suggested, just to reinforce the points, Mr. Trudeau made it clear in his exchange with Premier Lévesque that he was prepared, by changing a word or two in Mr. Lévesque's draft, to go along with the recognition of distinctiveness of Quebec's society in the Constitution.

Senator MacEachen: I will not press this point until I have an opportunity to look at the transcript of Mr. Trudeau's comments of yesterday, but it was my recollection that Mr. Trudeau had also quoted from a document that had been prepared by a Continuing Committee of Ministers, that it had been presented in square brackets to the First Ministers, and that Mr. Trudeau subsequently said that he was not prepared to accept one version but might have accepted the other in a preamble. However, we can check that when we look at the text.

I have one other point to raise with the minister and that is the assertion he has made that the Meech Lake Accord is not subject to any amendments. I take it that the minister still has that idealistic view of the Meech Lake Accord, that it is a seamless garment, the perfection of which is so evident to him that it cannot be improved at this stage.

Senator Murray: It is not so much an idealistic view, Mr. Chairman, as it is a most practical view. There is no doubt, as I have indicated, that to open it for one supposed improvement would open it for all kinds of other suggestions. As I have said, most of the suggestions for improvement have either been rejected by the First Ministers after careful consideration in the process leading up to Meech Lake and Langevin or they are such that they will be no more difficult—in fact, easier—to effect after ratification of the accord.

Senator MacEachen: It is a practical question then, not a claim of perfection; that is at least understandable. I will not ask the minister to speculate on when he thinks the Meech Lake Accord will become the law of the land, but I wonder how he is going to deal with the situation that prevails in the province of New Brunswick. It is true that the former premier did put his signature to the accord, but he subsequently called an election and was totally defeated by the electorate of New Brunswick, not winning a single seat.

The new Premier is now expressing preoccupations about the Meech Lake Accord. He is not a signatory to that accord and has asked that his preoccupations be addressed. Surely it would be fair to consider them and to accommodate the new Premier of New Brunswick, who has stated that he is not prepared to accept the accord unless his preoccupations are accepted.

Senator Murray: Mr. Chairman, Premier McKenna has, as the Leader of the Opposition points out, expressed his reservations about the Meech Lake Accord. So far as I am aware, he has not stated that he will not accept the accord unless certain changes are made in it. I am not aware that he has made such a statement. In any case, his government indicated in the Speech from the Throne a couple of weeks ago that it would be appointing a legislative committee to hear the views of the people of New Brunswick on the matter. There the matter rests for the moment. The Government of New Brunswick will hear from the people of that province and from other witnesses, and presumably a recommendation will be brought to the government.

The Leader of the Opposition asks me how the federal government is going to deal with the province of New Brunswick. I would remind him, and I would remind the Government of New Brunswick, that this is not a bilateral matter between us and them. Ten provinces, together with the federal government, signed the Meech Lake Accord. The House of Commons has already ratified it, as have the provinces of Quebec, Saskatchewan and Alberta. British Columbia is on the way to doing so, as was announced in the Speech from the Throne a few weeks ago. Ontario has a legislative committee which, if it has not already wound up its work, is in the process of doing so. Nova Scotia has a resolution now being debated in the House of Assembly. Prince Edward Island has announced it in the Speech from the Throne; Newfoundland has announced it in the Speech from the Throne. The ratification process, therefore, is moving ahead. With the exceptions of New Brunswick and of Manitoba, where an election has intervened, the ratification process is moving ahead very much on schedule.

In due course, if Premier McKenna or the Government of New Brunswick have views to express or have reservations or requests to make, they are not to be made in some bilateral negotiation with the federal government. The members of the Government of New Brunswick will have to address themselves to all of the other partners in Confederation who support this accord.

● (1230)

Senator MacEachen: May I take it from the minister's answer that there have been no discussions between the Government of New Brunswick and the Government of Canada with respect to the attitude of the New Brunswick government to the accord?

Senator Murray: I think it would be permissible for me to tell the Senate that in the course of private discussions that I have had with Premier McKenna on various matters Meech Lake has come up at least once. On that occasion I conveyed to him the views that I have just conveyed to the Senate, namely, that this is not a bilateral matter between us and them.

Senator MacEachen: It is not bilateral, but we take it that the federal government is an important player and that the views of the federal government will be part of the solution.

Is the federal government prepared, if the other provinces are prepared, to sit down and discuss with Premier McKenna his preoccupations to see whether an accommodation can be reached?

Senator Murray: To complete the record, Mr. Chairman, I should have indicated—and I have been reminded by the officials—that federal officials and officials from New Brunswick have, indeed, discussed the concerns that were expressed by Mr. McKenna and the New Bunswick Liberal Party during the election, now the government of that province.

The question that the Leader of the Opposition puts is frankly rather academic. One can discuss preoccupations, but it has been made clear, I think publicly both by this government and by the Government of Quebec and by various other governments, that we are not prepared to take the monumental risk to the unity of the country that would be involved in reopening the accord for the purpose of discussing matters which, as I said, could more easily be addressed after ratification in the second round of constitutional discussions.

As I have pointed out, the Government of New Brunswick has already been rebuffed—I hope that is not too strong a word—by several provinces on this matter. My honourable friend is well aware that without unanimous consent, which is not forthcoming, we cannot reopen the accord.

Senator MacEachen: But can you conclude the accord without unanimous consent? Can you make it the law of the land in the absence of New Brunswick?

Senator Murray: I think my friend knows the answer to that question as well as I do.

Senator MacEachen: What is it?

Senator Murray: A number of matters in the accord require unanimous consent, and that being the case, it would take unanimous consent to reopen—

Senator MacEachen: So it would require the consent of the Province of New Brunswick to make the accord the law of the land?

Senator Murray: Yes.

Senator MacEachen: And the minister is saying to me, if I understand him correctly, that the Government of Canada will not consider changing the accord to meet the preoccupations of New Brunswick.

Senator Murray: Mr. Chairman, I must give the same reply that I gave earlier, and that I gave to the Premier of New Brunswick, which was that this is not a bilateral matter between us and them. His concerns, if they are to be discussed, would have to be discussed multilaterally.

Just imagine the signal that I would send to the other partners of Confederation if I sat down and began to renegotiate Meech Lake with the Premier of New Brunswick.

Senator MacEachen: That is not the question; the question is whether the Government of Canada has made up its mind that it will not make changes that would meet the preoccupations of New Brunswick.

I am not asking about the other provinces; I am asking what is the attitude of the Government of Canada about possible changes to accommodate the preoccupations of New Brunswick? Is the attitude negative or positive?

Senator Murray: I am sure my honourable friend knows the answer to that question.

Senator MacEachen: Please give it to me. I do not know the answer, to tell you the truth.

Senator Murray: I will give it to my honourable friend again. The Government of Canada, together with ten other governments of this country, made a commitment at Meech Lake and at the Langevin meeting. We made a commitment. We respect and stand by that commitment. We are opposed to reopening the accord.

Senator MacEachen: Even though in the interim the population of New Brunswick has changed the government in a very drastic way? The Government of Canada is not prepared to take that into account?

Senator Murray: I trust the Leader of the Opposition is not suggesting that the issue in that election was the Meech Lake Accord.

Senator MacEachen: No.

Senator McElman: It was one.

Senator MacEachen: I am not suggesting that, but the fact remains that there is a new government. We have heard a great deal about the equality of the provinces. I remember the minister waxing eloquent in this chamber one day about the equality of the provinces.

Senator Murray: Which my friend says does not exist.

Senator MacEachen: I am applying the minister's standards to his own conduct; namely, what has happened to the equality of the provinces? How does New Brunswick attain equality now with the other provinces unless it has a voice in the consummation of Meech Lake? It is to be ignored, according to the minister.

Senator Murray: Not at all; nor does New Brunswick believe it is being ignored. The Government of New Brunswick has brought the resolution forward, at least for the purpose of referring it to a committee of that legislature.

The honourable senator is getting quite a bit ahead of himself and ahead of the legislature of New Brunswick in anticipating the result of that study and the eventual final position of the Government of New Brunswick.

Senator MacEachen: I do not think I am getting ahead of myself at all, or ahead of the events, because the premier was on television last evening and stated quite clearly that unless his preoccupations were addressed he would take the responsibility to the people of New Brunswick for seeing the Meech

Lake Accord not proceed. That is what I understood him to say on television last evening.

So I am not really ahead of myself. It seems to me my question is totally in accordance with the view expressed by the Premier of New Brunswick. I think that is a reality.

I can understand the minister's coyness in refusing to deal with this directly, because it is quite clear that unless New Brunswick comes aboard Meech Lake is a dead duck.

If the spirit of reconciliation is a guiding principle, it would seem to me that that spirit ought to be applied now by the government and the other premiers in trying to conciliate and reconcile themselves to a new premier.

Senator Murray: That remains a guiding principle, and, unlike the honourable senator, I am confident that it will triumph in the end.

Senator MacEachen: That is an answer that is so apocalyptic that it is probably a proper introduction to Good Friday.

Senator Murray: It is not apocalyptic.

Senator Haidasz: Mr. Chairman, following the example of the Leader of the Opposition in the Senate, I would take advantage of the presence in Committee of the Whole of the Deputy Minister of Justice and ask him whether he can, in some way, inform us of any advice or opinion he has given the government as to the constitutionality of any or all of the clauses of the Meech Lake Accord.

Senator Murray: Mr. Chairman, I am not sure what the honourable senator intends by that question, but he will know, as a former cabinet minister and as an experienced parliamentarian, that as a matter of practice it is not the custom to table legal advice that one receives in confidence from the law officers of the Crown.

I do not know whether the deputy minister would like to elaborate on that; I do not know what he could properly say in reply to the question Senator Haidasz has put. Let me simply say that what this process is about is amending the Constitution. Senator Haidasz seems to be suggesting that there is something unconstitutional about what is being done. Perhaps he should elaborate on that and then I will invite the deputy minister to comment, if he properly can.

Senator Haidasz: Mr. Chairman, we have heard statements in this chamber from other witnesses that lawyers from the two territories are being discriminated against because they will never be eligible for appointment to the Supreme Court of Canada since those two territories will not be able to become provinces, and, therefore, will not be able to submit a list of candidates for the Supreme Court of Canada. That is against the equality rights in the Charter of Rights.

● (1240)

Senator Murray: If I am not mistaken, and the deputy minister can perhaps elaborate, I believe that very point is now the subject of some litigation in the courts. In any case, I simply remind the honourable senator that lawyers in the territories, who are also members of provincial bars—as the overwhelming majority of them are and as all of them can become quickly—remain eligible for appointment to the Supreme Court of Canada under the Meech Lake process.

Mr. Frank Iacobucci, Q.C., Deputy Minister of Justice: Mr. Chairman and honourable senators, I would like to add a general comment. Obviously, as advisers to the government, my department thoroughly reviewed the constitutional proposals that are reflected in the 1987 amendment. As a general matter, we advised the government that these provisions did comply in all material ways with the provisions of the Constitution of Canada.

Senator Murray: It occurred to me, when the Leader of the Opposition was talking about the commitments that were made by First Ministers, that because there are questions of detail here I might ask Dr. Spector, who was both present in the room and is familiar with the documents, whether he has anything to add about the commitments to table those resolutions in the legislatures.

Dr. Norman Spector, Secretary to the Cabinet for Federal-Provincial Relations: Mr. Chairman and honourable senators, with respect to the question of the position of the Government of Canada concerning reopening the accord, it is important to consider that the accord signed on June 2 and 3 commits the signatories to lay or cause to be laid before their respective legislative assemblies as soon as possible the resolution that is appended to the accord.

There was—and this is public knowledge—a discussion in the early morning of June 3 at the Langevin Building on the topic of public hearings. The question arose as to the conditions under which the signatories to the accord would be released from their commitment with respect to presenting the resolution that is appended. The words, if I recall them correctly, were: "If there is an egregious error, and only if there is an egregious error, would we be prepared, as First Ministers, to reopen the accord."

It is our view that, if a signatory to the accord were to reopen it under other conditions and not lay or cause to be laid the resolution before his legislative assembly, the commitments contained in that accord would have been violated. Having said that, the situation we are in, given the unanimity requirement as a practical matter for the resolution, is that without the unanimous consent of the signatories to the accord to reconsider the commitments they made the morning of June 3 we would be no further along or no further behind where we are at present with the difficult issue that has been raised here with respect to New Brunswick. That is, we now have the prospect of a non-signatory with concerns about the accord. But unless there were unanimous agreement—even if there were only one premier who said that he was not interested in revisiting the commitments made on June 3, we would be no further along than we are at present with respect to the exception of New Brunswick.

I can tell you—and this is public knowledge as well—that overtures have been made to a number of provinces that have been rejected. Moreover, as an indication of the kind of process this sets in place with respect to the content of the

resolution, for example, the accord, one premier has suggested that if the accord were reopened he would want to see Triple-E Senate reform effected in the current round of discussions.

Senator MacEachen: That would be excellent!

Some Hon. Senators: Hear, hear!

Senator Murray: Yes; and the question that arises is whether you want to hold up Quebec's re-entry into the constitutional family until those other objectives are achieved. That is the question that is before this chamber and before the country and on which, I trust, honourable senators will have an opportunity to vote before the end of April.

Senator MacEachen: I wonder whether Dr. Spector can tell us whether there were any other conditions apart from—

The Chairman: One moment. Senator Haidasz, had you finished your questioning?

Senator Haidasz: I do not think I will get very far in my questioning, so I will desist.

The Chairman: Thank you. I then have Senator MacEachen, followed by Senator Doyle.

Senator MacEachen: Well, I will desist also.

Senator Doyle: I have a couple of questions that relate to proceedings in this chamber yesterday, and I will try to be as precise about them as I can.

I would like to ask the Leader of the Government if he would respond to a statement made in the course of the questioning of Mr. Trudeau. This was a statement made by Senator Frith. He said:

> . . . if this week or next week—that is before the expiration of 180 days—we pass a resolution authorizing a proclamation—that is what the section says—we will have paralyzed section 47, knocked it out, and we will have an absolute veto.

The "we" of whom he was speaking, of course, was the Senate. I wonder if you would agree with Senator Frith on that interpretation.

• (1250)

Senator Murray: Mr. Chairman, with all due respect, I think this position put forward by Senator Frith yesterday, and into which he tried to lead Mr. Trudeau, is absolutely ludicrous. Is there any doubt in anyone's mind as to what was intended in 1981-82? Is there any doubt in anyone's mind that what was intended was that the Senate should have a suspensive veto of 180 days on constitutional change, period? Does anyone doubt that? Does anyone who voted on that matter doubt what the intention was? I do not, and I would be surprised to find that anyone seriously does. I am quite surprised at Senator Frith's intervention on that matter.

However, let me go to section 47 of the Constitution Act, 1982 and read it to you, including a phrase which I am reasonably sure neither Senator Frith nor Mr. Trudeau quoted:

> 47. (1) An amendment to the Constitution of Canada made by proclamation under sections 38, 41, 42 or 43 may be made without a resolution of the Senate authorizing the issue of the proclamation—

Honourable senators, "*the* proclamation"—just one.

> —if, within one hundred and eighty days after the adoption by the House of Commons of a resolution authorizing its issue, the Senate has not adopted such a resolution—

Then I would draw the attention of honourable senators to the rest of this section:

> —and if, at any time after the expiration of that period, the House of Commons again adopts the resolution.

Honourable senators, I do not know what could be clearer than that; it is clear that what was intended by this section in 1982 was that the Senate should have a suspensive veto of 180 days only—a suspensive veto only—on constitutional change.

Senator Frith also tried to make something of the French version. I believe the French version, which I took occasion to read this morning, is at least as clear and at least as strong as is the English version. Because I am speaking advisedly on this matter, and although I speak in less diplomatic and less professional language than would the Deputy Minister of Justice, I invite him to comment.

Senator MacEachen: Are you speaking as Justice Murray or Minister Murray?

Senator Murray: I am speaking as the Minister of State for Federal-Provincial Relations—as I say, advisedly—on this preposterous legal point.

Senator MacEachen: What does that mean to us?

Senator Murray: When I say "advisedly," I mean having taken advice on what appeared to me then—and which I have confirmed to my own satisfaction, at any rate—a preposterous point interjected into the discussion yesterday by Senator Frith—

Senator MacEachen: It seems to have frightened you a little—

Senator Murray: —and into which he tried, quite unfairly, to lead the former Prime Minister.

Senator Perrault: He is starting a panic out there; panic in the streets.

Senator Murray: Let me tell my honourable friend that if it gets out that the honourable senators are trying now to claim that we did not lose the absolute veto in 1982, and that there is some little word in there, some form of words, that gives us back the absolute veto, they are welcome to take that case to the people of Canada, because we will be the laughing stock not only of the country but, I suggest, of the courts.

In any case, I ask the Deputy Minister of Justice to deal with this matter in more professional language.

The Chairman: Mr. Iacobucci?

Mr. Iacobucci: Thank you, Mr. Chairman. I cannot improve on the explanation of the intention that was given by Senator

Murray. As far as the wording is concerned, I note that, to begin with, the marginal note on section 47 states: "Amendments without Senate resolution." So it is pretty clear that there are amendments that can be contemplated that do not have a resolution passed by the Senate.

An amendment to the Constitution of Canada is made by a proclamation, and the proclamation has to relate to a resolution. Also, the wording of the section states pretty clearly that there is one proclamation and that there is one resolution.

Therefore, when we look at what resolution is passed by the House of Commons, it is that resolution that, in fact, has to be the resolution that is either adopted by the Senate or is not adopted by the Senate, and those are the choices from a legal standpoint. If the Senate, in its wisdom, chooses to modify a resolution, obviously, from a political standpoint, that is something that I would not want to comment on, but it would be up to the judgment of the Senate to do so if it wished to modify a resolution. However, if the Senate did that, then it would not have adopted such a resolution within the meaning of section 47, and, consequently, it would lose its suspensive veto, and, accordingly, after the expiration of the 180 days the House of Commons could again adopt that resolution.

The Chairman: Senator Doyle?

• (1300)

Senator Doyle: Mr. Chairman, that was very useful, because it leads me right into the second part of this question. We are talking about what the Senate might do, or attempt to do, to the resolution, and Mr. Trudeau dealt with that yesterday, I thought, in quite a striking way. However, in going back over the record of just what was said I find that it is perhaps not as precise as I had thought it was.

He did clearly recommend that this chamber make changes and make amendments and otherwise work towards setting the stage for a reference to the courts. At least, that is what emerged in my mind. He certainly was in favour of a reference to the courts and, while he thought there might be some limitation on how effective this chamber would be in moving that along, he wanted us to do what we could to encourage it.

Therefore, I wonder about the prospect of a reference to the Supreme Court, with all of the delay that would probably follow.

Senator Murray: Mr. Chairman, I must say that having heard Mr. Trudeau it is clear that his suggestion for a reference to the Supreme Court is nothing more than a subterfuge, because he also made it very clear, not once but several times in his presentation yesterday, that what he really wants is to have this accord consigned to the dust-bin of history. Then, of course, the Constitution Act of 1982 could last for a thousand years, as he told us in May, even with Quebec outside the constitutional family.

Mr. Chairman, constitutions are written in language that is intended to allow them to evolve with time and in response to changing conditions and to keep pace with changing conditions. As I had occasion to remark before, when people objected to some of the general concepts that were written into the proposed constitutional resolution, this is not a tax statute or a ways and means resolution that we are writing, in which we try to cover off every conceivable eventuality. Constitutions written like that frequently do not last very long or, at any rate, are not very successful. A long time ago I was taught that that had been the experience of a number of other countries. The idea of putting general concepts into the language of the Constitution is to ensure that that Constitution will evolve and keep pace with the changing needs and conditions in the country.

In 1867 the Fathers of Confederation set down "peace, order and good government," without much further elaboration. They left it to succeeding generations of Canadians and to the courts to interpret what that meant. The same applies to "property and civil rights."

One does not need to go back to 1867 to find these general concepts written into the Constitution. In the 1982 exercise we have the recognition of Canada's multicultural heritage as an interpretative clause for the Charter of Rights. Nobody has said or tried to define what that means. I think it would be rather interesting, albeit probably a futile exercise, for a bunch of us to get together to try to do that. It was not further defined, because it was not necessary to define it.

Even more to the point, section 1 of the Charter of Rights and Freedoms states:

> The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

The first clause in the Charter of Rights and Freedoms is the one that provides for limits on the most fundamental rights of Canadians; freedom of conscience and religion; freedom of thought, belief, opinion and expression; freedom of the press and other mediums, including communication; freedom of peaceful assembly; and freedom of peaceful association. That clause provides for the limits on those most fundamental freedoms of Canadians. What does it say? It says, "... such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." Do we try to define in some detail what is meant by "a free and democratic society"? No, we do not. We leave that to the courts. We leave that to successive generations of Canadians to decide.

In the 1981-82 exercise there were some questions that could be put to the courts, and were put by various provincial governments and by the federal government in a reference to the court. The questions were: Does Parliament have the power to do X, Y or Z? If not, then some more questions were put. If so, then some other questions were put. Those were concrete questions that could be put to the court. What questions would you refer to the court under the Meech Lake Accord? When he was asked about this, Mr. Trudeau said, "Well, the 'distinct society' clause." What is the question? Surely, there has to be a set of facts to put before the court.

No, Mr. Chairman, for all the reasons that I have indicated, a reference to the Supreme Court is not on.

Having stated the policy on this matter, there may be, from a legal point of view, some matters regarding references to the court that the Deputy Minister of Justice could put on the record at this stage.

Mr. Iacobucci: Mr. Chairman, when governments have decided to refer a matter, it has been in situations where there was concern about the legal aspects of the issues involved. In the context of the accord and the Charter of Rights and Freedoms and in the context in which the question was raised about a reference, it is my understanding that the government does not believe that the weight of legal opinion today suggests that there is anything in the accord that takes away, supersedes or overrides any of the rights of the Charter or otherwise puts them at risk.

The other point I raise is that the reference on the question of the Charter of Rights and Freedoms would have to involve a request to the Supreme Court to provide an interpretation of the accord in the abstract, and it would be very difficult, from a factual standpoint, to give the court a factual basis and context that would be necessary for the court to assess, in any meaningful way, the accord's contents.

Indeed, I point out that it was the lack of a similar factual basis and context that caused the Supreme Court of Canada to decline to answer certain questions in the 1979 reference on Senate reform.

A Supreme Court reference in the present context would be difficult to conceive in terms of adding a specific set of answers to a specific set of questions that would enlighten the issues under consideration.

Senator McElman: The statement just made by the witness is very interesting. The Department of Justice, of course, is the department that advises the government and supports that advice, which I respect.

The debate on Meech Lake-Langevin has not been very widespread, I think largely because the process used has had a blanketing effect upon proper public debate of the issue. However, there has been sufficient debate and sufficient testimony before this committee to show that there are some very deep reservations about some aspects of Meech Lake. I guess one could say that the deepest concerns have been with respect to the term "distinct society" and what its effect might be, for example, on elements of the Charter.

• (1310)

The government has taken the position that its effect will not be serious in diminishing those matters now in the Charter. Other highly respected witnesses have taken the contrary view. The government has said that, no, it does not wish to make a reference to the Supreme Court. One or more of the premiers have said that they have not the foggiest notion what "distinct society" means, although the Government of Canada says it believes it does know. We have, currently, a great difference of view. The government says that eventually it will be decided by the Supreme Court. Because of the concerns of some very credible witnesses that there are innate dangers involved here, why does the government not now make a reference—I do not accept that it is impossible to make a reference—that would perhaps allay some of the fears? I agree with what Senator Murray had to say earlier as to what was meant by "Parliament" and the 180 days. There are many things meant by "Parliament." The Supreme Court of Canada has said, "That may be what they meant, but it isn't what they have said in law." That could apply to this accord, despite the good advice to the government from its bureaucrats.

So why not consider the request that has been made by many viable witnesses, many learned people in constitutional law, to make a reference before the event rather than after the event?

Senator Murray: Mr. Chairman, first, I hope that we will have an opportunity at some point for Senator McElman to elaborate on his comments about the amending formula and the suspensive veto of the Senate, because I take it from what he said that he agrees with the legal opinion put forward by the Deputy Leader of the Opposition—

Senator McElman: Well, I had better stop you right there, because I made no such suggestion as to whether I support it or do not support it—and that is not in question at the moment; so don't lay that on me. Just deal with the question I gave you.

Senator Murray: Mr. Chairman, for reasons that my honourable friend will appreciate, I cannot resist the temptation to point out to him that when his party, at its 1986 convention, passed a resolution in favour of recognizing the distinctiveness of Quebec society, it must have known what it meant.

Senator McElman: We would particularly have known what it meant had it been in the preamble rather than where it is now.

Senator Murray: Before we leave today we must have a discussion between our legal advisers about the preamble as distinct from a clause in the Constitution. But since my honourable friend has brought that up, let me make this point—

Senator McElman: Could you first answer my question?

Senator Murray: I will get to your question. The preamble was under discussion in the 1981-82 exercise, as the record shows. But the moment passed for a preamble, and the other interpretative clauses that were put there in 1982 respecting aboriginal rights and our multicultural heritage—that the Charter had to be interpreted in a way consistent with our multicultural heritage—were not put in a preamble but as interpretative clauses in the body of the text.

So, when 1987 came along, and the question was where to put the interpretative clauses relating to the distinct society and to Canada's linguistic duality, we could do no less. The moment for the preamble had passed. The First Ministers, in 1982, had judged it appropriate not to have a preamble but to put those interpretative clauses into the body of the text.

We are not making a reference to the Supreme Court of Canada for the reasons that have been explained. You do not send to the Supreme Court of Canada for a legal opinion or a

legal interpretation. You send the set of facts and ask the Supreme Court to pronounce on those facts.

I want to ask the Deputy Minister of Justice to say a word, if he wishes to add anything and thinks it appropriate to do so, about this matter of preambles as distinct from the body of the text.

Senator McElman: Before you do so, may I ask a supplementary following upon your answer to my basic question? If the federal government feels that it is not in a position to be able to word such a reference, what would be the feeling if a province found it quite possible to word such a reference and have it go to its own Supreme Court?

Senator Murray: I am sorry, would you repeat the question?

Senator McElman: My question is: What would be the government's reaction to a province which felt itself capable of wording a reference and of putting it to its own Supreme Court? Would the Government of Canada then be intervening in some fashion?

Senator Murray: Mr. Chairman, the honourable senator asks what would our attitude be if the government of a province decided to make a reference to its own Supreme Court. What difference does it make what our attitude would be? If they put a reference to the Supreme Court, whether or not we intervened would depend on what the question was and how far it went, and whether the Supreme Court agreed to hear it or deal with it.

On this business of a "distinct society", I am sorry that Senator Frith is not here, because he was a member of the B & B Commission—

Senator McElman: We are sorry that you weren't here yesterday.

• (1320)

Senator Murray: —and, in addition to the resolution that was passed in 1986 by the Liberal Party—who would not, I am sure, pass a resolution dealing with a distinct society if they did not know what it meant—there is the Royal Commission on Bilingualism and Biculturalism. I will take just a second of your time to read what they say under the heading of "Two Societies":

> We have already said the two dominant cultures in Canada are embodied in distinct societies and that the word "society" designates the types of organization and the institutions that a rather large population, inspired by a common culture, has created for itself or has received, and which it freely manages over quite a vast territory where it lives as a homogenous group according to common standards and rules of conduct. We recognized the main elements of a distinct French-speaking society in Quebec. The same may be said of the other culture in the English-speaking provinces, and, to a certain degree in Quebec, where the disadvantages of minority status are balanced for the English-speaking society and by a very advantageous socio-economic position.

[Senator Murray.]

That was the position of the Royal Commission on Bilingualism and Biculturalism, of which our friend and colleague, Senator Frith, was a member.

If I may, I will read a couple of lines from the Task Force on Canadian Unity—the so-called Pepin-Robarts commission appointed by the Trudeau government and which reported in 1979, as follows:

> One can readily identify several factors which have led to the emergence of a distinct society in modern Quebec. We have identified six—history, language, law, common origins, feelings and politics—which together with others have led to the development of a distinct society in modern Quebec.

Senator McElman: And aside from civil law, the same description would apply to New Brunswick, would it not?

Senator Murray: Indeed, the Royal Commission on Bilingualism and Biculturalism would have said so. In fact, I will read what the commissioner said about the distinct society in Quebec:

> Elements of an autonomous society are taking shape elsewhere. In some cases they are tenuous and of marginal importance, but in others they are advancing vigorously.

He went on to state:

> Especially in New Brunswick.

But, in any case, I do not think anyone would pretend that that reality—that is, that Quebec is a distinct society—is at all comparable to the unique situation that we have in New Brunswick.

I do want to finish my thoughts on the matter of the preamble versus the interpretative clause by asking the Deputy Minister of Justice if there is anything he can add.

Mr. Iacobucci: Mr. Chairman, honourable senators, on the question of a legal distinction between the preamble and an interpretative clause, I will be as brief as possible. The interpretation clause in a statute or in a Constitution puts an obligation on not only the court but on others reading the Constitution, or the particular document in question, to take that interpretation clause into account in the interpretation of the provisions of the statute or Constitution in question. A preamble gives more of a discretion to the court to take into account the wording of the preamble.

There have been cases where the courts have referred to a preamble in arriving at an interpretation, but, as I said, it is not obligatory or mandatory for the courts to take the wording of the preamble into account. So a stronger form of impact is through an interpretation clause, and, as Senator Murray has pointed out, since it was decided to put multicultural preservation in the Charter in section 27, and aboriginal rights in section 25, the First Ministers agreed with the interpretation clause approach for the distinct society.

Senator McElman: Thank you, Mr. Chairman.

The Chairman: Thank you, Senator McElman.

● (1330)

Honourable senators, it is now a little past 1.30. We should make a decision as to how we wish to proceed. I have only one name on the list at the moment. If there are no other names to be added, then I suggest that we proceed and then rise, but if there are going to be further questioners we have to consider whether we should break for lunch.

Perhaps we should proceed with the next name on the list.

I now call upon Senator Perrault.

Senator Perrault: Honourable senators, I spent a long, hot summer as a member of the Joint Committee on the Constitution here in Ottawa last summer. I have maintained silence since that time. I have listened to the remarks of the minister today. I know that there are sincere people on both sides of this question of whether Meech Lake is a good agreement or an incomplete agreement.

I can say that the method pursued in order to bring this Meech Lake or Langevin accord into being is hardly the classic method. It is not elegant, it is not historical, in any sense. It almost seems to have been rushed through with furtive zeal.

At one time I was Parliamentary Secretary to the Minister of Labour, and that is the way we shoved through a minor labour dispute—keep them up all night, make an urn of coffee, and get them to sign on the dotted line. That is done in labour disputes all over North America.

But so many concerns have been raised since that event by so many qualified and well-intentioned people, I find it difficult to accept from the minister the suggestion that somehow this is a seamless web, some sort of gossamer fabric which would be rent by any suggestion that it is deficient in any way.

I find it even more difficult as a result of the report of the Commissioner of Official Languages which was made public last week. I know the Commissioner of Official Languages has been condemned by many members of the Conservative Party who walked in lock step to demand that he resign. I hope that the minister is not on that kind of weary and dismal bandwagon.

At page 7 of the annual report of the Commissioner of Official Languages it states:

> With all its imperfections, some form of official bilingualism is the only answer that does not point toward a progressive dismemberment of Canada.

When we hear remarks like that we ask what the reasoning behind them is. The report goes on to state:

> The language sections of the Meech Lake accord are an honest attempt to address that issue.

Fair comment. The report goes on to state:

> But, much as we must welcome Quebec's whole-hearted adherence to the Constitution of Canada, the relevant paragraphs of the accord do not, as now formulated, present a completely satisfactory balance between the general commitment to preserve duality and the specific affirmation of Quebec's role to preserve and promote its distinctiveness.

Precisely what the former Prime Minister said yesterday and what many well-thinking Canadians are saying across the country. Perhaps we had better listen to some of these concerns.

The report goes on to state:

> What may look like a difference of a couple of syllables could affect the general language equilibrium in this country. As we urged in our brief to the Special Joint Committee on the 1987 Constitutional Accord, the word "promote" or its equivalent should have been placed in both parts of the formula and apply to both official language minorities throughout Canada. The distinctiveness of Quebec society also seems to us inseparable, both in historical and contemporary terms, from the contribution of the English-speaking community in that province and should be recognized as such.

The Commissioner of Official Languages is concerned about this designation of a distinct society. You can reply to that and say, "Well, his fears are groundless," but there are so many Canadians in so many provinces now saying, "Look, we do not want to destroy Canada, we love this country. There is a special relationship being established for one province the others do not enjoy. Maybe we had better have another look at the Meech Lake Accord."

You almost suggest that it is an act of disloyalty to suggest that the Meech Lake Accord can be improved.

As I said, there are good people on both sides of this argument who are very distressed by what they believe to be the implications of the accord.

When the Commissioner of Official Languages spoke out, many Canadians said, "Off with his head! Get rid of him!" Is the minister prepared to denounce the Commissioner of Official Languages and the position that he has taken on behalf of many other Canadians?

Senator Murray: Mr. Chairman, I should note that quite some time ago, following the Meech Lake Accord and the Langevin accord, the Commissioner of Official Languages stated quite definitely—and I think I referred to this in my remarks earlier this morning—that the accord represented a net gain for linguistic minorities.

Further to that, while Senator Perrault has placed on the record some of the things Mr. D'Iberville Fortier said in his annual report, I think it is only fair that I should complete the record by quoting the conclusion that he comes to. I have the French language text.

[*Translation*]

> In spite of its flaws, this Accord is a great step forward—

[*English*]

And a bit later, and this is the position to which I would ask Senator Perrault to pay particular attention:

[*Translation*]

> We have some reservations (about the Accord) . . . but they do not lead to criticism of the Agreement's principle or appropriateness [. . .]. I must say that we disagree with Alliance Quebec and with Francophones outside Quebec whose position [. . .] which we do not share, is to amend or not to ratify the Accord. Our position is that the Accord is basically good without being perfect and that, if the opportunity to improve it was to arise later, we would prefer a more specific protection for minorities and that the word "promotion" be used instead of "protection".

[*English*]

I explained earlier that the Prime Minister tried to get all to agree to promote linguistic duality. That agreement was not forthcoming. What was achieved, and it was a first in Canadian history, was a commitment on the part of 11 governments towards bilingualism, towards the linguistic duality of this country as one of its fundamental characteristics. I would say, then, in contrast to what Senator Perrault has just said, that the views of Mr. Fortier and Mr. Trudeau on this matter are not the same.

• (1340)

Senator Perrault: I wish the minister had been here yesterday—perhaps he was monitoring the proceedings somewhere—to hear to the fullest extent what the former Prime Minister had to say. According to Mr. Fortier, in essence, the document says that while Quebecers are encouraged to promote French, Canadians in the other provinces are only required to tolerate it. Senator Murray has said, "We did our best to get them to move away from the position that they only tolerate it." The question then is: Could this pave the way for Quebec to create a kind of French ghetto within its boundaries and thus lead to a dissolution of this country?

Finally, with these concerns being expressed by very qualified observers in the provinces, in view of the historical importance of this agreement, is the government unwilling to consider amendments and changes to remove the concerns of many of the people in this country with regard to the ultimate impact of the agreement? It would be so easy, for example, to say to the Northwest Territories and the Yukon that they will have a say in their future. The present situation creates at least the suspicion that three or four provinces have not established what they think their northern boundaries are going to be, so they do not want any additional powers given to the northern people. The government could so easily remove many of these concerns, and we could all join together to bring into being an agreement which has general consensus and support.

Senator Murray: Mr. Chairman, many of the things that are suggested will be no more difficult—in fact, will be easier—in a second round.

Senator Perrault: Is that true when 100 per cent agreement is required?

Senator Murray: The honourable senator stated at the beginning that the accord was incomplete. The accord was complete in that it achieved in the first round the objective that the federal government and all the provinces had set for themselves, that objective being the re-integration of Quebec into the constitutional family. That is why the First Ministers, the premiers, agreed in August of 1986 that getting Quebec back to the table was a first priority, that this would be negotiated on the basis of Quebec's five conditions, and that other constitutional reforms would await a second round. What we have done with respect to the "distinct society" and "linguistic duality" clause is to recognize in a balanced way two extremely important realities of this country that were not recognized in that way in the 1981-82 exercise.

My friend says that we proceeded in a way that was not the classic method, as he put it. Perhaps that is why we succeeded. Senators heard Mr. Trudeau here yesterday, as I said, giving the litany of demands and counterdemands that were on the table during the constitutional conferences of the 1960s, 1970s and 1980s, when they went ahead with an almost unlimited agenda. We were dealing with quite a limited, fixed agenda that all agreed they would respect and, indeed, did respect. There was nothing new about these issues. Many of them—the distinct character of Quebec, the linguistic duality, the amending formula, the spending power—have been discussed and debated for generations in this country.

As to the specifics that we were negotiating in the run-up to the Meech Lake Accord and in the discussions at Meech Lake and Langevin, the five conditions were outlined by the Liberal Party of Quebec in the general election of 1985 in their election program "Maîtrisez l'avenir," following which Mr. Rémillard elaborated on them at a rather famous conference held at Mont-Gabriel. There was the meeting of provincial premiers in August of 1986 at Edmonton, to which I referred, where they agreed that the negotiations would be conducted on the basis of the five conditions put forward by Quebec. There were no surprises in all of this. The issues were not new and there were no surprises. The only surprise, perhaps, to the media and to a lot of people was that we succeeded.

The Chairman: Senator Perrault, does that conclude your questioning?

Senator Perrault: Although I would like to ask more questions, Mr. Chairman, I will desist at this time.

The Chairman: There being no further questioners on my list, then, I will entertain a motion that the committee rise and report progress.

Senator Petten: Mr. Chairman, I move that the committee rise, that the chairman report progress and ask for leave to sit again.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Acting Speaker: Honourable senators, the sitting of the Senate is resumed.

REPORT OF COMMITTEE OF THE WHOLE

Hon. Gildas L. Molgat: Honourable senators, the Committee of the Whole, to which the Meech Lake Accord and texts subsequently agreed to were referred, reports progress and asks for leave to sit again.

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

Hon. Senators: Agreed.

The Hon. the Acting Speaker: Honourable senators, when shall this committee have leave to sit again?

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, I move that the Committee of the Whole be given authority to sit again at the next sitting of the Senate.

Motion agreed to.

BUSINESS OF THE SENATE

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I believe it is the wish of the chamber that a recess be taken at this time. I am in the hands of honourable senators as to how long this recess should be.

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, it is rather late. The dining room closes at 2 o'clock.

Senator Doody: I am sure the cafeteria is open, although I do not want to sound too plebeian. Shall we adjourn until the sound of the bell at approximately 2.45 p.m.?

The Hon. the Acting Speaker: Honourable senators, it is moved by the Honourable Senator Doody, seconded by the Honourable Senator Tremblay, that the Senate adjourn during pleasure until 2.45 p.m.

Some Hon. Senators: No! No!

Hon. Gildas L. Molgat: Honourable senators, on a point of order, what business will we be dealing with when we return at 2.45 p.m.?

Senator Doody: Honourable senators, we have Question Period, although we on this side are willing to forgo that if it is the wish of the chamber. There are three government orders on the table with which I would like to deal, third reading of Bill C-76, second reading of Bill C-52, and second reading of Bill C-67. Standing in the name of Senator Adams is debate on second reading of Bill C-102.

Hon. William J. Petten: That will stand.

Senator Doody: Standing in the name of Senator Thériault is debate on second reading of Bill S-15.

Senator Petten: That will stand.

Senator Doody: We have Order No. 6, to do with Bill C-60, which I know will stand. Debate on second reading of Bill C-83, in the name of Senator Stewart, I suspect will also stand.

The three orders that I have mentioned are government orders that should be addressed. We would like to do it today, if at all possible.

Senator MacEachen: Let us do it now.

Senator Doody: I have no objection to that. If the Senate wishes to continue to sit now, that is fine.

Senator Petten: Agreed.

Senator Molgat: I was curious as to what it was we were coming back for.

Senator Doody: I thought I had made it clear that there were some government orders on the order paper, and that is why I asked that we canvass the Committee of the Whole at 1 p.m. and see what their intentions or wishes were. If the committee had wanted to break for an hour, we could have come back to deal with these other matters.

I do not know if Senator Murray has to converse or meet with anyone prior to Question Period, or if there is any information that has to be prepared, or if any of the people who want to speak on these bills on second reading need any time to get information or materials. However, as far as I am concerned, we can proceed now.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, if there is to be a Question Period, I would like time to get the information that was asked for in several questions that were put to the Deputy Leader of the Government yesterday.

Senator Petten: Honourable senators, I think I can speak for this side of the house—and, if I cannot, someone will correct me—that we can forego Question Period today and proceed directly to the Orders of the Day.

The Hon. the Acting Speaker: Honourable senators, is it agreed that we continue?

Hon. Senators: Agreed.

• (1350)

EMERGENCY PREPAREDNESS BILL

THIRD READING—DEBATE ADJOURNED

Hon. C. William Doody (Deputy Leader of the Government), for Senator Kelly, moved the third reading of Bill C-76, to provide for emergency preparedness and to make a related amendment to the National Defence Act.

Hon. John B. Stewart: Honourable senators, I would like to speak on this bill. Consequently, I move the adjournment of the debate.

The Hon. the Acting Speaker: Honourable senators, is it agreed?

Hon. Senators: Agreed.

On motion of Senator Stewart, debate adjourned.

COASTING TRADE AND COMMERCIAL MARINE ACTIVITIES BILL

SECOND READING—DEBATE ADJOURNED

Hon. Finlay MacDonald moved the second reading of Bill C-52, respecting the use of foreign ships and non-duty paid ships in the coasting trade and in other marine activities of a commercial nature.

He said: Honourable senators, let me begin by saying that this bill, in large part, continues the policy contained in current legislation. Its major new feature is to reserve the coasting trade to Canadian ships to the 200-mile limit.

The second principal benefit of the bill is that it clarifies that all commercial marine activities are reserved for Canadian ships.

The Canadian coasting trade, at the present time, is governed by Part XV of the Canada Shipping Act. These provisions became law in 1934 and have as their basis the British Commonwealth Merchant Shipping Agreement of 1931. This agreement required that all signatories grant equal treatment to ships from Commonwealth countries. In 1979 this agreement was terminated by common consent of the signatories. In 1966 Part XV of the Canada Shipping Act was amended, reserving to Canadian ships the coasting trade west of Anticosti Island, in the St. Lawrence and in the Great Lakes.

The Coasting Trade Act is designed to encourage growth in the Canadian coasting trade and create new opportunities for this industry in offshore exploration and development.

This bill completely removes the coasting trade provisions from the Canada Shipping Act and makes amendments to those provisions, thereby creating the new Coasting Trade and Commercial Marine Activities Act.

We are certain—or, at least, we are certainly confident—that this new act will give impetus to the marine, tourism and shipbuilding industries. It will create more jobs for seamen working in areas to be reserved for Canadians. These areas include commercial activities related to the exploration, development or production of mineral resources right out to the continental shelf.

The purpose of this bill is to reserve all commercial marine activities taking place in Canadian waters to Canadian ships and to allow foreign ships to provide services to Canadian shippers when a Canadian ship is not available. The bill also provides for certain categories of ships to be exempted from its provisions.

In dealing with the principle of reserving the trade to Canadian ships the bill distinguishes between the activities taking place within the 12-mile territorial sea and those taking place above the Canadian continental shelf. Subject to the exemptions listed in subsection 3(3), all commercial marine activities of a commercial nature taking place within the territorial sea are reserved to Canadian ships.

In the waters above the continental shelf—that is, 200 miles—only those activities of a commercial nature relating to the exploration, development, production or transportation of non-living natural resources are reserved to Canadian ships. I assume that "non-living natural resources" refers to oil and gas and, presumably in the future, to minerals. This difference reflects Canada's international obligations in the 12-mile to 200-mile economic zone. The extension of the reservation to the continental shelf will encourage construction in Canada of platforms for the exploration and exploitation of Canada's offshore oil and gas. The transportation of materials required by this industry is also reserved to Canadian ships, thus creating more jobs for Canadian seamen and shipyard employees.

This bill continues the practice of the Minister of National Revenue of granting a temporary licence to a foreign ship when no suitable Canadian ship is available to carry goods or undertake marine activity. This waiver system has worked well in the past to protect the Canadian shipping industry and to ensure that the shippers' needs are met. Under the present system approximately 99 per cent of the Canadian coasting trade is carried in Canadian ships.

Foreign cargo ships wishing to do business in Canada must obtain a temporary coasting trade licence and give 14 days' notice of the proposed activity. This will allow Canadian shipping companies to adjust their schedules to allow as many Canadian vessels as possible to be employed.

A provision has been inserted in the bill permitting the Governor in Council to place a cap on the number of licences that may be issued. This provision is available to the government in situations where it is in the public interest to do so.

The bill provides protection for cruise ships having a capacity of less than 250 overnight accommodations. It specifically exempts vessels with a greater number of overnight accommodations. Possibly someone might explain this to me, because I did not have an opportunity to go into this.

● (1400)

The purpose of this provision is to protect what could be called the "domestic cruise" industry. Apparently this is the industry that operates in the St. Lawrence and Great Lakes and along the east and west coasts of Canada during the summer months only. This industry is growing, but it needs protection to ensure that Canadians benefit from this development to the maximum extent possible. This industry uses vessels with less than 250 overnight accommodations, and many of them have no such accommodations.

The "international cruise" industry operates in Canada during the summer months and in other areas of the world during the rest of the year. This industry uses vessels of 250 or more overnight accommodations, and usually employs vessels with a capacity of 300 or 400 overnight accommodations. This is also a growing industry that attracts a large number of tourists to Canada's coasts. As these vessels must operate in other parts of the world during the Canadian winters, it is not feasible to provide protection to this class of vessel.

Finally, the bill provides for adequate enforcement procedures. These are contained in clauses 13 to 22. They have been

drafted on the basis of the enforcement procedures contained in sections of the Canada Shipping Act.

Exemptions to the legislation include fishing vessels, ships engaged in ocean research, including those operated or sponsored by foreign governments, and ships assisting others in distress. These foreign vessels are controlled by other Canadian legislation or by international agreements.

Overall, the bill enables the Canadian supply boat fleet to extend their range beyond the territorial sea to the outer edge of the continental shelf or 200 miles, whichever is the greater. The area will be reserved for Canadian ships.

In conclusion, this bill, in large part, continues the existing policy contained in current legislation. Its main feature, as I have mentioned, is to reserve the coasting trade to the 200-mile limit to Canadian ships. The second principal benefit of the bill is that it clarifies that all commercial marine activities are reserved for Canadian ships.

Honourable senators, I commend the bill to your favourable consideration.

On motion of Senator Petten, debate adjourned.

ANIMAL PEDIGREE BILL

SECOND READING—DEBATE ADJOURNED

Hon. Martha P. Bielish moved the second reading of Bill C-67, respecting animal pedigree associations.

She said: Honourable senators, I am pleased to introduce for second reading a bill that will replace the Livestock Pedigree Act with the Animal Pedigree Act.

Since the bill was tabled in the House of Commons last June there have been extensive consultations with industry, and the government listened carefully to their suggestions.

The draft amendments introduced in November addressed many of their concerns. Further consultations were held when the bill and the draft amendments were sent to the committee by the House of Commons.

We want to ensure that the best possible legislation is enacted to serve the purebred industry. Consultations with all sectors of the Canadian purebred animal industry have, in fact, been going on since 1982. So I am confident that this legislation will serve the industry well, and, in turn, it will be of real service to Canadian agriculture.

The animal pedigree bill will update and replace the old act, which has been in force since 1900 and was last amended in 1952. The new legislation will allow us to better address today's realities in the livestock industry.

The main purpose of the bill is to promote breed improvement and to protect those raising or buying registered animals. It will retain the provision of the old act regarding the animal pedigree associations authorized to keep pedigrees and to register animals of specific breeds.

The new bill will also allow the establishment of associations to keep records and to identify animals of evolving breeds. This is an important addition, designed to encourage the best possible records and pedigrees of evolving breeds.

Honourable senators, I will briefly summarize the major provisions contained in the bill before us.

The new Animal Pedigree Acts will more closely define the basic purpose, powers and duties of animal pedigree associations.

The new bill provides for the formation of the Canadian Livestock Records Corporation to replace the Canadian National Livestock Records, the legal powers of which are unclear. The new corporation would keep pedigrees for animals of a breed and for animals in the process of evolving into a new breed.

The act defines a purebred animal as having at least 87.5 per cent—that is, seven-eights—of its inheritance from one breed. However, individual associations could make this more restrictive if they so desired.

The bill allows for the registration of animals other than purebred or "percentage" animals.

The bill makes provisions for embryo transfer and artificial insemination.

The bill provides for the amalgamation and dissolution of breed associations.

The bill also includes an expanded offences clause. It specifies time limits for transferring certificates of registration or identification after a change in ownership, and it sets penalties for exceeding those limits.

In addition, the level of fines is now to be determined by the value of the animal to which the offence relates. The maximum level of fines under the new provisions will be raised to $50,000 from the old $500 maximum set back in 1952.

The new bill also brings provisions under the old act in line with current federal corporate law legislation.

In sum, the Animal Pedigree Bill will provide greater protection for the buyers of livestock, more realistic penalties for violations of the act, and more flexible rules for breed organizations.

I will now outline some of the major amendments that have been made to the original bill. As I mentioned, these amendments are the result of extensive consultations with industry representatives.

During consultations with the industry some associations feared that they would not be entitled to register certain animals of their breeds when they are less than 50 per cent pure.

In response, the 50 per cent requirement has been removed. As long as the lineage can be traced back to the breed's original foundation stock, associations that register animals such as the Quarter Horse, Appaloosa, Sport Horse and Anglo-Arab can operate under this act.

● (1410)

Following discussions with beef breeds associations, the wording in subclause 64(*g*) was changed. The intent is to prevent the selling of an animal under false pretences. Under

the current bill the seller of an animal that is not registered or eligible to be registered will not be allowed to sell the animal "in a manner that is likely to create an erroneous impression that the animal is registered or eligible to be registered."

Several associations requested that the new legislation clarify the clause which states that no association may fine a person. So the wording has been altered to clarify the fact that association fees are not fines. The bill before us reaffirms that associations have the right to charge different fees for late registration or to suspend someone from membership and force them to pay higher non-members' fees.

The bill also provides for the withdrawal of a breed from an association in order to form a new association or join an existing one. It will permit, for example, the formation of a Canadian Braunvieh, or Beef Brown Swiss Association, if it is shown that Braunvieh and Dairy Brown Swiss are two distinct breeds.

Another clause concerns liability. The bill will ensure that no one can be held personally liable for any act done in good faith on behalf of the Canadian Livestock Records Corporation.

In addition, a clause was added to provide for the establishment of a general stud and herd book to be kept by the corporation. This book will keep pedigree records for animals of breeds or evolving breeds for which there is no association.

After consultations with Holstein Canada, the bill was amended to require associations which are involved in artificial insemination and embryo transfer to make bylaws for the recording and identification of semen and embryos, as well as for issuing semen and embryo certificates.

After careful deliberation and further consultations with industry, clause 59 was introduced prior to passage of the bill in the House of Commons. This clause allows for the promotion of an environment of free enterprise and competition in the area of maintaining records.

The bill that is now before us allows the expertise, staff and equipment of one breed association to be made available to other associations for registration and record-keeping purposes. It will allow a choice of record-keeping and registration services other than the new Canadian Livestock Records Corporation.

In conclusion, honourable senators, I am convinced this bill will provide better protection for both buyers and sellers of registered or identified animals and promote breed improvement.

On motion of Senator Petten, debate adjourned.

EMERGENCY PREPAREDNESS BILL

THIRD READING

On the Order:

> Resuming the debate on the motion of the Honourable Senator Kelly, seconded by the Honourable Senator Bielish, for the third reading of the Bill C-76, An Act to provide for emergency preparedness and to make a related amendment to the National Defence Act.—(*Honourable Senator Stewart*).

Hon. John B. Stewart: Honourable senators, earlier this afternoon I indicated that I wished to say something on the motion for third reading of Bill C-76. Since then I have made some investigations and enquiries to discover the relationship between this bill, Bill C-76, and another bill which is to come to us, namely, Bill C-77. I discovered that there is almost no relationship, and, consequently, I do not wish to speak on Bill C-76. The result is that, if it is the will of the house, I certainly would not raise any objection to proceeding to third reading of the bill at this time.

Hon. C. William Doody (Deputy Leader of the Government): Thank you, Senator Stewart. In that event, I move third reading of this bill.

Motion agreed to and bill read third time and passed.

The Senate adjourned until Monday, April 18, 1988, at 2 p.m.

THE SENATE

Monday, April 18, 1988

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

Prayers.

NORTHERN CANADA POWER COMMISSION (SHARE ISSUANCE AND SALE AUTHORIZATION) BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-125, to enable the Northern Canada Power Commission to issue shares, to authorize the sale of those shares to the Government of the Northwest Territories, to repeal the Northern Canada Power Commission Act and to provide for related matters.

Bill read first time.

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

On motion of Senator Phillips, bill placed on the Orders of the Day for second reading on Thursday next, April 21, 1988.

LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Joan Neiman: Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*a*), I move:

> That the Standing Senate Committee on Legal and Constitutional Affairs have power to sit at five o'clock in the afternoon tomorrow, Tuesday, 19th April, 1988, even though the Senate may then be sitting, and that Rule 76(4) be suspended in relation thereto.

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

Hon. Senators: Agreed.

Motion agreed to.

QUESTION PERIOD

[*English*]

AGRICULTURE

GRAIN—1988-89 CROP YEAR—INITIAL PRICE

Hon. H.A. Olson: Honourable senators, I would like to ask the Leader of the Government in the Senate whether or not the initial price for wheat and other grains has been adjusted by the Canadian Wheat Board for the 1988-89 crop year. Last week I heard an announcement to the effect that the Canadian Wheat Board has increased the initial price for the current crop year by, I believe, $10 per tonne in the case of regular flour or bread wheat and $15 per tonne for durum wheat, but the announcement did not go on to say whether or not the increase applies to the new initial price for the ensuing crop year. I would appreciate it if the minister would clear this point up for me. If a communiqué has been sent to my office containing the information I have requested, I have not seen it as yet.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I regret to say that I do not have the information the honourable senator is seeking, as I have been out of town myself the past few days. I shall endeavour to obtain that information and bring it to him at once.

Senator Olson: Honourable senators, I would appreciate that very much. I wonder if the honourable minister would also seek the information respecting other grains, such as barley, oats and so on, so that farmers will have an indication of prospects for the ensuing crop year for these cereal grains as well as wheat.

Senator Murray: Honourable senators, I shall do that.

COASTING TRADE AND COMMERCIAL MARINE ACTIVITIES BILL

SECOND READING—ORDER STANDS

On the Order:

> Resuming the debate on the motion of the Honourable Senator MacDonald (*Halifax*), seconded by the Honourable Senator Barootes, for the second reading of the Bill C-52, An Act respecting the use of foreign ships and non-duty paid ships in the coasting trade and in other marine activities of a commercial nature.—(*Honourable Senator Petten*).

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, Senator Petten took the adjournment of this debate for Senator Langlois. So the order should stand in his name.

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

Hon. Senators: Agreed.

Order stands in name of Senator Langlois.

ANIMAL PEDIGREE BILL

SECOND READING—ORDER STANDS

On the Order:

Resuming the debate on the motion of the Honourable Senator Bielish, seconded by the Honourable Senator Macdonald (*Cape Breton*), for the second reading of the Bill C-67, An Act respecting animal pedigree associations.—(*Honourable Senator Petten*).

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, Senator Petten also took the adjournment on this matter, but for Senator Marchand. I wonder if we might have it stand in that honourable senator's name.

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

Hon. Senators: Agreed.

Order stands in name of Senator Marchand.

BUSINESS OF THE SENATE

Hon Orville H. Phillips: Honourable senators, may I suggest that we stand all remaining orders and proceed to the main motion before the Senate this afternoon?

Hon. Royce Frith (Deputy Leader of the Opposition): Agreed.

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

Hon. Senators: Agreed.

● (1410)

Hon. Jacques Flynn: On reading *Hansard* of March 31, I was under the impression that it was the intention that the order dealing with the Meech Lake Accord would be the first item to be called every day this week before we proceed to any other business. Will we have to do this every day?

Senator Frith: Do what every day?

Senator Flynn: I am talking about giving priority to the resolution concerning the Meech Lake Accord. Is there no order of the house that this be called as the first item of business every day?

Senator Frith: Honourable senators, I do not believe that there is such an order, but there is certainly an understanding that we are going to give priority to the Meech Lake resolution this week.

Senator Flynn: I thought there would have been an order of the Senate.

Senator Frith: We are also discussing the possibility of an order as to disposition, so we could include it in that.

The Hon. the Speaker: Is it your wish, honourable senators, that all inquiries stand?

Hon. Senators: Agreed.

THE CONSTITUTION

MOTION FOR PROPOSED CONSTITUTION AMENDMENT, 1987—MOTION IN AMENDMENT—DEBATE ADJOURNED

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations), pursuant to notice of Tuesday, June 16, 1987, moved:

THAT,

WHEREAS the *Constitution Act, 1982* came into force on April 17, 1982, following an agreement between Canada and all the provinces except Quebec;

AND WHEREAS the Government of Quebec has established a set of five proposals for constitutional change and has stated that amendments to give effect to those proposals would enable Quebec to resume a full role in the constitutional councils of Canada;

AND WHEREAS the amendment proposed in the schedule hereto sets out the basis on which Quebec's five constitutional proposals may be met;

AND WHEREAS the amendment proposed in the schedule hereto also recognizes the principle of the equality of all the provinces, provides new arrangements to foster greater harmony and cooperation between the Government of Canada and the governments of the provinces and requires that conferences be convened to consider important constitutional, economic and other issues;

AND WHEREAS certain portions of the amendment proposed in the schedule hereto relate to matters referred to in section 41 of the *Constitution Act, 1982*;

AND WHEREAS section 41 of the *Constitution Act, 1982* provides that an amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by resolutions of the Senate and the House of Commons and of the legislative assembly of each province;

NOW THEREFORE the Senate resolves that an amendment to the Constitution of Canada be authorized to be made by proclamation issued by Her Excellency the Governor General under the Great Seal of Canada in accordance with the schedule hereto.

SCHEDULE

CONSTITUTION AMENDMENT, 1987

Constitution Act, 1867

1. The *Constitution Act, 1867* is amended by adding thereto, immediately after section 1 thereof, the following section:

"2.(1) The Constitution of Canada shall be interpreted in a manner consistent with

(*a*) the recognition that the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also

present in Quebec, constitutes a fundamental characteristic of Canada; and

(*b*) the recognition that Quebec constitutes within Canada a distinct society.

(2) The role of the Parliament of Canada and the provincial legislatures to preserve the fundamental characteristic of Canada referred to in paragraph (1)(*a*) is affirmed.

(3) The role of the legislature and Government of Quebec to preserve and promote the distinct identity of Quebec referred to in paragraph (1)(*b*) is affirmed.

(4) Nothing in this section derogates from the powers, rights or privileges of Parliament or the Government of Canada, or of the legislatures or governments of the provinces, including any powers, rights or privileges relating to language."

2. The said Act is further amended by adding thereto, immediately after section 24 thereof, the following section:

"25.(1) Where a vacancy occurs in the Senate, the government of the province to which the vacancy relates may, in relation to that vacancy, submit to the Queen's Privy Council for Canada the names of persons who may be summoned to the Senate.

(2) Until an amendment to the Constitution of Canada is made in relation to the Senate pursuant to section 41 of the *Constitution Act, 1982,* the person summoned to fill a vacancy in the Senate shall be chosen from among persons whose names have been submitted under subsection (1) by the government of the province to which the vacancy relates and must be acceptable to the Queen's Privy Council for Canada."

3. The said Act is further amended by adding thereto, immediately after section 95 thereof, the following heading and sections:

"Agreements on Immigration and Aliens

95A. The Government of Canada shall, at the request of the government of any province, negotiate with the government of that province for the purpose of concluding an agreement relating to immigration or the temporary admission of aliens into that province that is appropriate to the needs and circumstances of that province.

95B.(1) Any agreement concluded between Canada and a province in relation to immigration or the temporary admission of aliens into that province has the force of law from the time it is declared to do so in accordance with subsection 95C(1) and shall from that time have effect notwithstanding class 25 of section 91 or section 95.

(2) An agreement that has the force of law under subsection (1) shall have effect only so long and so far as it is not repugnant to any provision of an Act of the Parliament of Canada that sets national standards and objectives relating to immigration or aliens, including any provision that establishes general classes of immigrants or relates to levels of immigration for Canada or that prescribes classes of individuals who are inadmissible into Canada.

(3) The *Canadian Charter of Rights and Freedoms* applies in respect of any agreement that has the force of law under subsection (1) and in respect of anything done by the Parliament or Government of Canada, or the legislature or government of a province, pursuant to any such agreement.

95C.(1) A declaration that an agreement referred to in subsection 95B(1) has the force of law may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement.

(2) An amendment to an agreement referred to in subsection 95B(1) may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized

(*a*) by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement; or

(*b*) in such other manner as is set out in the agreement.

95D. Sections 46 to 48 of the *Constitution Act, 1982* apply, with such modifications as the circumstances require, in respect of any declaration made pursuant to subsection 95C(1), any amendment to an agreement made pursuant to subsection 95C(2) or any amendment made pursuant to section 95E.

95E. An amendment to sections 95A to 95D or this section may be made in accordance with the procedure set out in subsection 38(1) of the *Constitution Act, 1982,* but only if the amendment is authorized by resolutions of the legislative assemblies of all the provinces that are, at the time of the amendment, parties to an agreement that has the force of law under subsection 95B(1)."

4. The said Act is further amended by adding thereto, immediately preceding section 96 thereof, the following heading:

"General"

5. The said Act is further amended by adding thereto, immediately preceding section 101 thereof, the following heading:

"Courts Established by the Parliament of Canada"

6. The said Act is further amended by adding thereto, immediately after section 101 thereof, the following heading and sections:

"Supreme Court of Canada

101A.(1) The court existing under the name of the Supreme Court of Canada is hereby continued as the general court of appeal for Canada, and as an additional court for the better administration of the laws of Canada, and shall continue to be a superior court of record.

(2) The Supreme Court of Canada shall consist of a chief justice to be called the Chief Justice of Canada and eight other judges, who shall be appointed by the Governor General in Council by letters patent under the Great Seal.

101B.(1) Any person may be appointed a judge of the Supreme Court of Canada who, after having been admitted to the bar of any province or territory, has, for a total of at least ten years, been a judge of any court in Canada or a member of the bar of any province or territory.

(2) At least three judges of the Supreme Court of Canada shall be appointed from among persons who, after having been admitted to the bar of Quebec, have, for a total of at least ten years, been judges of any court of Quebec or of any court established by the Parliament of Canada, or members of the bar of Quebec.

101C.(1) Where a vacancy occurs in the Supreme Court of Canada, the government of each province may, in relation to that vacancy, submit to the Minister of Justice of Canada the names of any of the persons who have been admitted to the bar of that province and are qualified under section 101B for appointment to that court.

(2) Where an appointment is made to the Supreme Court of Canada, the Governor General in Council shall, except where the Chief Justice is appointed from among members of the Court, appoint a person whose name has been submitted under subsection (1) and who is acceptable to the Queen's Privy Council for Canada.

(3) Where an appointment is made in accordance with subsection (2) of any of the three judges necessary to meet the requirement set out in subsection 101B(2), the Governor General in Council shall appoint a person whose name has been submitted by the Government of Quebec.

(4) Where an appointment is made in accordance with subsection (2) otherwise than as required under subsection (3), the Governor General in Council shall appoint a person whose name has been submitted by the government of a province other than Quebec.

101D. Sections 99 and 100 apply in respect of the judges of the Supreme Court of Canada.

101E.(1) Sections 101A to 101D shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws under section 101 except to the extent that such laws are inconsistent with those sections.

(2) For greater certainty, section 101A shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws relating to the reference of questions of law or fact, or any other matters, to the Supreme Court of Canada."

7. The said Act is further amended by adding thereto, immediately after section 106 thereof, the following section:

"106A.(1) The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the Government of Canada after the coming into force of this section in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that is compatible with the national objectives.

(2) Nothing in this section extends the legislative powers of the Parliament of Canada or of the legislatures of the provinces."

8. The said Act is further amended by adding thereto the following heading and sections:

"XII—CONFERENCES ON THE ECONOMY AND OTHER MATTERS

148. A conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once each year to discuss the state of the Canadian economy and such other matters as may be appropriate.

XIII—REFERENCES

149. A reference to this Act shall be deemed to include a reference to any amendments thereto."

Constitution Act, 1982

9. Sections 40 to 42 of the *Constitution Act, 1982* are repealed and the following substituted therefor:

"40. Where an amendment is made under subsection 38(1) that transfers legislative powers from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply.

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the

Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

(*a*) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(*b*) the powers of the Senate and the method of selecting Senators;

(*c*) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;

(*d*) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province was entitled; to be represented on April 17, 1982;

(*e*) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;

(*f*) subject to section 43, the use of the English or the French language;

(*g*) the Supreme Court of Canada;

(*h*) the extension of existing provinces into the territories;

(*i*) notwithstanding any other law or practice, the establishment of new provinces; and

(*j*) an amendment to this Part."

10. Section 44 of the said Act is repealed and the following substituted therefor:

"44. Subject to section 42, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons."

11. Subsection 46(1) of the said Act is repealed and the following substituted therefor:

"46.(1) The procedures for amendment under sections 38, 41 and 43 may be initiated either by the Senate or the House of Commons or by the legislative assembly of a province."

12. Subsection 47(1) of the said Act is repealed and the following substituted therefor:

"47.(1) An amendment to the Constitution of Canada made by proclamation under section 38, 41, or 43 may be made without a resolution of the Senate authorizing the issue of the proclamation if, within one hundred and eighty days after the adoption by the House of Commons of a resolution authorizing its issue, the Senate has not adopted such a resolution and if, at any time after the expiration of that period, the House of Commons again adopts the resolution."

13. Part VI of the said Act is repealed and the following substituted therefor:

"PART VI

CONSTITUTIONAL CONFERENCES

50.(1) A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once each year, commencing in 1988.

(2) The conferences convened under subsection (1) shall have included on their agenda the following matters:

(*a*) Senate reform, including the role and functions of the Senate, its powers, the method of selecting Senators and representation in the Senate;

(*b*) roles and responsibilities in relation to fisheries; and

(*c*) such other matters as are agreed upon."

14. Subsection 52(2) of the said Act is amended by striking out the word "and" at the end of paragraph (b) thereof, by adding the word "and" at the end of paragraph (c) thereof and by adding thereto the following paragraph:

"(*d*) any other amendment to the Constitution of Canada."

15. Section 61 of the said Act is repealed and the following substituted therefor:

"61. A reference to the *Constitution Act 1982, or* a reference to the *Constitution Acts 1867 to 1982,* shall be deemed to include a reference to any amendments thereto."

General

16. Nothing in section 2 of the *Constitution Act, 1867* affects section 25 or 27 of the *Canadian Charter of Rights and Freedoms*, section 35 of the *Constitution Act, 1982* or class 24 of section 91 of the *Constitution Act, 1867.*

CITATION

17. This amendment may be cited as the *Constitution Amendment, 1987.*

He said: Honourable senators, in speaking to this motion, I intend, first, to enumerate, very briefly, the achievements of the 1987 Constitutional Accord.

Senator Frith: That won't take long.

Senator Murray: Second, I intend to discuss the historical and political imperative posed by Quebec's constitutional isolation since 1982. Finally, I wish to place the Meech Lake Constitutional Accord in the context of our constitutional history and evolution and show how it builds upon Canadian realities and Canadian values.

Meech Lake represents a balanced resolution of issues which have stymied constitutional talks for years—a federal resolu-

tion in the true sense, because it recognizes the legitimate interests of the provinces while safeguarding federal authority, the national interest and the rights and freedoms of all Canadians. To be specific, the accord achieves the following:

First, it gains Quebec's political and moral acceptance of the Constitution Act, 1982, thus completing and turning the page on the historic but flawed patriation achievement of 1982;

Second, it strengthens the Canadian Charter of Rights and Freedoms through Quebec's willing acceptance of the Charter without amendments or deletions.

[*Translation*]

Third, it recognizes the legitimacy of the Supreme Court of Canada—where Quebec is now guaranteed three justices—as the ultimate arbiter of questions relating to the Charter of Rights and Freedoms and the distribution of powers.

Fourth, by recognizing the linguistic duality of Canada and the distinct identity of Quebec, it gives us a Constitution that accurately reflects the fundamental characteristics of Canadian society.

Fifth, by bringing Quebec back into the Constitutional family, it unblocks the process of constitutional reform.

Sixth, by requiring annual First Ministers' Conferences on the Constitution, the accord provides a forum for discussing other important constitutional matters, such as Senate reform.

Seventh, it represents the first constitutional affirmation of the federal government's spending power in areas of exclusive provincial jurisdiction and provides a process for establishing objectives through Parliament and for prior consultation with the provinces. This means that in future we will be able to have national shared-cost programs that are more effective and better adapted to regional needs.

[*English*]

Eighth, the accord strengthens the federal character of important national institutions such as the Supreme Court and the Senate.

Ninth, the accord respects the fundamental equality of the provinces by guaranteeing a provincial role in nominations and in changes to the amending formula which reflect the stake that each province has in important national institutions such as the Senate.

Finally, the accord guarantees a forum for economic policy coordination and planning in annual First Ministers' conferences on the economy.

Honourable senators, I want now to dwell for a moment on the circumstances that gave rise to the accord and which argue so strongly for its adoption.

The seminal issue of Canadian history since 1867 has been national unity. It is an issue that has presented itself in many forms at different times in our history; but what is transcendent about the issue is the relationship between English- and French-speaking Canadians, the relationship between Quebec—the one majority francophone province—and the rest of the country.

[Senator Murray.]

Some serious threat to our unity has arisen with almost every generation. That our unity has survived is due to the strong will that exists among Canadians to maintain this country; and due also, I believe, to some wisdom over the years on the part of the political leadership in this country.

The isolation of Quebec in 1982 presented dangers and disadvantages to the people of Quebec—to which I will make reference later in my remarks; but for Canada and for Canadian unity this wound could only grow more debilitating with time.

Quebec's refusal to take part in future constitutional amendments, so long as the issues surrounding her isolation had not been resolved, effectively blocked constitutional reform in this country. It was impossible to achieve constitutional amendments that required unanimous consent, and it was extremely difficult to achieve constitutional amendments that required the assent of seven provinces with 50 per cent of the population—as we saw during the conferences on aboriginal constitutional rights earlier this year and in previous years. Indeed, the Right Honourable John Turner made this point, very forcefully, I thought, in his address to the Liberal meeting in Quebec on the weekend.

Surely all of us can see, as the leaders of our country saw in 1985 and 1986, the danger of trying to settle this issue—the isolation of Quebec—at some future date, perhaps at a time of national crisis, perhaps in haste and at a price that would be dictated by urgency.

• (1420)

This is a point which some very longheaded and experienced Canadians have made time and again in supporting this accord and in commending this accord to parliamentarians. I think in particular of the statements made by the Honourable J. W. Pickersgill and Mr. Gordon Robertson on this very matter.

Nor, I think, should we ever underestimate the psychological and political effect of Quebec's isolation in Quebec and on Quebec's thinking. It was surely dangerous to have Quebec, as one retired politician put it to me, "half in and half out of the Constitution." So the question that faced the political leadership of this country a while back was what should be the appropriate response to this situation. Is it to insist that a constitution which does not have Quebec's assent is as legitimate as one that does? Surely not. Is the appropriate response to ignore them? For how long? For a thousand years? Or is the appropriate response to try to negotiate their return to the constitutional fold? It is that latter response that the Prime Minister of Canada and the premiers of the other nine provinces gave once Quebec had outlined the five conditions for its assent to the 1982 Constitution. Surely no one will deny that the continued isolation of Quebec from our Constitution posed a real threat to the political stability of this country.

This accord brings Quebec back into the Canadian constitutional family, and that was the purpose, that was the objective, of the Quebec round. To reject this accord now because it is not perfect, to reject it because it does not resolve other constitutional issues that were not even on the agenda during

the Quebec round, to keep Quebec out for those reasons, would be irrational and, in the context of the history that we all know about, it would be irresponsible.

An Hon. Senator: Hear, hear!

Senator Murray: Honourable senators, a constitution does more than apportion jurisdiction and set out rules and regulations; a constitution represents the commitment of the people to a set of shared values and is a reflection of what they are and a vision of how they wish to pursue their destinies together.

Canada's Constitution, as we all know, was forged in colonial times and took the form of a British statute. While independence lay far in the future, some enduring Canadian values and realities emerged in the Constitution of 1867. Look at the old BNA Act and you will find those realities reflected, you will find those values given constitutional expression by the Fathers of Confederation—federalism, parliamentary democracy, bilingualism, our inherited obligations towards the aborginal peoples, regionalism, pluralism, the distinctiveness of Quebec, the principle of sharing, above all, the splendid principles of equality and partnership between English and French-speaking Canadians. All of those realities are there in the old BNA Act. I argue and shall argue that the accord of 1987 builds on those realities and values.

The preamble to the BNA Act made clear that Canada was to be a federation with a parliamentary form of government.

[*Translation*]

The attempt to abolish the use of French through the Act of Union in 1840 was also officially rejected and provisions concerning the use of French and English in Parliament and the courts of Canada were enshrined in the Constitution.

Parliament was entrusted with the Indians and the lands reserved for them, as well as the commitments the Empire made in the Royal Proclamation of 1763.

Regionalism was expressed in the equal representation of the Maritimes, Quebec and Ontario in the Senate of Canada.

Pluralism was protected through guarantees regarding the rights of confessional schools.

By virtue of its distinct civil law system, Quebec was not affected by Parliament's power to ensure the uniformity of laws governing property and civil rights in the common-law provinces. Thus the guarantee provided in the Quebec Act of 1774 remained in effect.

The 1867 Act even provided in Section 118 for an early form of equalization payments to the provinces.

[*English*]

What is remarkable is that 120 years later all of these realities and values endure as hallmarks of the Canadian way. Not only do they endure but they have been strengthened—strengthened over the years and strengthened, notably, in the 1987 accord. As Premier Peterson told the Ontario legislature during the November 25 debate on the constitutional resolution:

> The Accord does represent a solution in the best Canadian tradition. It is a viable accommodation. In both symbolic and practical terms, it is the kind of agreement that has characterized the building of this country.

The 1987 accord will strengthen federalism in Canada by providing new mechanisms for intergovernmental consultation, collaboration and cooperation. It also reinforces our parliamentary system of government. For example, no immigration agreement negotiated by the executive of the government under this resolution will be given force of law unless it is authorized by the Senate, the House of Commons and the legislative assembly of the province concerned.

French and English were recognized as official languages of Canada and New Brunswick in the Constitution Act, 1982. In 1987 the role of Parliament and all legislatures to preserve Canada's linguistic duality will be constitutionally recognized. As the Prime Minister has said, the Government of Canada intends to address the issue of constitutional protection for minority language rights at the first constitutional conference to follow ratification of the Meech Lake Accord. To suggest, as some have, that the constitutional recognition of our linguistic duality as a fundamental characteristic of Canada will divide the country, as opposed to bilingualism, which unites us, is to set up a false dichotomy. Past and future policies and programs of bilingualism in Canada were premised on the incontrovertible fact of our linguistic duality. To afford constitutional recognition of this fact to Canada as it is, in the words of the special joint committee, and to affirm the role of Parliament and all legislatures to preserve this fact can only serve to strengthen and to further the interests of bilingualism.

Another false dichotomy, honourable senators, is the contention by some people that there is some inherent contradiction, or at least inconsistency, in the concept of a bilingual federal Canada, on the one hand, and the recognition of Quebec's distinctiveness within Canada, on the other. Today's leaders, and, in my opinion, most Canadians, accept that both linguistic duality and Quebec's distinctiveness are essential and cherished elements of our national identity.

● (1430)

[*Translation*]

The rights of Canada's native peoples recognized in the Constitution Act of 1982 were maintained in the Constitutional Amendment of 1987.

The pluralism affirmed in the 1867 education provisions was reinforced by the recognition of Canada's multicultural heritage in the Constitution Act of 1982. This recognition will be maintained in the 1987 Accord.

The protection of Quebec's distinct civil law system, first granted in the Quebec Act of 1774 and then in the British North America Act, will be increased in the 1987 Accord by the constitutional provisions on the composition of the Supreme Court, which will ensure in the Constitution that Quebec has at least three seats on the Supreme Court. This guarantee is presently found only in the Supreme Court Act. The Accord also strengthens the protection of Quebec's civil

law through provisions relating to appointments to the Court and also the provision relating to the interpretation of the "distinct society."

[*English*]

Over the years we have done more than preserve or expand the values and realities that shaped Canada's Constitution of 1867.

In 1960 Prime Minister Diefenbaker's Bill of Rights set us on a course of articulating and defining the rights and freedoms Canadians share. The proclamation of the Charter in 1982 completed that process. Nothing in the 1987 amendment will override or supersede that important achievement.

In 1982 First Ministers agreed it was reasonable that the substantive provisions of the Charter should be interpreted in light of our multicultural heritage and of aboriginal rights. In the 1987 Constitutional Accord First Ministers have complemented and extended those recognitions by agreeing that it is equally reasonable that the Charter should be interpreted in light of Canada's linguistic duality and Quebec's distinctiveness.

This is a view which was clearly held by the Right Honourable the Leader of the Opposition in the other place. Countering the criticism of those who charged that the accord will thus lead to two Canadas, on September 29, 1987, Mr. Turner said, in the other place:

> We do not believe this—

meaning the distinct society,

> —is a revolutionary concept. We believe we are merely confirming in this Chamber the reality. Quebec does have a distinctive character. Quebec is the only province where French is the language of the majority. There is a different system of law, a unique psychology and a unique history. I do not believe that recognizing that fact in the Constitution is dangerous. I do not believe that it will lead to special status or sovereignty association or in *le concept des deux Nations*. I believe it is a historical and cultural fact that should be recognized.

In fact, honourable senators, what we have done is to make explicit what has been implicit for 120 years. Underlying the provisions of the *Constitution Act, 1867* respecting Quebec's system of education, its system of civil law, its unique provisions for representation in the Senate, and the use of French and English in the legislatures and courts of Quebec was an implicit assumption that Quebec was and would remain a distinct society within Canada.

Did not Sir John A. Macdonald, in explaining why legislative union had been rejected, say in the Confederation Debates of 1865:

> In the first place, it would not meet the assent of the people of Lower Canada because they felt that in their peculiar position—being in a minority, with a different language, nationality and religion from the majority—in case of a junction with the other provinces, their institutions and their laws might be assailed and their ancestral associations, on which they prided themselves attacked and prejudiced; it was found that any proposition which involved the absorption of the individuality of Lower Canada—if I may use the expression—would not be received with favour by her people.

Hon. John B. Stewart: What did he say at that time about the "lower provinces," the Maritime provinces?

Senator Murray: My honourable friend is free to consult the *Debates of 1865* on that matter.

Senator Stewart: He said something along the same line. He said that the Maritime provinces, too, had distinct interests and local laws.

Senator Murray: I have no doubt—and I have said myself on many occasions—that my native province, which had its own interest, its own government, its own politics, its own culture, and its own political identity for all these many years, would not have accepted a legislative union.

Senator Stewart: Unless it were recognized as a "distinct society," is that what you are saying?

Senator Murray: I am saying that it would not have accepted a legislative union, for the reasons I have outlined.

I ask my honourable friend to pay heed to the statements of Sir John A. Macdonald, because if they do not define fully what is the distinctiveness of Quebec I think they incorporate some of the essential elements.

Senator Stewart: I know what he said with regard to Quebec; I also know what he said with regard to the Maritime provinces. On the basis of the honourable gentleman's own argument, he is saying that Macdonald regarded both those areas as "distinct societies."

Senator Murray: Well, my honourable friend can make that case if he likes for the interests of debate, but what I said was:

[*Translation*]

Sir John A. Macdonald's statement may not be a complete definition of what constitutes Quebec's distinct society, but it certainly contains the principal elements. Sir John knew perfectly well that Quebec would not support Confederation if it were to lose its individuality—its distinct identity—in a union with provinces with an English-speaking majority, where the Common Law system prevailed.

By bringing Quebec back into the Canadian constitutional family, we are completing the nation-building process that started with the federal union of 1867. Creating this nation was not a simple matter, witness the debate on Confederation, and the fact that Nova Scotia elected separatists to Parliament right after it became a Canadian province.

Subsequent attempts at nation-building were not an easy matter either. Prime Minister Trudeau mentioned these problems in his speech before the other place on March 23, 1981, during the debate on patriation of the Constitution.

He reminded members of the objections raised when Prime Minister St. Laurent decided, without prior discussion in a constitutional forum with the provinces, to abolish appeals to

the Judicial Committee of the British Privy Council and to establish the Supreme Court of Canada as the country's court of last resort.

[*English*]

He reminded the House that Mr. St. Laurent's decision to secure the entry of Newfoundland into Confederation was opposed by some because the provinces had not been consulted; and, indeed, one province, Quebec, was strongly opposed to the terms of union.

He also reminded members that the partial patriation of the Constitution in 1949 was also opposed because the provinces had not been consulted.

Finally, he reminded the House of the acrimony surrounding the flag debate in 1964.

Mr. Trudeau's examples of division that arose during past acts of nation building demonstrates how difficult it is in Canada to secure a broad consensus on the nature, the character and even the symbols of Confederation. That is why the Honourable J.W. Pickersgill and the Honourable Robert Stanfield spoke in identical words of what they saw as the "miracle of Meech Lake." For the first time in Canadian history a major act of nation-building has been achieved not with rancour, bitterness and division but with the unanimous and firm agreement of all First Ministers, supported by the leaders of both opposition parties in the other place. For, as the Honourable Jean-Luc Pépin pointed out during his testimony before the Ontario Select Committee, which is studying the accord:

● (1440)

[*Translation*]

And I quote:

> Seldom have we in Canada had the intelligence to do something about constitutional matters before a crisis arose.

[*English*]

That is the better way which Prime Minister Mulroney set out as the policy for a Conservative government at Sept-Îles on August 6, 1984, when he said:

> We are on the threshold of a true national renewal. Let us replace the bias of confrontation with the bias of agreement, let us open avenues to solutions instead of putting up obstacles, let us listen in order to understand, rather than condemn without hearing.

[*Translation*]

That was our policy during the past three years. It led to the memorandum of agreement in Regina in February, 1985, on an annual First Ministers' conference on the economy and other matters. It has provided for consultation and created a climate of co-operation and mutual respect between the federal government and the provinces. In fact, Canada has become so peaceful it is hard to remember that only five years ago, another federal government provoked feelings of regional alienation and bitterness such as Canada had never known before.

[*English*]

Those who believe that federalism is a war dance of the dialectic, a constant struggle between countervailing forces, will have difficulty supporting the accord, because it is not predicated upon strife and a test of strength.

Those who believe that federalism works best when it allows people to achieve common goals together through a national government, while respecting their diversity and regional concerns, will find their philosophy reflected in the accord. As the Honourable Eric Kierans pointed out to the Special Joint Committee:

> Meech Lake is not new. It is simply the closest that we have come to following the original intent and meaning of the *British North America Act* since Confederation. It reflects more accurately the view of what the regional Fathers of Confederation thought they were agreeing to at Confederation.

Honourable senators, this government's approach to federalism is not based on a naive belief that everything will work out in time. It is based on the conviction that people of goodwill must work long and hard to create the proper circumstances for success. Again, at Sept-Îles on August 6, 1984, the Prime Minister said:

> . . . knowing the importance and the complexity of federal-provincial issues, I will not undertake a constitutional path with ambiguity and improvisation. To proceed otherwise would risk making things much worse rather than better. Before putting gestures which risk engaging us, one more time, in an impasse, it is necessary to have precise terms and ground rules and to meet the minimal conditions of success.

[*Translation*]

Perhaps honourable senators will recall what was at stake in the Quebec Round.

After Quebec was isolated on November 5, 1981, the Quebec National Assembly adopted a resolution rejecting the plan to patriate the Constitution and the Canadian Charter of Rights and Freedoms.

Quebec subsequently recognized the legality of the Constitution Act, 1982, but continued to deny its political legitimacy. In fact, until quite recently it had systematically denied that the Charter of Rights and Freedoms applied to the statutes of Quebec, to emphasize the fact that the Constitution Act, 1982, had been imposed on the province without the consent of the Quebec National Assembly.

Some say that Quebec is required by law to respect the Charter and that its signature is not important. I doubt anyone here would say that it makes no difference whether or not one quarter of the population accepts the legitimacy of the fundamental values set forth in the Canadian Charter of Rights and Freedoms.

That is certainly not the kind of constitution that could last a thousand years, contrary to what one of our illustrious witnesses said in this chamber.

I may add that Quebec's rejection of the Charter did not in any way reflect a philosophical objection to fundamental rights and freedoms. In fact, the Quebec Charter of Rights is the most comprehensive one in Canada. As William R. Lederman, Professor Emeritus, Faculty of Law, Queen's University, said in his speech before the Special Joint Committee of the Senate and the House of Commons:

> Our fellow citizens in Quebec are not second to anyone in their belief in, and support of, human rights and fundamental freedoms.

[*English*]

Under Premier Lévesque, the Parti Québécois government published a proposal in May 1985 for ending Quebec's constitutional isolation from the rest of Canada, but it would have involved the non-application of almost all of the Canadian Charter to Quebec: the rights of Quebecers would derive from a provincial statute, symbolizing a perpetual isolation of Quebecers from the broader Canadian community.

The National Assembly of Quebec, by adopting the constitution amendment of 1987, has embraced the Canadian Charter voluntarily, underlining the values that Quebecers share with all other Canadians. Premier Bourassa and the National Assembly have not asked that the Charter be amended in any respect or that Quebec be exempted from the application of any of its provisions. They have asked only that the Charter be interpreted in the light of the reality of Canada's linguistic duality and of Quebec's distinctiveness, as it is now interpreted in light of Canada's multicultural heritage because of section 27, and in light of aboriginal rights because of section 25. Does this not better reflect Canada "as it is"?

[*Translation*]

As I said at the beginning of my speech, the accord reinforces the Charter and turns the page on the historic and imperfect agreement of 1982 that patriated the Constitution. As the Honourable Ian Scott, Attorney General of Ontario, said before the provincial legislature on November 25 last year:

> The Meech Lake Accord does not compromise the Charter but reflects its solemn and symbolic acceptance by the Government of Quebec.
>
> Consequently, as far as substance is concerned, it is clear the Accord is profoundly inspired by our history and previous constitutional achievements, and that it reflects, without ambiguity, the fundamental principles of federalism.

[*English*]

In terms of process, honourable senators, First Ministers are proceeding according to the amending formula adopted in the Constitution Act, 1982.

This is why I find so misleading the views of present proponents of amendments to the accord to refer to the 1981-82 exercise as a precedent for last-minute, over-the-telephone amendments. Let us not forget that we are now operating under far different ground rules than we were in 1981-82, when a single phone call between governments would suffice to achieve amendments, since no formal amending formula was in place and only the Joint Address of the Senate and the House of Commons was ultimately required to secure amendments to the Constitution.

[Senator Murray.]

Provincial legislative assemblies were not then required to give their constitutional approval to such amendments, but since 1982, under the amending formula then adopted, 11 legislative assemblies now play a very special role. Since the House of Commons, by an overwhelming majority and with the support of all three party leaders, and the Legislative Assemblies of Quebec, Saskatchewan and Alberta have already adopted the accord, any amendment at this stage would require not only the unanimous consent of First Ministers but also new resolutions by the legislative bodies that have already adopted the measure. But weeks of hearings by the Special Joint Committee of the House and Senate, and by the Senate Committee of the Whole, and the testimony and submissions of hundreds of witnesses have revealed no fundamental flaw in the accord which requires amendment. It is, to quote the special joint committee, "a reasonable and workable package of constitutional reforms."

• (1450)

It is also one which has the support of the federalist voices in Quebec, about which our colleague, Senator Grafstein, was inquiring on March 30 in this chamber. Among those voices are the voices of Laurent Picard, Eric Kierans, Yves Fortier, Jean-Luc Pépin, Robert Décary, Gérald Beaudoin, Solange Chaput-Rolland, Raymond Garneau and virtually all Quebec members of Parliament, including André Ouellet and, I trust, in the event, all honourable senators from Quebec and from other provinces as well. As Madame Solange Chaput-Rolland commented to the special joint committee:

> Prime Minister Mulroney promised a reconciliation between the provinces and his government, between Quebec and Ottawa, between separatism and federalism. He has kept his word; it has not been said enough: he has kept his word—

Twice in the past eight years—in the referendum of 1980 and at Meech Lake in 1987—Quebec has said "Yes" to Canada. It is now for the rest of Canada to say "Yes" to Quebec. It is now for the Senate to join with the other chamber of our federal Parliament in saying "Yes" to Quebec.

Some Hon. Senators: Hear, hear!

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators will recall May 5, 1987, almost one year ago, when the conclusion of the Meech Lake Accord was announced in the Senate. Senator Flynn, understandably, expressed his "profound joy" at this development and ventured the opinion that, outside of "extreme centralizers and separatists," there would be general acceptance. On that occasion I expressed the view that the atmosphere of euphoria which affected us all on that occasion would likely be more restrained as a deeper understanding was reached on the contents of the Meech Lake Accord. Almost one year later the Parliament of Canada has yet to complete its consideration of the accord,

and a number of provinces have either not yet begun or have not yet completed their consideration of the accord. It certainly would take an optimist to predict that the accord will be the law of the land before the next election. So we are discussing this evolution in our constitutional history at a very strategic moment.

The decision on the accord which we are about to take has been preceded by a joint committee of both houses, by hearings of the Committee of the Whole of the Senate, a special task force to Northern Canada, and a special submissions group which heard evidence to assist the Committee of the Whole. We certainly can say that the Senate took this question very seriously and did its homework in an exhaustive way. All along, we on this side have fully supported the objective of achieving Quebec's assent to the Constitution. Quebec is now willing to accept it and anxious again to take its full part in the constitutional process. We welcome this move, because it is of great significance to our future.

Prime constitutional and political objectives have been attained, and this achievement should not be obscured in our consideration of what made it possible. However, this having been said, we share the opinion of the joint committee of the Senate and of the other place when they stated in their report, "we do not accept the idea that any agreement that brings Quebec 'into the constitutional family' must *a fortiori* be a good agreement." We do not accept either that the end justifies the means. The Constitutional Accord of 1987 has to be valued on its own merits, and this evaluation calls for an understanding of Quebec's proposals, of their formulation in the relevant provisions of the accord and of Quebec's interpretation of these provisions.

It is interesting to recall that the first questions asked in the Senate following the announcement had to do with the concept of the "distinct society." That is understandable in the light of subsequent history and in the light of subsequent concerns and analyses of the implications of the introduction of this concept as a rule of interpretation into the Canadian Constitution. One thing I think we can say is that since that initial announcement our understanding of both the legal and political implications of the application of this new rule of interpretation has certainly been deepened, broadened and enhanced, if you wish. Everything that I have heard since that time has convinced me that it is a major innovation with major consequences for the future.

If that is a fact of life, the Canadian government should stop being ambivalent about it. It has been made abundantly clear by the drafters of the agreement that the expression "distinct society" carries a meaning in ordinary language to anyone familiar with the Quebec scene, but they deliberately avoided defining the phrase in the accord. Mr. Bourassa said:

> We did not want to define [distinct society] precisely in order to avoid reducing the National Assembly's role in promoting this specificity.

Senator Murray made somewhat the same point before the joint committee. He said:

> We decided not to define Quebec's distinct society more clearly . . . It would be easy to draw up a list . . . but that list might unduly limit the concept itself. The Constitution is a living and evolving instrument.

Senator Murray also said:

> there is nothing new in a constitution containing general concepts expressed in broad terms.

The argument is clear: the reality of Quebec will continue to evolve, as it has done over the past 50 years and earlier. The "distinct society" clause reflects a Quebec reality now. It may reflect a different reality in the future. The Canadian Constitution will be interpreted by the courts through a process of double interpretation. The courts will first have to define the "distinct society" and what the "distinct society" means in the light of the particular circumstances prevailing at the time in Quebec. The courts will then have to interpret the Constitution in the light of their own construction of the meaning of "distinct society."

● (1500)

If the drafters of the accord have refrained from a definition of "distinct society," they have, however, given assurance that they can easily describe what constitutes the specificity of Quebec. According to Senator Murray:

> . . . we all know that we can quickly draw up a list of those characteristics that describe Quebec . . . it would be easy to draw up a list.

The Quebec Minister for Intergovernmental Affairs has provided a more precise sketch of Quebec's specificity. He said:

> . . . it is evident that we know why (Quebec) is recognized to be distinct, by its language, by its culture, but also by its way of being and its way of life.

Of course, Mr. Rémillard also referred to the social, cultural, economic and historical dimensions of the concept of the "distinct society."

It is hoped that the courts, which will have to define what is the "distinct society" in the light of circumstances at some future time, will find it equally "easy" and "evident," but for us who have to pass judgment now "distinct society" is clearly an evolving and undefined concept, because such is the way in which it was deliberately written into the accord.

If grasping the scope of an open-ended concept raises a challenge for us, it will also be a challenge for the National Assembly and the Government of Quebec, because they have the responsibility under the accord to promote this open-ended concept. Quebec's National Assembly and government will promote Quebec's specificity. As they move from concept to reality, their perception of "la spécificité québecoise" is clearly that of a dynamic notion reflecting a dynamic society. The constitutionality of their actions, if challenged, will later be tested in the courts in the light of the very specificity which, paradoxically, these actions will be in the process of creating.

We know, honourable senators, that nothing is distinct in itself and by itself but only in relation to other things. The

distinctive character of Quebec will be defined through Quebec's difference from the rest of Canada. The promotion of this difference, whatever it may turn out to be in the future, will be written into the Canadian Constitution as a beacon for its interpretation.

The Quebec Minister for Intergovernmental Affairs has, here again, stated unambiguously what he perceived to be the effect of the accord. I quote from the proceedings of the National Assembly of June 19, 1987, when he said:

> The recognition in the constitution that this country, Canada, is based on two founding peoples, two national communities, French-speaking Canadians and English-speaking Canadians, two equal peoples which form what we call the principle of Canadian duality. That is a notion we have acknowledged for a long time in Quebec . . . that is a reality now.

Honourable senators, it is absolutely clear that Quebec alone is being recognized as a "distinct society," a point made with much emphasis by the Quebec Minister of Intergovernmental Affairs. He said:

> There are not two, three, four or five provinces which have been recognized to be distinct societies. There is only one, Quebec.

The Premier of Quebec made an even more telling statement when he said:

> Questions have been raised about what would happen to the right of self-determination of Quebec. I answered . . . that the Liberal Party had recognized that right and still recognized that right. Indeed there is in Quebec's free and willing move to adhere to the 1982 Constitutional Act a particular expression of the Quebec people's right of self-determination.

Honourable senators, these statements are now part of the legislative history of the 1987 Constitutional Accord and shed light on Quebec's position and objectives.

The "principle of duality," intentionally mentioned by the Quebec Minister of Intergovernmental Affairs, has a long history. The report of the joint committee appropriately noted that the Supreme Court of Canada had taken cognizance of such arguments in the Quebec Veto case. I refer to the joint committee report at page 36. The right of self-determination of nations has an even longer history, and the assertion of that right has, for many, paved the way to autonomy and independence. It is not surprising, therefore, that the joint committee noted, at page 43 of its report, the concern of some witnesses who argued that:

> . . . the recognition of Quebec as a "distinct society" means that Canada is being redefined as a country composed with individuals, not even of 10 provinces plus the northern territories, but of two nations.

I should say, honourable senators, that the concerns of such witnesses should not be dismissed lightly. Maybe these witnesses have a better insight into Quebec's view of the Constitutional Accord than the Government of Canada. Their concerns will not be allayed by the somewhat changing statements made by the Leader of the Government in the Senate and other spokesmen for the government.

There is no need to repeat that the "distinct society" clause is an interpretative clause and that the division of powers under our Constitution is not changed by the accord. This is well understood, and this is not the issue; but if the powers are unchanged, the exercise of these powers is a matter for judgment and for interpretation. The insertion of guidance for interpretation into the Constitution is, by itself, a recognition that there is room for interpretation and change.

Senator Murray, in a sense, detonated the first bombshell in this chamber by posing and then answering the following questions:

> Will that give Quebec greater room to manoeuver, more authority in order to protect, promote and preserve the distinctiveness of its society? Of course it will. Will it be used as an argument before the courts with regard to language legislation? Of course it will.

As a constitutional expert, Professor Beaudoin attested to its significance by insisting that, as a new rule of interpretation—and only as a rule of interpretation—it was "important . . . fundamental . . ." and ". . . it can in certain cases in particular under Section 1 of the Charter and in grey areas concerning the distribution of powers give more weight to certain arguments."

The joint committee itself was quite explicit in asserting that, as a rule of interpretation by the courts, it could and would likely have the effect of allocating and classifying subject matters to heads of jurisdiction—federal and provincial.

● (1510)

I draw to your attention the fact that Mr. Rémillard, in the debates of the National Assembly of June 19, 1987, analyzed how the use of the "distinct society" provision would assist Quebec in acquiring more clout, jurisdiction over broadcasting and credit unions, and added, as an additional example, the matter of international relations; and the latter point, namely, international relations, attracted my interest, because one of the first thoughts that occurred to me, sitting on this side of the house, as I heard about the Meech Lake Accord, was that if Quebec were authentically to express its distinctiveness, no one could do it better than Quebec itself abroad—and Mr. Rémillard, as if he had wanted to answer my question, made the following comment in the National Assembly:

> We must be able to express our specificity on the international plane and here we have the possibility of grounding our competence—

I repeat, "our competence":

> relating to international matters on a clear rule of interpretation.

The Quebec minister has underlined what ought to be evident to all, namely, that the "distinct society" gives new and additional potential through the judicial system for increasing the authority of Quebec.

That is the fact, and one might ask this question, just building upon that analysis of Mr. Rémillard's, with respect, for example, to the caisses populaires or the credit unions which he analyzed: Suppose that the Supreme Court of Canada accepts the projected argument of the Government of Quebec that the credit unions, with respect to the banking function, might, ought or could be brought under the provincial jurisdiction because of the "distinct society" clause, what would we do with the resulting situation: credit unions in Quebec with respect to banking functions because of the "distinct society" provision under provincial jurisdiction, and the banking function of credit unions in all other provinces under federal jurisdiction?

Those are some of the issues which have been raised by the government which formulated the provisions, which accepted those provisions, which had asserted those provisions as constituting a win for Quebec—and, honourable senators, I do not think that we should go into the situation armed only with soft assurances of the Leader of the Government.

Those are some of the potential legal implications that have been asserted by the Leader of the Government, by the joint committee, by constitutional experts, and analyzed in a political context by the Quebec minister. There are, of course, political implications also. I do not think it is necessary to tell experienced politicians that when they wish to argue aggressively a particular point they will use the weapons at hand—and what better weapon than the "distinct society" clause that ministers in Quebec understandably will use in the future to expand their reach in a variety of ways? I believe that would happen to a minister in any province. It is no reflection. But in this case Quebec has it and no other province will have it.

I think that it is so self-evident to politicians that it may be unnecessary to quote one or two witnesses; but perhaps I will quote from Professor Breton's testimony when, in Committee of the Whole, he said that the "distinct society" clause would become part of the political jargon of Quebec. He said:

> . . . it can be used virtually in every domain in terms of the promotion of what will be defined by any government in Quebec at any time as being within its purview.

Later he said:

> That clause will be used on all issues, whether they are closely related or only very remotely related to the distinctness of Quebec, precisely because nobody knows what makes the distinct character of a society.

The importance of this matter also derives from the recognition of the role the Legislature and the Government of Quebec must play in promoting the "distinct society." There is not only scope for change; there is a role to achieve change. Both have to be read together, and the most reliable interpretation of this scope and role must surely come from the Quebec government which designed and put forward the proposal. It is the Quebec government that had to be satisfied with its import in order to make it a condition for its acceptance of the Canadian Constitution.

It is the Quebec government which will shape the measures to promote the "distinct society," and the Quebec Premier, it seems to me, struck the right note when he said:

> There is no doubt that Quebec comes out a winner from this constitutional operation . . . Quebec will at least have its place in the Constitution and this place will be one of honour.

One does not complain that any province, including Quebec, has a place of honour and is a winner. No one complains about that. May I read the next paragraph:

> One must underline that the whole constitution including the Charter will be interpreted and applied in the light of this article on the distinct society. The exercise of legislative authority is included and we will thus be able to consolidate existing positions and make new gains.

When one has read the statements of the Quebec Premier and his minister, with the authority they have on the subject, one is not greatly helped by reading the testimony of the Deputy Minister of Justice and the Deputy Attorney General of Canada when he appeared before the joint committee and stated:

> Under section 1 of the Charter, it is open to the Courts to take a provincial piece of legislation and to interpret it according to the particular circumstances that relate to that province and to that piece of legislation.

That seems fairly obvious. I will read the second paragraph:

> To the extent the distinctive society clause reflects a reality of Canada, a court will be doing no differently from what it presently could do under the charter in section 1 and under the jurisprudence that has developed.

That certainly strikes a different note from that struck by the Premier of Quebec. While the remarks of the Deputy Minister of Justice were being made in the context of the Charter, they are equally applicable to those parts of the Constitution not withdrawn by article 16 of the accord from the "distinct society" interpretative clause. Are we to understand from the words of the Deputy Minister of Justice that the division of powers under the Constitution will not be affected and that the courts will behave no differently than they do now? If that is the case, why would the Premier of Quebec proclaim Quebec a winner? Nothing has been achieved except, in the words of the Deputy Attorney General, "the confirmation of the pre-existing *status quo*."

● (1520)

In the circumstances, and when we hear these contradictory analyses from those who were closest to the operation, we can understand why some people have suggested a reference of the phrase "distinct society" to the Supreme Court for interpretation at the earliest possible date. An important reference was made to the Supreme Court during the patriation process. The "distinct society" clause is already giving rise to divergent interpretations. It would be helpful to have the authoritative advice of the Supreme Court for the benefit of those legislatures which still have to pass judgment on the accord.

But I suggest, honourable senators, that no legal sophistry should hide the fact that with the accord we are bringing under one constitutional roof two divergent visions of Canada. On the one hand, there is the principle of duality, which Mr. Rémillard called "a reality now," and described as embodying "two founding peoples, two national communities, two equal peoples." That is the vision that Mr. Rémillard sees in the accord. On the other hand, there is the vision of a multicultural and bilingual society.

The Leader of the Government has taken the view that these visions are "compatible and complementary." I do not think he understands, if I may say so, because he could not have made such an egregious error in that comment.

Senator Frith: What sort of an error was that?

Senator MacEachen: An egregious error, and that is a special error. The Leader of the Government has taken the view that these visions are "compatible and complementary," and that "the conflict exists only in Mr. Trudeau's mind." As I said, I think the leader has failed to grasp the meaning of Mr. Rémillard's statement, or he is ignoring a great deal of Canadian history.

So it would appear to me that we are attempting to house within the accord two visions of Canada, and, of course, there is no return from the steps we are being asked to take. If we expect these steps that we are taking, or are being asked to take, will lead to harmony, then we must see to it that these visions do not clash or diverge or take such extreme forms as to divide the country. We must not, for the sake of bringing the country together now, sow the seeds of future division. It will call for a very strong framework to support both visions and still keep the nation together.

It may be, honourable senators, that the drafters of the accord at one moment sensed a potential difficulty and that, indeed, they might have been on a slippery slope and attempted to save themselves and save the nation by adding the provision of "the linguistic duality of Canada."

The drafters of the accord must have made that very judgment when they designed the provision concerning the linguistic characteristic of Canada. That was not one of Quebec's proposals. The language provision in the accord is clearly meant to be read in conjunction with the "distinct society" clause. Both are made principles of interpretation, applicable to the whole of the Constitution. The courts will have to bear in mind the existence of linguistic minorities in Quebec and in the rest of Canada when they use the "distinct society" clause as a principle of interpretation. That means that a limitation has been placed on the "distinct society" clause. It cannot have the effect of creating a unilingual society in any province in Canada. However, it has been of interest to me to observe that Article 2.1 of the accord is certainly not symmetrical, and there must be a purpose to this asymmetry. First, the existence of linguistic majorities and minorities in certain parts of our territory is recognized as constituting a fundamental characteristic of Canada. But the fact that Quebec constitutes within Canada a distinct society is not regarded as a fundamental characteristic. It will be a matter for the courts to interpret this discrepancy, which, so far, has not received any satisfactory explanation.

More significantly, the role of the Legislature and Government of Quebec to promote the distinct society is recognized, but the role of the Parliament of Canada and of provincial legislatures, as recognized in the accord, is only to preserve the fundamental characteristic of Canada. That is more than a discrepancy; it amounts to a statement of intent and of policy. The bottom line, as Senator Murray has stated, was that the provinces were not prepared to accept more, and that this was part of the saw-off which produced the package.

Honourable senators, I think we ought to acknowledge that we live in a country which recognizes the immense contribution to our identity and our quality of life by all minorities, wherever they may be. It is, therefore, deplorable that some provinces do not recognize the role for their legislatures in promoting improvement for our linguistic minorities. What I find particularly disquieting is the abdication by the Government of Canada of its responsibilities for promoting bilingualism in this country.

Section 2(2) of the accord spells out in constitutional language the role of the Parliament of Canada with respect to bilingualism. The Government of Canada is asking the Senate, part of the Parliament of Canada, to confirm a role *vis-à-vis* what is described as a "fundamental characteristic of Canada," which is less than what is expected of the Legislature and Government of Quebec *vis-à-vis* the distinct society. The proposition that the Canadian Parliament should preserve but not promote one of the most important instruments of binding this country together—that is, our ability to communicate across linguistic lines—is a proposition that is unacceptable and shameful. It flies against principles of policies which have been pursued by successive Parliaments, and it does so at a time when the acknowledgment of Quebec as a distinct society calls for a vision in which Quebec should be made to feel increasingly at ease within our federation, and our federation should be made increasingly at ease with a distinct Quebec.

Honourable senators, we have also discovered that the euphoria of May 1987 has been somewhat affected by two additional factors, the first being the refusal of the new Government of New Brunswick to adhere to the Meech Lake Accord; the second, the recent action of the Government of Saskatchewan in restricting the language rights of its French-speaking minority.

In his testimony before the Committee of the Whole Senator Murray had no solution to offer for the New Brunswick situation. He said it is not a bilateral matter between Ottawa and New Brunswick, it was sort of a Lenten Pontius Pilate act, appropriately on Holy Thursday. He admitted no responsibility at the suggestion that the Government of Canada should take the lead in attempting to reconcile the diverging views of the Government of New Brunswick and the governments of the other provinces.

• (1530)

On May 5, a year ago, when Senator Murray announced the Meech Lake Accord, he said:

> In short, the Accord is an eloquent demonstration of the government's commitment to make national reconciliation a basic principle of our political and constitutional existence.

Well, as a basic principle, national reconciliation has obviously been abandoned insofar as New Brunswick is concerned. In the case of New Brunswick, pressure is substituted for reconciliation.

On that same day in May of 1987, in commenting on the Meech Lake Accord and in explaining his vote against the Constitution Act, 1982, Senator Macquarrie stated:

> At that time I took the view that we could not have a nine-province Constitution for a ten-province country.

Today in Canada nine provinces have adhered to the Meech Lake Accord and one province has refused its adherence, yet the Government of Canada is not prepared to resolve this impasse in a constructive way. It confines itself to issuing warnings of foreboding to the Premier of New Brunswick. Today we heard again an enunciation of the principle of equality of the provinces. Well, does that equality apply to the province of New Brunswick? Should its views not be heard and reconciled so that it can become part of the ten-province Constitution?

A second development that certainly sent political shock waves through Canada was the new law affecting the rights of the French-speaking minority in the province of Saskatchewan. The citizens of that province, even though the province has passed the Meech Lake Accord, have not found any solace in its implementation. In fact, the provisions of the accord have been ineffectual. Substituted for it now are persuasion and negotiation to try to correct the situation rather than to rely on the authoritative statement of the Meech Lake Accord that the provincial legislatures were obligated to preserve the rights of linguistic minorities.

Honourable senators, I have a few more comments to make on a number of the remaining provisions of the accord. I should say at this point that my colleague, Senator Frith, will deal later in the debate with a number of aspects of the accord, including aboriginal rights, multiculturalism, the economic union, the Senate, the Supreme Court of Canada, the amending formula, and the annual conferences. I, however, would like to deal with two more aspects of the accord before I conclude. One has to do with the spending power, the other has to do with the Charter of Rights.

When Senator Flynn mentioned that those who would oppose the accord would be confined to a couple of categories, I think he failed to anticipate the concern that has been expressed by a number of voluntary organizations and independent persons in this country about the potential of the new provisions on the spending power to weaken the federation. That concern certainly had to do with the expression "national objectives," among other things. Perhaps I should read the section so that honourable senators can follow the context. The words of section 7 read, in part:

> The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the Government of Canada after the coming into force of this section in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that is compatible with the national objectives.

As I said, the use of the expression "national objectives" has caused considerable concern. Senator Murray attempted to deal with this concern before the joint committee when he said:

> What do we mean by national objectives? We mean the underlying purposes for which Parliament puts the program in place. . . What are the national objectives of medicare? Universality, accessibility, portability. Now, that is the kind of thing I mean about national objectives.

He then continued:

> So when you talk about standards, I talk about objectives; when somebody else talks about criteria, I talk about objectives—and I do not want us to fall into any semantic traps.

Of course, Senator Murray's effort to equate objectives to underlying purposes, criteria and standards failed not only to satisfy those who had concerns but failed to take into account dictionary definitions and the history of shared-cost programs in Canada in which certain terms took on a special meaning and context.

Among the witnesses on this point was the *Ad Hoc* Committee of Manitoba Women's Equality-Seeking Groups on the Meech Lake Accord, which made the following observation:

> Clause 3, dealing with immigration, uses the term "national standards and objectives". Clause 7—

that is, the spending power clause,

> —omits the word "standards". Such omissions may well be interpreted as significant and deliberate.

Honourable senators, if the courts were to interpret "objectives" as meaning "standards," as Senator Murray would have us believe, then we must ask what they would do with clause 3, the immigration clause, which contains both words "standards" and "objectives." It is clear that though it may be acceptable for a casual comment in early mid-summer to treat "objectives" as meaning "standards," it would hardly be satisfactory to ask the courts to do so.

Subsequently, when the members of the joint committee—including the colleagues of Senator Murray in the chamber—adjudicated upon this point, they certainly parted company with his interpretation. The joint committee agreed that the phrase "the national objectives" does not equate with the phrase "national standards." It goes on to say: "Given the language of proposed section 95B.(2) (which is the immigration section of the Accord) it would be impossible to equate

objectives with standards." That is the point to which I referred as emanating from the Women's Equality-Seeking Groups of Manitoba. The members of the committee then went on to say:

> Nor can it be said that the "national objectives" can be equated with conditions or criteria, as exemplified by the Canada Health Act.

I draw the attention of honourable senators to the testimony given in this chamber by Al Johnson, whom I regard as an extremely well qualified witness because of his background. His testimony added to our concern by his claim that:

> ... you can be as clear as you want about national objectives without establishing criteria.

Well, an "objective" is not a "criterion." Further on he stated that:

> The word "objective" does not mean the same thing as "principle"...

as is used in the Canada Health Act.

● (1540)

Numerous witnesses attacked the vagueness of the term "objectives" which, when combined with the preceding expression—namely, an initiative or program compatible with national objectives—makes a very weak situation indeed. We know what the word "objective" means. It is not a standard; it is not a criterion. These are the expressions that have been formally used in shared-cost programs.

The term "compatible" in French can mean capable of existing alongside; it could also mean consistent. I think one can really conclude this portion of the comment on the spending power by quoting a few paragraphs from the testimony of Professor Albert Johnson, followed by Dr. Forsey. Dr. Forsey had the merit of analyzing the meaning of the words and the meaning of the context rather than the general observations we have heard from quite a number of witnesses before the joint committee. There is quite a difference between opinion and analysis. We got analysis from Professor Johnson, and we got analysis from Dr. Forsey.

In *Debates of the Senate* of March 16, 1988, Professor Johnson said the following:

> Now Meech Lake says "compatible with national objectives." One is forced to wonder why there is the choice of the word "objectives" and the apparent discarding of the vocabulary of shared-cost programs and spending power, which are governed by the same principles. I think the change weakens it. An objective is the object of an action.
>
> One also has to ask about the word "compatible."

He then goes on to define the word "compatible" along the same lines that I have. He concludes with this very succinct summary:

> So a province may opt out of a new shared-cost program provided it has something which is capable of living alongside the end object of the program. I say that weakens it.

[Senator MacEachen.]

In reply to Senator Murray, if there is fundamental flaw in this document of Meech Lake, it is the spending power. That is where the fundamental flaw lies, because it will be impossible for the national government ever to launch a program such as Medicare. We can forget about it. I can tell you that from my own experience.

Recently I heard quite an accidental comment from a former colleague of Senator Murray, Senator Paul Martin. Quite out of the blue, he said, "With Meech Lake, national health insurance would have been impossible," and I believe that is the case. So loose have the words become and so easy have the conditions become that the social programs, if ever launched in the country, will be differentiated among the various provinces.

Perhaps that is what is desired. Perhaps that is the ultimate goal of the government, which wants to have variations which would inevitably have occurred if this provision had been in effect when Medicare was introduced. We would not have had the Medicare we have today under that kind of loose wording.

I would like to refer to what Dr. Forsey said when he analysed the spending power. He related "objectives" to programs or initiatives. In *Debates of the Senate* dated October 21, 1987, Dr. Forsey said the following:

> Other people have pointed out that it might apply to pollution. For instance, with regard to pollution, there might be a national objective to get rid of pollution. Everybody will say, "Oh, yes, that is fine." The government here might say, "We are prepared to make certain grants to the provinces if they adopt certain pollution measures."

So the government would attempt to lay down a standard, so to speak, to achieve its objective. Dr. Forsey goes on to say:

> But the provinces might do a "Reagan", and say, "We have an initiative, a program of our own involving research and incentives."

That is a program compatible with the objective of ending the pollution in the country, but it is certainly not a remedial program or an abatement program. This same point has been made by many others in the course of our hearings. It is not as if the objection to the spending power has been confined to persons such as Dr. Forsey and Professor Johnson.

The National Action Committee on the Status of Women told us:

> We are concerned that after the Accord is in force, the exercising of federal spending power could lead to the balkanization of social services. Balkanization is a generous word to use because the assumption is that it would exist everywhere. What it would mean is that some provinces would have certain services and others would not, resulting in inequality.

There is also evidence from the National Union of Provincial Government Employees, submitted by Larry Brown, who said:

> It is not at all clear that we will ever be able to have new programs in new areas, such as day care. It is not clear that we would have been able to enforce the ban against extra billing that the federal government was able to enforce previously.

The Executive Director of the Canadian Association of Social Workers told us:

> We are really fearful that that clause will not allow for strong national programs to develop in the future.

We will be proposing an amendment to section 7, which we trust will remove this fundamental flaw and establish a system in Canada that will permit the federal government, in conjunction with the provinces, to establish social programs that have common standards and common application in every region of Canada. That is part of the sharing that the minister pointed out was first mentioned in 1867, but which has been neglected in this particular formulation.

Our amendment would recognize and affirm that Canadians in all parts of the country are deserving of some measure of equality with respect to programs funded by their federal government, and that the national Parliament and the national government will not lose the role that it had in the past.

Honourable senators, I think it would be important to point out now that for many people one of the most difficult aspects of the accord is its relationship to our Charter of Rights and Freedoms.

Senator Murray assured us, during his presentation before the Committee of the Whole, that:

> As an interpretation clause, the "linguistic duality-distinct society" clause will not override, take away or supersede the substantive rights set out in the Charter . . .

That assurance deserves analysis both by reference to his key words—override, take away or supersede—and by reference to paragraph 16 of the accord.

Let us take paragraph 16 first. Paragraph 16 states that nothing in the "distinct society/linguistic duality" section of the accord affects the aboriginal or multicultural rights contained in the Charter. Many witnesses commented that by specifically mentioning these exemptions, rules of statutory interpretation would lead to the conclusion that the other provisions of the Charter are not exempt and can be affected by this new interpretative clause of the accord.

The Canadian Teachers' Federation made the point quite clearly before the Submissions Group, as follows:

> . . . in explicitly excluding these provisions of the Charter, the text of the Accord creates the assumption that all other rights and freedoms guaranteed by the Charter would be subject to the provisions of the Accord . . . there is reason to wonder whether the courts will find that all of the rights and freedoms guaranteed under the Charter enjoy the same status as they did prior to the signing of the Accord—

● (1550)

It should be remembered that Senator Murray, I think carefully, used such words as "override, take away or supersede." He has been careful to avoid saying that nothing in that clause affects the Charter. Paragraph 16 of the accord does not use any of Senator Murray's words; it says "affects," which is a much broader term that implies immunity in the context it is used.

Of course, most concerned about the Charter implications of the accord are women's groups. When they appeared before our Submissions Group, the National Association of Women and the Law and the National Action Committee on the Status of Women both expressed fear that there was being created "a hierarchy of rights." Louise Dulude of the National Action Committee on the Status of Women went so far as to say that:

> In this hierarchy of rights women will be below multicultural and native rights, and the lowest of all will be the doubly-disadvantaged groups, such as disabled women, visible minority immigrant women and native women.

We are deeply concerned about the implication of this particular provision. We hope to respond to the concerns that have been expressed by the citizens of Canada before the Senate. The Charter of Rights and Freedoms, as has been pointed out so frequently, is for the benefit of individual Canadians, wherever they may be found. It is of such fundamental importance that any attempt to dilute it must be opposed by those who believe that individuals do possess certain inherent rights. It is for this reason that among the amendments which we propose we will be calling for the exemption of the entire Charter from the clauses of the accord.

Honourable senators, I think it is appropriate for me to say that we will, in fact, be proposing a number of amendments to the resolution now before the Senate. We will be proposing amendments to remove the fundamental flaw relating to the spending power; to exempt the Charter from the application of the accord; and a certain number of other amendments to which I will refer before I conclude.

We have not been able to accept as ironclad guarantees the assurances that have been made from time to time by the Prime Minister and the Leader of the Government in the Senate. Not that we charge that these assurances have been ill-intentioned, but because the statements which they make, in a matter of this importance, have absolutely no standing whatsoever in law. We would like, while we have the opportunity to do so, some of these assurances converted into clear language in the Meech Lake resolution.

We do not intend to strike down the accord. We are not proposing to vote against it. We are suggesting ways of improving it in order to benefit all Canadians. We believe that Canadians deserve a constitution that strikes a balance between certainty and flexibility. The changes that we are proposing are intended to achieve this balance.

I will now summarize the amendments, which I will propose later and circulate. In making this summary I can do no better

than repeat the words of our leader, the Right Honourable John Turner, when he spoke on these identical amendments in the House of Commons on September 29, 1987. He said:

> First, we want to include as fundamental characteristics of Canada . . . the recognition of our aboriginal peoples, the recognition of the multicultural mosaic of Canada and the recognition of the regional identities and the advantage of lower trade barriers between the provinces . . .
>
> Second, we want to offer more protection to official language minorities by ensuring that Parliament is responsible for promoting as well as preserving official minority language rights.
>
> We want to offer every province the opportunity to commit its legislature to promoting as well as preserving our linguistic duality.
>
> Third, we also propose that the Charter of Rights and Freedoms take precedence, in order that the basic rights and freedoms of Canadians are not diminished by possible conflict with other clauses in the Accord. Especially the rights to equality for women . . .
>
> Fourth, we believe in an elected Senate . . .
>
> Our proposal would accelerate the move from an appointed Senate to an elected Senate by electing senators now when vacancies occur rather than appointing them based on provincial lists . . . Also, given our amendment, it would recognize the right of the citizens of the Yukon and Northwest Territories to senatorial election . . .
>
> Five, we believe . . . that the Accord clauses dealing with the appointment of Supreme Court justices from provincial lists could lead to an impasse between the federal and provincial Governments. We have therefore suggested a solution that would ensure that at all times the Supreme Court has a complement of justices, and that would protect the basic rights of Northern Canadians, by granting their Governments the same rights as provinces have to nominate candidates to the Court.
>
> Sixth, we propose that the clause concerning compensation for provinces opting out of national shared cost programs be clarified to ensure greater national consistency in programs available to all Canadians, and to ensure that minimum standards are met by provinces in order to claim compensation for opting out of such programs . . .
>
> Seventh, we propose to eliminate the rigid unanimity provision for Senate reform and return to the seven provinces and 50 per cent of the population formula . . .
>
> We also suggest that the eventual provincehood of the Yukon and the Northwest Territories and extension of existing provincial boundaries into those territories, should that ever happen, be resolved solely by the federal Government and the territory in question.

Senator Murray: Pre-1982!

Senator MacEachen: In reference to a final point he stated:

> Eighth, with regard to future constitutional conferences, we propose to make aboriginal rights a priority.

[Senator MacEachen.]

• (1600)

Honourable senators, it is our view that these amendments clarify and improve the accord and, when and if accepted, would lead to our full support in the subsequent vote on an amended and improved Meech Lake resolution. These amendments reflect the testimony we received in the Committee of the Whole in this chamber, in the Submissions Group and in the North of Canada. They reflect the views of Canadians who were concerned enough and interested enough to come forward and share with us their thoughts. Also, as I have said, they reflect fully the views of the Leader of the Liberal Party, the Right Honourable John Turner, as contained in the identical amendments which he moved in the House of Commons. I hope that the government will appreciate that by accepting and actually promoting these amendments it would win the support of many concerned Canadians, and that the Meech Lake Accord would be truly strengthened.

Honourable senators, I have made available to members of this chamber copies of my motion in amendment in both English and French. During my comments this afternoon I have summarized the amendments, and if honourable senators would spare me the burden of reading them again, I would be grateful.

Senator Flynn: May I ask if there is only one motion?

Senator MacEachen: Yes, it is one single amending motion.

Senator Flynn: You are asking the Senate to vote on all of these amendments at the same time?

Senator MacEachen: Yes.

MOTION IN AMENDMENT

The Hon. the Speaker: There is a motion in amendment of Senator Murray's original motion. It is moved by the Honourable Senator MacEachen, seconded by the Honourable Senator Frith:

> That the motion be amended as follows:
>
> (a) in paragraph 1 of the Schedule by deleting subsection 2.(1) and substituting the following therefor:
>
> "2.(1) The Constitution of Canada shall be interpreted in a manner consistent with
>
> (a) the recognition that the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec, constitutes a fundamental characteristic of Canada;
>
> (b) the recognition that Quebec constitutes within Canada a distinct society;
>
> **(c) the recognition that aboriginal peoples constitute a distinctive and fundamental characteristic of Canada;**
>
> (d) the recognition of the multicultural nature of Canadian society, and in particular respect for the many origins, creeds and cultures as well as the differ-

ing regional identities that helped shape Canadian society; and

(e) the recognition of the advantages of developing the Canadian economic union."

(b) in paragraph 1 of the Schedule by deleting subsection 2.(2) and substituting the following therefor:

"2(a) The role of the Parliament of Canada **to preserve and promote, and the role of the** provincial legislatures to preserve and, **subject to subparagraph (2)(b) to promote,** the fundamental characteristic of Canada referred to in paragraph 1(a) is affirmed.

(b) The role of a province in relation to promotion applies from the time it is adopted by a resolution of the legislative assembly of that province."

(c) in paragraph 2 of the Schedule by deleting section 25 and substituting the following therefor:

"25. Where a vacancy occurs in the Senate, and until an amendment to the Constitution of Canada is made in relation to the Senate pursuant to section 42 of the *Constitution Act, 1982,* the government of Canada shall, within six months after the vacancy occurs, call an election in the province or territory to which the vacancy relates for the purpose of filling that vacancy, and, notwithstanding the provision of section 29 of the *Constitution Act, 1867,* for a term of nine years."

(d) in paragraph 6 of the Schedule by deleting subsections 101C.(1) and (2) and substituting the following therefor:

"101C.(1) Where a vacancy occurs in the Supreme Court of Canada, the government of each province **and the elected government of each territory** may, in relation to that vacancy, submit to the Minister of Justice of Canada the names of any of the persons who have been admitted to the bar of that province **or territory** and are qualified under section 101B. for appointment to that court."

(2) **Subject to subsection (5),** where an appointment is made to the Supreme Court of Canada, the Governor General in Council shall, except where the Chief Justice is appointed from among members of the Court, appoint a person whose name has been submitted under subsection (1) and who is acceptable to the Queen's Privy Council for Canada."

(e) in paragraph 6 of the Schedule by adding immediately after subsection 101C.(4) the following:

"(5) Where an appointment is made in accordance with subsection (2) and, if within a period of three months, no name which has been submitted under subsection (1) is acceptable to the Queen's Privy Council for Canada, the Chief Justice may make an interim one-year appointment from among justices of the Federal Court of Canada or provincial Superior Courts."

(f) in paragraph 7 of the Schedule by deleting subsection 106A.(1) and substituting the following therefor:

"106A.(1) The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the **Parliament** of Canada after the coming into force of this section, in an area of exclusive provincial jurisdiction, if the province carries on a **compatible program which meets minimum national standards."**

(g) by deleting paragraphs 9, 10, 11 and 12 of the Schedule and substituting the following therefor:

"9. Sections 40 to 42 of the *Constitution Act, 1982* are repealed and the following substituted therefor:

40. Where an amendment is made under subsection 38(1) that transfers legislative powers from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply.

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

(a) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(b) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province was entitled to be represented on April 17, 1982;

(c) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;

(d) subject to section 43, the use of the English or the French language;

(e) the Supreme Court of Canada; and

(f) an amendment to this Part.

42.(1) An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with subsection 38(1):

(a) the powers of the Senate and the method of selecting Senators; and

(b) the number of members by which a province or territory is entitled to be represented in the Senate and the residence qualifications of Senators.

(2) Subsections 38(2) to (4) do not apply in respect of amendments in relation to matters referred to in subsection (1)."

"42A. Notwithstanding subsection 42(1) of the *Constitution Act, 1982,* the establishment of new provinces and the extension of existing provinces into territories shall be a matter exclusively for the Governor General

in Council and the elected government of the territory affected."

(h) in paragraph 13 of the Schedule by deleting subsection 50.(2) and substituting the following therefor:

"(2) The conferences convened under subsection (1) shall have included on their agenda the following matters:

(a) the aboriginal and treaty rights of the aboriginal peoples of Canada, including self-government;

(b) Senate reform, including the role and functions of the Senate, its powers, the method of selecting Senators and representation in the Senate;

(c) roles and responsibilities in relation to fisheries **at the first meeting only;** and

(d) such other matters as agreed upon."

(i) by deleting paragraph 16 of the Schedule and substituting the following therefor:

"16. Nothing in the *Constitution Amendment, 1987* derogates from any of the rights and freedoms guaranteed by the *Canadian Charter of Rights and Freedoms* or affects Part II of the *Constitution Act, 1982.*"

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

[*Translation*]

Hon. Jean-Maurice Simard: Honourable senators, I should like to raise a procedural point of order. I do not know whether I am speaking to the amendment or to the main motion.

Hon. Royce Frith (Deputy Leader of the Opposition): Or both.

Senator Simard: Honourable senators, I might have a few comments to make.

Senator Frith: Honourable senators, if I understand correctly, Mr. Speaker, both motions are now before the Senate. Remarks may relate to both at the same time. As to repetition or the right to speak twice on a question before the Senate, I believe we can agree on the possibility of speaking on both subjects at the same time without making a distinction between the two.

Hon. Eymard G. Corbin: Honourable senators, this creates a problem because in this case Senator Simard's wish to speak now is legitimate. The principle is that he would speak to the amendments now before the Senate.

If Senator Frith is suggesting that it matters little whether he speaks to the amendments or to the main motion, this suggestion has a certain significance because of the fact that once the amendment has been disposed of Senator Simard may again speak to the main motion should he want to. Of course Senator Simard may opt for exercising his right to speak now to the amendments and the main motion, but his right to rise again on the main motion once the amendments have been disposed of cannot be excluded. That issue has not been resolved.

Senator Frith: Honourable senators, I think if we want we can grant the right to speak to both motions at the same time. Then if a senator wants to rise on the main motion we can also extend the same right at that time. I want to avoid a senator rising to say: I am now speaking to the amendments. In this case we have the resolution before us, the resolution in amendment. Should the situation described by Senator Corbin arise, we could decide right then whether we are prepared to give the right to speak a second time on the main resolution. We can solve the problem that way if it turns out to be real.

Senator Corbin: I understand the spirit in which Senator Frith is making this suggestion. The decision is not ours, rules and precedents are there and we must respect them. We cannot deny Senator Simard the right to rise a second time on the main motion if he wants to. We have to acknowledge that possibility now. If Senator Simard speaks now we cannot say that he will not be able to rise again on the main motion once the Senate has disposed of the amendments. That is the only point I am making.

Senator Simard: If I may . . .

Senator Frith: It would not be accurate to say that we are totally ruled by the regulations. It is clear that, in the Senate at least, we can decide unanimously to let our decision prevail. That is clear. And that is what I suggested. If we agree to that procedure which I suggested is perfectly acceptable in the Senate.

Senator Corbin: I think that proposal could be passed if everyone agrees. But I do not support that procedure which is contrary to Parliamentary tradition.

Senator Simard: So, to help you solve this dilemma and given Senator Corbin's speech, let me say that I will be away from Ottawa until the vote and I do not intend to speak again on the main motion when it will come back up for discussion.

Dear colleagues, I am pleased to take part in this debate on the 1987 Constitutional Accord.

On August 26, 1987, I said in Saint-Louis-de-Kent:

> "It is fortunate that in Acadia we hold forums where our organizations and other parties can express their views.
>
> I stand before you today as a nationalist, if I can make that claim, and as a Progressive Conservative Senator representing New Brunswick and especially the French-speaking community of our province. The two roles are compatible. In 15 years of active political life in New Brunswick, I believe I have realized and proved that it was logical and desirable.
>
> It was an honor for me to serve the province and the Acadian community, as I can do it today in the Canadian Senate."

That is part of what I said at a seminar organized by school board teachers in that area of New Brunswick.

Dear colleagues, although I sit as an independant Progressive Conservative Senator, my position today has not changed much since last August and for good reason.

• (1610)

[*English*]

Of course, I have listened carefully to witnesses in this house or I have read their statements and followed with great interest the stands of many Canadians in New Brunswick and elsewhere in Canada, but, for reasons that I shall state, my initial support for the accord has not diminished.

[*Translation*]

Criticizing is easy, as Senator MacEachen showed us today, and with him a number of witnesses who have appeared before this chamber in the past two or three months to present their views. I agree that we also had a number of prominent experts, including Senator Forsey and others, who as the senator mentioned previously, went beyond general comments to analyse the terms of the accord. That is why I think the second round may be more fruitful than the Quebec Round.

However, I think many witnesses made the very legitimate point that it is difficult for parliaments and first ministers to respond to all the wishes of interest groups, whether we are talking about women, minorities, fishermen, and the rest. I think this reflects the complexity of the problem and urgency of finishing the Quebec Round as soon as possible, even though, as I will say later on, the accord may not be perfect.

Senator MacEachen gave us his vision of Canada. It is a vision we have known for some time, that of a centralized Canada, uniform from coast to coast. The senator gave us his dire predictions including, for instance, that it would be difficult to set up national social or economic programs. I think the present government is proving it is possible to be accommodating and to meet the objectives of national programs while allowing for certain nuances and for some accommodation with provinces whose characteristics set them apart from their neighbours.

Senator MacEachen talked about spending powers. He was concerned. I have followed the career of Senator MacEachen and others, and as far as I am concerned, I have espoused and continue to espouse the traditional position taken by the province of New Brunswick and successive provincial governments, and I can say I have not changed my views. I am for a strong Canada and a strong federal government that has the resources to help the provinces, including New Brunswick, meet their economic and social objectives. I do not believe that the accord we are considering today threatens spending powers and heavily mortgages the federal government's ability to raise funds and distribute them among the provinces, while leaving the provinces free to adopt national programs as they so desire, as long as the objectives are met. Eight interest groups have told us their views, and we must respect those views. The centralists have given us their views. However, I don't think it is necessary to dramatize just because my vision and the present government's vision differ from the centralists.

Honourable senators, the accord, the subject of our reflection and our discussions today, is a major step. It is a necessary step, and I think it will be a successful one, but it is also an urgently needed stage in the long process of Canada's constitutional reform. We call it the Quebec Round. We know that other rounds will follow, and that they will be effective and promising because Quebec will be part of those rounds. We know that Quebec was missed at some federal-provincial meetings and that as a result of its absence some progress that could have been made was not in fact made.

I think it is important for Canadians to maintain the support that they have already shown for this agreement reached in the Quebec round. The accord is imperfect, I repeat, but it does recognize the existence of English-speaking and French-speaking Canadians in all regions of the country as a fundamental characteristic of Canada that Parliament and all provincial legislatures have to protect; this must be considered undeniable progress in the struggle we have always been waging. Furthermore, the recognition of the distinct character of Quebec society must also be perceived as a historic response to the demands of the Quebec people.

Of course, in 1982, as in 1987, I was one of those who hoped for more and I still do.

So the 1987 accord is not perfect, I repeat. It is therefore possible to identify some deficiencies. I have no doubt that over time we will find other flaws.

Nevertheless, for my part, and it no doubt has to do with my rather optimistic nature, I prefer for the time being to stress the beneficial effects of this accord for French Canadians. So I share the opinion of *Le Devoir*'s editorialist Benoit Lauzière, who wrote the day after the agreement was signed:

> The Accord is a victory for intelligence, compromise and a sense of opportunity, virtues that are so important for the federation's evolution (and so foreign to ideological fixations).

That is the first point I wish to make. The result of these negotiations is first and foremost one of compromise and conciliation. I quote Richard Hatfield:

> Experience and realism were our guides.

He said that at a press conference on June 3, 1987.

• (1620)

That takes nothing away from the value of the agreement. Even though it is a compromise or the result of experience and realism, the accord, by recognizing Quebec's distinct character, will indeed correct a historical mistake, to use Michel Roy's words. Indeed, it is too often forgotten that on leaving political life, Mr. Trudeau left us with an unfinished Constitution and an isolated Quebec.

Furthermore, the Meech Lake agreement will, for the first time in our country's history, bring the federal government and all provincial governments to recognize Canada's linguistic duality as a fundamental characteristic of our country and to agree to protect this characteristic.

The Federation of Francophones Outside Quebec and other organizations have, in general, reacted positively to the agreement, while regretting that the provinces were not required to promote this linguistic duality. Like them, dear colleagues, I believe that the concept is somewhat restrictive. But the

federal government is behind many other initiatives that cannot help but promote this duality.

In this regard, I think of the tabling for first reading on June 25, 1987, of the Official Languages Bill that was favorably received by francophones outside Quebec and by many other groups and individuals. Not only did the Federation of Francophones Outside Quebec see most of its demands taken into consideration there, but it also admitted that the new legislation would support the development of francophone communities and encourage progress toward the equal status and use of French and English.

By the way, let me add that the recent problems in Saskatchewan in no way change my support for the spirit and letter of the Meech Lake Accord. In other debates, not in this one, we can come back to support what I have just said.

Here, I should like to quote Mr. Robert Décary, a constitutionalist and member of the Pépin-Robarts Commission on Canadian Unity:

> I am aware that the Agreement does not meet the expectations of the aborigines, the Francophones who live outside Quebec, the women, and ethnic groups in some regions, even in some provinces. I say to these individuals, these groups and these regions to understand what is at stake. This is only the beginning of the process. We will go nowhere as long as Quebec is not a full-fledged member of the Canadian family. We must first and foremost make sure that this country is Canadian and federal again.

I should like to quote also Mr. Richard Siméon, a director of the Queen's University Public Administration School, who stated:

> The committee and the groups concerned should recognize that by itself a series of changes will not deal with all the interests which want to be recognized in the Constitution, nor reiterate all the commitments we have made before. This document will result in Quebec joining the Constitution and the creation of a better balance between the federal and provincial powers. I suggest it achieves this goal very well.

So, dear friends, I suggest that the implementation of specific projects will have a certain impact on the future of the French language within our communities. The national program of community radio initiated and developed by the Federation of Young French Canadians and with which I have been personally associated is an example of promotion by the federal government with the provincial governments willing to do their share as its partners.

I also know that the federal government, and here I should like to call the attention of the Leader of the Government in the Senate to the fact that the federal government is now considering a project put forward by the National Commission of Francophone Parents, a group of over 435 francophone parent committees outside Quebec. Senator Murray, I sincerely hope that this program will be approved very shortly, so that these groups of francophone parents will be able to condemn, I repeat, honourable senators, to condemn and subsequently remedy a shocking situation, namely the tendency of most provincial governments with an English-speaking majority to treat their minorities unfairly with respect to education matters.

In fact, I intend to speak to this subject again in a few weeks' time following a notice of inquiry I tabled recently.

Honourable senators, I think I mentioned a number of initiatives that are a very clear reflection of the determination of the Mulroney government to protect and promote the French language and official language communities in this country. Isolated incidents, like the Piquette case in Alberta and the rather narrow-minded display by residents of Salisbury, New Brunswick, last year on the appointment of their new postmaster, occasionally cast a shadow on the efforts of the federal and provincial governments.

I know that these violations do not enjoy the support of the vast majority of Canadians, and I still believe that the Constitutional Accord of 1987 will become a source of inspiration and action. In fact, surveys published by the Commissioner of Official Languages confirm that the vast majority of Canadians share this openness of spirit and that they are far more favourable to the development of bilingualism across this country than was the case a few years ago.

Some bigots remain here and there, and we have our share in New Brunswick. I don't think we can escape that. However, I believe these people represent a small minority that is making itself heard and would take us back to the Stone Age. I think most Canadians, as I said before, support our attempts at openness and equality and the provision of equal services for both communities, which includes access to the Public Service, and so forth.

As our colleague Senator Murray said before the Special Joint Committee of the Senate and the House of Commons on the 1987 Constitutional Accord, on August 4 last year, I believe that a commitment by the federal government and the provincial legislatures to protect our Canadian linguistic duality is a minimum, not a maximum requirement.

Honourable senators, I believe that if the federal government is able to use this constitutional foundation to build a system that will provide for much closer and far more effective collaboration, we will, in future negotiations, be able to persuade the provinces to make a constitutional commitment to promote Canadian duality. If this close cooperation materializes, I am convinced that the difference between protection and promotion will become purely a semantic debate.

Bearing this in mind, I hope that the McKenna government will ask to have the provincial act recognizing the quality of both official language communities in New Brunswick enshrined in the Constitution, as requested by the Société des Acadiens du Nouveau-Brunswick and the vast majority of Acadians.

Honourable senators, since this bill that I had the honour to sponsor in a previous career was passed, we in New Brunswick

talk less and less about a dominant majority and a submissive minority at the whim of the provincial government.

Indeed, in my province, there are two equal groups that are entitled to their distinct institutions and their fair share of the tax base. That is why I want the provincial government to stop playing games and put an end to this indecision which it is trying to pass on to others. So I repeat, I hope that the McKenna government will stop playing for time and while recognizing the imperfections of the present accord, as I and others do, it will want to ratify what Richard Hatfield as Premier of New Brunswick accepted on behalf of his province, namely an agreement that moves the constitutional revision process one step forward.

This will usher in a new era in federal-provincial relations and make Quebec a full constitutional partner. In this way, in the second and third stages, the provincial governments will deal with such issues as fishing, native peoples' rights, Senate reform and subjects that others have mentioned and concern not only myself but also many Canadians, of course.

In conclusion, honourable senators, I support the 1987 Constitutional Accord unequivocally and with great satisfaction. I call on the people of New Brunswick and their government to do the same.

Hon. Gildas L. Molgat: Honourable senators, would Senator Simard accept a question?

Senator Simard: Yes.

Senator Molgat: Do I understand correctly that Senator Simard's remarks about francophones outside Quebec are to the effect that they supported the accord?

Senator Simard: Honorable senators, I said that their initial reaction was one of generous but partial support. I know that in recent months they have had an opportunity—given certain events in certain provinces—to insist that improvements be made at this first round of constitutional negotiations, particularly owing to the problems of which we are aware.

Unsatisfied though they may be, I should think they are realistic enough to know that their concerns will be considered during the second round of constitutional negotiations and that amendments might be made.

I would not want to put words in the mouths of other individuals nor make a judgment on what the president or several spokesmen for francophones outside Quebec may have said. Indeed that can vary from one spokesman or newspaper to another, depending on what people are reported to have said. but I think that francophones outside Quebec are reasonable people and prepared to wait, knowing there will be further amendments.

Senator Molgat: Further to my question, I believe that indeed francophones outside Quebec are reasonable. Still I want to draw the attention of Senator Simard to statements made by the president of Alberta francophones to the Submissions Group on the Constitutional Accord. Should he care to look into what the Franco-Albertan society and their president said he will find out that it is not the same thing as what he is telling us here. These people quite honestly expressed their views and they voiced their opposition to this accord. Did Senator Simard read what President Georges Arès of the Alberta group said?

Senator Simard: I wish I were told which documents we are talking about. I read several from Mr. Arès. I have worked with him and I continue to work with him on other programs. As a matter of fact, I mentioned one a few moments earlier. It is under these programs that the federal government will promote the French language. It will do that and take action concerning the promotion of the French language even though the Province of Saskatchewan and others have made no commitments in that respect.

Senator Molgat: Mr. Georges Arès said so before the Senate Submissions Group and you can read his remarks in the report presented here. He said he was flatly opposed to the accord. No one should claim here that these people support the accord.

Senator Simard: There is no problem about that.

• (1630)

[*English*]

Senator Frith: Honourable senators, so much can be said about Meech Lake, and so much has been said. Will Rogers once said that he had never met a man that he couldn't like. I have tried very hard to like Meech Lake, but I must say that I have not been able to find anything in it that I like. Its objective to have all provinces and all participants agree to constitutional amendments is supported, I believe, by everyone, but I find the provisions here exact too high a price for that objective. I said here, within two days of the announcement of the Meech Lake Accord, that the objective was desirable, but the price was too high. Nothing that has happened since the adjustments made at Langevin or the evidence that we have heard has changed my mind. Rather has my opinion been reinforced that this accord cries out for improvement.

The objective has often been stated to be Quebec's isolation—

Senator Murray: The end of Quebec's isolation.

Senator Frith: Yes. The reason was Quebec's isolation, and the target was to end Quebec's isolation. I must say that the evidence I have heard since that objective was first stated has not persuaded or convinced me of the existence of that isolation. Certainly, constitutionally I believe it is generally understood and accepted that Quebec was not isolated; that because the then Government of Quebec did not agree to the 1982 amendments, Quebec at that point was not cut loose and left floating like some Sargasso Sea, constitutionally by itself and not as part of the Canadian Constitution. As a matter of fact, Senator Murray, as I understood it, has never said that. Today he did not say that. He said that it was to end Quebec's political and moral isolation.

I have not been persuaded that Quebec has been politically isolated. It has participated since 1982 in Canadian federal and provincial politics, and its political isolation, as someone has said, appears largely to be the creature of professors at

Queen's and Toronto, while politically and economically Quebec has been succeeding magnificently. In fact, the most successful section of Canadian economic activity now is undertaken by the entrepreneurs in Quebec who, while Queen's University and the University of Toronto are worried about Quebec's isolation, are out conquering the economic world.

As to their moral isolation, I cannot understand the sense in which that term is used. All that happened was that the then Government of Quebec failed to agree to the amendments that were made at that time.

I had asked Senator MacEachen's assistant to find for me an extract from the evidence of Dr. Bliss who appeared before us on this question.

An Hon. Senator: Your pal.

Senator Murray: He was speaking of Toronto.

Senator Frith: I agree, and that gives greater force to his argument that his colleagues in Toronto, as he said, seemed to be more concerned about Quebec's isolation than was Quebec itself. At page 2337, Dr. Bliss, when speaking before the Committee of the Whole, said:

> I could say much more if time permitted. As historians, we worry about getting our facts right. Many of us have been outraged by the use of dishonest tactics to suggest that Quebec was somehow outside of the Canadian Constitution before the Meech Lake Accord, or even to suggest that separatist sentiments have been given great impetus by the Quebec government's failure to sign the 1982 Constitution. The empirical evidence, of course, is that they had not. There is no evidence that two Canadas were created as a result of 1982, but it may well be that we are creating two Canadas with the Meech Lake Accord. Certainly we are no longer going to have one Canada.

It seems to me, honourable senators, that the process could be compared metaphorically to the doctor who wants to engage in excessive treatment or surgery and, in order to do so, exaggerates the symptoms—the exaggerated or excessive treatment here being the willingness to make any deal, to give up any Canadian position, to fail to speak for Canada, in order to get an agreement from one of the provinces.

It seems to be generally agreed that this document is not perfect. If that is so, then why is it not also generally agreed that we should improve it? We are dealing with a constitution. I have never heard any proponent of this Constitutional Accord describe it as being perfect. If that is so, again I say, why not improve it—and that, honourable senators, is what the Leader of the Opposition is proposing by his proposed amendments, which I have seconded. I will therefore confine my comments to the items that he mentioned in his intervention—those that are the subject of amendments, but which were not touched upon by him.

● (1640)

The first are the fundamental characteristics. That phrase should sound familiar, "fundamental characteristics," because the interpretative clause, section 2(1), sets out as a fundamental characteristic of Canada:

> —the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated—

Notice the difference between "centred" and "concentrated":

> —outside Quebec but also present in Quebec—

That has been vigorously argued in Committee of the Whole to be too narrow a description of Canada's fundamental characteristics. Remember, the reference is to the "fundamental characteristic of Canada." No one, it seems to me, argued that Quebec, as a distinct society, is not "a fundamental characteristic of Canada". But what were some of the other fundamental characteristics referred to in the testimony given before the Committee of the Whole?

I want to point out that Senator MacEachen did take into account the evidence given to the Task Force on the Meech Lake Constitutional Accord, the submissions made to the Submissions Group, and the evidence given in Committee of the Whole, and that our amendments are based on what we heard here as well as on the debate that took place in the House of Commons.

I say that because I do not intend to resist again saying that I feel the exercise of the joint committee was constitutionally incorrect and turned out to be a waste of time, as we expected it would be. In the first place, we were not dealing with a joint resolution, so there was no reason to have a joint committee, and, second, the House of Commons had a majority on that committee, and, of course, the government had a majority of that majority. The members of the committee were told at the outset that the accord was a seamless web, that it would not be changed, that it could not be changed, but "please feel free to go ahead and hear all of the witnesses."

The only good thing about it was that it did engage a process against what has been called "executive federalism;" that is, at least it gave the people an opportunity to participate in the amending process. But we were told at the outset that, in effect, no attention was going to be paid to what the people or the members of that committee had to say if they proposed changes.

The Senate, fortunately, proceeded with its own committee, in spite of the fact that it was allowed to participate in the joint committee, and the references that I intend to make are from the evidence that the Senate heard.

So what are some of the additional fundamental characteristics that the people of Canada told us about during our hearings? First, the existence of the aboriginal peoples. Mr. Georges Erasmus, National Chief, Assembly of First Nations, in the Committee of the Whole, stated:

> We took tremendous exception to the concept that Canada has just two founding nations and one major "distinct society"—

That quotation is found in *Senate Debates* of November 18, 1987, at page 2200.

Mr. Louis "Smokey" Bruyère, President of the Native Council of Canada, echoed:

> The accord completely ignores aboriginal peoples and our place in the existing constitutional order. It misstates Canada as it is and as it had a greater chance of becoming... Canada is premised on the relations between three—not two—founding societies. The first, and the most distinctive, are the aboriginal peoples.

That quotation is found in *Senate Debates* of December 2, 1987 at page 2258.

Mr. James Allan of the Yukon, in his appearance before the Task Force in Whitehorse, reminded us that:

> —before the white man came 400 or 500 years ago the natives had a distinct society. We had our own unique culture, our own language, our own history, our own heritage, our own spiritual values, our own communities, and most important, we had our own self-government. I do not know how more distinct you can get before you are recognized as a First Nations people who were the original inhabitants of this country.

That quotation is found in the proceedings of the Task Force of October 25, 1987.

We accept the strength of these arguments and will attempt to amend the resolution to correct this omission. That amendment is found in the proposals put forward by Senator MacEachen.

We propose also an amendment to give expression to the multicultural characteristic of Canada. In the 1986 census 11 per cent of the population reported a language other than English or French as their mother tongue. Upwards of a third of Canadians trace their lineage elsewhere than to Britain or France. In Canada we took pride in welcoming people from every corner of the globe to join in the formation of our political, economic and cultural union. It is appropriate to acknowledge that reality in the accord.

Professor Binavince of the Canadian Ethnocultural Council, in his appearance before the Committee of the Whole, stated:

> The multicultural character of the country is not inconsistent with the recognition of the English and French culture in Canada. For that reason there is no reason to fear that an amendment to section 2, stating that one of the fundamental characters of Canada is multiculturalism, would be a dangerous proposition.

Not only would such an amendment not be dangerous as a proposition, it would, in fact, be welcomed and appreciated by millions of Canadians.

When one asks visitors from other nations what, in their opinion, makes Canada unique, the inevitable response is the country's breathtaking size. When this feature of geography is combined with a sparse population, the result is diverse regions, each possessing unique characteristics.

I will not argue that each region constitutes a distinct society in the sense used in these proposals, but the reality is that the challenge of uniting these widely differing regions into a single federation constitutes one of the most fundamental characteristics of our country. That should be recognized in our Constitution.

Finally, Canada is also more than a mere cultural and political union; it is a strong and vibrant economic union. Confederation, the subsequent westward expansion, and the addition of Newfoundland in 1949, was predicated on the recognition of the advantages of developing the Canadian economic union. This is a most fundamental characteristic of Canada that should be clearly recognized, particularly now when we are considering entering into a far-ranging economic agreement with the United States. The dismantling of trade barriers between nations is of great importance, but of equal or even greater importance is the elimination of impediments to the free flow of goods and services between the provinces themselves.

The characteristics I have described are, to quote the buzz word again, "fundamental" to our nation; they have all been crucial to our development and will all play an instrumental role in our future. Their existence cannot be ignored in a document that deals with the subject matter of the fundamental characteristics of Canada, certainly not in a document that deals with those fundamental characteristics on the basis of how the Constitution is to be interpreted. When the decision was made to delineate any fundamental characteristics of Canada in the Constitution, it was an error to confine the list to matters of language.

As we are aware, the accord has something to say about the Senate. Under the accord, persons appointed to the Senate will have to be approved by the provinces, and any changes to the membership of this chamber will require the unanimous consent of all the provinces. I have long favoured a reformed and elected Senate. I first made a speech on the subject here in this chamber many years ago. I have my doubts that any reform will be possible under the terms of the accord.

● (1650)

Again, to refer to the evidence of the Honourable John Roberts, he was unequivocal before our Submissions Group when he stated that the accord "means the death of the initiative for the equal, effective and elected representative base for the Senate."

It is true that the subject of Senate reform will be on the agenda of all future yearly constitutional conferences. That, as I understand it, was one item of *quid pro quo* given to Premier Getty by the Prime Minister in order to persuade him to join in the accord. This, however, is very thin gruel for those Canadians who look to a reformed Senate as a strong defender and advocate of their regions' interests. So, when Senator Murray stated on CTV's "Question Period" on May 1, 1987, that:

> the good news is we're going to talk about Senate reform and we are going to talk about it every year...

he might also have said:

> . . . and the bad news is that under the new amending formula, we will undoubtedly be talking about Senate reform every year for many, many years to come.

Senator Murray: Just watch us!

Senator Frith: Yes, we will—and for years and years and years to come.

Since there is a very wide consensus that reform of any substance would entail an elected Senate, we suggest that until such time as real change does take place senators be called to the Senate by the people of the provinces through direct elections and not by agreement between premier and Prime Minister. This would constitute a genuine and meaningful step towards the reform of this chamber. It would mean that we would have during the transition period some elected senators and some appointed senators. Many have suggested that that is an impossible situation, but Senator Flynn and I found otherwise when we were in Australia. One of the states—I believe it was New South Wales—had in place a system of appointed senators. This was gradually changed to a system under which senators were elected. We asked them how that worked, with elected senators sitting next to appointed senators, and they said that it worked fine. They said that it was a gradual process, but that within a year or two the entire state Senate would be fully elected.

Senator Tremblay: That is not the Canadian way.

Senator Frith: What is not the Canadian way?

Senator Tremblay: I will explain my point later.

Senator Frith: Oh, good; we look forward to that—another cliff-hanger.

Senator Phillips: What is the first?

Senator MacEachen: Senate reform!

Senator Frith: Honourable senators, another institution in which changes are being made in the appointment procedure is the Supreme Court of Canada. As with the Senate, new appointments to the Supreme Court of Canada will only be made with the prior approval of the provinces, with new justices being chosen from lists of names submitted by the premiers. In addition, the long-standing tradition of appointing from Quebec three of the nine justices will be entrenched in the Constitution.

Unlike the Senate, where change is seen as pressing, so far as I have been able to observe, there has been no clamour from the populace for the reform of the Supreme Court of Canada. The court is a highly respected body which is generally viewed as ruling without bias, whose members are acknowledged to be of the highest calibre.

What evidence have we on this subject? When Mr. Robert Baragar appeared before our Submissions Group on March 3, 1988, he wondered:

> why the provinces are so anxious to nominate their own justices to the Supreme Court. After all, the system works well, so why change it? Surely the answer has to be that the provinces are interested in gaining greater influence in court decisions . . .

Mr. Baragar was not alone in his scepticism. Senator Macquarrie, someone widely quoted on this side today—

Senator MacEachen: He is our only hope!

Senator Frith: —expressed concern about the wisdom of this provision when he said:

> The Meech Lake formula for appointments to the Supreme Court does not strike me as being as satisfactory as the one that now exists.

He made that statement at a meeting of the Submissions Group on March 3 of this year.

Senator MacEachen: The whip was away that day!

Senator Frith: One would also be forgiven for asking why the Territories have been shut out of the appointment process. I am sure that Senator Murray forgives us and others who ask that question. There is no legitimate reason not to allow the Territories to submit names to the federal government in the same fashion as the provinces do. Furthermore, there is no legitimate reason to exclude from consideration for appointment those members of a territorial bar who do not also belong to the bar of one of the other provinces.

Senator Flynn: They all do.

Senator Frith: Well, good—all the more reason, as you are saying.

In its final report, the Senate Task Force on Meech Lake said:

> Time after time we heard people of the North tell us that the only practical way to have qualified Northerners considered for appointment to the Supreme Court is to have their names submitted for consideration by the territorial governments. They believe that failure to do so constitutes unfairness and inequality visited on Northerners simply because of their place of residence.

We agree with this assessment and propose that the recommendations of the task force respecting the Supreme Court of Canada be accepted.

Still on the topic of the Supreme Court, we are very concerned by the lack of any dispute-resolution mechanism. Should the Government of Quebec refuse, for whatever reason, to submit a list of candidates to the federal government, or should the names submitted by the provinces be patently unacceptable to the federal government, how will the court maintain its full complement of nine justices? Would the court be asked to rule on cases emanating from Quebec, cases calling for the interpretation of the "distinct society" clause of the accord, at a time when there were no members of the Quebec bar on the court because of a long-standing dispute between the two levels of government? How effective would our highest court be if it were forced to operate for any length of time with only six or seven justices?

We are proposing that when such an impasse arises the Chief Justice be empowered to make an interim one-year

appointment from among the justices of the Federal Court or provincial superior courts.

When he appeared before the Special Joint Committee on August 4, 1987, Senator Murray commented:

> My hunch is that deadlock-breaking mechanisms create deadlock.

It is unusual for Senator Murray to try to justify something on a hunch. Knowing how careful he is, it suggests to me that he cannot think of any other justification for the absence of a deadlock-breaking mechanism. What he said before the special joint committee is akin to saying that laws create lawlessness, and it is not sufficient reason to leave the Supreme Court of Canada exposed to a deadlock that could rob it of its effectiveness and of the high standing and respect that it enjoys among Canadians.

On the amending formula, another aspect of this accord that causes us concern is the unanimity requirement for future changes to the Senate and for the creation of new provinces. Though we understand the principle of the equality of provinces and appreciate the interest of provinces in federal institutions, we believe that the principle of unanimity could be a serious, and even insurmountable, impediment to Senate reform and to the evolution of the Territories into provinces. The principle of unanimity is already haunting us, as Senator MacEachen has pointed out. This accord could be put into law without unanimous consent; that is, it could legally be put into effect without unanimous consent, because it only requires the 1982 formula in order to be a legal amendment, although we have been told that policy would not permit that.

• (1700)

In any event, to indicate the difficulties with the unanimity principle, I suppose that would mean that if it ever did come into law, we would then go into the New Brunswick round, which would be the round to end the isolation of New Brunswick and to bring New Brunswick back into the Constitution and into the constitutional family, and to end its political and moral isolation.

We propose that changes to the Senate require not the unanimous consent of the provinces but, rather, the consent of seven provinces with 50 per cent of the population, as provided for in section 38(1) of the Constitution Act, 1982. Furthermore, we propose that the establishment of new provinces be a matter within the exclusive jurisdiction of the federal government and the territory in question. This would be in keeping with tradition, and is, in fact, the procedure that was followed in 1949 when Newfoundland-Labrador joined Confederation.

As the accord now stands, the Territories have no say whatsoever in the creation of new provinces or in the extension of existing provinces into their territory. In 1949 the people of Newfoundland gave their consent to Confederation through a referendum. In 1987 the ten premiers and the Prime Minister decided that they alone would decide the fate of the Territories, that neither the people of the Territories nor their elected representatives had any legitimate say in the matter.

Senator Murray has said that every province has a legitimate interest in the creation of new provinces, because it affects their rights in terms of equalization and financial arrangments. But this does not explain why the people of the Territories themselves do not have a legitimate interest in their own future. There is a suspicion by northerners that the consent of all the provinces will not be easy to obtain.

When the Honourable Donald Johnston appeared before our Committee of the Whole, he brought to our attention the following statement made by Premier Bourassa before the Committee of the Quebec National Assembly, after the Meech Lake Accord, but prior to the Langevin Block meeting:

> As far as new provinces are concerned, I do not have to elaborate on the threat which the addition of new provinces would represent for Quebec's collective wealth especially in the regions where natural resources could become fully developed.

It is perhaps with good reason that the people of the Territories fear for their future under the accord.

The last item consigned to me by Senator MacEachen concerns future conferences.

Senator Flynn: How does Senator MacEachen say you're doing?

Senator Frith: Wait until the tenth round. If you remember, Dempsey always said that. It is how you look in the tenth round that counts, not how you look in the fifth round.

The accord also provides for yearly constitutional conferences, which will have included on their agenda the Senate and the fisheries. We propose that discussion on the fisheries be limited to the first meeting, unless otherwise subsequently agreed upon, and that the aboriginal peoples be on the agenda for future meetings.

The necessity of placing aboriginal matters on the agenda is self-evident. With respect to the fisheries, we agree that this is certainly an important matter, but we do not agree that it should be kept on the agenda for time immemorial. It has been observed that three of the four Atlantic provinces are concerned about the consequences of any transfer of jurisdiction. Furthermore, there is the real fear that discussions of fisheries jurisdiction every year would lead to instability in the industry and uncertainty in its administration.

If there are problems in Canada's fisheries that need to be addressed by the First Ministers, let them be addressed and resolved at the next conference.

Honourable senators, there is a common expression these days, "If it ain't broke, don't fix it!" In this case, this accord is broke, so let's fix it!

On motion of Senator Phillips, debate adjourned.

The Senate adjourned until tomorrow at 2 p.m.

THE SENATE

Tuesday, April 19, 1988

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

Prayers.

DISTINGUISHED VISITORS IN GALLERY

The Hon. the Speaker: Honourable senators, I would like to draw your attention to the presence in our gallery of a delegation from Mexico, led by the Honourable Senator Humberto Hernandez-Haddad, chairman of the Senate Foreign Affairs Committee.

[*Translation*]

This delegation is visiting Ottawa on the occasion of the VIII Interparliamentary Mexico-Canada Meeting.

[*English*]

VETERANS AFFAIRS

CHANGE IN NAME OF SUBCOMMITTEE—NOTICE OF INQUIRY

Hon. Jack Marshall: Honourable senators, I give notice that on Tuesday next, April 26, 1988, I will call the attention of the Senate to a change in the name of the Senate Subcommittee on Veterans Affairs to the Subcommittee on Veterans Affairs and Senior Citizens, approved by the parent Committee on Social Affairs, Science and Technology on Tuesday, December 1, 1987, and in order to make the mandate of the subcommittee compatible with the new responsibility of the Minister of Veterans Affairs as Minister of State for Senior Citizens.

BUSINESS OF THE SENATE

THE CONSTITUTION—MOTION FOR PROPOSED CONSTITUTION AMENDMENT, 1987 AND ANY MOTIONS IN AMENDMENT MADE FIRST ITEM OF BUSINESS

Hon. Orville H. Phillips: Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*h*), I move:

> That the motion of the Honourable Senator Murray, P.C., respecting the Constitution Amendment, 1987, be the first item on the Orders of the Day until the motion is disposed of;
>
> That any recorded division demanded on any amendment proposed to the said motion be deferred until the conclusion of the debate on the said motion; and
>
> That no later than three o'clock p.m. on Thursday next, 21st April, 1988, the Speaker shall interrupt the proceedings and put all questions necessary to dispose of the main motion and any amendments thereto.

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

Hon. Senators: Agreed.

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, I have no objection whatsoever to the motion. I simply make the point that there is nothing incompatible with having the votes on the amendments and on the main motion at the same time.

Hon. Jacques Flynn: But you are not suggesting, are you, that there should be only one vote?

Senator MacEachen: No, I take it for granted that there will be a vote on the amendments and, if they carry, a vote on the main motion, as amended, so that there would be two votes. I did not want it left hanging, however, and the inference might have been drawn by someone less alert than Senator Flynn that it would be necessary to have the vote on the amendments several hours before the vote on the main motion. That may happen, but it could also happen that the two votes would come more or less one after the other so that we would have the two divisions within the same time period.

Motion agreed to.

WAR VETERANS ALLOWANCE AND CIVILIAN WAR PENSIONS AND ALLOWANCES

GOVERNMENT CONSIDERATION OF AMENDMENT OF LEGISLATION—NOTICE OF MOTION

Hon. Jack Marshall: Honourable senators, I give notice that on Thursday next, April 21, 1988, I will move:

> That in the opinion of this House, the government should consider the advisability of amending the War Veterans Allowance Act and Part XI of the Civilian War Pensions and Allowances Act in order to provide for the payment of an allowance, as defined under each of those Acts, to any Canadian veteran or qualified civilian of World War I, World War II or the Korean conflict, or to any widow or orphan of such a veteran or qualified civilian as defined in those Acts, whether or not such veteran or qualified civilian, widow or orphan has resided in Canada at any time since either of those wars or the Korean conflict, as the case may be; and
>
> That, within 120 days after the adoption of this resolution, the Leader of the Government in the Senate should consider the advisability of tabling in the Senate the response of the government to this recommendation.

Some Hon. Senators: Hear, hear!

Senator Marshall: Before we proceed to Question Period, honourable senators, I wonder if I might elaborate on that motion to advise the Senate that tomorrow, at 7 o'clock in the

evening, in Room 250 of the East Block, the Subcommittee on Veterans Affairs will be hearing from Mr. Percy Mercer, the Secretary of the U.K. Veterans Association. He has come to Ottawa from London, England, at his own expense, to explain to Canadian parliamentarians the plight of many of the Canadian veterans who remained overseas after the war and are now living under destitute conditions. I ask any senator who is not busy at that time to attend that committee meeting.

QUESTION PERIOD

FISHERIES

CANADA-FRANCE RELATIONS—DISPUTE-SETTLEMENT NEGOTIATIONS—REQUEST FOR APPEARANCE OF FORMER AMBASSADOR TO FRANCE AND MINISTER OF FISHERIES AND OCEANS BEFORE COMMITTEE OF THE WHOLE

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, I would like to ask the Leader of the Government in the Senate whether he has anything to report on the state of relations between Canada and France subsequent to the arrest and jailing of the crew members of the French vessel, the recall of the French ambassador from Canada, and the very strong statements made by both the President of the Republic and the Prime Minister of France with respect to the actions taken by Canada. Are there any discussions in place to lower the temperature? Indeed, more importantly, will some way be found to begin negotiations both on the fisheries and on the boundaries? From my point of view, what happened in Saint Pierre and Miquelon and Newfoundland over the weekend did not project a very desirable image. From what one could observe, I do not think that Canada was exactly the clear winner. However, putting that aside, what positive steps are now contemplated to move this process of negotiation ahead?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I think it is a little too early to answer that question definitively. Those who were on the French vessel came here, declaring their intention to break Canadian law. They refused to cooperate with Canadian authorities. That being the case, Canada took the only action that was appropriate in the circumstances.

I can add nothing to what the Secretary of State for External Affairs said yesterday in the other place to the effect that this isolated incident should not be allowed to damage our long-term and very good relations with the Republic of France.

Senator MacEachen: That may be a desirable and pious wish, but the fact is that the language used by the President and Prime Minister of France in their description of Canadian policy has not been heard from French leaders for probably two or three decades. It may be a pious hope to say, "Let's believe that this has not affected our relations." Certainly, if verbal expressions are any indication of how the President and the Prime Minister of France feel, they feel great hostility towards Canada.

What steps are being taken to get these negotiations under way in order to lower the temperature and to get relations between the two countries back to a normal basis? If the minister is telling me that no steps are being taken or contemplated, then I will accept that reply.

Senator Murray: Honourable senators, first, the Leader of the Opposition should have—and I think does have—quite a long memory. That being the case, he should agree that our relations with France have survived worse challenges than the one with which we are now confronted.

Second, I am inclined to think that while time will not heal all things, a little bit of time should be allowed to elapse before we undertake any very formal initiative along the lines suggested by the Leader of the Opposition. As we speak, the former ambassador to France—the present Secretary of State, Mr. Lucien Bouchard—is in Paris and is making his adieus to the President and the Government of the Republic. We will no doubt have a report from him when he returns. We look forward to continuing, without interruption, the excellent relations we have with that country in the economic, political and cultural spheres.

Senator Frith: Mr. Bouchard is carrying out his constitutional duties even though he is not elected!

Senator MacEachen: In a sense, I am pleased that Senator Murray has referred to the visit of the former ambassador to Paris to say his farewells. It reminds me that on the order paper we have an order providing for the Committee of the Whole to deal with the fisheries and boundaries question. It had been in my mind that when we finish Meech Lake it would be appropriate to complete our study on the fisheries and boundaries question.

Some Hon. Senators: Hear, hear!

Senator MacEachen: We had requested the testimony of Mr. Bouchard—now Minister Bouchard—in the Committee of the Whole, but he was unavailable.

Would the minister consider—as he is reporting, in any event, to the government—paying his long-awaited visit to the Committee of the Whole in the Senate and bring us up to date on what is happening in Paris and on how he analyzes the situation? I think it is a timely visit, and it would be even more timely to have him in the Committee of the Whole, where we could not offer him a seat but could welcome him to the ministry.

Senator Frith: Yes, exactly!

Senator Murray: Honourable senators, it is a fact that Mr. Bouchard is probably more interested in finding a way into the other chamber of this Parliament, which I trust and am confident will take place soon!

Senator Frith: But in the meantime?

Senator Murray: But in the meantime I shall certainly convey the renewed interest of honourable senators in hearing Mr. Bouchard on this question in the Committee of the Whole.

Senator MacEachen: While we are on the subject, it might be appropriate to add the further point that we had had a useful visit from the Minister of Fisheries and Oceans and his officials in the Committee of the Whole. The intention was that at an appropriate time he would return to the Committee of the Whole. That has not been possible, but such an appearance is still quite relevant. Maybe the minister would also alert the Minister of Fisheries and Oceans that we may wish to have him present when we conclude our hearings and the taking of testimony in the Committee of the Whole and make a report to the Senate.

Personally, I believe at this stage it might be useful to have a constructive report from the Senate supporting Canadian objectives in this particular dispute, because I think, as the evidence unfolded in the Committee of the Whole, it would have been possible to reach a conclusion here that would have been supportive of the objectives of the Government of Canada in the fisheries and boundaries dispute and to make a statement here in the Senate in support of Canadian interests.

Senator Murray: Well, if that is the objective of honourable senators, I will certainly encourage it in any way possible, including producing my colleague, Mr. Bouchard, at the earliest possible date.

Senator Argue: There may be a certain amount of risk in that!

REFERRAL OF DISPUTE TO INTERNATIONAL COURT OF JUSTICE—GOVERNMENT POSITION

Hon. George van Roggen: Honourable senators, I have a question for the Leader of the Government in the Senate on the same subject.

When I last addressed myself to this fishing subject of Saint Pierre and Miquelon and the disputed waters, it is my best recollection that it was the position of the Canadian government that we would readily and happily refer this to the International Court of Justice for a binding settlement, and that France refused to do so.

First, is that still the position of the government? If it is still the position of the government, will the government take steps to make this clear to the Canadian public, and to the public and world opinion at large, that we are prepared to submit our case to the court, because it is so strong, but the French are not willing to do so?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, there are various issues involved in the dispute between Canada and France on this matter. I rather think that the position of the Government of Canada is a bit more nuanced than suggested by my honourable friend.

In any case, I think it would be prudent of me to obtain a prepared statement from my colleague on that matter.

[Senator Frith.]

REQUEST FOR APPEARANCE OF MINISTER FOR INTERNATIONAL TRADE BEFORE COMMITTEE OF THE WHOLE

Hon. Roméo LeBlanc: Honourable senators, I would like to ask the Leader of the Government in the Senate if he will provide for an extra chair when Mr. Siddon, the Minister of Fisheries, appears. I have noticed that in the House of Commons questions on east coast fishery matters, particularly questions in relation to Canada-France, tend to be dealt with by the former Minister of Transport, who is now the Minister for International Trade. It might be useful if the two gentlemen were present in the Senate on this occasion.

• (1420)

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, perhaps we should have a third chair. I read an editorial in *La Presse* the other day suggesting that we could do no better than call upon the Honourable Senator LeBlanc for his advice on these matters. Perhaps he would like to provide us with his advice on these matters when the minister is here.

Surely Senator LeBlanc does not object if Mr. Crosbie, who has an obvious interest as the federal minister from Newfoundland, takes questions on these matters that are so close to the interests of his constituents and of all Newfoundlanders.

Senator LeBlanc: Honourable senators, I certainly do not object to Mr. Crosbie's doing that. My normal modesty prevents me from conveying advice, except perhaps in one area. It is obvious that the Department of External Affairs and the Prime Minister's Office, by way of an intervention, which really was a diktat to the negotiator, forced him to sign an agreement without consulting the Government of Newfoundland. This created a situation where Mr. Crosbie was forced to intervene. I can understand his reasoning, because Newfoundlanders felt very exposed and very unprotected by the actions of the PMO and of External Affairs, which broke what had been a very long tradition within the Department of Fisheries and Oceans that provincial governments and the industry be fully involved in negotiations until the very last minute. In the case I am referring to, obviously they were not. So perhaps my suggestion is not mischievous but is merely an effort to correct the impression that was left with Newfoundland fishermen by this action. Also, I suspect that the Newfoundland government very much wants to have a seat at those negotiations for the same reasons.

Senator Murray: Honourable senators, the record does not justify the extreme interpretation just put on it by my honourable friend.

Some Hon. Senators: Oh, oh!

Senator LeBlanc: I am sorry, I did not hear that.

Hon. Royce Frith (Deputy Leader of the Opposition): He said that the record does not justify your extreme interpretation. That is almost word for word.

ENERGY

GEORGES BANK DRILLING MORATORIUM—CONSULTATION WITH GOVERNMENT OF NOVA SCOTIA

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, I would like to ask the Leader of the Government in the Senate a question on another matter, namely, the announcement by the Minister of Energy, Mines and Resources in Halifax yesterday that there would be a moratorium on drilling on Georges Bank for a 10- or 12-year period. I certainly support that decision as an interim step in resolving the difficulty and the conflict between the fishermen of that area of Nova Scotia and the oil companies.

My question to the minister is whether or not there have been any consultations between the Government of Canada and the Government of Nova Scotia with respect to this decision. In other words, was the Government of Nova Scotia consulted or informed prior to the announcement, and does it support the action taken by the Government of Canada?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, the answer to the first part of the honourable senator's question is almost certainly yes, and I suspect the answer to the second part is also in the affirmative. However, I shall ask my colleague, Mr. Masse, to confirm that and I shall bring in a prepared reply from him in a day or two.

Senator MacEachen: It is important to get the details, because I understand that Premier Buchanan has asserted that he just heard shortly before the press conference that this announcement was to be made in Halifax. I find it surprising, in view of the moving comments made yesterday about reconciliation in the Canadian federation, that a major announcement should be made at such short notice and without consultation. However, that is an allegation that arises from press reports, and I will not press it until I hear further from the minister.

Senator Murray: Honourable senators, I can assure the honourable senator that Mr. Masse has had consultations with ministers in the Nova Scotia government on this matter. I have heard him relate something of these conversations in the past. Furthermore, I think we are all aware of the position of the Government of Nova Scotia on the matter, because Premier Buchanan is on public record, and has been for some time.

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Orville H. Phillips: Honourable senators, I have a number of delayed answers to questions. I ask that they be printed as part of today's proceedings.

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

Hon. Senators: Agreed.

HEALTH AND WELFARE

AIDS—AVAILABILITY AND COST OF DRUG AZT IN CANADA—HEALTH PROTECTION BRANCH—REQUEST FOR TABLING OF REPORTS AND STATEMENT ON ACTION TAKEN BY GOVERNMENT

Hon. Orville H. Phillips: Honourable senators, I have a delayed answer in response to a question raised in the Senate on February 10, 1988, by the Honourable Stanley Haidasz, regarding Health and Welfare—Aids—Availability and Cost of Drug AZT in Canada—Health Protection Branch—Request for Tabling of Reports and Statement on Action Taken by Government.

(*The answer follows:*)

The cost of AZT has to this time been $250.00 Canadian per bottle of 100 tablets. The company has announced that the cost has been reduced by $50.00 to $200.00 Canadian per bottle. Burroughs Wellcome (UK) the parent company has made this price reduction worldwide and it is being directly passed on to the consumer. The question on availability was answered previously; the information has not changed.

The Cabinet established the Working Group to study the drug submission review process and to propose corrective action.

Members of government, the pharmaceutical industry and the Canadian Public Health Association were represented.

Their recommendations were submitted to the Minister of National Health and Welfare and to the Minister responsible for Privatization and Regulatory Affairs on October 1, 1987 (the Stein Report).

The actions proposed by the Department of National Health and Welfare to resolve the current backlog experience in the review of drug submissions are under review by ministers.

The report of the Working Group on Drug Submission Review (Stein Report) is considered to be a Cabinet confidence.

MULTINATIONAL CORPORATIONS

ELIMINATION OF MINORITY EQUITY INTERESTS—IMPACT OF ENHANCED CANADA-UNITED STATES TRADE

Hon. Orville H. Phillips: Honourable senators, I also have a delayed answer in response to a question raised in the Senate on March 15, 1988 by the Honourable Ian Sinclair, regarding Multinational Corporations—Elimination of Minority Equity Interests—Impact of Enhanced Canada-United States Trade.

(*The answer follows:*)

With respect to minority equity interests by Canadians in foreign multinational corporations, the Sectoral Advisory Groups on International Trade (SAGITs) did not focus on such a specific issue. The International Trade Advisory Committee (ITAC) which includes representatives from a broad range of senior business people, plus

academics, labour leaders and consumer advocates, did give the Government advice on investment matters, but not on this specific issue.

WESTERN ECONOMIC DIVERSIFICATION

DELIVERY SYSTEM FOR PROGRAM

Hon. Orville H. Phillips: Honourable senators, I also have delayed answers in response to requests for answers in the Senate on March 29 and 30, 1988, by the Honourable H.A. Olson. The first is regarding Western Economic Diversification—Delivery System for Program.

(*The answer follows:*)

The first answer Senator Olson requested was to a question he posed on March 2 concerning Western Economic Diversification. On March 30, in the Senate, Senator Olson said, "we have not yet been provided with an answer." An answer to this question was provided on March 16 in the Senate by the deputy leader (reference: page 2847).

AGRICULTURE

GRAIN—INITIAL PAYMENT FOR 1988 CROP YEAR

Hon. Orville H. Phillips: Honourable senators, I also have a delayed answer in response to requests for an answer in the Senate on March 29 and 30, 1988, by the Honourable H.A. Olson, regarding Agriculture—Grain—Initial Payment for 1988 Crop Year.

(*The answer follows:*)

The second answer requested by Senator Olson was to a question asked on March 22 about the initial payment for the 1988 crop year. In his original question and his follow-up of March 30 Senator Olson referred to a "long-standing practice of announcing these prices in early March". Below is a list of the dates of the initial payment announcement for the last eight years:

1987	April 20
1986	April 8
1985	March 28
1984	April 13
1983	April 5
1982	March 22
1981	July 15
1980	July 25

Senator Olson will also note that in these years the announcement was only twice made in March—once by this administration and once by the previous administration. Senator Olson will have noticed that the Minister of State for Grains and Oilseeds announced an adjustment to the initial price for this year on April 14, 1988. A copy of the press release is available for his information. The announcement of the initial price for the coming year is expected in the next few weeks.

[Senator Phillips.]

ENERGY

TAR SANDS PROCESSING PLANT, FORT MCMURRAY, ALBERTA—STATUS

Hon. Orville H. Phillips: Honourable senators, I also have a delayed answer in response to a request for an answer in the Senate on March 29 and 30, 1988, by the Honourable H.A. Olson, regarding Energy—Tar Sands Processing Plant, Fort McMurray, Alberta—Status.

(*The answer follows:*)

The third response requested by Senator Olson dealt with the tar sands processing plant in Fort McMurray, Alberta. Senator Olson raised the question first on March 15. Senator Olson raised the question again on March 16, and the question was addressed in full by Senator Murray on that date. No new information is available.

LABOUR

ALLEGED UNFAIR APPLICATION OF RAILWAY BACK-TO-WORK LEGISLATION

Hon. Orville H. Phillips: Honourable senators, I have a delayed answer in response to a question raised in the Senate on March 30, 1988, by the Honourable Hazen Argue, regarding Canadian Pacific Rail's use of Bill C-85 to threaten rail workers refusing to cross picket lines.

(*The answer follows:*)

Bill C-85, the maintenance of Railway Operations Act, 1987, was passed by Parliament in August of last year for the express purpose of restoring normal operations in the national railway system. Not only did the Act require striking Associated Railway Union (ARU) members to return to work, but it extended their collective agreement until December 31, 1988.

Both the Canada Labour Code Part V and the Maintenance of Railway Operations Act, 1987, prohibit strikes and lockouts during the term of a collective agreement. A strike includes a cessation of work, or a refusal to work or continue to work by employees, in combination or in concert or in accordance with a common understanding.

In a case involving the Canadian Wire Service Guild and the CBC, the Canada Labour Relations Board has held that in the absence of a provision in the collective agreement entitling employees to refuse to cross a picket line, "a group refusal to cross a picket line, even if only because of respect of the convention of honouring picket lines, will be concerted action in accordance with a common understanding and constitute a strike."

Members of the Shopcraft unions are exercising their legal right to withhold their services. However, because ARU members are subject to the collective agreement imposed by Parliament, they are not in a legal strike position. Both railway management and the ARU members are required to carry out the will of Parliament by keeping the railway operating. ARU members who refuse to report for work may thus be placing themselves at risk

of allegations that they have violated both the Canada Labour Code and the Maintenance of Railway Operations Act, 1987.

POST-SECONDARY EDUCATION

FEDERAL GOVERNMENT SCHOLARSHIPS—ALLOCATION OF FUNDS

Hon. Orville H. Phillips: Honourable senators, I have a delayed answer in response to a question raised in the Senate on March 30, 1988, by the Honourable John B. Stewart, regarding Post-Secondary Education—Federal Government Scholarships—Allocation of Funds.

(*The answer follows:*)

The scholarship money will be sent directly to the selected students.

The scholarship program will be treated differently from the Canada Student Loans because it is not a loan, and because it is to be restricted to science and engineering students.

ABORTION

RIGHTS OF UNBORN—INTRODUCTION OF LEGISLATION

Hon. Orville H. Phillips: Honourable senators, I have a delayed answer in response to a question raised in the Senate on March 30, 1988, by the Honourable Stanley Haidasz, regarding Abortion—Rights of Unborn—Introduction of Legislation.

(*The answer follows:*)

While the Minister of Justice discussed with his provincial and territorial counterparts a variety of options relating to abortion in Canada in Saskatoon, no consensus was reached. The federal government continues to consider the matter and will act as appropriate when its policy is formulated.

OFFICIAL LANGUAGES

REPORT OF COMMISSIONER—REACTIONS

Hon. Orville H. Phillips: Honourable senators, I have a delayed answer in response to a question raised in the Senate on March 30, 1988, by the Honourable Jacques Hébert, regarding Official Languages—Report of Commissioner—Reactions.

(*The answer follows:*)

The Government is committed to supporting the development and enhancing the vitality of both English and French linguistic minority communities throughout Canada.

It is this unequivocal commitment which underlies both the Meech Lake Accord and the Official Languages Bill, Bill C-72.

It is the Government's policy to contribute to the development of linguistic minority communities, including the English-speaking community of Quebec, through cooperation and dialogue with the provinces.

The Commissioner and the Government have a common objective—the development of linguistic minority communities throughout Canada. The Government recognizes the Commissioner's efforts in seeking to achieve this objective.

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BILL C-60—REQUEST FOR CORRESPONDENCE BETWEEN COUNCIL OF MINISTERS OF EDUCATION OF CANADA AND FEDERAL-PROVINCIAL RELATIONS MINISTER

Hon. Orville H. Phillips: Honourable senators, I have a delayed answer in response to a question raised in the Senate on March 30, 1988, by the Honourable Ian Sinclair, regarding Copyright—Bill C-60—Request for Correspondence Between Council of Ministers of Education of Canada and Federal-Provincial Relations Minister.

(*The answer follows:*)

I am prepared to table the documents, as requested, by Senator Sinclair.

(*Documents tabled*)

FOREIGN AFFAIRS

SENEGAL—PRESIDENTIAL ELECTION—SAFETY OF OPPOSITION CANDIDATE—ATTENDANCE OF OBSERVERS—REVIEW OF CONVENTION ON CONSULAR RIGHTS

Hon. Orville H. Phillips: Honourable senators, I have a delayed answer in response to a question raised in the Senate on March 30, 1988, by the Honourable Jerahmiel Grafstein and the Hon. Sidney L. Buckwold, regarding Foreign Affairs—Senegal—Presidential Election—Safety of Opposition Candidate—Attendance of Observers—Review of Convention on Consular Rights.

(*The answer follows:*)

The Canadian government is not aware of any demarche made by European Parliamentarians through their respective representatives to the Government of Senegal.

On March 17, the Canadian Ambassador in Dakar drew the attention of the Senegalese Minister for Foreign Affairs to the preoccupations and concerns expressed in the Senate and in the House of Commons, concerning the detention of Maître Wade and his colleagues in the opposition.

On April 11, the Canadian Ambassador sent to the Foreign Affairs Minister a transcript, in French, of all statements made in the Senate and in the House of Commons on this question.

The Senegalese government is therefore fully aware of the concerns expressed by members of the Canadian Parliament.

Following the tragic fire at the Cuban consulate in Montreal the question was raised whether the Canadian government will consider a review of the Vienna Convention on Consular Relations so that Canadian authorities could enter diplomatic or consular premises without the permission of the sending State in cases of emergency such as fire.

Article 31.2 of the Vienna Convention on Consular Relations provides that:

> The authorities of the receiving State shall not enter that part of the consular premises which is used exclusively for the purpose of the work of the consular post except with the consent of the head of the consular post . . . The consent of the head of the consular post may however, be assumed in case of fire or other disaster requiring prompt action . . .

The Cuban Consul General was present when the fire occurred at the consulate in Montreal and refused Canadian firemen entry to the building. Hence, the consent of the head of the consular post could not be assumed.

The Canadian government does not consider it useful to ask for a review of the VCCR for the purpose of limiting the inviolability of consular premises. The same international convention which prevented Canadian authorities from entering the premises occupied by the Cuban consulate in Montreal also serves to maintain the inviolability of Canadian missions abroad and prevents the authorities of foreign governments from entering them without permission. The Canadian government along with all other countries who are signatories to the Convention, considers the inviolability of diplomatic or consular missions to be absolutely essential.

All Canadian posts abroad have instructions on how to respond to fire and other emergencies.

THE CONSTITUTION

MOTION FOR PROPOSED CONSTITUTION AMENDMENT, 1987—MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

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

THAT,

WHEREAS the *Constitution Act, 1982* came into force on April 17, 1982, following an agreement between Canada and all the provinces except Quebec;

AND WHEREAS the Government of Quebec has established a set of five proposals for constitutional change and has stated that amendments to give effect to those proposals would enable Quebec to resume a full role in the constitutional councils of Canada;

[Senator Phillips.]

AND WHEREAS the amendment proposed in the schedule hereto sets out the basis on which Quebec's five constitutional proposals may be met;

AND WHEREAS the amendment proposed in the schedule hereto also recognizes the principle of the equality of all the provinces, provides new arrangements to foster greater harmony and cooperation between the Government of Canada and the governments of the provinces and requires that conferences be convened to consider important constitutional, economic and other issues;

AND WHEREAS certain portions of the amendment proposed in the schedule hereto relate to matters referred to in section 41 of the *Constitution Act, 1982*;

AND WHEREAS section 41 of the *Constitution Act, 1982* provides that an amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by resolutions of the Senate and the House of Commons and of the legislative assembly of each province;

NOW THEREFORE the Senate resolves that an amendment to the Constitution of Canada be authorized to be made by proclamation issued by Her Excellency the Governor General under the Great Seal of Canada in accordance with the schedule hereto.

SCHEDULE

CONSTITUTION AMENDMENT, 1987

Constitution Act, 1867

1. The *Constitution Act, 1867* is amended by adding thereto, immediately after section 1 thereof, the following section:

"**2.**(1) The Constitution of Canada shall be interpreted in a manner consistent with

(*a*) the recognition that the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec, constitutes a fundamental characteristic of Canada; and

(*b*) the recognition that Quebec constitutes within Canada a distinct society.

(2) The role of the Parliament of Canada and the provincial legislatures to preserve the fundamental characteristic of Canada referred to in paragraph (1)(*a*) is affirmed.

(3) The role of the legislature and Government of Quebec to preserve and promote the distinct identity of Quebec referred to in paragraph (1)(*b*) is affirmed.

(4) Nothing in this section derogates from the powers, rights or privileges of Parliament or the Government of Canada, or of the legislatures or governments of the provinces, including any powers, rights or privileges relating to language."

2. The said Act is further amended by adding thereto, immediately after section 24 thereof, the following section:

"**25.**(1) Where a vacancy occurs in the Senate, the government of the province to which the vacancy relates may, in relation to that vacancy, submit to the Queen's Privy Council for Canada the names of persons who may be summoned to the Senate.

(2) Until an amendment to the Constitution of Canada is made in relation to the Senate pursuant to section 41 of the *Constitution Act, 1982,* the person summoned to fill a vacancy in the Senate shall be chosen from among persons whose names have been submitted under subsection (1) by the government of the province to which the vacancy relates and must be acceptable to the Queen's Privy Council for Canada."

3. The said Act is further amended by adding thereto, immediately after section 95 thereof, the following heading and sections:

"Agreements on Immigration and Aliens

95A. The Government of Canada shall, at the request of the government of any province, negotiate with the government of that province for the purpose of concluding an agreement relating to immigration or the temporary admission of aliens into that province that is appropriate to the needs and circumstances of that province.

95B.(1) Any agreement concluded between Canada and a province in relation to immigration or the temporary admission of aliens into that province has the force of law from the time it is declared to do so in accordance with subsection 95C(1) and shall from that time have effect notwithstanding class 25 of section 91 or section 95.

(2) An agreement that has the force of law under subsection (1) shall have effect only so long and so far as it is not repugnant to any provision of an Act of the Parliament of Canada that sets national standards and objectives relating to immigration or aliens, including any provision that establishes general classes of immigrants or relates to levels of immigration for Canada or that prescribes classes of individuals who are inadmissible into Canada.

(3) The *Canadian Charter of Rights and Freedoms* applies in respect of any agreement that has the force of law under subsection (1) and in respect of anything done by the Parliament or Government of Canada, or the legislature or government of a province, pursuant to any such agreement.

95C.(1) A declaration that an agreement referred to in subsection 95B(1) has the force of law may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement.

(2) An amendment to an agreement referred to in subsection 95B(1) may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized

(*a*) by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement; or

(*b*) in such other manner as is set out in the agreement.

95D. Sections 46 to 48 of the *Constitution Act, 1982* apply, with such modifications as the circumstances require, in respect of any declaration made pursuant to subsection 95C(1), any amendment to an agreement made pursuant to subsection 95C(2) or any amendment made pursuant to section 95E.

95E. An amendment to sections 95A to 95D or this section may be made in accordance with the procedure set out in subsection 38(1) of the *Constitution Act, 1982,* but only if the amendment is authorized by resolutions of the legislative assemblies of all the provinces that are, at the time of the amendment, parties to an agreement that has the force of law under subsection 95B(1)."

4. The said Act is further amended by adding thereto, immediately preceding section 96 thereof, the following heading:

"General"

5. The said Act is further amended by adding thereto, immediately preceding section 101 thereof, the following heading:

"Courts Established by the Parliament of Canada"

6. The said Act is further amended by adding thereto, immediately after section 101 thereof, the following heading and sections:

"Supreme Court of Canada

101A.(1) The court existing under the name of the Supreme Court of Canada is hereby continued as the general court of appeal for Canada, and as an additional court for the better administration of the laws of Canada, and shall continue to be a superior court of record.

(2) The Supreme Court of Canada shall consist of a chief justice to be called the Chief Justice of Canada and eight other judges, who shall be appointed by the

Governor General in Council by letters patent under the Great Seal.

101B.(1) Any person may be appointed a judge of the Supreme Court of Canada who, after having been admitted to the bar of any province or territory, has, for a total of at least ten years, been a judge of any court in Canada or a member of the bar of any province or territory.

(2) At least three judges of the Supreme Court of Canada shall be appointed from among persons who, after having been admitted to the bar of Quebec, have, for a total of at least ten years, been judges of any court of Quebec or of any court established by the Parliament of Canada, or members of the bar of Quebec.

101C.(1) Where a vacancy occurs in the Supreme Court of Canada, the government of each province may, in relation to that vacancy, submit to the Minister of Justice of Canada the names of any of the persons who have been admitted to the bar of that province and are qualified under section 101B for appointment to that court.

(2) Where an appointment is made to the Supreme Court of Canada, the Governor General in Council shall, except where the Chief Justice is appointed from among members of the Court, appoint a person whose name has been submitted under subsection (1) and who is acceptable to the Queen's Privy Council for Canada.

(3) Where an appointment is made in accordance with subsection (2) of any of the three judges necessary to meet the requirement set out in subsection 101B(2), the Governor General in Council shall appoint a person whose name has been submitted by the Government of Quebec.

(4) Where an appointment is made in accordance with subsection (2) otherwise than as required under subsection (3), the Governor General in Council shall appoint a person whose name has been submitted by the government of a province other than Quebec.

101D. Sections 99 and 100 apply in respect of the judges of the Supreme Court of Canada.

101E.(1) Sections 101A to 101D shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws under section 101 except to the extent that such laws are inconsistent with those sections.

(2) For greater certainty, section 101A shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws relating to the reference of questions of law or fact, or any other matters, to the Supreme Court of Canada."

7. The said Act is further amended by adding thereto, immediately after section 106 thereof, the following section:

"**106A.**(1) The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the Government of Canada after the coming into force of this section in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that is compatible with the national objectives.

(2) Nothing in this section extends the legislative powers of the Parliament of Canada or of the legislatures of the provinces."

8. The said Act is further amended by adding thereto the following heading and sections:

"XII—CONFERENCES ON THE ECONOMY AND OTHER MATTERS

148. A conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once each year to discuss the state of the Canadian economy and such other matters as may be appropriate.

XIII—REFERENCES

149. A reference to this Act shall be deemed to include a reference to any amendments thereto."

Constitution Act, 1982

9. Sections 40 to 42 of the *Constitution Act, 1982* are repealed and the following substituted therefor:

"**40.** Where an amendment is made under subsection 38(1) that transfers legislative powers from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply.

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

(*a*) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(*b*) the powers of the Senate and the method of selecting Senators;

(*c*) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;

(*d*) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province was entitled; to be represented on April 17, 1982;

(*e*) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;

(*f*) subject to section 43, the use of the English or the French language;

(*g*) the Supreme Court of Canada;

(*h*) the extension of existing provinces into the territories;

(*i*) notwithstanding any other law or practice, the establishment of new provinces; and

(*j*) an amendment to this Part."

10. Section 44 of the said Act is repealed and the following substituted therefor:

"**44.** Subject to section 42, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons."

11. Subsection 46(1) of the said Act is repealed and the following substituted therefor:

"**46.**(1) The procedures for amendment under sections 38, 41 and 43 may be initiated either by the Senate or the House of Commons or by the legislative assembly of a province."

12. Subsection 47(1) of the said Act is repealed and the following substituted therefor:

"**47.**(1) An amendment to the Constitution of Canada made by proclamation under section 38, 41, or 43 may be made without a resolution of the Senate authorizing the issue of the proclamation if, within one hundred and eighty days after the adoption by the House of Commons of a resolution authorizing its issue, the Senate has not adopted such a resolution and if, at any time after the expiration of that period, the House of Commons again adopts the resolution."

13. Part VI of the said Act is repealed and the following substituted therefor:

"PART VI

CONSTITUTIONAL CONFERENCES

50.(1) A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once each year, commencing in 1988.

(2) The conferences convened under subsection (1) shall have included on their agenda the following matters:

(*a*) Senate reform, including the role and functions of the Senate, its powers, the method of selecting Senators and representation in the Senate;

(*b*) roles and responsibilities in relation to fisheries; and

(*c*) such other matters as are agreed upon."

14. Subsection 52(2) of the said Act is amended by striking out the word "and" at the end of paragraph (b) thereof, by adding the word "and" at the end of paragraph (c) thereof and by adding thereto the following paragraph:

"(*d*) any other amendment to the Constitution of Canada."

15. Section 61 of the said Act is repealed and the following substituted therefor:

"**61.** A reference to the *Constitution Act 1982*, or a reference to the *Constitution Acts 1867 to 1982*, shall be deemed to include a reference to any amendments thereto."

General

16. Nothing in section 2 of the *Constitution Act, 1867* affects section 25 or 27 of the *Canadian Charter of Rights and Freedoms*, section 35 of the *Constitution Act, 1982* or class 24 of section 91 of the *Constitution Act, 1867*.

CITATION

17. This amendment may be cited as the *Constitution Amendment, 1987*.

And on the motion in amendment of the Honourable Senator MacEachen, P.C., seconded by the Honourable Senator Frith, that the motion be amended as follows:

(*a*) in paragraph 1 of the Schedule by deleting subsection 2.(1) and substituting the following therefor:

"**2.**(1) The Constitution of Canada shall be interpreted in a manner consistent with

(*a*) the recognition that the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec, constitutes a fundamental characteristic of Canada;

(*b*) the recognition that Quebec constitutes within Canada a distinct society;

(*c*) the recognition that aboriginal peoples constitute a distinctive and fundamental characteristic of Canada;

(*d*) the recognition of the multicultural nature of Canadian society, and in particular respect for the many origins, creeds and cultures as well as the differing regional identities that helped shape Canadian society; and

(*e*) the recognition of the advantages of developing the Canadian economic union."

(*b*) in paragraph 1 of the Schedule by deleting subsection 2.(2) and substituting the following therefor:

"2(*a*) The role of the Parliament of Canada **to preserve and promote, and the role of the** provincial legislatures to preserve and, **subject to subparagraph (2)(*b*) to promote,** the fundamental characteristic of Canada referred to in paragraph 1(a) is affirmed.

(*b*) The role of a province in relation to promotion applies from the time it is adopted by a resolution of the legislative assembly of that province."

(*c*) in paragraph 2 of the Schedule by deleting section 25 and substituting the following therefor:

"25. Where a vacancy occurs in the Senate, and until an amendment to the Constitution of Canada is made in relation to the Senate pursuant to section 42 of the *Constitution Act, 1982,* the government of Canada shall, within six months after the vacancy occurs, call an election in the province or territory to which the vacancy relates for the purpose of filling that vacancy, and, notwithstanding the provision of section 29 of the *Constitution Act, 1867,* for a term of nine years."

(*d*) in paragraph 6 of the Schedule by deleting subsections 101C.(1) and (2) and substituting the following therefor:

"101C.(1) Where a vacancy occurs in the Supreme Court of Canada, the government of each province **and the elected government of each territory** may, in relation to that vacancy, submit to the Minister of Justice of Canada the names of any of the persons who have been admitted to the bar of that province **or territory** and are qualified under section 101B. for appointment to that court."

(2) **Subject to subsection (5),** where an appointment is made to the Supreme Court of Canada, the Governor General in Council shall, except where the Chief Justice is appointed from among members of the Court, appoint a person whose name has been submitted under subsection (1) and who is acceptable to the Queen's Privy Council for Canada."

(*e*) in paragraph 6 of the Schedule by adding immediately after subsection 101C.(4) the following:

"(5) Where an appointment is made in accordance with subsection (2) and, if within a period of three months, no name which has been submitted under subsection (1) is acceptable to the Queen's Privy Council for Canada, the Chief Justice may make an interim one-year appointment from among justices of the Federal Court of Canada or provincial Superior Courts."

(*f*) in paragraph 7 of the Schedule by deleting subsection 106A.(1) and substituting the following therefor:

"106A.(1) The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the **Parliament** of Canada after the coming into force of this section, in an area of exclusive provincial jurisdiction, if the province carries on a **compatible program which meets minimum national standards."**

(*g*) by deleting paragraphs 9, 10, 11 and 12 of the Schedule and substituting the following therefor:

"9. Sections 40 to 42 of the *Constitution Act, 1982* are repealed and the following substituted therefor:

40. Where an amendment is made under subsection 38(1) that transfers legislative powers from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply.

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

(*a*) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(*b*) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province was entitled to be represented on April 17, 1982;

(*c*) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;

(*d*) subject to section 43, the use of the English or the French language;

(*e*) the Supreme Court of Canada; and

(*f*) an amendment to this Part.

42.(1) An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with subsection 38(1):

(*a*) the powers of the Senate and the method of selecting Senators; and

(*b*) the number of members by which a province or territory is entitled to be represented in the Senate and the residence qualifications of Senators.

(2) Subsections 38(2) to (4) do not apply in respect of amendments in relation to matters referred to in subsection (1)."

"42A. Notwithstanding subsection 42(1) of the *Constitution Act, 1982,* the establishment of new provinces and the extension of existing provinces into territories shall be a matter exclusively for the Governor General in Council and the elected government of the territory affected."

(*h*) in paragraph 13 of the Schedule by deleting subsection 50.(2) and substituting the following therefor:

"(2) The conferences convened under subsection (1) shall have included on their agenda the following matters:

(*a*) the aboriginal and treaty rights of the aboriginal peoples of Canada, including self-government;

(*b*) Senate reform, including the role and functions of the Senate, its powers, the method of selecting Senators and representation in the Senate;

(*c*) roles and responsibilities in relation to fisheries **at the first meeting only;** and

(*d*) such other matters as agreed upon."

(*i*) by deleting paragraph 16 of the Schedule and substituting the following therefor:

"16. Nothing in the *Constitution Amendment, 1987* derogates from any of the rights and freedoms guaranteed by the *Canadian Charter of Rights and Freedoms* or affects Part II of the *Constitution Act, 1982*."— (*Honourable Senator Phillips*).

Hon. Orville H. Phillips: Honourable senators, I yield to the Honourable Senator Doyle.

Hon. Richard J. Doyle: Honourable senators, I think that all of us in this chamber should be grateful to the Leader of the Opposition in the Senate for his timely reminder that "distinct" is a comparative word, that it means "difference, one from the other", and that implies that we should not take it to mean "special" or "favoured" or "exclusive" or "exceptional." *Oxford* tells us that it means "possessing differentiating characteristics." Meech Lake defines Quebec as having different characteristics than the rest of Canada. Now, had the First Ministers in their meeting last year chosen to say that all the provinces but one in this country constituted a distinct society, they would have been acknowledging an admitted fact. But, I dare say that in the circumstances we would, this very day, be attacking the Prime Minister and the premiers for isolating a minority.

There the word sits, in the accord as it was when it was signed and as it was when the accord was supported by all the parties in the House of Commons. We have been told that the premiers and members were wrong to leave it there, that it could become "a tremendous force in the politics of separation," and that "it would be the end of the peaceful kingdom."

Yes, those were the words of Pierre Trudeau when he came as a witness before the Committee of the Whole. Those words were part of a very gloomy scenario indeed. May I remind honourable senators that he said, ". . . if the people of Canada want this accord . . . I for one will be convinced that the Canada we know and love will be gone forever." Then he exhorted us by saying, ". . . if it is going to go, let it go with a bang rather than a whimper." *Hansard* tells us that some honourable senators answered, "Hear, hear.", although I heard some other words.

• (1430)

It is right that the Senate should respond when a former Prime Minister speaks. We know that this one does not enter casually into such a debate. At the nub of his argument was his assertion that the House of Commons has decided to "pass a resolution with its known imperfections, its known contradictions or known vaguenesses which have still to be interpreted and make no effort to correct them."

Senator Murray, the Leader of the Government in the Senate, dealt eloquently, I thought, with many of the right honourable gentleman's contentions, but perhaps you will give me some time today to deal with what Mr. Trudeau said about process—for process is very much at the heart of achieving change, change which both sides of this chamber desire and advocate—whether to go now to a new plateau in constitutional evolution or to reopen the accord and go for a bundle of new possibilities, as suggested in the MacEachen amendments.

Mr. Trudeau took us by the hand through his own constitutional venturing, telling how he had coped with his difficulties along the way to "a solution which respected the idea of a national will binding all."

Honourable senators, I witnessed that process from a distance and from another perch, but, if memory serves, this is how it seemed to me.

It is a green and pleasant time in the spring of 1980. René Lévesque has released his white paper on an independent Quebec to be related to Canada by sovereignty association. Claude Ryan, leader of the Liberals in Quebec, has presented what will be known as the "beige paper," which calls for a fundamental reworking of the framework of our institutions within a single Canadian Constitution. Tom Wells, Ontario's Minister of Intergovernmental Affairs, calls it "a reasonable, positive and constructive contribution to revitalizing Canadian federalism."

As Mr. Lévesque's famous referendum is about to go to the people of Quebec, Prime Minister Trudeau and his Justice Minister, Jean Chrétien, join Mr. Ryan to fight sovereignty association. On the eve of the vote Canadians outside of Quebec are reminded that "when we urge the people of Quebec to vote no, we are committing ourselves to the negotiation of change, real and possibly wrenching change. No, in this context, will not be a signal that we can go back to sleep."

Three cheers and a tiger! Quebec defeats the separatist option!

Allan Blakeney, the Premier of Saskatchewan, asks for a First Ministers' conference within three weeks. Mr. Trudeau dispatches Mr. Chrétien to see each of the premiers to talk about constitutional change. He warns the Commons that "Quebec will not be happy with crumbs, they will want a whole new constitution."

Summer in Canada is a time of many storms. One breaks as the ministers meet. A squall produces a leak and the *Ottawa Citizen* headlines it. The government already has a contingency plan to patriate the Constitution unilaterally.

Well, the September song is hardly sweet. The First Ministers argue about constitutional initiatives. Mr. Trudeau is stern and unyielding. "The provinces," he says, "have enormous power, more power under our Constitution than any of the component parts of any government in the world." Mr. Blakeney responds:

> If there was substantial change unilaterally imposed, then a large number of Canadians would view this as meaning that the Canada we have known is gone, and that if Canada is leaving us . . . it is perhaps time we gave some thought to leaving Canada.

In the Ottawa Press Gallery, Michael Valpy and Robert Sheppard take full notes of everything for the book they will eventually write, in which they describe how the Liberal caucus decided to go for the Cadillac—its own and nobody else's drive for patriation and entrenchment of the Constitution and the Charter of Rights.

The only arbiters of this exercise will be the Liberal majority. The guillotine of closure is used to send the resolution to committee, and the newspapers describe how they brought the Tories down.

Canada, we are told, is almost certain to have by July 1, 1981, a Constitution that has been unilaterally amended, unilaterally imposed, and unilaterally altered to allow the federal authority to ride over the will of the provincial legislatures.

Well, not all of the legislatures. Ontario's premier, pleased with the federal policy on energy, supports Mr. Trudeau and urges Ontario members of the federal House to do the same. The odd man out from New Brunswick says, "Me, too."

The leader of the NDP, in return for concessions on resource control and indirect taxation, jumps on the Trudeau bandwagon; but the Premier of Saskatchewan, pursued by the Grits to the beaches of Hawaii, declines. He joins what is now called "The Gang of Eight" in provincial opposition.

With Christmas coming, the Prime Minister receives an unwelcome gift. Dr. Gallup wraps up a poll that says that 58 per cent of respondents disapprove of what the government is doing and only 27 per cent approve. The heaviest weight of disapproval comes from the Prairies, 72 per cent; the lightest, but still a majority, from Ontario, 52 per cent.

With the New Year the scene shifts to Great Britain, where supporters and opponents of the Trudeau plan are lobbying Westminster—which is, by agreement, the trustee of both Ottawa and the provinces in matters relating to the Constitution.

The Prime Minister, acknowledging the U.K. reluctance to deal quickly with his resolution, suggests that the British hold their noses and sign it.

In Quebec Claude Ryan's Liberals join with the Parti Québecois in a resolution condemning the federal initiative.

In the spring of 1981 the Trudeau timetable is in disarray and the matter is before the Supreme Court of Canada.

● (1440)

Dr. Gallup is back. His news: 88 per cent of all Canadians want Ottawa to meet the provinces to seek constitutional agreement; 90 per cent want all changes except those affecting the amending formula to be made in Canada by Canadians. So much for Mr. Trudeau's 200 complex sections and subsections of reform.

The Supreme Court divides, but the majority finds that what the government proposed is legal. The same court says:

> As a matter of constitutional convention, consent of the provinces would be needed for changes affecting the rights of the provinces. No amendment changing provincial legislative powers has been made since Confederation when agreement of a province . . . was withheld.

And the Prime Minister's resolution would "abridge provincial legislative authority on a scale exceeding the effect of any previous constitutional amendment."

Senator Frith: Could you read that statement again, please?

Senator Doyle: Yes. It states:

> No amendment changing provincial legislative powers has been made since Confederation when agreement of a province . . . was withheld.

Senator Frith: But many times they were not even consulted, so how could they have withheld approval? That is a nice way of putting it.

Senator Doyle: I had taken that from a much larger context, and I have no doubt, considering some of the governments in power in the past, that there were many things done in the midnight sun.

At any rate, we have the decision of the Supreme Court and, in time for Thanksgiving, Mr. Trudeau issued the first of his invitations to provincial consultation.

We all recall what happened, how the Prime Minister rediscovered provincial concerns and passions, and how the premiers juggled options and sat up all night to find a deal. But, somewhere along the way, Quebec was left out. Mr. Lévesque was not even invited to witness the last of the wheeling and dealing and, oh well, what could a man committed to separatism be expected to contribute to Canadian unity anyway? We all rang bells when the Queen brought the Constitution home.

The achievement of 1981 was shadowed by the travail that plagued it. But it had no hope of enduring as long as it was only a law to be enforced in one of our ten provinces and not an expression of the unity of purpose of them all.

Jack Pickersgill, the long-time Liberal cabinet minister, would put it this way:

> I wanted to see the Constitution repatriated, and when it was accomplished, I was, on balance, pleased. But I did not like the sleazy way it was done or the unnecessary humiliation of the Premier of Quebec.

Robert Sheppard and Michael Valpy—remember them up in the gallery—finished their book. They wrote:

> There was, of sorts, a Trudeau victory. The Supreme Court of Canada handed him a stinging rebuke on propriety, but by then the Prime Minister had succeeded in narrowing the final agenda to his preferred items, and was able to winkle out a compromise he could live with. But phase two—what one might call the renewed federalism that underlay the shopping lists of most of the Premiers—seems as dead as Laurier's reciprocity.

> November 1981 came at such high political cost that it is unlikely that any government will have the will to take up the rough issues again for years to come.

That was their last word on that.

Senator MacEachen: Who said that?

Senator Doyle: Michael Valpy and Robert Sheppard in a book entitled *The National Deal*. That was written in 1982.

Senator Frith: For whom do they work?

Senator Doyle: Oh, they work for the *Globe and Mail*.

Some Hon. Senators: Oh, oh!

Senator Doyle: I wondered if this little question might come up.

Senator Frith: Excellent auspices!

Senator Doyle: I said I viewed this development from a different perch, and I do not apologize for the perch. May I say that one thing, perhaps the only thing, I share with the former Prime Minister is that I, too, am a former journalist. I might also say that the former Prime Minister, like myself, occasionally still puts pen in hand and writes for the press. In fact, on these very matters—

Senator Frith: Same perch, but different birds.

Senator Doyle: Yes, different birds with different calls—I just happen to have with me a little bit of what Mr. Trudeau recently wrote for the *Toronto Star* about the present accord.

Senator MacEachen: They are still your former employees!

Senator Doyle: He talked about the people who put it together and he called them "snivellers and losers, people who staged tantrums and were guilty of betraying their country." He called the Prime Minister a "weakling," who, with the complicity of ten premiers "would render the Canadian state impotent."

If his journalism can return to that, please allow me this afternoon a reference simply to a book written by other journalists.

Senator Frith: Consider it allowed.

Senator Roblin: Thanks a lot!

Senator Doyle: At Sept Îles in the 1984 election campaign Brian Mackasey told Canadians—

An Hon. Senator: Brian who?

Senator Doyle: Pardon me, Brian Mulroney. I am going to get myself into trouble before I am finished. I apologize if mentioning the name "Mackasey" puts honourable senators opposite into such a stir.

Senator Buckwold: It was giving him the name "Brian" that bothered us.

Senator Doyle: I think perhaps most honourable senators could quote most of Mr. Mulroney's speech at Sept Îles without my reminding them, but he did say:

> Our first task is to breathe a new spirit into federalism.

Senator Murray reminded us of that Monday. Two years later the Prime Minister told the Commons:

> We all knew that the Constitution could never be truly Canadian until Quebec had agreed to it.

In Quebec Mr. Bourassa embraced the goal. At Meech Lake the premiers of every province made it their cause. At the Langevin Building in Ottawa it all came together, and the leaders of the Liberal and New Democratic Parties pledged their support of the necessary legislation. We have heard nothing of threats made along the way.

There have been public hearings in Ottawa; the Senate has conducted hearings of its own. The Charter has already been approved by the National Assembly in Quebec and by the legislatures of two other provinces.

Never say that the Meech Lake Accord will give us a perfect Constitution. Who would be so foolish as to anticipate perfection? But the foundation is there for building. We must come to aboriginal rights—and we have already recognized that in four national parlays with the native peoples.

When the architects of Confederation celebrated July 1, 1867, they looked westward and eastward and lamented the absence of provinces that would surely be. We must look northward to the Yukon and the Northwest Territories.

• (1450)

Is the Charter of Rights secure against any adventuring? We are reassured, but vigilance is prudent, while the courts continue their interpretation of the Charter's intent.

Are there risks in formalized annual meetings of First Ministers? Like Churchill, we opt for jaw-jaw. Who knows, we may even find the secret passage to free trade within Canada.

Does the accord tip the balance of power to the provinces? Hardly. What it does do is move a step towards the reality of diversity and the opportunity of federation. That, surely, is the message of Meech Lake and its process—a process far removed from that vain effort at unilateral change. Once again, a word from Mr. Pickersgill:

> I wouldn't have bet the chances were even one in ten that the Meech Lake day would have succeeded—

he said,

> —but I care a lot about these things and I was ecstatic. Particularly when I read it, and saw that it diminished the power of Parliament not at all.

The proposals in the alphabet of retreaded amendments before this chamber represent a reworking of thrusts in the accord that might be instructive as constitutional evolution continues, as surely it will, to meet the needs of a vital society. Mr. Trudeau notwithstanding—if I may dare to use that word—nothing "binds us for all time." Is there any one of these variations on the theme worth the loss of the fine and fragile moment we have reached?

Some Hon. Senators: Hear, hear!

Hon. Lorna Marsden: Honourable senators, the months since June 1987, when we first began hearing witnesses on the topic of the 1987 constitutional amendments, have been

intensely interesting ones. The Senate has heard from a wide variety of citizens' groups and experts on Canadian society and on the Canadian Constitution. These witnesses have brought great depth to our review of the implications of the proposed amendments to our Constitution. They have provided a thought-provoking analysis of the measures to which the premiers and the Prime Minister agreed in the Langevin Building in the early hours of the morning of June 3, 1987. The work of those who appeared here and before the submissions group is very much appreciated and their views have been closely attended to.

It is now ten months since that agreement was reached and for all of that period Canadians interested in this project have been working out the ramifications of those proposed changes. Constitutional revisions are difficult in any society in any part of the world. We can look, for example, at the process of change in the United States of America, the Equal Rights Amendment, and the difficult process through which that has gone in various periods. We can look at the Philippines and elsewhere where constitutions are being renewed, changed or amended. In any society committed to democratic ideals and to hearing the views of its members there is bound to be a long and fiercely argued process. It has been such a process in Canada historically, and should continue to be such a one.

None of the witnesses here underestimated the importance of the signature of all provinces to our national Constitution. While many of our witnesses have said that they do not know, and claim that no one knows, what the new "distinct society" clause means, and while many have expressed their anxieties, all have agreed that the culture, the language and the history of the province of Quebec are highly significant in our national life and that this distinctiveness is worthy of protection. The problem lies in the implications of the amendments for the process of constitutional growth in Canada and for the protection of those rights of Canadians which are threatened by the wording, the arrangement of the sections and the lack of clarity in the accord.

Honourable senators, there are many issues on which I would like to comment. The rights of native people are particularly important and significant in this stage of constitutional amendment. We have heard testimony from a number of groups that have put eloquently their concerns on this debate. The concern over federal spending powers is a significant one for those of us who believe that Canadians from every part of the country, whatever their economic situation and whatever their circumstances, should have the right to some universal programs and universal standards in social and economic policy. Those of us concerned with health care, child care, the care of Canadians in retirement and other groups are very worried about the meaning of the federal spending power amendments. But the Canadian Nurses Association, Professor Al Johnson, the Canadian Social Workers Association and others have put that case clearly.

One would like to talk about the deadlock which was created by the unanimity section of the amending formula on many matters on the constitutional agenda. But Mr. Vincent MacLean has eloquently expressed that concern as he related it to the fisheries issue in testimony before this committee. One would like to talk about the threat to the Territories, not only in their long-term ambition of provincehood but also in their representation in this chamber and in the Supreme Court. But that case has been made earlier in our report, based on the Senate committee's hearings in the North, and Senator Lucier will speak on that question. One would like to speak on the rights of language minorities. The sad sight of the Premier of Saskatchewan failing to make the distinction and appreciate the difference between fundamental rights and the pragmatic provisions of services makes one fear for the protection of language minority rights across this country, whether the language be French or English. But the Alliance Quebec, the Protestant school boards of Quebec, the francophones outside Quebec and, now, many other leaders are speaking out on this issue.

Therefore, honourable senators, I will not speak on these or on many of the other topics which are so important and which have been so well expressed in this chamber by our witnesses and other senators. I propose to confine myself to two issues which I think are very important and which require changes not only to the accord, itself, but to the process of future constitutional debate.

The first issue on which I would like to speak is the threat to gender equality rights represented by these amendments to the Constitution. The matter has been widely misunderstood. I go further. I suggest to you that the matter has been deliberately distorted by some so as to prevent those Canadians concerned about gender equality from recognizing the dangers implicit in the Meech Lake Accord as amended on the 2nd and 3rd of June in the Langevin Block. Many of our witnesses have made this case. The deliberate aspects of distortion have come from a series of half truths, dubious tactics and a smothering of debate which might have taken place in Canada on this issue. One has only to look to the comments of Senator Lowell Murray in this chamber on March 31 to see transparent evidence of this problem.

Let me make this case in some detail, because it represents one example of a problem faced by those concerned with sexual equality rights since the Meech Lake Accord first appeared. When Mr. Trudeau was our witness on March 30, I asked him the following question, and I quote from *Debates of the Senate*:

> In current times we are being told three things.
>
> The first thing we are being told by witnesses appearing before this committee—constitutional lawyers and others—is that there is a hierarchy of rights being created by provisions of section 16 that indirectly weakens the access to the Charter in the courts and, therefore, threatens the Charter of Rights with respect to women's equality rights.

Mr. Trudeau responded as follows:

> Well, I would agree with your words "hierarchy of rights." It is quite clear that if "distinct society" means something—and I have argued that in the intention of its

> most important framers, those who are asking for it, it does mean something—then the protection women have under the Charter will be somewhat lessened.

Honourable senators, I urge you to note Mr. Trudeau's words, "I agree with your words 'hierarchy of rights'." Mr. Trudeau then went on to talk about the strength of section 28. He pointed out that the reasonable limits, or the "notwithstanding" clause, may not be able to override section 28. However, he clearly and distinctly agreed with the problem of a hierarchy of rights. Yet, the very next day we heard Senator Murray say the following:

> As an interpretation clause, the "linguistic duality-distinct society" clause will not override, take away or supersede the substantive rights set out in the Charter, including those in section 15. Indeed, if I followed correctly the testimony of the Right Honourable Pierre Trudeau yesterday . . . when, in reply to a question from our colleague Senator Marsden, he underlined the strength of the sexual equality rights in the Charter, indeed their virtual invincibility—my words, not his—their virtual invincibility because of section 28.

● (1500)

Let me make three points clear. First, Mr. Trudeau did not say that the equality rights were invincible because of section 28. I am afraid Senator Murray has failed that test of credibility. Second, Senator Murray has not followed correctly the testimony of the Right Honourable Pierre Trudeau. Mr. Trudeau did not agree that the interpretative clause—the linguistic duality/distinct society clause—would not override, take away or supersede the substantive rights set out in the Charter. Senator Murray has used the evidence to serve his own argument, evidence which is published and is in front of us. Third, Mr. Trudeau agreed, quite clearly stated on page 3002 of *Debates of the Senate* of March 30, 1988, that a hierarchy of rights may be created by the Meech Lake Accord.

Honourable senators, it is important to point out this example of disinformation which is being put forward to bury the threat to women's equality under the Charter. Senator Murray's sin is not original. Many others are doing the same.

The claims made by groups concerned with sexual equality rights—principally women's groups—are not exaggerated or distorted. The claims of the sponsors of this amendment, unfortunately, are. I suggest to all Canadians who are concerned with the rights which were won by women under the Charter that they pay attention not only to the content of the Meech Lake Accord insofar as it affects the rights of women but also to the process by which the voices of citizens, expert and otherwise, are being stifled and smothered in this debate.

This is only one instance of the smothering of the debate, and I quote it because it occurred here in front of us very recently. However, there are other examples. Nor is this strategy unknown throughout Canadian history. There is a series of notorious measures which have been practised against people who raised issues which were inconvenient to governments, who, in the past, were in sole control of the constitutional agenda. This history is laid out in an important brief given on February 4, 1988, by Mary Eberts, a well-known constitutional lawyer, to the Ontario Select Committee on Constitutional Reform. One of the tactics which Eberts notes is that women have consistently throughout our history been manoeuvered into a position which pits women against the provinces.

This happened in 1978, for example, when Prime Minister Trudeau, at the end of a constitutional conference, suddenly conceded to the provinces jurisdiction over marriage and divorce. It took an enormous effort to stall this initiative, which would have made custody and support orders even more difficult to enforce in the federal system and threatened the existence of an effective uniform law on divorce. Only the efforts of women and the indifference of the provinces to this proposal overcame what would have been a significant setback to orderly family life for women, children and other Canadian citizens.

Time and again we see that equality rights for women and the gains which women have made in Canadian history are sacrificed in the interests of provincial powers. Perhaps the best known example of this came in 1981-82 when governments played off one another on the question of women's rights and the rights of native people. Women were then forced to form a massive popular lobby to persuade Premier Blakney and his allies to change their minds and support the entrenchment of women's rights in the Constitution. The choice was put between gaining women's rights and gaining the rights of native people, a ploy for which women did not fall and do not support, and are not about to fall for in this case either. Such have been the tactics of constitutional decision-making in this country.

In the Meech Lake Accord, the technique of pitting women against the provinces has been used with a degree of cynicism unseen before in this country, as the women of Quebec were forced into the position of declaring themselves either in favour of Quebec or in favour of women's rights. This is a false dichotomy. These issues are not mutually exclusive. The women of Quebec can be supportive of the distinctiveness of Quebec society and fight for that while, at the same time, supporting the rights of sexual equality in the federal Constitution and for women from coast to coast. Women outside Quebec can speak for Quebec's distinctiveness and still assert the need to clarify the supremacy of the Charter. But the political manipulation by provincial premiers and the federal government has forced many women across Canada into a silence or an agonized dilemma on this issue. I would like to quote from Mary Ebert's brief before the Ontario Select Committee. On page 9 she says:

> High on the list of deterrents to real debate is the threat that any change to the Accord will make it unravel or fall apart. Women who seek such change are thus portrayed as the potential wreckers of Confederation. The portrayal is not a subtle one: Prime Minister Mulroney publicly endorsed Lise Bissonette's charge that Anglo-Canadian

> women were a "Trojan Horse" for the foes of Quebec's enhanced participation in Confederation.
>
> Strongly linked with this portrayal of women critical of Meech Lake is the assertion by the federal government and the Special Joint Committee that Quebec women are the only women whose voices count on the issue of whether the distinct society provisions of the Accord will have a negative impact on women. The message sent by Ottawa is: Quebec women must speak, all others hold your tongues, because the Accord is not your business . . .
>
> . . . And the reason they face that choice is because the federal government and its closest allies among the provinces have said that no woman can be both—they have, by their manipulation of the issue, told all Canadian women, wherever they live, that they must be either for Quebec or for women. If they are for Quebec, they will drop their complaints about Meech Lake; if they are for women, they will persist with the complaints and run the risk of wrecking Confederation. To tell women across Canada, who have worked together for years to improve the status of women, that they must make these choices is insulting and totally unrealistic. Any idea that a sensible middle position can be reached is never allowed on the agenda.

In effect, women, who comprise 52 per cent of the Canadian population, are told to speak with one voice or not be taken seriously or be listened to. Others have told women that because of their regional, political or other characteristics they have no right to be heard in the debate.

Of course, men are not told that they must speak with one voice, nor are they told that because they come from Ontario or Quebec, from B.C. or the Northwest Territories their views are not valid. That would be nonsensical, and it is nonsensical in the charge to women.

The entrenchment of the "distinct society" idea in an interpretative clause is the source of the mischief here, and it is possible to clarify this problem. The failure of each of the premiers, the Prime Minister and, indeed, Senator Murray to agree to that change to ensure clearly the sexual equality rights as paramount leads many Canadian watchers to the conclusion that this must be a deliberate attempt to diminish sexual equality rights.

The premiers will tell us once again that it is not their intention and that they would never do anything to diminish sexual equality rights. But this conveniently forgets the fact that once the matter is in the court system it is beyond the powers of the premiers or the Prime Minister to make the decision as to whether sexual equality rights will take precedence over other rights.

In this regard, I would like to refer senators to a paper entitled, "The Effect of the 'Distinct Society' Clause on Charter Equality Rights for Women in Canada", delivered by Professor Lynn Smith of the Faculty of Law, University of British Columbia, on October 29, 1987. She concludes as follows:

[Senator Marsden.]

> I think that there is confirmation in the Joint Committee Report that Charter equality rights will be affected, in the sense that a new interpretative rule will be added to the process of balancing interests under a section 1 (or under section 15, if the balancing takes place there) . . .
>
> . . . Further, I think that there is a possibility (although small) that section 2 will be seen as conferring legislative powers, and if that is the case it seems quite likely that section 2 would be given primacy over gender equality values (in light of the wording of section 16, and in light of the Bill 30 Reference).
>
> Finally, I think that the ignominy of being overlooked or deliberately ignored will reflect on women's position in a general way . . .

• (1510)

She goes on to say:

> Thus, there is reasonable cause for concern that the proposed new section 2 will directly or indirectly tend to restrict the scope of Charter equality rights, both inside and outside of Quebec. Those equality rights were the culmination of a long and hard struggle, and naturally the potential impairment of them is viewed with alarm. Given the continued reiteration by the Prime Minister that the accord will not affect the rights of women, native people, and minorities, and given the well-known difficulties of predicting in advance how constitutions will be interpreted, the question 'Why not amend to clarify this matter?' is a powerful one. The answer that it is not desirable to 'open up' and therefore imperil the accord only increases the concern of the critics, who begin to suspect even more strongly that the impairment of Charter equality rights is intended and is seen as necessary and desirable—otherwise, there could be no difficulty in making the desired change.
>
> In fact, I think the best explanation for the current situation is that the supporters of the Meech Lake Accord have wisely chosen the dry-land strategy. Once a discussion of the possible effects of section 2 on equality rights opened up, inevitably the situations in which the supporters think those rights ought to be affected would be revealed. There would then follow a discussion about the comparative importance of rights in which the true political issue would emerge from the muddy waters.

Both of these excerpts raise the question of whether or not the Meech Lake Accord has to do only with Quebec with respect to gender equality rights, or elsewhere, and, on this matter, I would like to quote again briefly from the Eberts brief to the Ontario Select Committee at page 27. She says:

> This highlights an important issue that is almost always ignored in the discussion of Meech Lake. The Supreme Court of Canada is the final Court of Appeal for all of Canada, including Quebec. Cases from Quebec dealing with conflicts between sexual equality and the distinct society will, once decided by our highest court, be in our jurisprudence for citation in other sexual equality cases

> arising in other parts of Canada. It is thus not at all true to say that the relation between sexual equality and the distinct society is a domestic matter for Quebec only. As long as the Supreme Court is the highest court in Canada, its jurisprudence affects us all. We have seen in the court's recent pronouncements that its judgments make philosophical and valued statements. They do not simply reach conclusions. It will not help the women of Canada to have a clearly articulated statement that the interests of women must be subordinate to those of their national or linguistic group because, in a pluralistic society with many national and linguistic groupings and strong constitutional and accord protection for multicultural values, such a statement will not be confined to Quebec.

For these reasons, all those concerned with sexual equality rights are calling for an amendment of the Meech Lake Accord on this issue. However, because so many of the groups making this argument appeared before the Submissions Group and not before the Committee of the Whole, and because their testimony has not been published, I will refrain from reading all of their testimony into the record. However, I would like to list for honourable senators who may not have read their testimony the list of groups who made these and similar arguments protesting this issue before the Submissions Group: The National Association of Women and the Law; the National Action Committee on the Status of Women; the Women's Network Incorporated from Prince Edward Island; West Coast Legal Education Action Fund Association; the Disabled Women's Network of British Columbia; the Ad Hoc Committee of Women on the Constitution; the Ad Hoc Committee of Manitoba Women's Equality-Seeking Groups Concerned About the Meech Lake Accord; the Ad Hoc Committee on the Meech Lake Accord (Nova Scotia); the Prince Edward Island Advisory Council on the Status of Women; the National Council of Women of Canada—the oldest women's association in this country; the Canadian Advisory Council on the Status of Women—which, I might draw to senators' attention, recently sent to every senator a summary of their brief protesting the Meech Lake Accord; the British Columbia Women's Liberal Commission; the Vancouver Association of Women and the Law; the Prince Edward Island Caucus of the National Association of Women and the Law; the Manitoba Action Committee on the Status of Women; the Okanagan Women's Coalition; the Port Coquitlam Area Women's Centre; the Penticton University Women's Club and the National Federation of Nurses' Unions.

Not only have all of these groups raised their doubts and called for amendments but the Senate is calling for amendments and clarification; the Liberal Party in the House of Commons has called for such clarification; the New Democratic Party at its B.C. convention the weekend before last passed a resolution protesting the abandonment of women's equality rights, or the threats to them; some Conservatives are endorsing this amendment. The country is calling for this clarification, but the First Ministers are ignoring this request in such a blatant way that they are opening a well of doubt that can only be resolved by a Supreme Court clarification or, preferably, by an amendment to the Meech Lake Accord.

It is, of course, entirely possible for the premiers and the Prime Minister to get together and clarify the accord in the way which is being recommended. As former Prime Minister Pierre Trudeau reminded us, this is what happened in 1981. The Constitutional Amendment had been signed and was then re-opened to accommodate the concerns of women.

Senator Murray: That is still there.

Senator Marsden: It is important to stress here that at the Meech Lake meeting and at the Langevin meeting which produced the Meech Lake Accord none of the premiers nor the Prime Minister had made any effort to represent the concerns of 52 per cent of the population. There was no effort made to have at these meetings experts with particular expertise or perspective on women's concerns with respect to the Constitution. The reason that it could have been anticipated that they would do so in this round as opposed to previous rounds was precisely because of the difficulties that should have been so fresh in the memories of all of the First Ministers of the 1981-82 agreement. Indeed, several of the leading studies of the 1981-82 constitutional amendments have referred explicitly to the concerns of women and sections 15 and 28.

However, the tactics of distorting the record and pitting women's rights against the interests of the provinces does not stop at this. In addition to putting up these tactics, there is another tactic employed, and that is to dismiss or silence those who complain about this accord—mostly women—as not being expert or knowledgeable on matters concerning the Constitution. This tactic is both wrong, in the sense of not being founded on the facts, and insulting, since it resorts to the traditional patriarchal tactic of dismissing women's brains. For example, it is alleged—and Senator Murray may wish to comment on this—that at a meeting between Senator Murray and the Ad Hoc Committee on the Constitution last summer, and after hearing from a variety of women's groups led by constitutional lawyers and experts on this process, Senator Murray said, "We have heard from the women, now let's hear from the experts." Honourable senators, I was not at that meeting. I heard this secondhand. Senator Murray may deny or confirm this statement, and witnesses may be called who will say that they heard it. However, whether or not this comment was correctly interpreted in the secondhand accounts that I have received, the fact remains that that is the odour which prevails in this debate.

Many premiers and officials have dismissed experts, both male and female, who have argued that the hierarchy of rights does represent a problem which is deserving of debate. On the matter of expert knowledge, I refer honourable senators to, among other documents, the brief presented in this chamber on March 16, 1988, by Lucie Lamarche and Beth Atcheson of the Women's Legal Education Action Fund. That fund is an organization of litigators who litigate test cases on the Charter. As was reported in that brief, and as interested honourable senators will know from the newspapers and from briefs in the legal community, the Women's Legal Education Action Fund

has appeared in the superior, trial and appeal courts of every province and territory, with the exception of two. They have had intervenor status in five major equality cases before the Supreme Court of Canada. As they testified, they use a wide consultation process, because equality cases raise complex issues, as do the requirements of the courts in Charter cases. They require "a very sure definition about the meaning of equality, because when you go before the court you have to make a very precise argument."

● (1520)

LEAF lawyers are experts not only on the application of the Charter, and women's equality rights in particular, but on the history of women's equality rights in Canada. They and their colleagues in the law who are interested in these issues have an analysis, superseded by no others available, of the development of women's equality rights, including the Persons Case, which eventually brought women to this chamber—no thanks to the Supreme Court of Canada; the Canadian Bill of Rights in which Jeanette Lavalle and Stella Bliss were both denied their rights; and they are the framers and veterans of the 1981-82 constitutional battle to strengthen the provisions governing gender equality in our current Charter. As the witnesses testified, they recognize the importance of both political and judicial remedies in gender equality issues. They recognize as well that governments often act unconstitutionally, and have done so throughout our history. They recognize that the Supreme Court has not yet interpreted fully and directly sections 15 and 28 of the Charter. They went on in their testimony, which you will find on page 2867 and thereafter in *Debates of the Senate*, to show how the creation of a hierarchy of rights may occur in our courts and threaten gender equality rights in the Constitution if these constitutional amendments are proceeded with. I urge senators and all Canadians who are interested in this issue to read their testimony, which is technical and complex, to see how their argument is developed.

Those politically committed to the Meech Lake Accord as it currently stands may reject the argument they are making on political grounds, but they are not in a position to reject the argument on legal grounds. Even the constitutional advisors to the First Ministers, who are now reappearing in front of provincial committees such as the Ontario Select Committee, are basing their cases more on their political desires than their legal interpretation. This becomes more and more apparent as they cautiously and carefully backtrack on their original position. While women do not reject or diminish the importance of political commitment and political action in gaining gender equality, it is impossible to emphasize sufficiently the strategic importance of maintaining the supremacy of gender equality rights in the Consitution so that it may be argued as a defense in cases before the courts. I urge our premiers and Prime Minister to take the opportunity to listen carefully to the arguments of the experts on Charter cases, not only to the arguments of academics who argue from the base of theory and the wishful thinking of their officials.

The political tactics named above are not the only ones which have been used to attack and deflect examination of the threat to women's equality rights. The Joint Senate and House of Commons Committee, which held public hearings during the summer of 1987 and published its report, "The 1987 Constitutional Accord", on September 9, 1987, engaged in a particularly offensive type of tactic to ignore the concerns of women. Honourable senators have all heard the analysis of that document by Dr. Eugene Forsey in front of the Committee of the Whole. The expert testimony in front of the joint committee was as clear as it has been to us. The "gender equality" experts were heard. They testified, but their testimony in the report is distorted and their analyses dismissed. I refer honourable senators to page 14 of Senator Forsey's paper, "Analysis of the Report of the Joint Committee on the Constitutional Accord, 1987", where he notes that the joint committee report:

> —rightly devotes considerable space to the contention of various women's organizations that the 'abundance of caution' ought to have meant the inclusion in Section 16 of the equality rights of women. However, the committee thought this was not necessary for six reasons.

None of those six reasons, which Senator Forsey then goes on to dissect, is compelling in his opinion. Indeed, the reasons offered in the joint committee report only exacerbate one's fears.

The distortion of the conclusions of the joint committee have not gone unremarked. It can only be seen as part of the general campaign to prevent a serious consideration of this issue, which places governments in difficult political positions vis-à-vis their own agenda concerning power between the provinces and the federal government. It leaves the gender equality rights issue mainly affecting the women of Canada relatively unexplored in the media and public debate.

Honourable senators, democracy has its foundation in free information and free debate. In the discussion of gender equality rights in relation to the Meech Lake Accord, we have not had as yet a democratic hearing. The signatories to the Meech Lake Accord have ignored these concerns. They have refused to entertain serious opinions different from their own. The record has been distorted—whether by design or not, I cannot tell you—and this is not acceptable. I call upon those premiers who have not yet committed their provinces to this accord to think seriously about the implications of a constitutional, political and human rights nature which flow from their decisions.

Honourable senators, the process of the Meech Lake Accord has not been in the spirit of Canada's new Constitution. Professor Alan Cairns in testimony before our committee and elsewhere has made the argument that before 1981-82 constitutional matters were largely government issues, but that the entrenchment of the Charter of Human Rights and Freedoms in the Constitution has turned it from the government's Constitution to the people's Constitution. The people of Canada—women and men, native people, multicultural groups, anyone affected by federal spending powers, and therefore nearly every citizen—feel some stake in the process of constitutional change. This process must be a more open and democratic one than we have experienced this time.

Professor Al Johnson in testimony here suggested that the premiers should announce an area in which they were considering constitutional reforms, hear from the people through legislative and parliamentary public hearings; and then, having heard the views of the people, come together to make their decision on our behalf in the spirit of responsible government. This would allow the people of Canada a hearing. This would allow the legislators of every province, territory and the two chambers of Parliament to play the role for which they were elected or appointed—that is, to represent their constituencies or their provinces and reflect the views of the people. It would allow the First Ministers to exercise their prerogative and power of decision-making in an informed way.

We are now entering a round of changes with respect to the Senate and fisheries. We have been reading about Premier Bourassa's discussions with Premier Getty on these matters. They are important matters. On the question of Senate reform, I am in full agreement with those who would like to see a reformed second chamber and a new method of selecting senators. Electing senators is not a solution alone, because the division of powers between the House of Commons and the Senate then becomes of crucial moment. The Australian situation has demonstrated this. But it is not beyond the imagination of Canadian constitutional experts and the people of Canada together to resolve the problem. Those public hearings proposed by Professor Johnson as a first phase of constitutional growth are essential.

Honourable senators, I seek many amendments to the Meech Lake Accord. In particular, I seek a clarification on the question of gender equality rights and the primacy of the Charter. Equally, I seek the democratization of the process of constitutional amendments. I support, generally speaking, the proposal put forward by Professor Johnson and other critics of the process, such as Professor Albert Breton. Above all, I regret the lofty dismissal of the brains of constitutional experts on the grounds of their sex and urge that this climate of creating first- and second-class experts in Canada be expunged from constitutional decision-making. Women, members of linguistic and cultural minorities, people with disabilities, native people, and all groups who are not represented in constitutional hearings must be heard, and heard with open hearts and minds, if our country is to live up to the ideal established in the preamble to our current Constitution.

Some Hon. Senators: Hear, hear!

● (1530)

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, as a matter of, I suppose, personal privilege, I would like to take this occasion, for the record, to inform the honourable senator and the house that the secondhand report which she placed on the record a few moments ago alleging that I made a certain remark at a meeting attended by, among others, representatives of women's groups is totally untrue.

Hon. R. James Balfour: Honourable senators, the Constitutional Accord of 1987 springs from the urgent need to restore Quebec to Canada's constitutional family. It is an historic achievement, and, in the view of the Special Joint Committee on which this chamber was represented, a reasonable and workable package of constitutional reforms which, I submit, should be adopted by this chamber.

Patriation of the Constitution with the Canadian Charter of Rights and Freedoms in 1982 was incomplete, because Quebec was isolated. The accord repairs the damage done then to national unity. Together with all Canadians, I welcome this.

But I would support the accord even if it had not been designed to resolve Quebec's isolation. My reason is that it lays the foundations for a renewal in federal-provincial cooperation based on mutual respect between the two orders of government, not on rivalry and confrontation. The accord upholds the national interest and recognizes the equality of all provinces while it also meets Quebec's concerns.

Let me illustrate with the immigration provisions. As honourable senators know, immigration has been a shared jurisdiction from the first day of Confederation. Although many people think of this as a federal matter, section 95 of the Constitution Act, 1867 permits a province to make laws in relation to immigration to the extent that they do not conflict with paramount federal laws. As the committee notes, over the past 16 years the federal government has concluded administrative arrangements respecting immigration with seven provinces, taking into account their special concerns.

Among them is Quebec. Under the so-called Cullen-Couture Agreement of 1978, Quebec exercises considerable powers, according to its own criteria, in the selection of immigrants to settle in Quebec. One of Quebec's concerns, of course, is to preserve a strong French-speaking community, because this is one of the keys to its distinct identity within Canada.

Some provinces have a special interest in attracting immigrants with job skills that match their economic requirements. These agreements have worked well, as the Special Joint Committee concluded. There has been concern, however, that these agreements were unprotected from unilateral federal action at any time. It is no secret that Quebec, in particular, wanted the agreements to have a more solid, constitutional foundation. This is provided in the accord. However, I want to stress that it is provided in a way that respects the equality of the provinces. There is no special status here. Under the accord, the federal government will negotiate an agreement with every province that asks. Each will be tailored to the particular needs and circumstances of the province. I also want to stress the built-in protection for the national interest and the role that Parliament will play. Again, this is a feature on which the committee has commented with approval.

Parliament will continue to set national standards and objectives relating to immigration and aliens, including provisions that establish general classes of immigrants or relate to annual levels of immigration. This will allow Parliament to ensure that family reunification, for example, remains a high priority in our immigration policy for all of Canada.

Parliament will also review the precise terms of each federal-provincial agreement. An agreement will have the force of

law only after approval by resolution of the House and the Senate as well as of the legislative assembly of the province concerned.

Quebec will no doubt continue to place emphasis on an ability to speak French or on a disposition to learn it. This is understandable and proper. It is directly related to Quebec's distinct identity.

But there can be no discrimination by any province, or by the federal government for that matter, on the grounds of race, national or ethnic origin, colour or religion, as well as on sex and other grounds. Section 15 of the Charter sees to that, and the Charter has been made explicitly to apply these agreements. This was done because the agreements will be developed by a new method, a method which was not in place when the Charter was first adopted in 1982. The accord ensures that the ambit of the Charter is broad enough to encompass these agreements. The Charter also ensures that immigrants will be free to relocate anywhere they wish in Canada.

I could give other examples of the accord's recognition of the fundamental equality of the provinces and its protection of the national interest. Equality is expressed in the requirement for unanimous consent to certain constitutional amendments of fundamental importance, and this has been done in a way that the Special Joint Committee concludes carries forward principles established in 1982 and is "consistent with both the 'equality of the provinces' and a recognition of the stake that each and every province has in the basic elements of the Canadian federation." Equality is also expressed in the right of all provinces to put forward names for appointment to the Senate and the Supreme Court of Canada as key federal institutions.

I make a similar point with repect to the national interest. The national objectives, against which provincial initiatives or programs will be tested for reasonable compensation, will be set at the federal level. Thus, all Canadians will benefit from federal spending. Final authority for appointments to the Senate and the Supreme Court will lie with the federal government.

Let me remind honourable senators that the Trudeau government was prepared to dilute federal authority in these fields. It twice supported proposals for a mechanism that would have prevented Parliament from using its spending power to establish new shared-cost programs unless a majority of the provinces with at least half the population gave their consent. There is no such limitation in this accord. The provinces cannot prevent Parliament from establishing new shared-cost programs.

The Trudeau government was also twice prepared to offer unconditional compensation to individual provinces that did not participate in such programs. Under this accord, compensation will be offered to non-participating provinces only if they carry out programs or initiatives compatible with national objectives. Provinces can, of course, choose to remain outside shared-cost programs. They have always had that right. But they will not be entitled to federal funds unless they take steps on their own to meet the national objectives.

[Senator Balfour.]

As the Special Joint Committee notes, the major effect of the proposed amendments in this area will be "to place a renewed emphasis on negotiation."

In 1969 the Trudeau government also endorsed giving provinces the final say on the appointment of some senators. Bill C-60 included a similar proposal which would have led to the provinces appointing half the members of the reformed Senate. This accord does not go nearly so far.

Then, in the Victoria Charter of 1971 and in Bill C-60 of 1978 the Trudeau government was prepared to hand over appointment of Supreme Court justices to a nominating council when the federal and provincial governments could not agree on a choice. This accord keeps the decision where it belongs—in the hands of people who are responsible to the electorate.

In addition, all previous rounds of constitutional negotiations involved changes to the distribution of powers in the direction of the provinces. In the words of the Special Joint Committee, ". . . nothing has been said to lead us to believe that the basic principles of the Canadian federation would be compromised . . ." by the accord.

In immigration, in the creation of new shared-cost programs, in appointments to federal institutions, and in the distribution of powers, the accord clearly upholds the authority of the federal government and of Parliament as the voice of all Canadians. Yet, it does so in a climate of federal respect for provincial authorities as the voices of varying regional needs.

Under the accord, no province is singled out for special status. The accord ensures full consensus on fundamental changes affecting the federation, including Senate reform—an item now guaranteed to be on the agenda for future constitutional talks.

In conclusion, one reason I support this accord is because it ends Quebec's isolation and brings it back as a full and enthusiastic partner in future constitutional growth for our country. But I would support it even if it did not accomplish that, because this accord reflects the reality of Canada as a federal nation. It fosters a federation with a strong federal government at its centre and ten strong, responsible provincial governments. This is the Canada that the Fathers of Confederation sought to build. It is the Canada that the Canadian people expect us to preserve. It is the Canada I will support with my vote for this accord.

Some Hon. Senators: Hear, hear!

● (1540)

Hon. Paul Lucier: Honourable senators, I wish—this should come as no surprise—to address the subject of the treatment of Canada's North in connection with the 1987 Constitutional Accord.

As my opening remarks, I offer not my own words but those of two others. Mr. Tony Penikett, the government leader of the Yukon, stated to us in Whitehorse last fall, "To have had no

vote was bad enough, to have been granted no voice was outrageous."

The other comment, also made in Whitehorse, came from a colleague, whose absence I lament. I refer to the Honourable Jean Le Moyne, who accompanied us on our northern hearings. Unfortunately, he retired before the report of the Senate Task Force on the Meech Lake Constitutional Accord and on the Yukon and Northwest Territories was tabled. Senator Le Moyne, with his customary eloquence, summarized the issue in three words: "It is invidious." I only regret that he cannot be here to contribute further to our deliberations.

On June 30, 1987, during meetings of the Committee of the Whole, I rose on a point of order, which at that time was probably a questionable one. Senator Molgat, as chairman of the Committee of the Whole, to his credit, allowed me to make a presentation to the Senate dealing with the Meech Lake Accord. At that time I praised the role of the Senate committees concerning the northern territories. I mentioned the fact that the Fisheries Committee, chaired by Senator Marshall; the Energy Committee, chaired by Senator Hastings; and the Joint Committee of the Senate and the House of Commons on Senate Reform, among others, had visited the Yukon and had made the people of the Yukon feel that their views were important. As I stated at that time, "The Senate has done an excellent job of representing the interests of the territories since I arrived here in 1975."

During my presentation to the Committee of the Whole, I made statements concerning the Meech Lake Accord. I would now like to read part of those statements for you. They are taken from *Debates of the Senate* of June 30, 1987, at pages 1548 and 1549. I said:

> Mr. Chairman, I would like to speak on behalf of the people of both territories, who have been directly and adversely affected by the Meech Lake Accord, with no participation, no input, at any of the meetings. They feel that they have been betrayed by the one person who supposedly represented them at those meetings—namely, the Prime Minister of Canada.
>
> I would like to make it clear that the people of the north are not upset with the premiers. They were there getting what they could for their provinces. That was their job. I also want to make it very clear at this time that the people of northern Canada would like to see Quebec become part of the Constitution. I fully agree with the objectives of the Meech Lake Accord.
>
> However, I would like to make it clear that we feel that we had a representative at those meetings who was not elected by the people of the north. The Prime Minister of Canada was supposedly speaking for the north, and we feel that he sold us down the river.
>
> I find it very difficult to accept that, whereas the people of northern Canada have always been quietly cast as second class citizens, we have now been openly declared to be second class citizens. There are four areas of the Meech Lake Accord on which the people of the north want to be heard. They are aboriginal rights, provincial status, naming of judges and senators, and holding of constitutional conferences.
>
> By giving an absolute veto on constitutional changes to every province, the Canadian Prime Minister has, in one sentence, doomed the aboriginal people to their present status, has precluded the Yukon and the Northwest Territories from becoming provinces in the future, has made no provision for naming senators or judges from the territories, and has made no provision to enable us to attend future constitutional conferences.

Honourable senators, I believe the above statement, which reflected not only my views but those of all northerners, is as valid today as it was in June 1987.

As a result of my presentation to the Committee of the Whole on June 30, a task force of the committee was formed and travelled to Whitehorse, Yukon and Iqaluit to hold hearings on the Meech Lake Accord. That task force heard witnesses representing all political parties and all aboriginal groups in both territories. Following those hearings, the task force returned to Ottawa to put together its report, referred to as the Report of the Senate Task Force on the Meech Lake Constitutional Accord and on the Yukon and Northwest Territories. That report, honourable senators, has done the Senate proud.

Northerners unanimously endorsed the report as categorically representing their views. Once again, the Senate has proved that it can be an adequate representative of the regions of Canada. The Yukon government leader, Tony Penikett, is happy with the report and was quoted in the Yukon paper as saying, "For a New Democrat, I must say I am feeling uncommonly kind to the Senate today."

Mr. Ted Richard, a member of the Legislative Assembly of the Northwest Territories, in a letter dated March 3, 1988, to Senator Molgat, said:

> You and your colleagues initially showed your genuine concern for northerners by taking the time to travel to the Yukon and N.W.T. to listen directly to Northern Canadians. From my quick review of the report, it appears that you also listened carefully when you were in the north, for you have grasped the issues correctly.
>
> Those of us who made representations to your Task Force could not have asked for anything more from you. You have shown a clear understanding of our concerns, and your recommendations are concise and unequivocal.

Concerning the task force, honourable senators, I would like to take this opportunity to single out three of the honourable senators who served on the report for the job that they did. Senator Bielish and Senator Macquarrie, who travelled with the committee, had a very difficult time of it. We heard from 68 witnesses during our trip to the North and we had 47 written submissions. As you can well imagine, about 104 per cent of them were opposed to the accord, and it was very difficult for Senator Bielish and Senator Macquarrie to sit and take that day after day—but they did it and they did an

excellent job. They participated fully in the hearings, and I believe that the people of the North probably appreciated their attendance as much or more than they did anyone else's because of the difficulty of the situation in which they were placed.

Some Hon. Senators: Hear, hear!

Senator Lucier: The other honourable senator whom I would like to single out at this time is Senator Molgat, who chaired that committee and also the Committee of the Whole. Senator Molgat has spent virtually the last year on the subject of Meech Lake and, as with everything else that he does, he has done an excellent job on our behalf.

Some Hon. Senators: Hear, hear!

Senator Lucier: He deserves our praise. Whether or not honourable senators agree with the Meech Lake Accord, the job that he has done in chairing those two committees has been a credit to the Senate.

Honourable senators are aware of the contents of the task force report, which was tabled by the chairman, Senator Molgat, in February. You are also familiar, I am sure, with the task force's recommendations; so I shall not belabour you with the details of them. Suffice it to say that the task force recommended amendments to the Constitutional Accord which would eliminate discriminatory provisions against the North, ensure northern representation at future First Ministers' conferences on the Constitution or the economy, return the question of future status of the Territories to a matter of negotiation with the federal government, not subject to provincial veto; add aboriginal and treaty rights and the issue of self-government to the agenda of future constitutional conferences, and recognize the aboriginal peoples of Canada as well as Quebec as distinct societies.

● (1550)

The people of Canada and the people of the Yukon and the Northwest Territories were shocked that 11 men locked themselves into a room and refused to surface until they had agreed on a document that treats northerners so unfairly, and that it would be done without their knowledge or participation. During this presentation I will deal with some of the more offensive parts of the accord.

Honourable senators, let me first dispel the notion that the shabby treatment we received from the First Ministers was an oversight, was something that they included as an afterthought or, more importantly, something they plan to correct during the so-called next round, which the government continues to refer to when trying to cover its tracks. To prove my point, let me quote from remarks made by someone who should know, no less an authority on Meech Lake than Senator Lowell Murray. I have here a document from the Office of the Leader of the Government in the Senate and the Minister of State for Federal-Provincial Relations entitled, "Notes for a Presentation by the Honourable Lowell Murray at the Conclusion of the Hearings of the Special Joint Committee of the Senate and the House of Commons on the 1987 Constitutional Accord". This is dated September 1, 1987.

[Senator Lucier.]

On page 3 of the document, Senator Murray says, and I quote:

> I want to assure the Committee that the Accord as drafted, faithfully translates the intent of First Ministers.

Further down on the same page, Senator Murray states:

> Let me be clear. The Meech Lake Constitutional Accord was not drafted over the course of a day and a night. The issues had been debated over a twenty-year period. There were prolonged discussions over the course of the past year among officials, ministers and First Ministers not only on policy directions, but also on the best means to translate policy decisions into legal texts. Expert legal advice was sought and obtained. First Ministers are unanimously agreed on the policies reflected in the Accord and continue to be satisfied that the legal text expresses those policies.

Honourable senators, the idea of this having been done inadvertently, or this having been done as an afterthought, or that this will be corrected later can be forgotten. As I said earlier, honourable senators, what Meech Lake does to northern Canada was done deliberately with no intention whatever of being changed at a later date. Why should the premiers come back for a second round? They got everything they wanted in the first round.

Honourable senators, the first thought that comes to mind when the words "Yukon" and "Meech Lake" are heard is "provincial status." Because of the unanimity clause, the universal veto, any hope the territories ever had of some day becoming provinces has been taken away. Anyone who does not agree with that statement is not being very honest.

Let me say to Senator Murray, to the Prime Minister and to others who continue to hide behind the next-round theory, and also the theory that at some future date the ten premiers and the Prime Minister will agree to allow the territories to become provinces, that they may think northerners are naive and not too bright, but we are smart enough to know when we are being conned. We just do not buy that ridiculous position on that particular issue. If the premiers have no intention of using their veto, why is it there? If they have no intention of some day extending their boundaries into the territories, why did they ask that that be put into the accord?

Honourable senators, if by some miracle at some future date they all agree that the Yukon Territory could become a province, what possible justification could there be for the premiers making that decision instead of the people of the Yukon and the people of Canada? As premiers, it is none of their damn business! It is the business of the people of the Yukon Territory and the business of the people of Canada.

Senator Murray: How did you vote in 1982?

Senator Lucier: I voted and spoke very strongly against provincial involvement in the territories becoming provinces.

Senator Murray: Did you vote against patriation?

Senator Lucier: No, I did not vote against patriation, but I was very strong in my opposition to the premiers having any involvement in the territories becoming provinces.

Senator Flynn: You did not vote accordingly.

Senator Lucier: As I said, honourable senators, the responsibility for the Yukon Territory and the Northwest Territories becoming provinces is an issue to be dealt with by the people of the territories and the people of Canada, represented by the Prime Minister.

Senator Murray: Pre-1982!

Senator Lucier: That should not involve the premiers, but the Prime Minister and the Government of Canada. That was good enough for the rest of the provinces, and that is what we want, exactly the same as the rest of the provinces were given.

Senator Murray: With the consent of seven provinces with 50 per cent of the population. You had an option to vote against that.

Senator Lucier: I was opposed to this then, and I am opposed to this now.

Senator Murray: But you did not vote against it.

Senator Frith: British Columbia came in without any of the existing provinces being involved.

Senator Lucier: In 1905 Alberta and Saskatchewan came in, and every other province came in in exactly the same way. There has never been a provincial premier involved in another province becoming a part of Canada. Why should we be treated differently?

Some Hon. Senators: Hear, hear!

Senator Lucier: Honourable senators, the premiers can rest easy for a while. We have no plans to become a province for quite some time. What we as Canadians object to most strenuously, and what we find repulsive, is that this Prime Minister and this Minister of State for Federal-Provincial Relations have abdicated their responsibilities concerning the north to the premiers. If they do not have the intestinal fortitude to stand up for their responsibilities, perhaps they should turn their jobs over to someone else, someone who does not negotiate while on their knees, as this Prime Minister seems to do.

Senator Flynn: Are you speaking of Trudeau in 1981?

Senator Lucier: On December 9, 1987, the Human Rights Institute of Canada appeared before the Committee of the Whole and listed a number of basic problems and injustices that the Meech Lake Accord will create.

The institute pointed out the fact that the procedure for appointments to the Senate violates important international conventions that Canada has ratified, guaranteeing women appointment to public office on an equal basis with men as well as raising questions about possible breach of the equality provisions of the Charter of Rights and Freedoms.

The institute has also raised publicly the question whether the exclusion of the Yukon Territory and the Northwest Territories is a violation of other international conventions that Canada has accepted as binding.

As the senator representing the Yukon Territory, I support amendments to the Meech Lake Accord that will bring it into line with justice and with Canada's international commitments. Appointments to the Senate are particularly open to challenge because of the precise nature of the qualifications. These changes would recognize the real interest of the Yukon and Northwest Territories as well as the legal claims of women of Canada. It would bring Senate appointments into line with Canada's international agreements and the Charter, and would make the Senate more clearly representative of the people of Canada who would otherwise be excluded from any legal right to appointment on an equal basis to the Senate.

There is, of course, the problem that the Prime Minister is proceeding with appointments to the Senate in accordance with the Meech Lake provisions without waiting for the Meech Lake Accord to become law. Even if the accord never becomes law, it seems as if the territories will be effectively excluded and the women of Canada will continue to be denied appointment to the Senate on an equal basis with men, as required under the Convention on the Political Rights of Women.

The Human Rights Institute of Canada drew our attention to the fact that the Minister of Justice, the Honourable Ray Hnatyshyn, and the Prime Minister himself have refused repeated requests by the Human Rights Institute for a reference to the Supreme Court of Canada as to whether appointments to the Senate violate international conventions and the Charter. The institute has been told that women should wait for their rights to evolve. We all know how long that can take.

I have now seen a legal opinion that the institute has received from the law firm of Osler, Hoskin and Harcourt, confirming that they are prepared to bring legal proceedings in the Federal Court of Canada attacking the appointment procedure. The legal opinion states clearly that:

> We consider the issues raised . . . to be fundamentally important. They are not frivolous or without foundation in law. We look forward to addressing these issues, not only in our opinion, but also in preparing the pleadings and commencing proceedings on behalf of the Institute.

The legal challenge to the appointment procedure will have important implications for the Meech Lake Accord. The Human Rights Institute is now seeking funding for the case. It could force the government to reconsider other parts of the Meech Lake Accord and to re-open the discussions with the premiers about the accord itself.

● (1600)

Honourable senators, I now want to speak about the effects of the Meech Lake Accord on our aboriginal people—a subject which I am sure will be touched upon by others, as well. Can you, in your wildest dreams, imagine a government so misdirected that it decides Canada's original people are not worthy of being an agenda item at First Ministers' conferences? Instead, the agenda will include Senate reform and fish. If it were not so dangerous, it would be funny. I do not think anyone would seriously argue that Meech Lake does not institute a third level of government through annual First

Ministers' conferences. I think that is a foregone conclusion. It might be bad or it might be good—only time will tell—but it is really a joke to say that annual First Ministers' conferences will have a fixed agenda in perpetuity that consists of Senate reform and fish. First, any hope of meaningful Senate reform will be lost because of the unanimity clause—the fact that the premiers have a veto on everything—and the fisheries, as we all know, are a federal responsibility. As someone once said, "Fish swim a lot and they tend to ignore provincial boundaries."

Honourable senators, why have discussions on aboriginal peoples' rights been removed from the agenda? Because, according to our Prime Minister and our Minister of Justice, the last conference failed to reach a satisfactory conclusion. Big deal! Canada's aboriginal peoples have been fighting for their rights since the first Europeans arrived here and started removing those rights. And they will continue to fight. They are tough, resilient, very patient and very smart. They are also driven by the knowledge that they are fighting for their very survival. Failing is nothing new to them, but quitting is, and that seems to be what the federal government has done in this case.

Does this government not understand that if ever there should be one permanent agenda item it should be aboriginal rights? They are not going to go away, nor are the problems that must be resolved. It is ridiculous for any government to suggest that there will be no future talks on aboriginal rights until it feels that a solution to all of the problems will result.

How does a premier or a prime minister who does not want aboriginal problems resolved deal with them? He simply states that there appears to be no solution available, so it will not be put on the agenda. Case closed. That's a nice way to deal with it—that's pretty neat. For those who might suggest that no premier would do such a thing, I suggest that they go back to review the tapes of the past First Ministers' conferences when that subject was dealt with. They may have their eyes opened.

Honourable senators, I think that the Meech Lake Accord as it presently stands is not acceptable to the people of northern Canada. Why should the rules concerning the appointment of senators and the Supreme Court justices be different for the territories and the provinces? Is a Yukon judge inferior to a judge from Alberta? Is Senator Ottenheimer, recently appointed from Newfoundland—and I welcome him to the chamber; I think his is a great appointment—superior to a senator from the north? I do not think he is, and I do not think he sees himself that way. Why should a premier have a right to suggest that any senator be here when a leader of the government of the territories does not have a right to do the same thing?

Senator Flynn: The Prime Minister has that right.

Senator Lucier: Is there any justification for entrenching annual First Ministers' conferences, at which major decisions will be made concerning the economy, social policy and political evolution of our country, while in the same breath saying, "By the way, Yukon and Northwest Territories, you are not only denied a voice at these meetings, you will not even be permitted to attend"? It is not surprising that a government callous enough to treat its citizens in such a despicable manner would want the resolution passed with the absolute minimum of debate and exposure. I don't blame them for being ashamed of themselves.

Honourable senators, some strange things have been happening lately. First, we have seen a brave young man from New Brunswick challenge one of the premiers who signed the Meech Lake Accord. He ran on a platform of opposition to the accord and won 58 of 58 seats in his province.

Second, we have seen a rather brave young lady by the name of Sharon Carstairs from the province of Manitoba run a campaign against the Meech Lake Accord. It is the one issue on which she is questioned at every meeting that she attends. The polls say that she has gone up from 13 to 35 per cent in the standings.

Some Hon. Senators: Hear, hear!

Senator Lucier: It appears to me, honourable senators, that the more people become aware of the ramifications of the Meech Lake Accord, the more they appear to question its content. Would it not be funny to watch the people of Alberta when they realize that their premier, who went to the Meech Lake conference with the specific goal of obtaining Senate reform—a Triple-E Senate—agreed to a unanimity clause which forever dooms any possible chance of meaningful Senate reform? One of these days they are going to realize that he went to get Senate reform and, instead, signed a piece of paper that forever prevents it from happening. And what did he obtain in exchange for this unanimity clause? He won the right to have Senate reform placed on the agenda of First Ministers' conferences for discussion in perpetuity. That was a great deal. Maybe somebody should have explained to him that we have been discussing Senate reform since 1867, and that he could have had that for free—he did not have to fight for it. That Mulroney must have been a great snake-oil salesman!

Of course, one of the other small things Premier Getty and his friends agreed to at Meech Lake was that Quebec could become a "distinct society." If you ask them what that term means, they shrug their shoulders and change the subject.

Honourable senators, going through this Meech Lake Accord has been a strange exercise. We have spent a year at it now. I do not think we know a lot more about it than we did at the very beginning. I do not think we have gained an awful lot. Is Quebec any closer to becoming a distinct society than it was at the beginning of this exercise? Honourable senators, we cannot discuss the "distinct society" clause without talking about the aboriginal peoples. During the hearings of the Task Force on the Meech Lake Accord and in Committee of the Whole we heard it said on several occasions, "if there is such a thing as a distinct society in Canada, surely what could be more distinct than the aboriginal peoples, who were here 30,000 years ago?" Senator Adams, Senator Watt and Senator Marchand surely qualify over someone from another coun-

try, for example, who came to Canada five years ago, took out Canadian citizenship, and resided in Quebec. An interesting observation, honourable senators, is that if Senator Adams, for instance, who lives in Rankin Inlet, moved to Ottawa or Vancouver, he would still be a member of a "distinct society." Nothing would change for him. But if Senator Flynn or Premier Bourassa moved from Quebec to Halifax, neither would any longer be distinct. They would just be ordinary Canadians at that point. They would not carry the distinctiveness with them.

Senator Flynn: Don't be so simple! Listen, you are pushing it. Try to reason a little.

Senator Lucier: If Senator Flynn does not believe that, perhaps he would like to talk to some Quebecers who have moved to Saskatchewan recently. If he does not believe that, he should move to Saskatchewan and Premier Grant Devine will show him how distinct he is. Senator Flynn is distinct when he is in Quebec; when he moves out of Quebec he will be a Canadian like the rest of us—that is what is suggested in this accord. The "distinct society" clause does not apply to the people—it applies to the Government of Quebec.

Senator Steuart: There you go, John!

Senator Lucier: I am not sure whether that is true or not—perhaps somebody should try to explain it to Senator Flynn. I am sure some people on that side of the chamber will know what "distinct society" means. No one has bothered to explain it yet, but perhaps someone would like to try it some time. I think it is interesting that if a person from Quebec moves to Saskatchewan he is no longer a member of a "distinct society."

Senator Flynn: That is nonsense!

Senator Lucier: But Premier Devine has the blessing of the Prime Minister and Premier Bourassa when he shoots them down. I think that is a very interesting concept. As a Quebecer you are distinct as long as you are in Quebec; when you move away you are just like the rest of us.

Senator Flynn: It is foolish to advance that.

Senator Lucier: Honourable senators, I have spent almost 40 years in the Yukon, 20 of those years in active politics. I can honestly say that I have never been more proud to call myself a Yukoner than I was after the task force hearings in Canada's North. The people who made presentations had worked hard on their briefs and delivered them with such emotion and true feelings of betrayal that anyone who attended had to be impressed. We are not country bumpkins looking for a handout. We are not whiners looking for something that is not available to every other Canadian. We, the people of northern Canada, are demanding that we be given an opportunity to develop this great country along with the rest of you. The North is a very important part of Canada. Senators Watt, Adams and I represent a very proud group of Canadians who have chosen to live in a tough part of Canada. Quite frankly, I think we need you, but, as well, you need us.

Honourable senators, the Meech Lake Accord is not good enough. We Canadians can do better, and if we have the will and the imagination to do what is right for the country and its future we will do better. I think this is an insult to the people of Canada. It is particularly an insult to the people of northern Canada. There is no reason why we should be treated as second-class citizens. I think we should get on with the amendments and get this thing changed so it will be liveable for the rest of us.

[*Translation*]

Hon. Paul David: Honourable senators, on April 30, 1987, the first ministers of the provinces and Canada assembled at Meech Lake and agreed on a series of constitutional amendments in order to bring Quebec back into the Canadian constitutional family. The agreement in principle was subsequently finalized as the Langevin Agreement and signed on June 3 by all provincial first ministers and the Prime Minister of Canada.

As a Canadian and a Quebecer, I was delighted with this "miracle" of national reconciliation, which finally made it possible for Quebec to become a full-fledged partner of our Canadian Federation.

The Liberal majority in the Senate is now proposing a series of amendments which, if they are adopted, will oblige the other place to adopt the text of the accord a second time. As a representative for Quebec in the Senate, I strenuously object to this proposal which fans the fires of old feuds, divides Canadians instead of uniting them and gives rise to further useless confrontation.

By recognizing that Quebec is a distinct society within the Canadian nation, the Meech-Langevin Accord is merely putting words to a reality that was already implicit in the Constitution adopted by the Fathers of Confederation. From my earliest years to this very day, all governments in Quebec have favoured policies that were characteristic of that province. In this respect, the continuity of philosophy and political action is, with all its diversity, a remarkable phenomenon, from Maurice Duplessis to Jean Lesage, Daniel Johnson, Jean-Jacques Bertrand, Robert Bourassa, René Lévesque, Pierre-Marc Johnson and again Robert Bourassa. Quebec has always been a distinct society and if you wonder why, Senator Lucier, I will tell you because of its traditions, its rationalism, its language, religion and culture, its laws and institutions. The preservation and promotion of this distinct society has always been an overriding concern of the various political parties in Quebec and their leaders. Why not acknowledge this reality? And since acceptance of this principle was part of the conditions set by Quebec for becoming a partner in our Constitution, why run the risk of a new wave of "indépendantisme"? Have we already forgotten the troubled years of the "souverainiste" movement, and the referendum that was won thanks to the Canadian loyalties of a majority of the people of Quebec? The wounds are still too fresh to raise new obstacles to Quebec's acceptance of the Canadian constitutional proposal. Maintaining two solitudes is the surest way to cause further confrontation, while the Meech-Langevin Accord is a generous, realistic and positive gesture of long-awaited reconciliation that has finally been achieved. The consequences of

denying the existence of a distinct society would seem to be far more dangerous than the implications of recognizing and approving this principle.

Another controversial issue is the role of the federal government in relation to that of the ten provincial governments.

Honourable senators, we are being offered two visions of Canada.

One thrives on confrontation, the other on co-operation; one is based on the struggle for power between the federal government and the provinces, the other on mutual respect; one projects an image of rivalry, while the other sees the parties as partners working together to serve Canadians.

The 1987 Constitutional Accord clearly leans towards co-operation, mutual respect, association and union.

I support the option of a more united and thus stronger Canada.

To me, the 1987 Constitutional Accord is inspired by the very essence of federalism, mainly the principle that the federal government and the provinces can work together for the greater benefit of Canada and Canadians.

The patriation of the Constitution, the formula whereby Canada is able to adopt its own constitutional amendments, and the Charter of Rights and Freedoms are historic landmarks, and we recognize that fact.

However, there was a very serious flaw in the process, since these decisions were made without the consent of Quebec, without the consent of the government elected by this distinct society.

In 1982, while most Canadians were celebrating, Quebecers were left out.

In 1980, however, Quebecers had said "no" to sovereignty-association and yes to the renewed federalism they were solemnly promised during the referendum campaign.

Some witnesses appearing before the Special Joint Committee of the Senate and the House of Commons pointed out the serious consequences this kind of situation would have in the long run for the unity of this country. Mr. Pickersgill mentioned the ensuing grief and bitterness. I remember this period and from personal experience, I agree.

Robert Stanfield's verdict was that in 1982, we created two Canadas.

Gordon Robertson also gave us a clear warning:

> . . . it is an extremely dangerous situation for the future, if we leave it one in which there is that sense of grievance, frustration, and even perhaps of betrayal.

The recent accord now gives us a chance to heal the wounds and reunite Canada.

As Solange Chaput-Rolland said before the committee:

> It was not until the day after Meech Lake that, for the first time, I felt we had won the referendum.

The accord allows Quebec to take its place within our constitutional family, which I think is extremely important for the country as a whole. It also provides a framework for increased co-operation between the two levels of government.

Honourable senators, I will not elaborate on the provisions the accord contains in this respect. We are all familiar with them. However, I would like to look at some of the repercussions.

I will start with our federal instituions. By giving the provinces the option of proposing candidates for appointments to institutions as important as the Supreme Court and the Senate, the accord reinforces the very nature of our federation.

As far as the Senate is concerned, the accord paves the way for new reforms that may materialize in the second round of constitutional talks. That reform, in fact, provided under the accord.

The desired objective is increased participation by the provinces in the national decision-making process. An initial step has already been taken in this direction, and the tentative provisions set forth in the accord clearly reflect this objective.

In fact, the proposal also reflects what the Fathers of Confederation had in mind in 1867, when they provided that the Senate would be a forum for expressing the concerns of the regions on national issues.

With respect to First Ministers' conferences, about the economy or other issues, the accord has put an end to a problem that has always undermined the harmony of federal-provincial relations.

Until 1985, the federal government alone determined the subject, formula and dates of these conferences. Every time this led to discussions about suitable dates for bringing the First Ministers together.

In the Meech-Langevin Accord, the Prime Minister of Canada and his provincial counterparts have unanimously agreed to meet once a year. The accord thus adds an element of stability and harmony to the relations between our two levels of government.

Constitutional reform can be pursued in an orderly manner, free of past constraints, since the accord provides for an annual constitutional conference.

Exchanges on the immigration question will also take place in a more relaxed atmosphere, since federal-provincial agreements of the kind we have had in the past seventeen years and which have already proved satisfactory will be better protected from now on.

In concluding, I would like to say a few words about the federal government's spending powers.

The accord recognizes the integrity of provincial jurisdiction in shared-cost programs and guarantees reasonable compensation for provinces whose programs, in addition to being adapted to the specific needs of their population, are compatible with national objectives.

Finally, honourable senators, the Constitutional Accord paves the way for a stronger Canada, and it does so in three ways:

First, it enables Quebec to participate without reservations in the future of our country.

Second, it creates a framework for cooperation instead of confrontation between the federal government and the provinces.

Third, the sense of unity between federal and provincial governments will help us to deal better with the challenges the future holds in store.

Honourable senators, for all these reasons I intend to vote in favour of the resolution, in the hope that this personal "yes" will be shared by all members of this chamber, although I do not cherish many illusions about that.

Thank you, honourable senators.

● (1620)

[*English*]

Hon. John B. Stewart: Honourable senators, I listened carefully just now, as I am sure all honourable senators did, to the words of Senator David.

I doubt that there is anyone in this house who questions—certainly I do not—the assertion that Quebec has many distinct features. I applaud the efforts of francophones to maintain their language and culture in North America. There is no disagreement among us on that.

The question is not the end but the means. That is what we are talking about; that is what we are debating. The real question is whether the specific measures in the Meech Lake Accord are the correct ones to support the francophones in Quebec in their efforts.

I suppose that as a layman I might say to Dr. David, "We agree that the aim is to maintain the patient." But I suggest to Senator David—I do not expect him to believe me—that the remedies and procedures recommended to him by the experts, the specialists, in this case may very well endanger the life of the patient. I hope he understands my point, because I mean it in the best of goodwill. There is no notion in my mind that francophones in Quebec are to be suppressed. The truth of the matter is that they are to be encouraged in every productive way. We are to applaud them just as loudly as we can. I speak as a Scot, with not a drop of English blood in my veins. They are to be applauded for doing what we failed to do.

What I am afraid of is that if the Meech Lake Accord prevails we will end up with effectively two Constitutions in Canada. I think the rule with regard to the interpretation of the Constitution, the "distinct society" rule, is defective. It is defective because of its practical implications for Canadian unity.

I have heard the importance of the "distinct society" rule of interpretation dismissed—not in this chamber but outside. It has been argued, "Well, it has only to do with language." But let us look at the section.

The proposed new section 2 of the Constitution of Canada sets forth two new rules of interpretation. The first has to do with linguistic duality. The second says that the Constitution is to be interpreted in a manner consistent with the recognition that Quebec constitutes within Canada a "distinct society." That second rule of interpretation is substantial. It stands on its own. It could stand even if the language duality rule were not there at all.

Clearly, language is a part of Quebec's distinctiveness. But the distinctiveness to be promoted under this rule goes far beyond language. That this analysis is correct is shown by the inclusion of subsection 4 to the proposed new section 2. We are told there that:

> Nothing in this section derogates from the powers, rights or privileges of Parliament or the Government of Canada, or of the legislatures or governments of the provinces, including any powers, rights or privileges relating to language.

● (1630)

The conclusion, then, is that rule 2, the "distinct society" rule, is of general application. Its scope is complete; the rule applies throughout the whole of the Constitution, subject only to the modifications set forth in section 16. However, it may be said that although its scope is wide, its influence does not go deep. That is what we are being told here in Ottawa.

Therefore, we must go back to subsection (4), the non-derogation clause. If we were to read that clause as saying that the division of powers is to be found by the courts to be exactly the same in the future as it has been found to be in the past, then rule 2, the "distinct society" rule, would be a nullity. The courts will not accept that view. The alternative is that when constitutional questions come to be decided in the future, the courts will give the new rule of interpretation its full force in cases involving Quebec. Indeed, the very first question that a judge will have to answer when a case comes before him is this: Does this statute, this regulation, this order, this policy have any effect on Quebec as a distinct society? If it does, the decision of the court may then have to be different where Quebec is involved than it would be if Ontario, New Brunswick or one of the other provinces were involved.

As I understand what has been said, the division of power between Parliament and the National Assembly—and here I am talking about Quebec—remains exactly as it is now in all settled cases. There is no attempt to roll back what has already been settled. However, from the date the Meech Lake Accord becomes law the court will have to take this new rule into account. In other words, in the future in particular cases the decision of the court may be different from what it would have been in the absence of the "distinct society" rule.

Senator Murray was very clear on this last year. On May 7 he was asked:

> When the courts come to consider specific cases involving that distribution of powers . . .

And here I interject, the distribution of powers in section 91 and 92—

> . . . will they or will they not be bound by the new provision that the Constitution of Canada is to be interpreted in a manner consistent with the recognition that Quebec constitutes within Canada a distinct society?

Senator Murray replied:

> Honourable senators, the proposal is that the Constitution will provide in that interpretative clause that the Constitution is to be interpreted in a manner consistent with 'distinct society,' and also what I have summarized in my language as being 'linguistic duality.' The Constitution shall be interpreted. It is not intended to exempt any particular section of the Constitution from that interpretative clause.

He then continued:

> We do not purport to change the distribution of powers, and the courts do not change the distribution of powers. There is a process for changing the distribution of powers.

In political science or in public law a distinction is made between two ways in which constitutions are changed. We talk about the formal process of amendment; we refer also to the informal method of constitutional amendment. What Senator Murray is saying—and now I inflict my words upon him—is that there is no formal amendment with regard to the distribution of powers, but that from the moment this new rule of interpretation becomes part of the constitutional law of Canada a powerful new factor will influence the process by which informal amendment of the distribution of powers takes place.

What is likely to be the result? I have listened carefully to the evidence that we have had from the government to see whether they would put before us a specific example of where they thought this new rule would have an important impact. Honourable senators, we have had not a single example. However, let me propose one. When the validity of the War Measures Act was tested in the Fort Frances case, the judges decided that the "peace, order and good government" clause gives Parliament the right to enact such a statute to deal with an emergency, even though the act authorizes measures relative to matters such as property and civil rights in the province—matters which normally are within the exclusive legislative jurisdiction of the provincial legislature. Now, however, when the new emergency powers statute has been enacted, the court will have to decide whether that statute—which will eventuate from Bill C-77 the new emergency powers legislation which is now before Parliament—is valid generally. That will be the first question, and it will be, I think, pretty easy to answer. The second question that will have to be answered is whether it is valid in the distinct society which is Quebec. In other words, there will be two questions to be asked as to its validity.

In answering the second question the court will have to decide whether the measures taken under Bill C-77 affect detrimentally the distinct identity of Quebec society. At that point the court will have to begin the difficult and prolonged task of establishing the specific characteristics of Quebec.

Honourable senators, what the "distinct society" rule does is this: It opens up the prospect that in some circumstances measures that will be *intra vires* the Parliament of Canada in nine provinces will be *ultra vires* in the province of Quebec.

[Senator Stewart.]

The fact that the rule of interpretation runs both broad and deep is shown by what was said by the Premier of Quebec, Robert Bourassa—who I assure you understands this document extremely well. He said in the National Assembly, and I quote:

> . . . first we must conclude that the distinct society clause is a major victory which is more than sheer symbolism, because henceforth the Constitution of the country will have to be interpreted in light of this acknowledgement. The French language is a basic aspect of this specificity, but there are others such as culture as well as political, economic and judicial institutions. As we have said on a number of occasions we did not want to be more precise so as to avoid reducing the role of the National Assembly in promoting this specificity . . .

However, honourable senators, we really did not have to rely upon the Premier of Quebec for that information, because the Joint Committee of the Senate and the House of Commons in its report talks about the distribution of powers. At page 45 of its report the committee deals with this very point in a very revealing manner. I quote from page 45 of that report:

> . . . the Joint Committee was advised that the definition of the scope of a legislative power is an ongoing process of allocating subject matters to heads of jurisdictions. Take, for example, the regulation of markets for financial securities. Would such a law be classified as an aspect of the federal 'trade and commerce' power, as some say, or of 'property and civil rights' within exclusive provincial jurisdiction, as others contend? And what about a new law purporting to regulate the content of radio or television broadcasting? As new laws are made and challenged before the courts this process of classification of laws into federal or provincial jurisdiction continues.

A sentence or two later, they say:

> The ongoing process of the constitutional "classification" of laws by the courts is one of the important areas where the interpretative provisions of the "linguistic duality" and "distinct society" clauses will come into play. Indeed, if this were not so, then the "linguistic duality" and "distinct society" interpretative provision would be meaningless, a result that can hardly have been intended by its framers.

• (1640)

They then go on to talk about the peace, order and good government clause, what is often referred to as the "residual power." There they quote no less an authority than Senator Murray. He is quoted as having said the following:

> . . . the powers that accrue to the federal Parliament by virtue of the peace, order, and good government clause are every bit as explicit and as safe as any of the other heads of powers that are enumerated in the old *Constitution Act of 1867*.
>
> I will ask the Deputy Minister of Justice whether he would like to add something in a more complete and professional way to this statement.

Then Mr. Iacobucci is quoted as having said:

> There is nothing I could usefully add. I believe it is the analysis we have advised the government on.

Then our joint committee formed its conclusion as follows:

> The net result of the advice received by the Joint Committee is that federal powers are "safe" but that they continue to be subject to judicial interpretation and evaluation. The possibility, therefore, exists that the affirmation in section 2(3) of the role of the government and legislature of Quebec "to protect and promote" Quebec's distinct society could be used by the courts to *interpret* the distribution of powers in a way not precisely the same as these powers would have been interpreted if the "distinct society" clause were not part of the constitutional mix.

I smile at the sly use of the expression ". . . not precisely the same . . . ," because whether the interpretation will be precisely the same or very far different will depend on the meaning of the expression "distinct society," and that has not yet been revealed.

Senator Murray has told us that he has no definite meaning in his mind when he uses this expression. Indeed, he has sought to turn the ambiguities of the rule, the fact that it provides "no precise terms and ground rules"—an expression he used yesterday in recommending precise terms and ground rules—into a great strength and virtue. So now we have a new maxim for constitution writers: Be vague; be ambiguous; fly from precision; avoid establishing a rule of law, for a rule of law will foster predictability. Do not tie the judges' hands with law; rather, rest the future of the country on the unfettered discretionary power of the judges. What Senator Murray has given us as a new rule for constitution-makers, we might call, I suppose, "Murray's rule." Alternatively, we might call it "the rule of constructive ambiguity."

Senator Flynn: That is very humorous.

Senator Stewart: Unlike Senator Frith, Senator Murray is a modest man.

Senator Frith: Senator Frith? You are right, but I do not think that you meant me.

Senator Flynn: That could not be applicable to you.

Senator Frith: It certainly could, but I do not think he intended it to apply this time.

Senator Stewart: In any case, Senator Murray is a modest man. The Fathers of Confederation—I mean the 1867 version—were very wise men. Senator Murray told us that yesterday. They applied "Murray's rule of constructive ambiguity," Murray says, but not as a maxim for, as a maxim, it was unknown to them; rather, they applied it from a kind of subconscious political instinct.

On March 31, 1988, Senator Murray said that long ago he was taught that the experience of a number of countries where constitutions were precise was that such constitutions did not last very long or, at any rate, were not very successful. He went on to say:

> In 1867 the Fathers of Confederation set down "peace, order and good government," without much further elaboration. They left it to succeeding generations of Canadians and to the courts to interpret what that meant. The same applies to "property and civil rights."

Well, Senator Murray is wrong.

Senator Murray: I used some other examples as well.

Senator Stewart: Senator Murray is saying that he is wrong on the examples I have quoted. The truth of the matter is, wisely or not, the Fathers of Confederation did seek precision. The expression "peace, order and good government" was an old expression in the law in 1867. In fact, that expression was first used, as far as I can ascertain, on October 26, 1689. I quote from the Report Pursuant to Resolution of the Senate, 1939, which states:

> The Royal Proclamations, the commissions of all colonial governors, the constitutional statutes of colonies, in so far as any of these related to the making of laws, all ran in the same terms. Up to 1867 the sole source of jurisdiction to enact any kind of statute of the provinces which entered Confederation was a Royal Proclamation or Commission or an Imperial statute authorizing the making of laws for the peace, *order* and good government or for the peace, *welfare* and good government of the colony concerned.

There was nothing ambiguous in Lord Thring's mind and in the Fathers' minds when those words were used in section 91 of the British North America Act.

Senator Flynn: Not in relation to the division of powers. It is not the same thing at all.

Senator Frith: You have not listened to what was said about it.

Senator Stewart: Similarly, the property and civil rights provision in the division of powers was not new in 1867. It was not a vague and ambiguous term. It was used in section 8 of the Quebec Act where it was provided that ". . . in all matters of controversy, relative to property and civil rights, resort shall be had to the laws of Canada as the rule of decision of the same . . . ." These were not instances in which "Murray's rule" was applied.

But Murray was wrong in a second way; and he was wrong in a far more important way.

Senator Flynn: You have not been right up to now.

Senator Frith: No, Murray has not.

Senator Stewart: The truth is that the new "distinct society" rule has not been abandoned as a shapeless block of marble. The sculptors already have been appointed. Under subsection (3) of the proposed section 2, the legislature and the Government of Quebec are to be assigned the duty of preserving and promoting a distinct society. Part of their obligation as they perform their constitutional function will be to define the meaning of that term. Every judge will be most reluctant to overrule, to second guess those who functionally have the important constitutional responsibility of promoting the dis-

tinct society. Does anybody believe that the Supreme Court of Canada will set itself up as the master, the custodian, the second-guesser over the National Assembly of Quebec in performing its constitutional role under subsection (3) of section 2? Nobody really believes that.

The egregious error of this part of the Meech Lake Accord is, first, that it imposes too heavy a burden on the legislature and Government of Quebec, a burden falling little short of self-determination. The second egregious error is that it imposes an insuperable burden on the Supreme Court of Canada, the burden of acting as the Almighty reining in and superintending the promotion of the distinct society in Quebec. I submit that the Supreme Court of Canada will not undertake to perform that function in any way comparable to the way it passes on ordinary statutes.

Honourable senators, I come now to my second topic. I shall not take up as much time on it, and I hope that I will not agitate honourable senators opposite as much as I did earlier. I have Senator Flynn particularly in mind. I want to say a word or two about the proposed new section on shared-cost programs.

Senator Flynn: I wasn't too sure where you were going.

Senator Stewart: I am sure you had no idea where I was going.

Senator Frith: I agree. He didn't follow you at all.

Senator Flynn: May I ask a question?

Senator Stewart: Certainly.

Senator Flynn: Were you saying what you were saying about the distinct society because you oppose the insertion of these words in the motion?

Senator Stewart: I thought I had made my position very clear—

Senator Flynn: You're against it.

Senator Stewart: —at the beginning. You weren't listening.

Senator Flynn: You didn't say that you were opposing it.

Senator Stewart: I propose to support the amendments that have been moved.

Senator Flynn: But then you will be supporting the "distinct society" concept. I do not know how you can read it otherwise.

Senator Stewart: Senator Flynn, it should be—

Senator Flynn: Read it! It is there!

Senator Stewart: You can read it yourself! Certainly I have read it! To have only two rules of interpretation is one thing, but to put those rules in the context of a set of several rules changes the interpretative significance greatly. An isolated mountain peak is far different from a peak in a range of mountains. The senator is a distinguished lawyer, and he knows very well what he is trying to do!

Senator Flynn: But I don't know what you are trying to do!

Senator Stewart: I know what he is trying to do. He is trying to obfuscate.

Senator Flynn: "Obfuscate," what's that?

Senator Frith: O-b-f-u-s-c-a-t-e, that is the word. You can look it up, too!

Senator Stewart: I don't think it is an unparliamentary term.

Honourable senators, I do not want to delay the house, so let me go on. I am sure that Senator Flynn does not want me to delay the house either, but perhaps I will put in a footnote. Senator Flynn is really trying to delay us. He has been providing a kind of shrill obligato all afternoon. He has not done this for many months; now he is back to normal.

Senator Flynn: I have to have good health to listen to you!

Senator Stewart: He has done the same thing with every speaker on this side. I suppose that simply tells us where he sits.

I want to say something about shared-cost programs, because they are important to the part of the country from which I come. The shared-cost programs have been of great value. I refer to shared-cost programs such as the early old age pensions, the TransCanada Highway, hospitalization, Medicare, and even federal assistance for post-secondary education during one phase of its evolution.

Let us remind ourselves of what happens under the present Constitution. Ottawa proposes the establishment of a shared-cost program for a particular purpose. It offers to pay the government of every participating province a part of the cost. Unless a special opting-out provision is included, any provincial government that decides not to establish a program conforming to the federal standards and principles is ineligible for a payment in relation to that program. But the effect of the proposed new section 106(A) will be to restrict the spending power. The federal Parliament is to lose its right to set national principles and standards.

What will happen? I think two things can be anticipated. First, eligibility for compensation will depend on having a program or an initiative compatible with the national objectives. In other words, eligibility is to depend upon compatibility of ends. The means may be entirely different in each of the ten provinces, but if the ends are the same the provincial government gets the money. The terms "balkanization" and "cantonization" have sometimes been used to describe the result. Second, there will be no assurance that the provincial government will support its program or initiative with much money from its own revenues. We know what has happened in the case of post-secondary education.

The response to these criticisms has been that if the federal government does not like what the provincial governments are prepared to do, they can abandon the proposal to establish the program. As Senator MacEachen said yesterday, that is what we fear. We are afraid that when the federal government brings in proposals for new shared-cost programs or proposals to update, for example, hospitalization and Medicare—as the

Canadian Nurses Association told our committee, they will have to be updated—they will become discouraged by the unwillingness of the provincial governments to agree to common standards and principles.

Senator Murray: But those examples are not potential shared-cost programs.

Senator Stewart: That is a point that can be debated. I understand what the honourable senator is saying. He is saying that any changes to these programs will simply be revisions; however, I think we can anticipate that if the revision is a considerable one, some provincial governments will say, "Look, let's be candid. This is really a new beginning." I think in candour the senator will admit that that is an argument that will be made. Certainly the Canadian Nurses Association and Doctor Al Johnson indicated that it is a line of argument they anticipate provincial governments will adopt.

As a representative from Nova Scotia, a province which has benefited greatly from shared-cost programs, it would be unthinkable if I did not register my protest against what I regard, perhaps incorrectly, as a rich-province attempt to cut down, to pare away the effective spending power of the Parliament of Canada.

Now, I would like to really go to the east coast and to say a word about the inclusion of roles and responsibilities in relation to fisheries on the permanent agenda for the constitutional conferences. Senator Murray has told us that the term "roles and responsibilities" is broader than jurisdiction. We ought not to assume, he implies, that what is contemplated is an amendment relating to fisheries jurisdiction. What is he suggesting? Is he suggesting that constitutional amendments relating to the construction and repair of wharfs, dredging, the provision of ice for cooling fish are the matters to be discussed? If he thinks that these are the topics that will be put forward for potential constitutional amendments, may I suggest he call Brian Peckford right away. Permanently on the table in every negotiation relative to constitutional amendments—whether unanimity is required or whether the amendment is one that could be made under the seven provinces rule—will be the question of fisheries jurisdiction. The Meech Lake Accord deals the Premier of Newfoundland perhaps not the ace of spades but a very high card. Nova Scotia fishermen say that the early gull gets the fish. In this instance, the Premier of Nova Scotia was not an early gull; he seems to have been gulled.

● (1700)

The proposal in the amendments deals appropriately with this error. It does not erase the reference to roles and responsibilities in relation to fisheries—that would be too much to ask of Premier Peckford—but they will take the fisheries question off the table after one year.

Senator Frith: That it does not necessarily have to be on the agenda.

Senator Stewart: They will not automatically be on the table. That's the point.

Senator Murray: What if they want to discuss it?

Senator Stewart: They may want to discuss many things. Senator Murray is an experienced politician. One of the problems of putting this permanently on the agenda is that any Premier of Newfoundland coming to a negotiation for constitutional amendment will have to go back home with something to show on this line, whether or not he really thinks it is a price which he ought to exact for agreeing to other amendments. That is the political problem that this amendment will raise for any Premier of Newfoundland in the future. And, of course, the Premier of Nova Scotia will be in the position of having to refuse any amendment along those lines—and we understand the kind of stalemate—

Senator Murray: They have discussed it at virtually every constitutional conference in the last decade.

Senator Stewart: I thought that you were now launching a new and productive chapter. You lead us to expect that in the future these discussions will produce amendments.

I come now to what I think will be the general effect of the Meech Lake Accord. The Honourable Eric Kierans told the joint committee that this accord:

> ... is the closest that we have come to following the original intent and meaning of the British North America Act.

Well, if the Meech Lake Accord embodies the original intent and meaning of the British North America Act, the Fathers of Confederation certainly failed to make evident their intent and meaning. They gave the Parliament of Canada the plenitude of power and then subtracted the specific matters listed in section 92. They gave the Parliament of Canada an unlimited power to tax. They gave the Parliament of Canada an unlimited power to spend. They gave the Parliament of Canada the declaratory power. They gave the Governor in Council the right to appoint the governors of the provinces. They gave the Governor in Council the right to appoint the judges of all provincial courts at or above the County Court level. They gave the lieutenant governor the power to reserve provincial bills. They gave the Governor in Council the power to disallow provincial statutes.

Here Mr. Kierans is wrong and Senator Murray is right. According to Senator Murray, the general purpose of the Meech Lake Accord is to take a giant step toward putting the intentions of 1867 far behind us. There is to be a transformation. Instead of being, as the Constitution Act, 1867 states in section 3, one nation, Canada—the language in the statute is "One Dominion", an outmoded term—with certain legislative powers assigned to Parliament, and certain other legislative powers assigned to provincial legislatures, Canada is to be a union of provinces. We are to be provinces united.

Senator Murray made the aims of the government clear on March 31. At that time he was talking about the way in which, under this accord, we would select our senators and members of the court. He said, at page 3051:

> It is exceptional that the federal government should be under no legal obligation to consult the governments of the member States or any other authority when the time comes to appoint Supreme Court judges or senators.

That is a very carefully contrived sentence, but the implication is clear, and the rest of the Meech Lake Accord is entirely consistent with that implication.

Then, on the same day, he summed up. At page 3055, he said:

> The Meech Lake Accord will help transform our Constitution, a document which, with limited change, has served us for 120 years. It will help transform it into a more authentically federalist document.

Take that, Kierans! He goes on to say that he believes that the new Constitution will be more in accord with current Canadian conceptions.

The total effect of the Meech Lake Accord will be to reduce the ability of the power of the Parliament of Canada and the Government of Canada to act on behalf of all Canadians. That may be an attractive prospect for politicians from the rich provinces—all those provinces that were enriched by gifts of territories endowed with natural resources made to them unilaterally by the Parliament of Canada. That may be acceptable to such politicians. It may be acceptable to rich provinces such as Alberta and Saskatchewan, who would never think of asking for federal funds for farmers, as Senator Argue and Senator Olson are constantly telling us.

It is a dismal prospect, however, for the people of Nova Scotia, who joined Canada in 1867, very reluctantly, on the assumption that Canada would have a Parliament and government competent to advance the national interests of all Canadians, including Nova Scotians.

In 1867 Nova Scotia was shanghaied into Confederation by a Tory majority in the Nova Scotia Legislative Assembly, without a mandate to do so. That inaugurated some 70 years of complaints, grievances and protests. Since 1945 those complaints, grievances and protests have died away. They have died away because, since about that date, the Parliament of Canada and the Government of Canada have been prepared to use their powers—those left with them by the Judicial Committee of the Privy Council—in ways beneficial to the people of Nova Scotia and the other Atlantic provinces.

It now appears that another Tory majority, without a mandate on this important matter, is determined to weaken the powers of the Parliament of Canada and the Government of Canada. They seem determined to move Canada toward the very model of federalism that Sir John A. Macdonald warned us to avoid. They want to move us toward the model of federalism, weighed and found wanting and rejected emphatically by our American neighbours. How ironic it would be, honourable senators, if the theory of federalism embraced by the Southern Confederacy some 125 years ago were to triumph in Canada in 1988!

● (1710)

Some Hon. Senators: Hear, hear!

[*Translation*]

Hon. Martial Asselin: Honourable senators, it is not an easy task to follow Senator Stewart with his learned statements about various legal aspects. Although he wanted to prove, with some very polished legal arguments, that a distinct society cannot exist under our present legal system and conventions, the fact remains that no one since the beginning of Confederation has denied the existence of a Quebec, different from the other provinces. I would say to my friend Senator Stewart that the facts are always ahead of the law.

In this case, the Canadian government and the provinces wanted to give this particular fact a legal framework through the Meech Lake Accord.

The term distinct society does not give Quebec more rights or privileges. It merely restates a Canadian fact of life. The term distinct society, as Senator David said earlier, defines and reaffirms the existence of a community consisting of a majority of French-speaking Canadians.

This community has its own history, institutions and culture, its own way of life, its own outlook and its own values. The members of this community have developed a strong sense of identity.

For many years, in fact for generations, this sense of identity in Quebec led to a subsequent withdrawal from the outside world of a community exhausted by the constant struggle to safeguard and stand up for its rights. Then one day came the Quiet Revolution and the need to meet the challenge of modern technology and economics. Suddenly Quebecers felt this immense urge to take their place in a world that would challenge the traditional structures and institutions of Quebec society, and more than ever before, the place of Quebec society within Confederation.

My friends, Quebecers were delighted in 1980 when they were told about constitutional reform, the changes that would take place, and the promise that if they voted no in the referendum, very substantial constitutional changes would be made.

The mood quickly changed when the Canadian Constitution was patriated without Quebec's participation. I will not get into the historic debate that took place in this chamber on the patriation of the Constitution.

Suddenly, Quebec was isolated, and throughout this period we felt almost like outlaws, living on the fringes of our country's Constitution.

We had to wait for Brian Mulroney to regain the trust of Quebecers with the Meech Lake Accord. And now, despite the long way we have come, there are still people who refuse to acknowledge the Quebec situation because they are afraid that under the accord Quebec will be able to obtain more rights within the Canadian federation. This is really beyond me.

When the Meech Lake Accord was signed, the Premier of Quebec, Mr. Robert Bourassa, stated that he was proud to be a Canadian, to be a citizen of a country whose national unity had just been reinforced.

The Prime Minister of Canada said that it was a very long time since we heard that kind of statement from a Quebec Premier.

Other Quebecers also proclaimed their Canadian patriotism to borrow a phrase from Mr. Trudeau, after the Meech Lake Accord was signed. Solange Chaput-Roland stated before the Special Joint Committee of the Senate and the House of Commons, and I quote:

> The Meech Lake agreements have not gone unnoticed in the province of Quebec. Those 60 per cent of Quebecers who voted no to independence and yes to Canada felt it in their hearts and in their souls . . . Since the signing of the Meech Lake Accord, I feel I am becoming more and more Canadian.

In 1982, Canada was split in two, as Robert Stanfield said before the Special Joint Committee of the Senate and the House of Commons. Today, thanks to the 1987 Accord, we have one Canada and one Canadian nation.

The Meech Lake Accord ends the constitutional isolation of Quebec, a situation that Gordon Robertson qualified as "extremely dangerous", and the feelings "of injustice, frustration and even betrayal" which according to Mr. Robertson were caused by the 1982 Accord.

Thanks to the Meech Lake Accord, Quebecers have now become full-fledged members of the Canadian federation.

There are those who claim that acknowledging the distinct identity of Quebec has brought us closer to the two nation concept and will one day lead to sovereignty association.

Honourable senators, these people do not know the historical, social and political reality of Quebec.

The Meech Lake Accord recognizes and reflects the Quebec reality.

It also puts it in context. Not only does the accord recognize Quebec's distinctness but it also places it in the broader context of Canada's linguistic duality. The Special Joint Committee rightly pointed out:

> What is described as "a fundamental characteristic of Canada," the existence of linguistic minorities, that is French-speaking Canadians concentrated in Quebec but also present in the rest of the country and English-speaking Canadians concentrated in the rest of the country but also present in Quebec . . .

Quebec's specificity must therefore be understood within the context of this linguistic duality of Canada, this recognition that French-speaking Canadians are present everywhere in the country and that English-speaking Canadians are also present in Quebec. That is the Canadian reality!

This linguistic duality is Canadian and Parliament and all provincial legislatures, including Quebec's, are to protect it.

The Special Joint Committee stressed the importance of the role that from now on falls to every government in the country. In its report, we read:

> Equally significant is the situation in which the other provincial premiers found themselves. They went to Meech Lake to deal with the issue of Quebec as a distinct society . . .

That was the main reason for the provincial premiers to go to Meech Lake.

> . . . they returned home with the commitment to enshrine in the Constitution the obligation to protect French-language minorities in their provinces. They agreed to recognize exclusively the presence of these minorities as a fundamental characteristic of Canada.

Obviously, the Saskatchewan government's reaction to the Supreme Court decision dashed some of our hopes.

As President of the International Association of French-language Parliamentarians, I took it upon myself to send a letter to the Premier of the Province of Saskatchewan, the Honourable Grant Devine, in which I said:

> As President of the International Association of French-language Parliamentarians, I must draw to your attention the serious consequences that the bill concerning the use of French could have for Saskatchewan's francophones and French Canadians in general and the survival of the French language.
>
> May I request that you speak on my behalf to your government for it to reconsider this initiative.

This is an important problem for the survival of French culture in the English provinces. I think that everything necessary should be done to solve it as quickly as possible.

So one of the effects of the accord is to integrate the distinct society of Quebec in this fundamental characteristic, Canada's linguistic duality, at the same time making it a vital element of the distinct character of Canada.

The accord also maintains legal equality among the provinces without prejudice to the Charter of Rights and without in any way reducing the legislative powers of the federal government.

According to Queen's University Public Administration School Director Richard Simeon, and I quote:

> Of all the means we could have chosen to represent the distinct character of Quebec in our federal institutions, those which have been used in the Accord seem to represent the smallest challenge to the other important values of Canadian federalism.

Other people have also rejected the suggestion that the Meech Lake Accord puts us on the slippery slope towards two nations. Honourable senators, simply read what Mr. Robert Stanfield had to say before the special joint committee. Here are some of his remarks:

> I do not see anything in the Accord which puts us on that slippery slope towards two nations . . .

He said.

> . . . On the other hand I believe we were led to a dangerous slope after 1982 . . . If the negotiated accord is rejected we will again find ourselves on that slope. As I see it, that is the slippery slope about which we ought to be concerned.

Let us not forget either that when Quebec was excluded from the constitutional family of 1982 the National Assembly

of Quebec refused to accept the legitimacy of a Charter of Rights and Freedoms which was imposed without its consent and which reduced its powers.

While some Canadians were bound to the Charter, others were exluded. That is why at the beginning my remarks, I said that we looked like outlaws before the Canadian Constitution. In that context, the Charter could not help promote a system of common values and therefore reinforce our national unity.

Honourable senators, thanks to the Meech Lake Accord, Quebec accepts fully and willingly, without any deletion or modification, the Canadian Charter of Rights and Freedoms as well as the whole Canada-oriented set of values described therein.

In short, the Meech Lake Accord recognizes the Quebec reality, sets up a Canada-wide definition of our linguistic duality which makes room for Quebec as a distinct society, gains Quebec's acceptance of the Canada's constitutional and social set of values, and secures Quebec's full participation in the Constitutional renewal process.

In my opinion, therefore, the Meech Lake Accord can only contribute to our national reconciliation and strengthen our unity.

● (1720)

[*English*]

Honourable senators, I believe that the accord represents an historic achievement for Canada and Canadians. It repairs the damage done to national unity when Quebec was left out of the agreement which led to patriation of the Constitution and it makes us a stronger country.

I agree with the joint committee that to provide in the Constitution that Quebec constitutes within Canada a distinct society is to recognize a fact, not a right or a power. Moreover, the wording makes it clear that Quebec's distinct society is part of a larger entity—Canada. The federal government alone will continue to exercise the international personality of Canada and to represent the interests of Quebec, as it does those of the rest of the country.

That said, as a result of international arrangements negotiated by Canada, Quebec already enjoys the status of participatory government within the Agency for Technical and Cultural Co-Operation and within the Summit of Francophone Nations. Quebec has every reason to see in the Constitutional Accord a confirmation of this acquired status, which it exercised very effectively at the recent meeting of francophone countries in Quebec City and which can only serve to enrich Canada.

In the National Assembly, on June 19, Gil Rémillard said that Quebec:

> . . . has been acquiring a greater role in international relations while respecting the federal government's jurisdiction over external affairs.

Mr. Rémillard added:

> It is Canada, as a sovereign country, which sets the framework for action by its policy in external affairs.

[Senator Asselin.]

[*Translation*]

Honourable senators, our friend the Leader of the Opposition in the Senate mentioned the danger that Quebec, while exercising its rights at the international level, might encroach on the rights and powers of the federal government to exercise its exclusive jurisdiction over international matters. I wish to remind my honourable friend, Senator MacEachen, that the agreement which makes it possible for Quebec from time to time to play a role on the international scene was there thanks to the umbrella provided in 1964 by the Right Honourable Lester B. Pearson. Honourable senators will remember, I think, that Honourable Senator MacEachen was then a minister in Mr. Pearson's Cabinet.

This agreement made it possible for Quebec to intervene in areas of its own jurisdiction on the international scene, while respecting Canada's sovereignty and exclusive jurisdiction in foreign policies.

That is what happened at the time and this is what happens again whenever Quebec participates in a Francophone Summit. It operates within the federal delegation and takes initiative only in matters of provincial jurisdiction.

I insisted somewhat on this argument because people might think that the Meech Lake Accord provided Quebec with new powers at the international level, while reducing the federal government's sovereignty and exclusive jurisdiction in foreign matters.

Honourable senators, this is the way I understand the Meech Lake Accord which will give Quebecers a new feeling of belonging to the Canadian federation.

Whatever their political affiliations, Quebecers in this Parliament cannot remain indifferent or insensitive to this constitutional development. Thank you very much.

[*English*]

Hon. Michael Kirby: Honourable senators, in my remarks on the Meech Lake resolution I would like to deal with three separate topics.

I would, first, like to show that the government is wrong when it claims that the Meech Lake Accord is a natural outgrowth of the constitutional amendments agreed to by the federal government and nine provinces in 1981. In fact, I will show that the Meech Lake Accord reflects a vision of Canada which runs entirely counter to the vision reflected in the 1981 constitutional amendments. The real truth, as I will establish in a moment, is that the Meech Lake Accord reflects the Conservative Party's vision of Canada while the 1981 amendments reflect the Liberal Party's vision of Canada.

Second, I would like to comment on three specific elements of the Meech Lake Accord which I find particularly offensive. While it would be easy to criticize virtually all elements of the accord—and, indeed, speakers in this house have already done so yesterday and today—I will limit my remarks to three items on which I have had considerable personal experience and which I believe are illustrative of the badly flawed premises on which the accord is based.

Third, I will comment briefly on the amendments to the Meech Lake resolution which have been introduced by the Leader of the Opposition in the Senate and point out why they make the resolution more acceptable to those of us who passionately believe in the vision of Canada, which has long been the basis of Liberal Party policy and which has long been supported by most Canadians.

First, then, let me turn to the issue of what I have called two competing visions of Canada. During the federal-provincial constitutional debate of 1980-81 two sharply conflicting visions of Canada were evident. One vision was supported by the federal government and the Conservative governments of Ontario and New Brunswick while the other vision was supported by eight other provincial governments.

To understand these two sharply differing and conflicting visions one need look no further than the two different preambles to the Constitution which were proposed during those negotiations. The federal preamble was based on the premise that the basic unit of Canadian society is the individual. Indeed, it began with the words: "Parliament and provincial legislatures, and various governments and their agencies, shall have no other purpose than to strive for the happiness and fulfillment of each and all of us."

The view of the group of eight provinces who opposed the federal government and the Governments of Ontario and New Brunswick was that it was the provinces, or more precisely provincial governments, which were the ultimate source of Confederation. Thus, during those negotiations in 1980 and 1981 they proposed a preamble that included the words: "The provinces of Canada choose to remain freely united." In this vision of Canada it is the provincial governments, not the people, which are seen to make up the country, and it is the provincial governments which are seen to be the basic unit of Confederation.

The Meech Lake Accord reinforces this provincial compact theory of Confederation, this provincial compact view of Canada, in the following ways. Let me give you an example. By including the so-called "distinct society" clause and refusing to ensure that this clause will not impinge on any rights which are now guaranteed in the Constitution under the Charter of Rights, the Conservative federal government is saying, in effect, that the rights or powers of provincial governments are more important than the rights of individual citizens.

The Meech Lake Accord reflects, therefore, a vision of Canada which is precisely the opposite of the vision which underlies the 1981 constitutional amendments.

It is hardly surprising, however, that a Conservative government should support this view of the role of the Province of Quebec in Confederation or, indeed, this vision of the nature of the Canadian federation. For example, it has been a long-standing view of previous Conservative leaders.

Consider the fact that Robert Stanfield, when he was leader of the Conservative Party in the federal House of Commons, supported what was in those days called the "two-nation" theory of Confederation. His successor, Joe Clark, both when he was Leader of the Opposition and then as Prime Minister, argued that Canada was—and these are his words, not mine—a community of communities. Thus, both of Prime Minister Mulroney's predecessors as leaders of the federal Conservative Party have argued for a form of special status for Quebec and a form of the provincial compact theory of Confederation.

Moreover, this view of the nature of Confederation—this vision of Canada—has also been articulated on many occasions by Conservative premiers across the country. Let me give you two examples. Former Premier Lougheed, speaking on behalf of his fellow premiers at one of the constitutional conferences in 1980, said:

> We view Confederation as a compact.

Premier Peckford has said that the federal government was "the agent of the provinces . . . and not the other way around."

What these statements by both former federal Conservative Party leaders and Conservative premiers show is that the Meech Lake Accord is a clear reflection of the long-standing Conservative Party vision of the nature of Canada and the nature of Confederation.

It is precisely this vision which was rejected overwhelmingly by the federal government of Prime Minister Trudeau and by the Conservative premiers of Ontario and New Brunswick in 1981. It is therefore completely misleading to suggest, as Conservative spokemen, including the Leader of the Government in the Senate, have on occasion suggested, that the Meech Lake Accord is a natural sequel to the 1981 constitutional agreement. In fact, it reflects exactly the opposite vision of Canada.

Let me give you one other illustration of this difference between the competing visions of Canada. One need only look at the statements the government has made respecting the immigration clauses of this agreement to realize how completely the federal government has accepted the provincial compact theory of Confederation.

The federal government has said that in the future the Government of Quebec and, indeed, the government of any other province, if it so chooses, will have the power to provide all services which new immigrants to Canada receive. These services will no longer be supplied by the national government. Thus, new immigrants settling in Quebec will be taught that they are citizens of Quebec rather than citizens of Canada living in Quebec. This will inevitably lead to immigrants thinking that they are provincial rather than Canadian citizens.

This vision of Canada and of the nature of the Canadian federation, as I have said, runs exactly counter to the vision that was put forward, and which many of us in this Chamber fought so hard for, in 1980 and 1981.

A second major difference in the vision of Canada reflected by Meech Lake and the 1981 constitutional agreement can be seen in the way both agreements deal with the issue of the degree of protection to be offered to members of minority

language groups in a province. The federal government's position in 1981 was that the basic bilingualism of Canada must be affirmed in the Constitution and that minority language rights arising from that bilingualism must be protected everywhere in Canada.

The parliamentary supremacy argument of the premiers in 1980 and 1981 led them to the conclusion that their legislature and, hence, the language majority group of the province had the right to determine language policy in that province. Thus, the premiers of that day concentrated their attention on protecting the power of the language majority, whereas the federal government, helped by the Governments of Ontario and New Brunswick, made the language minority group the focus of their constitutional position.

This issue of the language rights of the majority versus those of the minority has been dealt with in the Meech Lake Accord. What we find in the accord is a position which requires that the Government of Quebec "preserve and promote" the French language in that province, but in the other nine provinces the only requirement of provincial governments is that they "preserve" the rights of francophones, the minority language group.

Recent action by the Governments of Alberta and Saskatchewan show how little they are committed to even preserving the language rights of francophones in their provinces. Indeed, Bill 2, which was recently introduced in the Saskatchewan legislature, does not preserve rights which the Supreme Court has said francophones in that province have had ever since Saskatchewan became a province. It is very clear that Bill 2 in the Saskatchewan legislature runs counter to both the letter and the spirit of the Meech Lake Accord.

If this is an example of what Prime Minister Mulroney has repeatedly called the spirit of Meech Lake, then the future rights of minority language groups in Canada are in trouble. Clearly the Meech Lake Accord has accepted the underlying premise of the group of eight premiers who opposed the federal government's constitutional position in 1980 and 1981, namely, that the role of government is to protect the power of the language majority rather than protecting the language minority group from the tyranny of the majority. As a result, the Meech Lake Accord supports the duality vision of Canada rather than the bilingual vision of Canada, which was a fundamental premise of the Liberal Party's position in 1980 and 1981.

Meech Lake is based on a vision of Canada which is almost certain, over time, to lead to a unilingual French Quebec and nine other unilingual English provinces. Meech Lake, as one would expect from a Conservative government, is based on a two-nation duality vision of Canada which is exactly counter to the thrust of the entire debate and all the amendments of 1981. Thus, with respect to the way it treats minority language rights, the Meech Lake Accord, far from being a natural sequel to the 1981 amendments, as the government has suggested, tries to at least partially undo what was accomplished in 1981.

[Senator Kirby.]

Again, it should be noted that the vision of Canada which is reflected in the Meech Lake Accord has long been a vision supported by members of the Conservative Party. To see this we only need to note some of the comments which government members in the other place are making with respect to language legislation which is now before that chamber. What, in fact, has happened is that Meech Lake has once again catered to the narrow views of a considerable number of members of the Conservative Party.

● (1740)

A third element of the federal government's vision of Canada during the 1981 negotiations involved the balance which should exist between the degree of local diversity and the degree of national community in Canada. The federal government's belief was that Canada is a national community which respects diversity, indeed, extols pluralism, protects the rights of the individual and the collective rights of its citizens. But the Liberal vision also was that Canada is more than the sum of its parts; that it is far more than merely a community of communities.

The Liberal view also was that there were national values and characteristics which were more important and should override a blind commitment to provincial diversity and, in particular, a blind commitment to provincial legislative autonomy. This is why the federal Liberal government fought so hard for an entrenched Charter of Rights and why it opposed—and why the Liberal Party still opposes—the notwithstanding clause in the current Canadian Constitution.

The perspective of the eight provinces which initially opposed the repatriation of the Constitution in 1980—a perspective which I have said reappears again and again in the Meech Lake Accord—was the overriding importance of local diversity in contrast to national values.

Indeed, in 1981 the eight provinces that opposed the Charter of Rights did so mainly because they felt it would constrain their ability to be different from other provinces, and also because this ability to be different was more important to them than the national values which the Charter would put into effect from coast to coast in Canada.

The view that Canada is more than the sum of its parts, that there is a national interest which is distinct from and, indeed, greater than the aggregation of regional interests, is fundamental to the Liberal vision of Canada, and was fundamental to the position which the federal government took in 1980 and 1981. That is why the Liberal government of that day fought for an entrenched Charter of Rights which defines common values for all Canadians. That is why the Liberal government of that day insisted upon a constitutional commitment to equalization. That is why the Liberal government of the day promoted mobility rights and why it argued that as a member of the national community every Canadian has the right to pursue a living, take up residence, and receive a comparable quality of basic public services anywhere in Canada.

Indeed, this belief that certain kinds of public services—such as the issue of Medicare and medical services which has

been raised here today—should be available under similar terms and conditions anywhere in Canada was precisely the reason why, in 1981, the amendments made it clear that the provinces that chose to opt out of constitutional amendments in the future were not to be given fiscal compensation for that decision.

The Liberal government in that day, and the Liberal Party today, firmly believes that giving fiscal compensation to the provinces will simply encourage them to opt out of future national cost-shared programs and thus weaken the pan-Canadian nature of future services which should be provided to all Canadians on a truly national basis and, equally importantly, at a national standard of quality. The Liberal government in 1981 believed that uniformly administered cost-shared programs were a major part of the social contract that binds Canadians together.

The current Conservative government, however, in its rush to give the provinces everything they wanted in the Meech Lake Accord, and in its rush to embrace the provincial compact theory of Confederation, has ensured that there will never again be established in Canada a truly national cost-shared program. The Meech Lake Accord establishes, once and for all, that local variation and, above all, provincial paramountcy and power are more important than national services provided with a national standard of quality, particularly in the social policy area.

Liberals have long believed that a comparable quality of service, particularly essential services such as, for example, daycare, should become in the years ahead an integral part of being a Canadian citizen. Services of comparable quality should—indeed, must—be available to every Canadian. The level or quality of service should not depend on the province an individual Canadian happens to live in. For this reason the Liberal Party has strenuously argued for, and, indeed, will continue to fight for in the future, national programs which are comparable not only in their objectives but also in the quality with which they are delivered to the individual citizens of this country.

By offering fiscal compensation to any province that chooses not to participate in a national cost-shared program the federal government has absolutely ensured, through the Meech Lake Accord, that this aspect of Canadian citizenship will be lost in future cost-shared programs. The end result will be a country in which national programs are not truly national and a country whose citizens will be forced to find out what kinds of public services are available in any given province before they move there.

Thus, in its proposed constitutional amendment relating to cost-shared programs the Meech Lake Accord is putting into effect a vision of Canada which is exactly contrary to the vision which was put forward by the federal government and the Provinces of Ontario and New Brunswick in 1980-81. Thus, in this area, too, we see that the claim by the government that Meech Lake is a natural sequel to the constitutional amendments of 1981 is completely false. It is, however, as I have said, a natural sequel to the vision of Canada which leaders of the Conservative Party, both federal and provincial, have supported for a long time.

In summing up this part of my remarks on the Meech Lake resolution, I wish to stress the fact that the reason that a great many Canadians are strongly opposed to the Meech Lake Accord is that it represents a retreat from their long-held and passionately-supported vision of a bilingual, multicultural Canada to a vision of Canada as two nations, one English and one French-speaking, each with geographically defined limits.

The Meech Lake Accord also represents a retreat from the vision of Canada as a national community whose strength comes from shared values, claims, obligations and opportunities to a vision of Canada in which provincial, rather than national, values are paramount.

The Meech Lake Accord also represents a retreat from a vision of Canada as a country where the focus of public policy is on the rights of the individual to a vision of Canada in which the rights of provincial governments are more important than the rights of the people they are elected to govern.

It is for these reasons, honourable senators, that I reject the basic premises of the Meech Lake Accord, and why I resent the blatant and false attempts by the government on various occasions to suggest that the Meech Lake Accord is, in any way, an extension of the grand vision of Canada which the federal government had in 1980 and 1981.

Let me turn now to a few comments on the specific elements of the Meech Lake Accord. I have already indicated my strong opposition to the principles of the accord and the vision of Canada reflected by these principles. As a result, it would be easy to take virtually every part of the accord and point out the reasons why I disagree with it. Rather than do so, however, I will limit my comments to three specific amendments about which I feel strongly on the basis of my experience as a senator, as a Nova Scotian and as a former Secretary of the Cabinet for Federal-Provincial Relations.

● (1750)

First, let me comment on the issue of Senate reform. For the last 20 years, and, indeed, for decades before that, many different proposals have been advanced for Senate reform. While these proposals have often differed in detail, virtually every single one of them has been based on two principles: One is the principle that senators should be elected and the other is the principle of greater Senate representation for the four Atlantic provinces, the four western provinces and the northern Territories.

The Meech Lake Accord will make the achievement of Senate reform, embodying either of these two principles, impossible. Let me explain why. Let us first consider the issue of the likelihood of all provincial governments agreeing to an elected Senate, and I say "all" because changes to the Senate can now be made only under the unanimity provisions of the amending formula. The Meech Lake Accord clearly establishes a permanent role for provincial premiers on the national scene in areas of federal jurisdiction. Given this role which the premiers have now won on the national political stage, it is

extremely unlikely that they will agree—that all of them will agree—to increase the number of elected representatives from their province in Ottawa, since this would create a new set of elected politicians whose claim to speak legitimately for the people of their province would equal that of provincial premiers. The last thing most provincial premiers want is additional voices in Ottawa with a legitimately powerful claim to speak for the interests of their province. The premiers do not want this added competition on the national stage. Moreover, having acquired the power to at least prepare a list from which the person selected to fill a Senate vacancy must be chosen, it is highly unlikely that the premiers—and again let me remind you that it takes all of the premiers—will agree to give up this power to influence events in the federal Parliament. Neither are they likely to want to give up their power to convert the Senate into a chamber which reflects the view of their provincial government. Therefore, in my view, the creation of an elected Senate is virtually impossible under the Meech Lake Accord.

But perhaps more importantly, since senators are part of the federal Parliament, it seems to me that we must ask why provincial governments should have any say in the method by which senators are appointed. It is true, as I am sure some senators will recall, that almost a decade ago the Supreme Court of Canada, commenting on Bill C-60, said that provinces do, in fact, have a say in the distribution of Senate seats.

The Hon. the Speaker *pro tempore:* I am sorry to interrupt you, senator, but it is now 6 o'clock and according to the rules I must adjourn the debate until 8 o'clock.

The Senate adjourned until 8 p.m.

• (2000)

The Hon. the Speaker *pro tempore:* The sitting is resumed.

Senator Kirby: Honourable senators, before we adjourned for dinner, I was explaining why in my view under the Meech Lake Accord the creation of an elected Senate will be virtually impossible. I concluded my remarks before the dinner break with the observation that, since senators are part of the Federal Parliament, one has to ask why provincial governments should have any say in the method by which they are appointed.

While it is true that the Supreme Court ruled with regard to Bill C-60 a decade ago that provinces have a legitimate voice in the distribution of Senate seats among provinces, the court also said that the method of appointment of senators was up to the federal government. Therefore, there would appear to be no justification for Prime Minister Mulroney's voluntarily giving up this power to the provinces.

Indeed, if the Prime Minister really believes in an elected Senate, as many of us in this chamber, including myself, have argued for publicly for many years, he should have moved to create an elected Senate without giving any premier a veto over such a change. By giving this veto, the Prime Minister has made an elected Senate impossible.

The other key premise underlying most proposals for Senate reform that the Meech Lake Accord will make impossible to achieve is the movement toward a greater number of Senate seats for the four Atlantic provinces, the four western provinces and the northern territories. Indeed, if those regions are to be given more Senate seats, we should ask ourselves where they would come from.

Anyone familiar with the political problems faced by any Quebec premier, of any party, will realize that it would be politically impossible for a Quebec premier to agree to reduce the percentage of seats in the Senate from the Province of Quebec. If a Quebec premier agreed to reduce the percentage of Quebec senators in this chamber, it would amount to his agreeing to weaken Quebec's influence in Ottawa, something no Quebec premier could do without suffering political consequences at home.

Consequently, I suggest that the percentage of Quebec seats in this chamber will never be lower than on the day Meech Lake goes into effect. Therefore, the only way in which the Atlantic provinces, the western provinces and the northern territories can increase their percentage of seats in the Senate is for the seats they gain to be taken entirely from the Province of Ontario.

While Ontario has indicated in the past its willingness to consider slightly reducing the percentage of seats it holds in this chamber, it would clearly be politically foolhardy for an Ontario premier to agree to a drastic reduction in Ontario's representation in the Senate in order to increase the representation from Atlantic and western Canada and the territories, if the other large province in Canada—namely, Quebec—refuses to accept any reduction in its percentage of seats. Therefore, the relative balance of the number of senators among the regions of Canada is going to be impossible to change under the Accord because of the unanimity provisions of the amending formula.

It seems to me, therefore, that Senate reform, which many of us in this chamber believe in passionately and believe is essential and long overdue, will be impossible to achieve because of Meech Lake.

I should add also that what the clauses on the reform of the Senate in the Meech Lake Accord clearly prove is the degree of constitutional rigidity which has been introduced by the new unanimity provisions of the amending formula. These provisions ensure that it will now be virtually impossible for any meaningful constitutional amendment to be written into the Constitution, unless, like some parts of the Meech Lake Accord, the amendment involves a transfer of jurisdiction, a transfer of power from the federal government to the provinces.

Let me turn now to a few comments on the fisheries issue, which Senator Stewart spoke on earlier today. The Meech Lake Accord requires that constitutional conferences be held every year.

Hon Charles McElman: Would the honourable senator accept a question at this point?

Senator Kirby: Yes.

Senator McElman: The honourable senator has obviously given a good deal of thought to reform of the Senate, and he has spoken of numbers. What about powers for the reformed Senate? Have you given any thought to that matter?

Senator Kirby: Yes, I have. I favour a power solution somewhat like that in the British House of Lords, in which the Senate would have a suspensive veto. But the fundamental purpose of a reformed Senate should be to deal with, and settle, interregional issues in Canada. At present interregional conflicts are not dealt with effectively in the federal Parliament but are now handled provisionally through First Ministers' conferences.

In my view, the real mistake of institutionalizing First Ministers' conferences has been the transfer of the inevitable interregional bargaining, which takes place in any federal state, from the federal Parliament to an extraparliamentary forum, which we call First Ministers' conferences. My concern has always been that, to the extent we do this, we not only weaken the role of the federal government, but we give a degree of legitimacy to provincial premiers in areas that go beyond their jurisdiction, because First Ministers' conferences, almost inevitably, have on their agenda only items of federal jurisdiction.

I strongly believe that one of the major thrusts of Senate reform should be to weaken the role played by the First Ministers' conference as a decision-making body, which is essentially what it has become, and to transfer the interregional bargaining that must occur in a federal state back to this chamber.

Senator McElman: Thank you.

Senator Kirby: I should like to turn now to a couple of comments on the fisheries issue as touched upon in the Meech Lake Accord. The accord requires that constitutional conferences be held every year. One of the items on the agenda of such a conference is the issue of fisheries.

In other words, fisheries jurisdiction, which, since the country was started in 1867, has always been an exclusively federal responsibility, will be up for grabs in the transfer of power from the federal government to the provinces every year at the constitutional conference—forever.

Premier Peckford has repeatedly stated—indeed, he restated his position extremely clearly a few days ago in a speech in the Newfoundland Legislature—that his goal is to have the Constitution amended to give Newfoundland control over the catching and processing of fish located off Newfoundland. Premier Peckford continues to argue, as he did during the constitutional negotiations of 1980 and 1981, that fish living in what he regards as Newfoundland waters—which in his terms are coastal waters out to the edge of the 200-mile limit—are a provincial resource and should be treated as such under the Constitution.

The Meech Lake Accord is the key to Premier Peckford's achieving his stated aim of control over all fish off Newfoundland, since the accord guarantees that every year there will be a chance to push for provincial control over fish allocations at a constitutional conference. If seven provinces and the federal government agree with Newfoundland's position, Nova Scotia, New Brunswick and Prince Edward Island, even if they combine forces, cannot block a constitutional amendment which would give Newfoundland jurisdiction over fisheries.

When that happens the people in my own province of Nova Scotia will lose their existing right—a right they have exercised since long before Confederation—to have access to fish stocks off Newfoundland.

Even if Newfoundland fails to win fisheries jurisdiction on its first try, or its second or third try, the threat to Nova Scotia will not disappear. The Meech Lake Accord ensures that the issue will keep coming back year after year after year.

Like an open-ended game of Russian roulette, sooner or later political conditions will favour Newfoundland's case and some Prime Minister, trying desperately to curry favour with the Premier of Newfoundland, supported by other provinces who, as a matter of principle, will accept any transfer of power from the federal government to the provinces, will give to Newfoundland the jurisdiction it so desperately seeks.

In 1986, 140 million pounds of fish were caught by Nova Scotia fishermen in the waters Newfoundland wishes to control. If jurisdiction over fisheries is transferred to the provinces, that 140 million pounds of fish will be reserved for Newfoundlanders and the result will be the loss of thousands of jobs in Nova Scotia fishing communities such as Lunenburg, Canso, Liverpool, Louisbourg and many others.

● (2010)

The clause in the Meech Lake Accord that places the issue of fisheries jurisdiction on the agenda of an annual First Ministers' conference forever, ought frankly to have been opposed by the Premier of Nova Scotia during the Meech Lake negotiations; but he did not do so. In his attempt to do whatever the Prime Minister wanted, Premier Buchanan placed the future of Nova Scotia's most important industry in jeopardy. The threat to the livelihood of thousands of Nova Scotians is far too serious for Nova Scotia to take any chances. The fisheries clause in the Meech Lake Accord should be amended to give every east coast province the right to veto any change in the division of fisheries powers between Ottawa and the provinces. That would allow Nova Scotia, or indeed any other coastal province, to block constitutional changes that favour fishing industries and fishermen of some provinces at the expense of others.

At the very least, the Meech Lake Accord should be amended so that fisheries jurisdiction is on the agenda of only one First Ministers' conference—only the next constitutional conference—and it should be amended to ensure that it is not automatically on the agenda of every constitutional conference thereafter, forever. Yet, when both these amendments are proposed, we are told by the federal government that they will not support or allow any amendments to the Meech Lake Accord. I think we have to ask why they would not accept even this one minor amendment. Surely it is impossible for them to argue—although they try to do so—that such an amendment

in any way impacts on what we are constantly told is the purpose of the Meech Lake Accord, namely, getting Quebec to sign the Constitution. Clearly, an amendment of the fisheries clause does not affect the fundamental government purposes for the Meech Lake Accord.

I suspect that the real reason why the federal government will not agree to this amendment is that the Prime Minister is too weak-willed to be able to stand up to any provincial premier, even one whose political future is on as shaky ground as Premier Peckford's is at the present moment.

I note with pleasure, however, honourable senators, that the Leader of the Opposition in the Nova Scotia legislature, Vince MacLean, has waged such a powerful campaign against the fisheries clause of the Meech Lake agreement that, at least temporarily, Premier Buchanan has backed off trying to ram the resolution supporting the accord through his provincial legislature. I remain hopeful, therefore, that even though Nova Scotia can expect no help from the federal government—federal spokesmen, including those from Nova Scotia have made that very clear—it may in the end be saved by the Liberal opposition in the Nova Scotia legislature from the consequences of the Meech Lake resolution as they apply to the fishing industry.

Finally, honourable senators, let me comment on the issue of the creation of new provinces. Prior to the Meech Lake Accord, new provinces could be created without the approval of provincial legislatures provided that, in creating those provinces, the boundaries of existing provinces were not affected. Thus, for example, Newfoundland joined Canada in 1949 after a vote of the Parliament of Canada and the people of Newfoundland, but without requiring the formal approval of the legislatures of the nine provinces which existed at that time.

I see no reason for changing this practice. I believe that there is no justification for the clause in the Meech Lake Accord that requires the unanimous approval of all provinces before new provinces can be created. Indeed, in light of the fact that no representatives of either the Yukon or the Northwest Territories participated in the Meech Lake discussions, this agreement affecting their future is an extreme example of legislation without representation.

We must, therefore, ask why this particular clause is included in the Meech Lake Accord. To answer this question we need look no further than at the statements some premiers have made about this specific clause. For example, Premier Bourassa has indicated that he regards the creation of new provinces as a threat to the wealth of Quebec, particularly if the provinces are created in regions where natural resources are rich in abundance. This is a not very subtle way of saying that he is opposed to the Yukon and the Northwest Territories becoming provinces because Quebec would lose a share of the natural resource wealth from the territories that now goes to the federal government, if these territories became provinces.

As Secretary to the Cabinet for Federal-Provincial Relations from 1980 to 1983, I had many discussions with both legislators and the general public in the north about their aspirations for constitutional development in the Yukon and the Northwest Territories and about their deeply held desire to eventually become provinces. I said then, and I continue to believe now, that these are very legitimate aspirations and that progress in this direction should be made in an orderly, step-by-step way until full provincial status is achieved in the not-too-distant future.

To have this potential achievement put in jeopardy by the Meech Lake resolution borders on the unconscionable. What it does is set up a situation in which, before a new province can be created, before the people living in the Yukon and the Northwest Territories can fulfill their aspirations for their region of the country to become a province, the federal government will have to give something to the provincial premiers in return for their support.

The long history of federal-provincial constitutional negotiations in this country establishes beyond a shadow of a doubt that provincial support for a proposed federal constitutional amendment is given by the provinces only if the provinces see themselves as getting something in return.

Thus, the Meech Lake Accord says to the people living north of 60 that their legitimate political aspirations can be fulfilled only as a consequence of a power-trading bargain between the federal government and provincial governments. It is clearly wrong to constrain the rights of northerners in this way. There is no justification for it other than the desire of the premiers to acquire more power for themselves and the unwillingness of the Prime Minister to stand up for the rights of northern Canadians.

I now turn, honourable senators, to a few brief remarks on the proposed amendments to the Meech Lake resolution that the Leader of the Opposition introduced in the Senate yesterday.

The proposed Liberal amendments introduced in the Senate by Senator MacEachen, the Leader of the Opposition, address many of the concerns I have outlined in my remarks thus far. For example, the proposed amendments to subsections 2(1) and 2(2) of the Constitution Act, 1867 would help to correct the problems in the Meech Lake Accord caused by the failure of that accord to offer adequate protection to official language minorities throughout Canada. These amendments also stress the fundamental characteristics of Canada including its aboriginal peoples, its multicultural nature and its regional diversity.

The concern that section 16 of the Constitution Amendment, 1987 would give the legislature of Quebec the right to constrain some of the individual rights and freedoms which are now guaranteed under the Charter of Rights would be eliminated by the proposed Liberal amendment to section 16.

The concern I expressed in my earlier remarks about provincial governments not agreeing to an elected Senate would be alleviated by the proposed Liberal amendment relating to the method by which senators are appointed. I must point out, however, that this amendment does not deal with the more fundamental need to reduce the percentage of senators who

now come from central Canada—from the provinces of Quebec and Ontario—in order to increase regional representation in this chamber from the Atlantic provinces, the western provinces, the Yukon and the Northwest Territories.

The proposed Liberal amendment to section 7 of the Constitution Amendment, 1987, which would have the federal government provide reasonable compensation to a province that chooses not to participate in a national cost-shared program provided that the provincial program meets minimum national standards, is certainly a move in the right direction. In my view, however, the fundamental problem associated with cost-shared programs, namely, the truly national programs as we have grown to know them in this country and as they have been enforced in recent years through legislation, such as the Canada Health Act, will remain. I would have hoped for a stronger amendment in this area.

• (2020)

I strongly support the proposed Liberal amendments to section 9 of the Constitution Amendment, 1987, which deals with the amending formula. Canada continues to be the only federal country in the world that has a unanimity provision in its Constitution, and the extension of the unanimity rule, as proposed under the Meech Lake agreement, will only make future constitutional change in this country virtually impossible. Indeed, it is the unanimity rule that, as I have already said, guarantees, in my view, that we will never get meaningful Senate reform.

Finally, honourable senators, I also support the proposed amendments to section 13 of the Constitution Amendment, 1987, which restore aboriginal rights to the constitutional agenda and put fisheries only on the agenda of the First Ministers' meeting on the Constitution.

As I have already indicated, the proposed Liberal amendments modify the Meech Lake Accord in ways I regard as highly desirable. I therefore support them fully.

But let there be no doubt. I continue to oppose passionately the vision of Canada that is reflected in the Meech Lake Accord. No amount of tinkering, or touching up with minor amendments, can change the fact that the Meech Lake Accord reflects a vision of Canada that I have opposed during the more than 20 years I have been involved in politics and government at both the federal and the provincial level in this country. For that reason I have enormous regret that the Senate lacks the constitutional power to block the entrenchment of the Meech Lake Accord.

Some Hon. Senators: Hear, hear.

[*Translation*]

Hon. Jean Bazin: Honourable senators, the Meech Lake Accord is a new step in the constitutional evolution of our country. Other steps were made in 1982 when Canada patriated its Constitution and added to it a Charter of Rights and Freedoms. Unfortunately, Quebec's refusal to join in cast a shadow on these achievements.

Thus in building our country, we were faced with a major obstruction since 1982 because Quebec was not part of our constitutional family.

Today the 1987 accord affords us the means to put an end to Quebec's isolation and allows Quebec to take back the place it righly deserves at the constitutional table.

By ratifying the 1987 Constitutional Accord, we shall hold out our hand to Quebec and we shall restore Canadian unity.

We shall also lay the foundations for future achievements to which all elected governments will contribute.

On the other hand, if we reject the accord, we would maintain the split that occurred in 1982 when the Constitution was patriated under circumstances that both the elected Government of Quebec and the Quebec National Assembly rejected.

Some of the provisions of the accord, such as the interpretation clauses of linguistic duality and the distinct society, the provisions relating to spending powers and the amending formula, have attracted much attention.

Other less prominent provisions did not attract as much attention, but it does not mean they are less important or have a more limited scope. On the contrary, they play an equally central role in our constitutional evolution.

Such is the case of the Supreme Court of Canada. This institution is the keystone of our judicial system. It provides both individuals and governments with final interpretations of the Canadian Constitution, including the division of powers between the federal and provincial governments, the rights and freedoms guaranteed under the Charter and the interpretation of ordinary federal and provincial statutes.

However, this essential institution is not explicitly recognized in our Constitution. It was simply created by an ordinary act of Parliament. The federal government has the exclusive authority to select and appoint the nine members of the Court and an ordinary act sets their salary and defines their mandate.

In spite of this lack of a constitutional base, the Supreme Court has always shown a very high degree of integrity, impartiality and quality in discharging its responsibilities. This because its members adhere strictly to the principle of the independence of the judiciary and the rule of law.

Nevertheless, as was pointed out by the Special Joint Committee of the Senate and the House of Commons, there has been increasing pressure in the last fifteen years to include in the Constitution a number of the essential characteristics of our highest court. This included recognizing the institution as such in the Constitution and giving it the status to which it is entitled. It meant providing for balanced participation by the federal government and the provinces in selecting and appointing its members and in future changes in the membership and infrastructure of the court.

The resolution before this Chamber today proposes a number of constitutional amendments.

The court will be defined in the Constitution as the general court of appeal for Canada. The Constitution also provides that it will consist of nine judges, three of whom will be appointed among lawyers or magistrates who have passed the examinations of the Civil Bar of Quebec. Qualifications, terms of appointment and remuneration of the members of the court will also be included in the Constitution.

Even more important, a new joint federal-provincial mechanism for selecting judges of the Supreme Court will be provided in the Constitution. This mechanism will, of course, recognize a characteristic that is so essential to a federation like ours, namely that both levels of government have an interest in the organization and membership of this important institution.

Thanks to the joint mechanism, when a vacancy occurs in the court, provincial governments will have the right to submit to the federal government names of qualified candidates who have been admitted to the Bar of the respective provinces or have been judges of their courts, and the federal government will fill the vacancy by selecting a name among the suitable candidates appearing on these lists. Where a vacancy occurs in one of the three positions set aside for Quebec, the vacancy will be filled by a candidate whose name was submitted by the government of that province. In the case of other vacancies, a suitable candidate will selected from names submitted by the nine "common law" provinces.

There has been some criticism of certain aspects of the new appointment mechanism. I would like to comment briefly and try to respond to some of these criticisms.

A number of people who appeared before the Special Joint Committee of the Senate and the House of Commons claimed that the candidates submitted by provincial governments would become judges with a provincial bias. Such fears are unfounded. It is as much in the interest of the provincial governments as the federal government to ensure that our highest court consists of individuals with outstanding qualifications as legal scholars. Furthermore, the Supreme Court maintains a profound sense of the independence of the judiciary which would certainly not be affected by the new procedure. The Special Joint Committee of the Senate and the House of Commons defended this view in the following terms, and I quote:

> We believe that a provincial bias among newly appointed judges is no more likely than a federal bias among the present judges of the Supreme Court of Canada. Legal scholars who have examined the issue whether the court has displayed a federal bias in its constitutional decisions have been unable to substantiate any such bias. Indeed, recent constitutional jurisprudence would, if anything, suggest a provincial bias.

Other witnesses criticized the absence of a mechanism for resolving a stalemate, in cases where it is impossible to agree on a suitable candidate. Some people would prefer to amend the resolution before this chamber to provide for such a

[Senator Bazin.]

mechanism. That is also the position taken by the Opposition in its proposed amendments.

According to its proposal, if both governments failed to agree on the choice of a suitable candidate within a period of three months following a vacancy, the chief justice would have the power to make an interim one-year appointment from among justices of the Federal Court of Canada or provincial superior courts.

Honourable senators, this proposal is not a mechanism for resolving a stalemate. It simply encourages both governments, in case of a conflict, to drag their feet, and fails to provide a solution if no agreement has been reached within one year. Furthermore, it totally ignores a fundamental conclusion drawn by the Joint Committee regarding the role of non-elected intervenors in political stalemates, and I quote:

> This flies in the face of the principle that all members of the judiciary, and particularly the judges of the Supreme Court of Canada, should be appointed by persons responsible to the electorate.

But let us also ask ourselves the following question, "What government really has an interest in blocking the appointment of a judge to the highest court in the land if there is a vacancy?" To ask the question is to answer it. In this case, it seems to me that we must believe in the governments' good faith.

Finally, the territorial governments' inability to name competent candidates from their bar and bench under the accord was also criticized.

The report of the joint committee presented the situation realistically, while recognizing that competent residents of the territories continue to be eligible for the position of Supreme Court judge under Section 101(G)(1) of the Constitution.

The report concludes that in practice, it is very unlikely for the provincial governments to nominate such individuals.

Although I am not at all convinced that this will really be the case, since all provincial governments will want to present the best possible candidates, I subscribe to the joint committee's proposal that the matter be reviewed by the first ministers at their first constitutional conference. The purpose of this review would be to see whether in practice the territorial governments should have the same status as the provincial governments regarding these appointments. Personally, I believe that they should and I hope that this will be achieved at a later stage.

More generally, I share the opinion of the joint committee and of most members of the other house that the present constitutional amendments are really workable. Moreover, they are needed to bring Quebec into the Constitution and they fit in with the objectives of national reconciliation and true federalism.

The special joint committee that studied the accord last summer and on which this house was represented states that without Quebec's participation:

> The Constitution will continue to evolve one way or another without the participation of an essential partner in Confederation.

Or, as Mr. Pickersgill said:

> We could leave unattended a wound of which the enemies of Canadian unity might take advantage.

As long as Quebec will not feel at home around the constitutional table, it will be hard to find the support required to push through the reforms which are still necessary to meet the country's needs.

In fact, it will not be possible to proceed with certain reforms which at the present time require the unanimous consent of all the provinces and of Parliament.

Since we cannot afford to relegate Quebec to the role of an unwilling partner in the federation, it goes without saying that we must now vote in favour of the accord.

In my mind, it also goes without saying that no change must be made to the accord at this stage. Unfortunately, all do not share the same opinion in this respect.

During the course of their examination of the accord, the joint committee and our Committee of the Whole have heard a great number of eloquent as well as interesting arguments which were made to clarify certain points and add certain elements.

No one was left unimpressed in particular with the testimony of those who represented the native peoples. I believe however that members of the joint committee are right to suggest that:

> The solution to their problems does not lie in the rejection of the 1987 Constitutional Accord.

Hopefully we will soon be in a position to foresee opportunities for success in a new meeting of provincial premiers in order to work with them in finding a fair and honourable solution to native problems. Our constitutional arrangements are clearly flawed in that respect.

However, any amendment to the accord might jeopardize the progress that is already noticeable.

Mr. Laurent Picard from McGill University had this assessment of the situation:

> Any new important change or even unimportant change can and will create among some signatories the feeling of being released from the commitment ... To reopen the content will probably end up destroying the commitment of some of the signatories and as a consequence, to an early rejection of the accord.

The Prime Minister and his provincial counterparts are agreed not to reopen the accord except for correcting egregious errors that might have crept in. No such error has been noted.

During their annual conference in August, the premiers once more rallied to the position firmly defended by the Canadian government, namely that the accord should not be put back on the table.

For someone with experience in labour relations, it is easy to understand that once a collective agreement has been negotiated it must be signed before initiating a new round of negotiations. To re-negotiate before signing only jeopardizes what had been agreed.

Certainly, further reforms will have to be considered during the second round of constitutional negotiations as provided for in the accord.

If we reopen the accord now, even for one change, we will make it twice as hard to refuse a second one, and three times as arduous to refuse a third one.

At that rate, it is a completely new constitutional reform we will be faced with, everyone will try to pull his own way, and any agreement will be impossible. That will be the impact of the proposed amendments on the accord.

The stakes are too high in my view for taking such a risk.

We must keep in mind that the accord is the result of a unique set of circumstances.

The time has now come to repair the damage done to national unity when Quebec was excluded from the 1982 Constitutional Accord.

If we do not take this opportunity now, who can safely predict which such an opportunity will arise again?

In order to illustrate that caveat, I would like to briefly recall the circumstances that led the First Ministers to sign the accord.

In 1984, Canadians elected a new Canadian government which had national reconciliation as a priority.

With all due respect, I think that Senator Kirby's vision of Canada is yesterday's vision marked by nostalgia. He doesn't seem to realize that the Canadian people overwhelmingly rejected that vision back in September 84.

We cannot be governed by nostalgia. Let us look ahead to tomorrow as our constituents have demanded and stop discussing the past.

Canadians were weary of the climate of confrontation that was the hallmark of federal-provincial relations and the constitutional reform process in the late 1970s and early 1980s.

They wanted their federal and provincial governments to work together to provide them with the services they needed instead of prolonging fruitless disputes.

It is in that spirit that the Prime Minister, in a speech in Sept-Iles on August 6, 1984, called for the emergence of a genuine national renewal and put forward a program reflected in the accord before us today.

I had the honour to contribute to that speech and to hear him deliver it. Beyond any partisanship and as a fortunate witness, I can only confirm the Prime Minister's deep commitment in that respect. I would also like to quote part of that speech:

> We must ban, once and for all, parallel actions and duplication of efforts by both levels of government. That it why we will set up a standing federal-provincial consul-

> tation and coordination agency at the highest level, that is at the level of the eleven Premiers themselves . . . .

Indeed, the accord contains provisions that apply to First Ministers' conferences. What better consultations can we have than those between all elected premiers?

Again at Sept-Îles the Prime Minister indicated that, while continuing to help the provinces finance their programs in such basic sectors as health, vocational training, and post-secondary education, the federal government would have to respect their jurisdiction over these matters.

The accord provides that fair compensation be paid to provinces which choose to opt out of shared-costs programs whose purposes or initiatives are compatible with national objectives and, as the Report of the Special Joint Committee of Senate and the House of Commons puts it:

> In fields under exclusive provincial jurisdiction it is still possible to negotiate national shared-costs programs to the benefit of both the federal government and the provincial governments.

In 1984 the Prime Minister also decided he would make every effort to convince the Quebec National Assembly to endorse Canada's new constitution with honour and enthusiasm.

The accord enables us to reach that objective.

For their part, Quebecers have since elected a new provincial administration, a government which has devised a realistic program to bridge the gap opened in 1982.

And so it was that in early 1986, in both Ottawa and Quebec City, the governments were therefore eager to finish the constitutional task left undone by the exclusion of Quebec in 1982.

Another step was to be accomplished at the annual meeting of provincial premiers in August 1986 when they officially made the reintegration of Quebec their first political priority. I am sure they did not find it easy to give less priority to their own political objectives. They were certainly tempted to take advantage of the situation to voice some of their concerns.

Still they thought the national interest should prevail and preferred to avoid raising issues which might have stood in the way of agreement.

This decision was confirmed at the November 1986 First Ministers' conference in Vancouver and was to be the launching pad for extensive discussions at both the ministerial and the official levels.

On the federal side we are indebted to Minister of State for Federal-Provincial Relations Senator Lowell Murray who played a key role in these negotiations.

Hon. Senators: Hear, hear.

Senator Molgat: Go ahead, now is the time!

Senator Bazin: The discussions I just referred to proved to be so useful that the First Ministers did reach an agreement in principle at Meech Lake in April 1987 which, concurred in later in June 1987 in the Langevin Building, became the current agreement.

[Senator Bazin.]

There is no indication that similar circumstances will ever occur again. That is precisely why the accord must be passed as is, without amendment.

I hope, however, that all Canadians understand that it will not be impossible to amend the Constitution.

I also hope they understand that the accord provides for future First Ministers conference beginning in 1988 (the so-called "Second Round") and that the amendments which we are ruling out for the time being may be introduced again within the framework of these conferences.

Following the example of professor William Lederman, a top expert on constitutional issues, I hope that the chances of making new constitutional progress will improved as soon as the accord makes it possible for Quebec to resume its place at the negotiation table.

As he pointed out when he appeared before the Special Joint Committee of the Senate and the House of Commons, we shall accomplish great things towards the Constitutional reform if we can count on Quebec's full and complete cooperation.

I am glad that he dealt among other things with the issue of aborigenal rights, and I quote:

> I would doubt, for example, if there is going to be any progress in aboriginal rights until Quebec is an active participant in the proposed future conferences.

That is also the opinion expressed by members of the Special Joint Committee of the Senate and the House of Commons who, in their majority report, pointed out that Quebec's joining the Constitution

> . . . would benefit native peoples and break the deadlock which actually prevents a number of provinces to progress in this respect.

In conclusion, may I say that the Constitutional Accord of 1987 is not an end in itself but a new stage in our history. That is a perspective which we should not jeopardize, as suggested in the proposed amendments. We should remember that by moving amendments, we could only return to the situation which existed in 1982.

The idea is to turn a new leaf in the Canadian constitutional book together. There will remmain many other leaves to turn. Let us not rip off the page which reinstates Quebec within the federation.

Honourable senators, I thank you very much.

[*English*]

Hon. Paul Lucier: Would Senator Bazin permit a question?

Senator Bazin: Yes.

Senator Lucier: Senator Bazin, I believe you are the president of the Canadian Bar Association. Does the Canadian Bar Association endorse the contents of the Meech Lake Accord, particularly the section that allows premiers to name Supreme Court judges?

Senator Bazin: If you go back to the appearance of the then president of the Canadian Bar Association before the joint committee in August of 1987, at that time the suggestion was

made that consultation should be made with judges, lawyers and the public, and that committees should be established in the provinces. The president submitted that these committees should also be set up in the Yukon and the Northwest Territories.

Last week an announcement was made that suggestions for federal court appointments would be reviewed by such committees, including committees in the Yukon and the Northwest Territories.

Senator Frith: Federally appointed judges, not just Federal Court judges.

Senator Bazin: Yes.

Senator Lucier: Honourable senators, that excludes Supreme Court appointments, does it not? That only deals with appointments of judges under Supreme Court level?

Senator Bazin: I do not want to interpret what has been announced and what will happen. I would say that it is silent on the subject.

Ideally, I think these provincial committees should be used by provincial authorities, the Northwest Territories and the Yukon to gather the appropriate material and make suggestions for Supreme Court appointments.

Hon. Charles McElman: Honourable senators, I have a question for Honourable Senator Bazin. He has tweaked my fancy with some of the information he has given us in his remarks this evening.

Recently, the Honourable Lucien Bouchard stated that he was the writer of the Sept Iles speech. Now we learn that the honourable senator was a writer of the Sept Iles speech.

Senator Ottenheimer: Great minds think alike.

Senator McElman: I assume the Prime Minister may have written the start of it before he got to all the things that were written. Having tweaked our fancy and curiosity, could you list the other writers who were involved?

Senator Bazin: It was an historical speech.

Senator McElman: Knowing the authorship, I am not surprised by your answer.

Hon. Peter Bosa: Honourable senators, I am pleased to take part in this important debate on the Meech Lake Accord. From the time the Meech Lake Accord was made public in June 1987 I have heard many witnesses, both in Committee of the Whole in the Senate and in the Senate Submissions Group on the Meech Lake Accord, and I have also received briefs from ethnic organizations and have had numerous conversations with individuals on the subject.

I would now like to share with honourable senators my views on the many representations that have been made to me on the proposed constitutional amendments. In Canada the federal government, rather than the provinces, has traditionally been the source of support for equalization of rights. In 1918 the federal government extended the franchise to women. However, women in Quebec were not accorded voting rights on equal terms with men until 1940. Similar cases abound throughout Canadian history. The infamous Padlock Law, which restricted political rights, was passed by the Quebec legislature and was nullified only by the Supreme Court of Canada.

The Government of Alberta tried to eliminate freedom of the press through its Alberta Press Act, but there, too, the Supreme Court of Canada disallowed the legislation, ruling it *ultra vires*.

On another occasion the Quebec government restricted freedom of religion, when it closed a restaurant simply because its proprietor was a member of a religious minority. Once again, Canada's Supreme Court had to overturn that basic denial of rights by a provincial government. One can only shudder to think what will happen to the defence of equal rights if the Meech Lake Accord provision allowing provinces to nominate Supreme Court judges should come into effect.

The Government of Manitoba abrogated its commitment to bilingualism in 1890, despite the clear intent of the Manitoba Act, which created that province. Yet again, the Supreme Court of Canada had, belatedly, to rectify the situation, as it had had to do in similar circumstances in a case involving the Government of Quebec.

Now, 98 years after that reversal in Manitoba, and even after the much vaunted Meech Lake Accord has been signed, the Government of Saskatchewan is trying to implement a similar provision that will deny the basic bilingual commitments of the province since 1905.

If the Meech Lake Accord can allow such things to happen, what has it really accomplished?

• (2100)

Senator Flynn: It is not in force.

Senator Bosa: Pardon?

Senator Flynn: It cannot allow that; it is not in force!

Senator Bosa: Well, the spirit of the accord is there.

Senator Frith: By a signatory!

Senator Bosa: It has been signed by the Premier of the Province of Saskatchewan, one of the protagonists—

Senator Frith: Signatories!

Senator Bosa: —of the accord.

Senator Flynn: Not at all.

Senator Frith: Not at all? You mean Devine did not sign it? What do you mean?

Senator Flynn: It is not in force.

Senator Frith: But he is saying that it was signed by the very premier who reneged. That is all he is saying, and he is right.

Senator Bosa: Apparently the accord does not do much when it comes to extending or even guaranteeing equalization of rights. The only winners in the Meech Lake Accord seem to be the provincial governments, while the losers are both the people of Canada and their national government.

It seems to me that in these matters the Meech Lake Accord moves Canada entirely in the wrong direction. Rather than uniting this country as a national political community, the "distinct society" clause will, in fact, create at least two constitutional spheres—one in Quebec and the other in the rest of Canada. Very possibly, the long-term results may be as many as 11 constitutional spheres. Each province could acquire, through judicial precedent, the right to ban federal provisions at its own discretion, until only limited room would be left for national standards in a small, residual federal sphere. If not a country of sovereign associates, Canada would certainly become a pack of parochial provincialisms.

This apparent move away from the equalization of rights is particularly ironic because a number of the government's own party members have advised following the other direction. The parliamentary committee on equality rights tabled its report on October 25, 1985. That report, entitled "Equality for All." was thoughtful, comprehensive and progressive. The committee unanimously recommended the extension of equality rights to the many groups that at present lack such explicit guarantees; for example, women, aboriginal peoples and ethnic communities.

The only way for such protection to take national effect is for the federal government to set national standards and implement national programs. Provincial governments have a history of not wanting to move far in these areas. Only the federal government has the responsibility and the opportunity to develop a national vision and to give it national support.

One reason for the Meech Lake Accord's cavalier disregard of the equalization of rights and the national patrimony is undoubtedly the lack of public participation in the process. As the National Congress of Italian Canadians has reminded us, public participation in the Constitution process is essential if the final product is to acquire public legitimacy.

Such involvement by all Canadians has not yet taken place. Quite the contrary. In fact, the only participants in the accord were the 11 First Ministers and their select officials. The result shows this, because everyone but the federal and provincial executives are excluded from the constitutional process. We are presented with a document that entrenches narrow executive interests, but precious little else.

Many of those who were unfairly excluded from this latest round of constitutional negotiations, such as native peoples, northern governments and women's groups, are now claiming that not only were they denied the legitimate opportunity to participate but also their political interests and constitutional rights were actually jeopardized. For them the Meech Lake Accord represents more than just negligence; it represents actual regression.

Although it is certainly commendable to bring Quebec into the Canadian constitutional family, this should not be done at the expense of every other consideration. Quebec's constitutional veto was also granted to all the other provinces so as to avoid recriminations. As a result, any one of them can now, under the terms of the Meech Lake Accord, effectively and

[Senator Bosa.]

permanently thwart the national will. This constitutes a permanent institutionalized destruction of consensus. Since the opting-out provisions provide financial compensation to the provinces, there would be practically no incentive for them to cooperate in any future national programs.

The requirement for unanimity on constitutional change in the Meech Lake Accord will likely also harm our prospects for entrenching multicultural or aboriginal rights in the Charter of Rights and Freedoms. This could bring to a tragic and untimely end the evolution of rights even before they have been extended to all those who need and deserve them.

Let me explain the basis for this concern. The British parliamentary system started off by granting rights to individuals on a person-by-person basis. When the parliamentary system was adopted in Canada, two fundamental changes were necessary to make it work in our particular circumstances. On the one hand, it was necessary to design a federal arrangment with divided jurisdiction to accommodate the provinces. On the other, it was necessary to create group rights so that English and French, Catholic and Protestant would be assured due respect.

Canada has thus been a pioneer in the development of the legal framework of social rights in a parliamentary system. So far, however, only the Charter groups, the English and the French, have received specific guarantees of their group rights. The rights of two other groups still need to be elaborated and entrenched in the Canadian Constitution. Native peoples form one of these groups. Their particular status is recognized, but adequate specification and protection still await action from the federal and provincial governments. The other group consists of those whom the Royal Commission on Bilingualism and Biculturalism called "the other ethnic groups"—that is, those of non-British, non-French and non-native parentage. These Canadians also have needs and concerns which only an entrenched set of rights can fully accommodate.

However, the Meech Lake Accord's unanimity requirement for constitutional change would make any such future progress highly unlikely, if not impossible. The record of provincial neglect in these areas is, unfortunately, well known. Quebec has recently not been particularly enthusiastic about rights for anyone except its francophone majority. Similarly, the western provinces are equally unenthusiastic about responding to aboriginal claims and concerns. Hence, the Meech Lake Accord provides veto power against entrenching any future multicultural or aboriginal rights in the Constitution, except by the miracle of unanimous consent. Surely, in all fairness, this must be unacceptable.

As if to add insult to injury, the Meech Lake Accord also excludes the northern territories from participation in negotiating the agreement, and subjects their desire for provincehood to the aforementioned unanimity and/or veto provisions. Since aboriginal peoples constitute a large share of the population of these northern constituencies, this presents a double insult. Their claims both as native people and as political communities are being ignored by the accord.

Of course, I am not the first to raise those concerns here. The Right Honourable Pierre Elliott Trudeau made similar points during his eloquent plea for a sober second look at the Meech Lake Accord. Furthermore, many of the issues which Mr. Trudeau covered have still not been dealt with adequately by the federal government. Therefore, we should ask the same questions again.

One of the things Mr. Trudeau questioned was the government's great and unseemly haste to achieve ratification as it proceeds in such a way as to ignore all the shortcomings, weaknesses and oversights in the accord, and all the criticisms, assessments and amendments suggested for its improvement.

Why so much haste? It took the Swiss 350 years of debate before they adopted their Constitution in 1848. This government, however, went to the other extreme. The Prime Minister and ten premiers made an irrevocable decision on the constitutional amendments in a short period of time. They then said to parliaments, provincial legislatures and to Canadians as a whole, "Go ahead and debate the amendments, but regardless of your views we will not accept any changes." Would it not have been more democratic of this government to issue a white paper on constitutional reform? The government could then have initiated a national debate in which all Canadians would have had an opportunity to express their views, following which the 11 First Ministers could have made a decision based on the aspirations of the people of Canada.

• (2110)

Mr. Trudeau also touched on this point of the lack of public contribution to the accord. Constitutions belong not just to governments but to the people, and constitution-making should therefore involve not just governments, but the people. For my part, I can only repeat what the National Congress of Italian-Canadians has already said: "If the Constitution is to mean anything at all, it has to guarantee equality to all Canadians, and the process of developing a Constitution must involve all Canadians."

The third important question Mr. Trudeau raised involved the government's unwillingness to consider changes to the accord. No constitution should be carved in stone, nor should any of its proposed amendments. The original 1982 Constitutional Agreement underwent changes even after all governments had agreed to a text, and it did not fall apart as a result. Surely, the same must hold true in this case.

Mr. Trudeau also expressed concern about the government's refusal to refer the accord to the Supreme Court before adopting it. When a change with equally far-reaching implications was proposed for the Senate in 1978, the proposed legislation, Bill C-60, was referred to the Supreme Court for an opinion. In 1979, the Supreme Court ruled that Parliament could not unilaterally amend the *British North America Act* to effect fundamental changes affecting representation in, and the role of, the Senate. The Meech Lake Accord would involve changes of even greater magnitude, and it too should be referred to the highest court in the land so that its constitutionality can be determined before it is hastily, and perhaps disastrously, adopted.

Since the Meech Lake Accord was announced, objections to it have been expressed by federal parliamentarians, provincial premiers, native peoples, northern governments, women's groups, ethnic communities and constitutional experts. In these circumstances, it is our democratic duty to listen to the people and to accommodate their concerns.

For these reasons, I fully support the amendments proposed by the Leader of the Opposition in the Senate, Senator MacEachen, because these amendments reflect quite extensively the aspirations of Canadians.

Hon. Heath Macquarrie: Honourable senators, Senator Bosa, in a very proper traditional beginning, said that he was pleased to be taking part in this important debate. My joy is somewhat diminished by the fact that I do not get very enthusiastic about evening sittings. I am still less enthusiastic about taking part in them and, therefore, prolonging them. I know that there have been deliberative bodies through the years who found it either better or necessary to meet at night. Here I am thinking of the Sanhedrin and the Supreme Soviet. When Senator Muir, Senator Phillips and I were sitting in the House of Commons, that particular body found it necessary to sit at least three nights per week. They finally gave up that nonsense—

Senator Frith: The House of Lords sits five nights a week.

Senator Macquarrie: I never aspired that high, although my son is very upset that we have lost the hereditary principle in the Canadian Senate. However, that is just a prejudiced point of view, I think, that he has.

In any event, we are here; it is late and it will be later still before I am through. No speaker speaks as briefly as he thinks he does, and usually does not talk as long as his auditors think he does, so we will have to try to find some realistic appraisal here.

I really did not want to speak tonight, but when I was a youth leader a thousand years ago, one of the slogans I often used to the young unfortunates under my charge was an old statement:

When duty whispers low, *thou must*,
The youth replies, *I can.*

Therefore, I had to say, "I can and I will."

I am very sorry, honourable senators, that I was not able to hear all of the speeches in this important debate. Whatever virtues I have lacked in all my years in this chamber, I always believed it was useful and valuable to listen to all of the speakers in any debate in which one himself was taking up the time of his colleagues. However, we had the important Mexican delegation here these last two days and, even though important things such as this debate come up, I think that, once committed, we must honour that commitment to visiting delegations. So I have missed some of the speeches and I will not be able to read the ones delivered today until tomorrow. However, I did have the opportunity to acquaint myself with some of the interesting contributions.

Honourable senators, I am taking part in this debate partly because in recent months I have been a participant—thanks,

perhaps, to the long-standing friendship of my whip—in the Meech Lake Task Force and in the Submissions Group, which meant that I heard a good deal about the Meech Lake Accord. Senator Lucier, in his excellent speech, in which he was very kind to both Senator Bielish and me, said that perhaps 104 per cent of the submissions Senator Bielish and I heard in the north were against the accord. I cannot remember very many that were partial to it or that showed an open mind on it. However, at the same time, they seemed to be able to give us hell and leave us feeling that they were most excellent people, and we gave them great marks for the depth of their feelings. There is an old definition that a good diplomat is one who can tell you to go to hell in such a way that you are raring to go. I thought the strength of the advocacy of the people in the two territories was most impressive.

Honourable senators, I had been to the Northwest Territories once before, but I had never been to the Yukon, and I marvel yet at the beauty of that wonderful territory. I was lucky enough to have a hotel room from which, in the early morning, I could see the beauty of the mountains and of the flora and fauna and rejoice that that—to me—new territory was part of my country.

With respect to the Northwest Territories, it was a joy just to visit their legislature, to meet the people and to contemplate the variety of their society. I think there are ten languages spoken in the legislature of the Northwest Territories, two or three of which are not written languages. We think that our translators here in Ottawa are excellent, and they are, but I should think that the challenge to translators in that legislature in the Northwest Territories must be immense.

I was touched by what I call the cleverness and sensitivity of the people in the Northwest Territories. Although tradition is a great thing in terms of the British practice, the symbols in the legislature in the Northwest Territories did not reflect the lions and unicorns of British heraldry. Rather, the symbols there displayed represented the natural life and the historic life and lore of that enormous and important part of Canada, and that was, for me, a revelation.

I enjoyed Senator Lucier's remarks. He was a very good host to us in the north, as was Senator Adams. I agree with him 100 per cent in his encomium of our chairman, Senator Molgat, who conducted every meeting with great aplomb, with great goodwill and with equity. He and I got along very well—

Senator Phillips: Now is the time for that round of applause.

Some Hon. Senators: Hear, hear!

Senator Macquarrie: We had only one moment where perhaps I was not as cordial as I nearly always am. That occurred after a flight from Whitehorse down to Vancouver, spending goodness knows how long in Vancouver and then flying over to Edmonton with a stop or two in between. We got into Yellowknife a stroke or two after midnight. Senator Molgat came over and said, "I know we are supposed to start at nine o'clock tomorrow morning, but the press would like to meet us at 8.30" I said, "Well, God Almighty, if they are available to go to all the meetings, do you have to listen to every damned fool suggestion you get? You can have the thing without me." But being a cautious, careful and devoted Calvinist, I was the first guy there. We had that little testiness because down in Prince Edward Island we are not used to this kind of travel. When I fly from Charlottetown to St. John's, Newfoundland, I am not used to going through Chicago and Atlanta before I get there, but that seems to be the way it happens in the vast part of the world to the north of us.

[Senator Macquarrie.]

● (2120)

I listened very carefully to all the things I heard there. I listened to many of the things that Senator Lucier said. However, I came out of that experience and those hearings not as upset as the many people who were witnesses before us. I am not so lacking in faith that I think there is nothing to this "next round" theory. If anyone believes that there will not be any more meetings between the provinces and the federal government, he has not been keeping track. Apparently, one of the great pastimes of the two levels of government is having meetings. The last time I looked there were 500 meetings in a year—ministers, deputy ministers, heads of legislatures and so on. So God knows there will be plenty of meetings and there will be plenty of topics coming up.

I noticed among the amendments one that suggests that fisheries be taken off and aboriginal rights be put on the agenda. I do not think it is wise or prudent in a country like ours to suggest that you can project ahead and say, "This is unimportant and that is very important." The time was when the Minister of Fisheries in the Canadian government had a soft touch, a cinch. He had to go to the Lunenburg Exhibition and to the Pacific Exposition, issue a few licences for lobster fishermen, and no other licences were needed. It was a very easy job. But the poor guy who is in charge of fisheries today is in a very tough spot. If it is not the French in St. Pierre and Miquelon, it is the Americans on Georges Bank—or some problem with another jurisdiction. There is the matter of resources and the terrible problems about the depletion of our fishing stocks—a very sensitive matter. If 20 years ago someone had said that this would be a problem of the Minister of Fisheries, he would have been accused of being very much lacking in realism.

I always thought the best question I ever heard in the House of Commons was asked by a Newfoundland member at a time when we were wrestling with very powerful and well equipped Soviet trawlers—and some very attractive actresses in France, and when there was much talk about seals and so on. He stood up and said, "Mr. Speaker, I would like to ask the Minister of Fisheries if it is now the policy of the government to let the seals eat half our cod fish and the Russians come in and take the other half?" What was a poor Minister of Fisheries to say to that question? Even though the particular minister had a Ph.D., he had difficulty with it.

I note that Senator Lucier observed that Premier McKenna ran on a platform of opposition to the accord. I believe he has critcized it, but I have yet to see where he has said that he is against it. He is a perfectly articulate young man, and if he

wants to say that he is against the accord, well, so far he has not said so.

I agree with Senator Lucier that the Meech Lake Accord does nothing to hasten the adoption of a Triple-E Senate. If he notes that I am not weeping over this fact, there is nothing wrong with his eyesight, though as a Prince Edward Islander, I would go for the equality part of it. However, I hope I have a degree of realism as to what the House of Commons would do if they really thought that someone else was going to be as important as they are. So as to efficiency; on that point, I find it a little hard to evaluate or to explain what in fact it means.

I am sorry to give the impression that I only picked out the critical things in Senator Lucier's speech, but perhaps I have done so. I noted what he said about provincehood for the two territories. I have always hoped that I would live to see that day, because it is a natural evolution, but I noted that many of the people who appeared before us did not have in mind the hastening of provincehood. I heard many of them say that they did not expect the territories to become provinces overnight. It seems to me that in my years in caucus in the other place and in hearing spokesmen for various governments—not just Conservative governments because they were less numerous—there was a very strong and sincere view that all of us southerners were in favour of doing everything possible to devolve upon the territorial governments more and more responsibility for their own affairs. I cannot remember anyone at the caucus taking a view adverse to that view, so I believe that the attitude is there and that it remains strong.

Like Mr. Pickersgill, I do not feel that a year or two years from now a group of premiers and the Prime Minister will take an attitude hostile and denigratory to the claims of the people of the north. Although I heard Senator Lucier's well articulated views about the Senate, I could never accept, or envisage, that under Meech Lake, if ever a senator is to be appointed from the Northwest Territories or Yukon—since I like both these people, I hope this will be a long time in the future—the federal government would appoint someone from somewhere else. That seems to me to be the height of exaggerated fear.

Nor do I believe that there will be any difficulty or any reluctance among the 11 First Ministers in dealing with the important issue and related issues of aboriginal rights. I am so old that I belonged to the House of Commons, as did Senator Flynn, for two or three years before the Indian people of Canada were given a vote. I do not think that any of us were people of narrow mindedness or ill intent. We actually did not react as we should have to this matter.

I think it was in 1960 that the Diefenbaker government made that move, but what has happened since has been almost a geometric expansion and expression of the views which, in a smaller way, prompted that. That is why I am more optimistic and, on the whole, I look upon the Meech Lake Accord not just as a mere accommodation or achievement, but as a majestic achievement. I look upon it as a noble step in our national history.

• (2130)

We all, I trust, admire Robert Stanfield, but I do not think anyone has ever written that he was a highly excitable man.

Senator Frith: Nor, in fact, was he.

Senator Macquarrie: But Robert Stanfield said:

> Let me say quite frankly that I am ecstatic about this agreement. I am frankly and unashamedly ecstatic that we have achieved an agreement.
>
> Meech Lake has put Canada back on track. Meech Lake really constitutes a constitutional renewal. Let us keep it there.

Then he called it a ". . . marvel of marvels . . ."

Senator Frith: Imagine saving up all those years for that ecstasy and to squander it all on Meech Lake.

Senator Macquarrie: Then we have a comment from a great pragmatist, sometimes called a "fixer" in the House of Commons when I was there, the Honourable J. W. Pickersgill. He went on to say:

> Mr. Stanfield and I were together the night before the Meech Lake meeting, and we both said nothing would come of it. I am glad to say we were wrong; but it was a miracle.

I think Mr. Stanfield used similar language:.

> I am not at all ashamed to say that I think it is a great achievement.

Senator MacEachen did me the honour of quoting me when he made his speech and I appreciate being quoted and, indeed, noted by a man of his parliamentary, political and scholarly attainments, apart from the fact that he is a great highlander and, like myself, probably overgiven to mentioning that subject. He used the word, "euphoric" and I am not reluctant about the euphoria part of it either.

We have here—and Senator Lucier and Senator Molgat and I had something to do with the extravagance of the beautiful cover—the task force report. To me, the most important page in the whole report is page 45 with the signatures of the First Ministers. What is notable about that is that above the line marked "Quebec" there is a blank. Isn't that, really, honourable senators, what it is all about? To conceive of a formal document—as among the leaders of the provinces and the "Dominion", as I think we are still entitled to call it, and yet there is one omission. Why would we not rejoice in the fact that in Meech Lake there is no blank? There is no omission?

We have an important constitutional document supported by premiers representing four different parties and, heaven knows, a wide range of temperaments in all of these other matters; supported by all the leaders of the House of Commons; supported by some of the great savants of the country: people like Gordon Robertson, the distinguished Clerk of the Privy Council, and one of the wisest men we ever had, Pickersgill, and all these people down the line.

Senator Frith: If it is someone on our side, he or she is always distinguished.

Senator Macquarrie: We do not use our adjectives loosely. I think he is a great man. I always said that MacKenzie King was a great man, but I doubt if I would have said that too loudly in the presence of my late father. Now I can say it, and I did so before I even saw the so-called documentary.

In the north I used to hear some regret and criticism about the unanimity in reference to provincial boundaries. Sir Robert Borden, that great statesman, our first internationalist, a tremendous constitutionalist, was very exercised when he was telling the House of Commons how unjust it was that many provinces attracted to themselves vast territories contiguous to them. Manitoba was a little province but all of a sudden it extended all the way up to Hudson Bay. My remarks also apply to Saskatchewan, Alberta, British Columbia, Quebec and Ontario. He said, "It seems strange that we who began the whole thing are confined to the boundaries that we had and, yet, the whole country, including us, developed these territories."

I submit that perhaps the Yukon and the Northwest Territories, if there are any avaricious neighbours who have designs on their territories, may someday abide by the just strictures that people like the Premier of Prince Edward Island, New Brunswick and Nova Scotia may be able to insert on their behalf.

I am not all that upset that some matters have now moved into the realm of unanimity. I am not going to get into the quotation game but the most impressive witness I ran across was Professor Courchene from York University, the Robarts professor of Canadian studies. Perhaps we tend to quote people who agree with us and, once in a while it may be that we do because we agree with them. He said something that I thought was very important. He said that it is, however, an argument that states that three traditional "have" provinces of the federation, Ontario, B.C. and Alberta, ought not to have a veto on new provinces if the three "have-not" Maritime provinces do not have a veto. There must be some time when we consider that all provinces have a certain proprietary interest.

When I first came to the House of Commons there was some snob of a person there who said, "Oh, we have twice as many people in Scarborough as you have in P.E.I." I said, "Are you saying that Scarborough should be a province? Would that be good for the country?" There are times when even the smallest among us—and I happen to come from that smallest among us where the whole thing began—will say that our rights should not be curtailed or tied to a lower level than those of the great and rich among us.

These unanimity areas have been taken up with care. They are not extended to everything, for goodness' sake, because that would be ridiculous.

Professor Hogg said that when devolution reaches the stage of full provincial status, the other provinces are profoundly, albeit indirectly, affected. He said that the establishment of new provinces would increase the total number of provinces and thus indirectly affect the operation of the amending formula.

[Senator Frith.]

I am hopeful, honourable senators, that after all of the criticism is over, after all of the details have been stretched, exposed and expressed, there will be this great step forward for our people, for our provinces—this move, supported by all of our elected leaders. I heard someone in the Submissions Committee say to us, "Ugh, this cabal." Now, Clifford, Arlington, Buckingham, Ashley and Lauderdale—Senator Hicks would know them exactly right—were *sub rosa*, or perhaps subversive, but how did those 11 First Ministers get there? They were all elected. If they did not have a majority in a free election, they would not have been there.

• (2140)

So it is not a little deal that was cooked up. It is something that was worked out by our elected representatives; and I say let us go with them. Let us see further evolution, further expansion, further expression of the kind of goodwill which may, when the historians have a long look at it, raise the expression, "Meech Lake Accord" to a very fine expression of the noblest, most cooperative Canadianism that we have so far had.

Some Hon. Senators: Hear, hear.

Hon Charles McElman: I have a question for the honourable senator. I am keeping a poll. Could he tell us whether he had anything to do with the Sept-Iles speech?

Senator Flynn: Touché.

Senator Frith: Between you and him, Jacques, he is not excessively modest.

Senator McElman: That is a better answer than I had before. My second question is in more serious vein. Senator Macquarrie spoke with some favour of the principle of unanimity in matters of great concern. As a student of history, I probably do not need to remind him that one of the most important principles established by the Government of Canada, in cooperation with provinces, for our part of the country—the maritimes and with the addition now of Newfoundland—was the equalization formula. It was your gallant premier of the day, Walter Jones, Angus MacDonald of Nova Scotia and John MacNair of New Brunswick who fought mightily to have the federal authority and other provinces join with them in changing the wartime tax agreements to become the federal-provincial tax-sharing agreements with the beginnings of the equalization formula; and that had to be done over the great protest particularly of Ontario, and, to a lesser degree, the Province of Quebec. The requirement for unanimity was shoved to one side at that time. Does the honourable senator not agree that there are times when the interests of the nation, particularly our part of the nation, would do better without the unanimity clause?

Senator Macquarrie: I thank the honourable senator. I did say that unanimity is not advisable at all levels and in all areas of federal-provincial cooperation and that it was restricted. Yet it is wonderful what can be accomplished. The federal government, in my opinion, has moved through the years into many fields of provincial jurisdiction, and by that has brought

benefits to the people of Canada. That took place with or without a formula.

I often remember what my dear friend, Walter Shaw, our former premier, used to say, that instead of hostility and niggardliness from people like Mr. Frost of Ontario, we received tremendous cooperation and support. I also recall that one of the great occasions in the history of the maritimes—and I think that Senator McElman would agree with me—was when the Diefenbaker government moved powerfully and effectively on such moves as the Atlantic Provinces Adjustment Grant; and I suppose that, since special arrangements were made with the Atlantic provinces, they must have had at least the acquiescence of those provinces which were not the recipients. In other words, I imagine, like a true Conservative of the John A. Macdonald school, I am ready to be an enlightened pragmatist in all of these matters.

Hon. Dalia Wood: Honourable senators, for the past year the Meech Lake Constitutional Accord has been under the scrutiny of the press, the public and of Parliament and the legislatures across Canada.

While the first ministers keep reminding the country of their self-proclaimed title as the modern Fathers of Confederation, well respected figures from Canadian newspapers, universities and public life have been demonstrating that the accord has serious, if not fatal, flaws, which could ultimately threaten Canada's existence as we currently know it.

Drafting amendments to a Constitution demands careful and statesmanlike deliberation. Any changes should take the long view of what is required and not be the results of the political exigencies of the moment. Contemporary political figures must remember that their tinkering with the Constitution of Canada will have an effect on our government and society that will last until long after the leaders of today have left the political scene.

There is a common thread that runs through the criticism of the Meech Lake Accord. Briefly put, it is that the provisions of the accord as written would alter the institutions and practices which underlie the constitutional foundations of Canada.

Former Senator Eugene Forsey summed up those concerns in his submission to the special joint committee on the accord. He pointed out that:

> . . . it would produce a massive shift in power from Parliament and the legislatures to the courts: a very considerable shift from the federal government and Parliament to the . . . provinces, especially Quebec—

Which already has a National Assembly in lieu of a legislature:

> —It might easily produce also, in practice, a massive shift from Parliament and the provincial legislatures to the first ministers' conference, now given a new status, a new legitimacy.

In analyzing the accord's impact upon specific institutions, most commentators agree that the interim role assigned to the provinces for them to submit names for ultimate appointment to the Senate might block any changes to the Senate for the foreseeable future. The decentralization of the selection process for Supreme Court justices might impair the quality of judicial appointments. Choosing judges from provincial lists increases the opportunity for decisions to be based on political trade-offs. This practice could also block the appointment of judges with origins in non-traditional groups such as various ethnic minorities.

Northerners have severely criticized the accord. They rightly argue that section 9, which requires unanimous consent to establish new provinces, can effectively veto the achievement of provincial status by Yukon and the Northwest Territories.

• (2150)

Many thoughtful individuals and groups have expressed the worry that the accord will allow a province to opt out of a national program and yet have the right to compensation from the federal treasury if the province has a program or initiative compatible with national objectives. This provision of the accord begs the question of how national objectives will be determined.

Furthermore, the failure to define a provincial "initiative" gives the accord a most unsatisfactory vagueness. In fact, the accord leaves the door open to different levels of social services in different provinces and to the threat of provincial governments' opting out of a program unless lower national standards are accepted by the federal government.

The section of the Meech Lake Accord which, if adopted, would most seriously upset the traditional balance in Canada involves the two new interpretative clauses of the Constitution. These clauses, set out in section 1 of the accord, specify that the provisions of the Constitution must be interpreted consistently with:

1. the recognition of Canada's linguistic duality;

2. the position of Quebec as a distinct society within Canada.

At the same time, the accord also affirms the role of Parliament and all legislatures in recognizing and preserving the "fundamental" duality of the country. In addition, the accord establishes the additional role for the Government of Quebec to preserve and promote its distinct identity.

Instead of the vision of Canada as a single entity comprised of ten provincial equalities, the Meech Lake accord splits the country in two. On one hand, there is a "distinct" Quebec, and on the other hand, there are nine English-speaking provinces. The accord destroys the philosophy and the effort that led to the Constitution Act of 1982. The framers of this act went to great lengths to define a country in which all citizens, Quebecers included, could be at home.

The Meech Lake Accord will almost inevitably fragment the country by turning Quebec inwards. It will become a province with less and less in common with the rest of the country. The "distinct society," which Meech Lake will encourage, involves a vision of collective rights that will take precedence over the rights of individuals as guaranteed by the Charter of Rights.

Speaking of individuals, I should like to quote from a commentary made by Professor Graham Decarie of Concordia. He said:

> When the Commissioner of Official Languages reported that English-speaking Quebecers felt humiliated, the Quebec National Assembly unanimously censured him. That, in this year of miracles, provoked an awareness in the rest of Canada that something was happening to the anglophone minority of Quebec.
>
> There is some humiliation in being told that our language is forbidden in public, in being told that the towns and districts first settled by our ancestors must have their names changed because English names are offensive, in being told that our institutions like our schools must not be allowed to grow, by a process of attrition, will be encouraged to disappear. There is some humiliation in knowing that, however bilingual we may be, we will never be welcomed into civil service jobs, either federal or provincial, within this province, and we will never have equal access to government services. I feel some personal humiliation in reading in the francophone press that, despite a family history of almost 350 years in this province, I am not a real Quebecer. I am a demographic problem which must be remedied.
>
> There is some humiliation in all of that. But the greater humiliation came when all of the anglophone members of the National Assembly joined the unanimous vote of censure of the Official Languages Commissioner—the only federal official who has ever spoken in our defence.
>
> Like the francophone minorities in other provinces, we have been abandoned by almost all of the political leadership at every level. That is what the Meech Lake Accord is about. It gives free rein to provincial premiers like Mr. Bourassa to harass minorities, to use them as scapegoats, and to ignore even the basic human freedoms in our Charter of Rights.
>
> We're staying in Quebec, and we'll survive in Quebec. Despite political leaders, we'll work with our francophone neighbours—and we have some pretty fine francophone neighbours—to build the sort of tolerant society that Canada was suposed to be.
>
> Meanwhile, Canada, please don't ask us to share the flame. We've been burned too often.

The fact that only the Government of Quebec would have the task of protecting and promoting Quebec's distinct society is very disquieting. In this regard, Premier Bourassa and his Intergovernmental Affairs Minister, Gil Rémillard have made it quite clear that the courts will be required to take Quebec's status into account in all constitutional interpretations involving the province. This will have a particular impact on the future of the measures that are currently included in Bill 101. Although the Supreme Court of Canada has not yet ruled on the challenges to this legislation, the adoption of the Meech Lake Accord will create a whole new set of circumstances that might ultimately alter the effect of any Supreme Court decision.

If Meech Lake comes into effect:

> 1. The Province of Quebec will no longer be required to allow bilingual signs. The accord will permit the provincial government to argue that the need to preserve the distinct French face of Quebec takes precedence over any court ruling which requires such signage.
>
> 2. Quebec will be able to ignore some of its previous constitutional obligations including equality rights, official language rights and minority language education in order to "preserve and promote" its distinct identity.
>
> 3. The national government will be able both legally and politically to ignore its previous constitutional obligations to the English-speaking residents of the province of Quebec.

In short, the proposed constitutional provisions of the accord have the potential to remove the rights of the English-speaking residents of Quebec. At its worst, the combined effect of the various sections of the accord could create two classes of citizens: those in the nine provinces with rights that are constitutionally entrenched, and those in the province of Quebec whose rights can be removed to preserve and promote the distinct identity of Quebec.

If Parliament or a provincial legislature in the nine other provinces fails, in the opinion of the french-language minority, to live up to its "commitment" under section 1 of the Meech Lake Accord, presumably the minority could appeal to the courts to restore these rights. At the same time, this recourse would not apply to actions of the National Assembly of Quebec because the accord requires the courts to interpret the Constitution "in a manner consistent with the recognition that Quebec constitutes within Canada, a distinct society."

I should now like to quote Mr. Gil Rémillard, the Minister of Intergovernmental Affairs for the province of Quebec when he addressed the National Assembly on June 19. When referring to the Meech Lake Accord, he said:

[*Translation*]

> A historic agreement, to the extent that it acknowledges Quebec as a distinct society, to the extent that it acknowledges the National Assembly's role in the protection and promotion of the Quebec specificity.

A little later he went on to say, and I quote:

> We also have a safeguard provision with respect to the distinct society and the Canadian duality, a safeguard provision which enables Quebec to have a guarantee for its linguistic rights, a guarantee that there is a minimum, a minimum guarantee which may eventually make it possible for us to obtain new elements for this cultural security which is essential to us... The Premier of Quebec managed to convince his colleagues to endorse this provision which enables us to have this guarantee, which now makes it possible for us to build on the basis of what we already have. I have shown that... when refer-

> ring to the distinct society which is a power, a basic tool to enforce our jurisdictions. And again I show that by means of this safeguard provision which is at the very foundation of our claims as a distinct society with respect to our linguistic rights, our cultural rights. We have these full powers.

[*English*]

The writing is already on the wall. Gil Rémillard has already indicated that if the Supreme Court of Canada rules that unilingual signs are unconstitutional, the accord would empower his legislature to re-enact the prohibition of such signs.

Today, the spotlight is fixed ever more firmly on the issue of minority language rights. This is the result of Premier Devine's efforts to avoid implementing the provisions of the original act which created bilingualism in Saskatchewan. This province, the first after Quebec to ratify the Meech Lake Accord, is directly attempting to diminish historic language rights. Even prior to the announcement of these measures in Saskatchewan's Bill 2, the Fédération des francophones hors Québec had decided that the Meech Lake Accord needed amendments to preserve the rights of French-speaking Canadians outside that province. The FFHQ currently wants to eliminate the section of the accord which confirmed exclusive provincial jurisdiction in the area of aid to linguistic minorities.

[*Translation*]

I should like to read a communiqué put out by the Fédération des francophones hors Québec. I quote:

> In the minds of many people, and in our opinion as well, this action lays greater emphasis still on the axis of an English Canada and a French Canada. It shows also that the constitutional agreement as it is now worded does not guarantee greater protection for the rights of francophones outside Quebec. This is why the FFHQ is so insistent that the promotion of Canada's duality be written in the Constitution of Canada.

● (2200)

[*English*]

This was signed by the President of La Fédération des francophones hors Québec, Mr. Yvon Fontaine.

But for many in Quebec, even sensible suggestions such as this are treated as opposition to Quebec and to les Québécois. The editor of *Le Devoir* claimed that the FFHQ was falling into the trap of "decoupling the francophones of Canada from those of Quebec."

At the same time, this "decoupling" is precisely the strategy of Premier Bourassa. He has failed resolutely to condemn the actions of Premier Grant Devine in restricting French language rights in Saskatchewan.

The question is "why?" and the answer is obvious. Robert Bourassa wants to mute, in advance, any opposition, both by Saskatchewan and by Alberta, to measures that might restrict the rights of the anglophone minority in Quebec. Even if the Meech Lake Accord does not come into force, Mr. Bourassa may use the override clause in the Constitution to prohibit bilingual signs in Quebec—that is, if the Supreme Court decides that they are illegal under current circumstances.

Honourable senators, I quote from a statement the Prime Minister made on March 26, 1988:

> We have obtained Quebec's signature on our Constitution on terms that are satisfactory for Quebec and honourable for Canada. And we have done so in a manner that safeguards the rights of our language minorities. As I said in the House of Commons on October 21 last year:
>
> > In voting for this Accord, Members are upholding the rights of our language minorities, English-speaking in Quebec and French-speaking outside Quebec. Let no one misconstrue our commitment, either now or at any time in the future. If I, for one moment, thought that anyone's rights were being overridden by this Accord, I would not have recommended it to my colleagues in Government . . .

I now ask: Is not the Prime Minister ready to amend the Meech Lake Accord now that Saskatchewan has not lived up to the spirit of that accord?

In closing, the omens are already grim. The Meech Lake Accord, if adopted, could provoke a full-scale storm that will not pass in the near future. Ominous clouds could hang over Canada for years to come.

On motion of Sentor Ottenheimer, debate adjourned.

BUSINESS OF THE SENATE

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, as far as our side is concerned, all orders stand, all inquiries stand and all motions stand.

Hon. Orville H. Phillips: Honourable senators, I was just going to suggest the same thing.

The Senate adjourned until tomorrow at 2 p.m.

THE SENATE

Wednesday, April 20, 1988

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

Prayers.

INTERNATIONAL TERRORISM

MEETING OF SUBCOMMITTEE OF NORTH ATLANTIC ASSEMBLY IN ANKARA, TURKEY—NOTICE OF INQUIRY

Hon. William M. Kelly: Honourable senators, I give notice that on Tuesday next, April 26, 1988, I will call the attention of the Senate to the meeting of the Subcommittee of the North Atlantic Assembly on International Terrorism held in Ankara, Turkey, from April 5 to 8, 1988.

VETERANS AFFAIRS AND SENIOR CITIZENS

SUBCOMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Jack Marshall: Honourable senators, in view of the fact that the resolution on the Meech Lake Accord will take priority in the Senate today, may I move a motion now rather than waiting until motions are called on the order paper?

Hon. Royce Frith (Deputy Leader of the Opposition): Is it a motion of which you have given notice?

Senator Marshall: I wish to move that the Subcommittee on Veterans Affairs and Senior Citizens have power to sit while the Senate is sitting.

Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*a*), I move:

> That the Subcommittee of the Standing Senate Committee on Social Affairs, Science and Technology on Veterans Affairs and Senior Citizens have power to sit at seven clock in the evening today, April 20, even though the Senate may then be sitting, and that Rule 76(4) be suspended in relation thereto.

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

Hon. Senators: Agreed.

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, have we actually changed the title of the subcommittee to include senior citizens, or was that merely proposed yesterday and not dealt with?

Senator Marshall: The main committee, the Standing Senate Committee on Social Affairs, Science and Technology, has given its consent to the subcommittee to change its name. Yesterday I introduced an inquiry to inform the Senate of my feelings on the subcommittee's mandate and to indicate why I am changing its name. As I understand it, I did not have to introduce an inquiry in the Senate, because the main committee had given the subcommittee the authority to extend the name. I introduced the inquiry merely to bring the matter to the attention of the Senate and to put it on record.

Senator Frith: I am not sure that that is so.

Senator MacEachen: Honourable senators, I am at least relieved that the Senate itself is not being asked to make that change—in other words, to confer on a subcommitte responsibility for the senior citizens of Canada. It may be possible later to discuss whether or not this action is appropriate, but I merely wanted to make sure that the Senate itself had not been asked to make that change and that by permitting the inquiry to proceed it did not constitute a formal decision of the Senate to entrust to the subcommittee the responsibility for senior citizens.

I do not want to inconvenience my colleague at all, and I will not press the matter further at this point. I just want to register some concern about this development.

Motion agreed to.

QUESTION PERIOD

NATIONAL DEFENCE

REPORT OF ADVISORY GROUP TO MINISTER ON REGULATION OF POLITICAL ACTIVITIES IN CANADIAN FORCES ESTABLISHMENTS—RECOMMENDATIONS 3 AND 4—GOVERNMENT ACTION

Hon. Lorna Marsden: Honourable senators, several times in the chamber I have asked whether the Minister of National Defence was prepared to table his report on the regulation of political activities in Canadian Forces establishments, and I am very happy indeed to see that that report has now been tabled. The minister was kind enough to send me a copy.

I would like to ask the Leader of the Government in the Senate for clarification of the press release put out yesterday by the Minister of National Defence, which is attached to the copy of Professor Morton's report. There were seven recommendations and, as the Leader of the Government no doubt knows, there is a comment in brackets after several of them indicating the action that the government proposes to take. However, after Recommendations 3 and 4 there is no such comment. I wonder if the Leader of the Government knows what that means. Is there no recommendation from the Department of National Defence, or is that to follow later?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I suspect that the government is accepting those recommendations, but I had better confirm that with the minister.

THE CONSTITUTION

MOTION FOR PROPOSED CONSTITUTION AMENDMENT, 1987—MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

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

THAT,

WHEREAS the *Constitution Act, 1982* came into force on April 17, 1982, following an agreement between Canada and all the provinces except Quebec;

AND WHEREAS the Government of Quebec has established a set of five proposals for constitutional change and has stated that amendments to give effect to those proposals would enable Quebec to resume a full role in the constitutional councils of Canada;

AND WHEREAS the amendment proposed in the schedule hereto sets out the basis on which Quebec's five constitutional proposals may be met;

AND WHEREAS the amendment proposed in the schedule hereto also recognizes the principle of the equality of all the provinces, provides new arrangements to foster greater harmony and cooperation between the Government of Canada and the governments of the provinces and requires that conferences be convened to consider important constitutional, economic and other issues;

AND WHEREAS certain portions of the amendment proposed in the schedule hereto relate to matters referred to in section 41 of the *Constitution Act, 1982*;

AND WHEREAS section 41 of the *Constitution Act, 1982* provides that an amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by resolutions of the Senate and the House of Commons and of the legislative assembly of each province;

NOW THEREFORE the Senate resolves that an amendment to the Constitution of Canada be authorized to be made by proclamation issued by Her Excellency the Governor General under the Great Seal of Canada in accordance with the schedule hereto.

SCHEDULE

CONSTITUTION AMENDMENT, 1987

Constitution Act, 1867

1. The *Constitution Act, 1867* is amended by adding thereto, immediately after section 1 thereof, the following section:

"**2.**(1) The Constitution of Canada shall be interpreted in a manner consistent with

(*a*) the recognition that the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec, constitutes a fundamental characteristic of Canada; and

(*b*) the recognition that Quebec constitutes within Canada a distinct society.

(2) The role of the Parliament of Canada and the provincial legislatures to preserve the fundamental characteristic of Canada referred to in paragraph (1)(*a*) is affirmed.

(3) The role of the legislature and Government of Quebec to preserve and promote the distinct identity of Quebec referred to in paragraph (1)(*b*) is affirmed.

(4) Nothing in this section derogates from the powers, rights or privileges of Parliament or the Government of Canada, or of the legislatures or governments of the provinces, including any powers, rights or privileges relating to language."

2. The said Act is further amended by adding thereto, immediately after section 24 thereof, the following section:

"**25.**(1) Where a vacancy occurs in the Senate, the government of the province to which the vacancy relates may, in relation to that vacancy, submit to the Queen's Privy Council for Canada the names of persons who may be summoned to the Senate.

(2) Until an amendment to the Constitution of Canada is made in relation to the Senate pursuant to section 41 of the *Constitution Act, 1982,* the person summoned to fill a vacancy in the Senate shall be chosen from among persons whose names have been submitted under subsection (1) by the government of the province to which the vacancy relates and must be acceptable to the Queen's Privy Council for Canada."

3. The said Act is further amended by adding thereto, immediately after section 95 thereof, the following heading and sections:

"*Agreements on Immigration and Aliens*

95A. The Government of Canada shall, at the request of the government of any province, negotiate with the government of that province for the purpose of concluding an agreement relating to immigration or the

temporary admission of aliens into that province that is appropriate to the needs and circumstances of that province.

95B.(1) Any agreement concluded between Canada and a province in relation to immigration or the temporary admission of aliens into that province has the force of law from the time it is declared to do so in accordance with subsection 95C(1) and shall from that time have effect notwithstanding class 25 of section 91 or section 95.

(2) An agreement that has the force of law under subsection (1) shall have effect only so long and so far as it is not repugnant to any provision of an Act of the Parliament of Canada that sets national standards and objectives relating to immigration or aliens, including any provision that establishes general classes of immigrants or relates to levels of immigration for Canada or that prescribes classes of individuals who are inadmissible into Canada.

(3) The *Canadian Charter of Rights and Freedoms* applies in respect of any agreement that has the force of law under subsection (1) and in respect of anything done by the Parliament or Government of Canada, or the legislature or government of a province, pursuant to any such agreement.

95C.(1) A declaration that an agreement referred to in subsection 95B(1) has the force of law may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement.

(2) An amendment to an agreement referred to in subsection 95B(1) may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized

(*a*) by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement; or

(*b*) in such other manner as is set out in the agreement.

95D. Sections 46 to 48 of the *Constitution Act, 1982* apply, with such modifications as the circumstances require, in respect of any declaration made pursuant to subsection 95C(1), any amendment to an agreement made pursuant to subsection 95C(2) or any amendment made pursuant to section 95E.

95E. An amendment to sections 95A to 95D or this section may be made in accordance with the procedure set out in subsection 38(1) of the *Constitution Act, 1982,* but only if the amendment is authorized by resolutions of the legislative assemblies of all the provinces that are, at the time of the amendment, parties to an agreement that has the force of law under subsection 95B(1)."

4. The said Act is further amended by adding thereto, immediately preceding section 96 thereof, the following heading:

"General"

5. The said Act is further amended by adding thereto, immediately preceding section 101 thereof, the following heading:

"Courts Established by the Parliament of Canada"

6. The said Act is further amended by adding thereto, immediately after section 101 thereof, the following heading and sections:

"Supreme Court of Canada

101A.(1) The court existing under the name of the Supreme Court of Canada is hereby continued as the general court of appeal for Canada, and as an additional court for the better administration of the laws of Canada, and shall continue to be a superior court of record.

(2) The Supreme Court of Canada shall consist of a chief justice to be called the Chief Justice of Canada and eight other judges, who shall be appointed by the Governor General in Council by letters patent under the Great Seal.

101B.(1) Any person may be appointed a judge of the Supreme Court of Canada who, after having been admitted to the bar of any province or territory, has, for a total of at least ten years, been a judge of any court in Canada or a member of the bar of any province or territory.

(2) At least three judges of the Supreme Court of Canada shall be appointed from among persons who, after having been admitted to the bar of Quebec, have, for a total of at least ten years, been judges of any court of Quebec or of any court established by the Parliament of Canada, or members of the bar of Quebec.

101C.(1) Where a vacancy occurs in the Supreme Court of Canada, the government of each province may, in relation to that vacancy, submit to the Minister of Justice of Canada the names of any of the persons who have been admitted to the bar of that province and are qualified under section 101B for appointment to that court.

(2) Where an appointment is made to the Supreme Court of Canada, the Governor General in Council shall, except where the Chief Justice is appointed from among members of the Court, appoint a person whose name has been submitted under subsection (1) and who is acceptable to the Queen's Privy Council for Canada.

(3) Where an appointment is made in accordance with subsection (2) of any of the three judges necessary to meet the requirement set out in subsection 101B(2), the Governor General in Council shall appoint a person whose name has been submitted by the Government of Quebec.

(4) Where an appointment is made in accordance with subsection (2) otherwise than as required under subsection (3), the Governor General in Council shall appoint a person whose name has been submitted by the government of a province other than Quebec.

101D. Sections 99 and 100 apply in respect of the judges of the Supreme Court of Canada.

101E.(1) Sections 101A to 101D shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws under section 101 except to the extent that such laws are inconsistent with those sections.

(2) For greater certainty, section 101A shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws relating to the reference of questions of law or fact, or any other matters, to the Supreme Court of Canada."

7. The said Act is further amended by adding thereto, immediately after section 106 thereof, the following section:

"**106A.**(1) The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the Government of Canada after the coming into force of this section in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that is compatible with the national objectives.

(2) Nothing in this section extends the legislative powers of the Parliament of Canada or of the legislatures of the provinces."

8. The said Act is further amended by adding thereto the following heading and sections:

"XII—CONFERENCES ON THE ECONOMY AND OTHER MATTERS

148. A conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once each year to discuss the state of the Canadian economy and such other matters as may be appropriate.

XIII—REFERENCES

149. A reference to this Act shall be deemed to include a reference to any amendments thereto."

Constitution Act, 1982

9. Sections 40 to 42 of the *Constitution Act, 1982* are repealed and the following substituted therefor:

"**40.** Where an amendment is made under subsection 38(1) that transfers legislative powers from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply.

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

(*a*) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(*b*) the powers of the Senate and the method of selecting Senators;

(*c*) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;

(*d*) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province was entitled; to be represented on April 17, 1982;

(*e*) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;

(*f*) subject to section 43, the use of the English or the French language;

(*g*) the Supreme Court of Canada;

(*h*) the extension of existing provinces into the territories;

(*i*) notwithstanding any other law or practice, the establishment of new provinces; and

(*j*) an amendment to this Part."

10. Section 44 of the said Act is repealed and the following substituted therefor:

"**44.** Subject to section 42, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons."

11. Subsection 46(1) of the said Act is repealed and the following substituted therefor:

"**46.**(1) The procedures for amendment under sections 38, 41 and 43 may be initiated either by the Senate or the House of Commons or by the legislative assembly of a province."

12. Subsection 47(1) of the said Act is repealed and the following substituted therefor:

"**47.**(1) An amendment to the Constitution of Canada made by proclamation under section 38, 41, or

43 may be made without a resolution of the Senate authorizing the issue of the proclamation if, within one hundred and eighty days after the adoption by the House of Commons of a resolution authorizing its issue, the Senate has not adopted such a resolution and if, at any time after the expiration of that period, the House of Commons again adopts the resolution."

13. Part VI of the said Act is repealed and the following substituted therefor:

"PART VI
CONSTITUTIONAL CONFERENCES

50.(1) A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once each year, commencing in 1988.

(2) The conferences convened under subsection (1) shall have included on their agenda the following matters:

(*a*) Senate reform, including the role and functions of the Senate, its powers, the method of selecting Senators and representation in the Senate;

(*b*) roles and responsibilities in relation to fisheries; and

(*c*) such other matters as are agreed upon."

14. Subsection 52(2) of the said Act is amended by striking out the word "and" at the end of paragraph (b) thereof, by adding the word "and" at the end of paragraph (c) thereof and by adding thereto the following paragraph:

"(*d*) any other amendment to the Constitution of Canada."

15. Section 61 of the said Act is repealed and the following substituted therefor:

"**61.** A reference to the *Constitution Act 1982*, a reference to the *Constitution Acts 1867 to 1982*, shall be deemed to include a reference to any amendments thereto."

General

16. Nothing in section 2 of the *Constitution Act, 1867* affects section 25 or 27 of the *Canadian Charter of Rights and Freedoms*, section 35 of the *Constitution Act, 1982* or class 24 of section 91 of the *Constitution Act, 1867*.

CITATION

17. This amendment may be cited as the *Constitution Amendment, 1987*.

And on the motion in amendment of the Honourable Senator MacEachen, P.C., seconded by the Honourable Senator Frith, that the motion be amended as follows:

(*a*) in paragraph 1 of the Schedule by deleting subsection 2.(1) and substituting the following therefor:

"**2.**(1) The Constitution of Canada shall be interpreted in a manner consistent with

(*a*) the recognition that the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec, constitutes a fundamental characteristic of Canada;

(*b*) the recognition that Quebec constitutes within Canada a distinct society;

(*c*) the recognition that aboriginal peoples constitute a distinctive and fundamental characteristic of Canada;

(*d*) the recognition of the multicultural nature of Canadian society, and in particular respect for the many origins, creeds and cultures as well as the differing regional identities that helped shape Canadian society; and

(*e*) the recognition of the advantages of developing the Canadian economic union."

(*b*) in paragraph 1 of the Schedule by deleting subsection 2.(2) and substituting the following therefor:

"2(*a*) The role of the Parliament of Canada **to preserve and promote, and the role of the** provincial legislatures to preserve and, **subject to subparagraph (2)(*b*) to promote,** the fundamental characteristic of Canada referred to in paragraph 1(a) is affirmed.

(*b*) The role of a province in relation to promotion applies from the time it is adopted by a resolution of the legislative assembly of that province."

(*c*) in paragraph 2 of the Schedule by deleting section 25 and substituting the following therefor:

"25. Where a vacancy occurs in the Senate, and until an amendment to the Constitution of Canada is made in relation to the Senate pursuant to section 42 of the *Constitution Act, 1982*, the government of Canada shall, within six months after the vacancy occurs, call an election in the province or territory to which the vacancy relates for the purpose of filling that vacancy, and, notwithstanding the provision of section 29 of the *Constitution Act, 1867*, for a term of nine years."

(*d*) in paragraph 6 of the Schedule by deleting subsections 101C.(1) and (2) and substituting the following therefor:

"**101C.**(1) Where a vacancy occurs in the Supreme Court of Canada, the government of each province **and the elected government of each territory** may, in relation to that vacancy, submit to the Minister of Justice

of Canada the names of any of the persons who have been admitted to the bar of that province **or territory** and are qualified under section 101B. for appointment to that court.

(2) **Subject to subsection (5),** where an appointment is made to the Supreme Court of Canada, the Governor General in Council shall, except where the Chief Justice is appointed from among members of the Court, appoint a person whose name has been submitted under subsection (1) and who is acceptable to the Queen's Privy Council for Canada."

(*e*) in paragraph 6 of the Schedule by adding immediately after subsection 101C.(4) the following:

"**(5) Where an appointment is made in accordance with subsection (2) and, if within a period of three months, no name which has been submitted under subsection (1) is acceptable to the Queen's Privy Council for Canada, the Chief Justice may make an interim one-year appointment from among justices of the Federal Court of Canada or provincial Superior Courts.**"

(*f*) in paragraph 7 of the Schedule by deleting subsection 106A.(1) and substituting the following therefor:

"**106A.**(1) The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the **Parliament** of Canada after the coming into force of this section, in an area of exclusive provincial jurisdiction, if the province carries on a **compatible program which meets minimum national standards.**"

(*g*) by deleting paragraphs 9, 10, 11 and 12 of the Schedule and substituting the following therefor:

"9. Sections 40 to 42 of the *Constitution Act, 1982* are repealed and the following substituted therefor:

40. Where an amendment is made under subsection 38(1) that transfers legislative powers from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply.

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

(*a*) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(*b*) the right of a province of a number of members in the House of Commons not less than the number of Senators by which the province was entitled to be represented on April 17, 1982;

(*c*) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;

(*d*) subject to section 43, the use of the English or the French language;

(*e*) the Supreme Court of Canada; and

(*f*) an amendment to this Part.

42.(1) An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with subsection 38(1):

(*a*) the powers of the Senate and the method of selecting Senators; and

(*b*) the number of members by which a province or territory is entitled to be represented in the Senate and the residence qualifications of Senators.

(2) Subsections 38(2) to (4) do not apply in respect of amendments in relation to matters referred to in subsection (1)."

"**42A. Notwithstanding subsection 42(1) of the *Constitution Act, 1982,* the establishment of new provinces and the extension of existing provinces into territories shall be a matter exclusively for the Governor General in Council and the elected government of the territory affected.**"

(*h*) in paragraph 13 of the Schedule by deleting subsection 50.(2) and substituting the following therefor:

"(2) The conferences convened under subsection (1) shall have included on their agenda the following matters:

(*a*) the aboriginal and treaty rights of the aboriginal peoples of Canada, including self-government;

(*b*) Senate reform, including the role and functions of the Senate, its powers, the method of selecting Senators and representation in the Senate;

(*c*) roles and responsibilities in relation to fisheries **at the first meeting only;** and

(*d*) such other matters as agreed upon."

(*i*) by deleting paragraph 16 of the Schedule and substituting the following therefor:

"**16. Nothing in the *Constitution Amendment, 1987* derogates from any of the rights and freedoms guaranteed by the *Canadian Charter of Rights and Freedoms* or affects Part II of the *Constitution Act, 1982.***"—(*Honourable Senator Ottenheimer*).

[*Translation*]

Hon. Gerald Ottenheimer: Honourable senators, I am delighted to have this opportunity to share with you my views concerning the Meech Lake Accord and the amendment moved by Senator MacEachen, the Leader of the Opposition in the Senate.

[*English*]

Senator Frith: Just when I thought I was beginning to understand Newfoundlandese!

Senator Ottenheimer: I am trying to improvise for honourable senators.

[*Translation*]

We have not come up with Newfoundland French, not yet anyway, but it could happen with a distinct society.

It is not the first time I have the opportunity to consider this issue. As Newfoundland Minister of Intergovernmental Affairs, I had the opportunity two or three times to discuss this issue with Mr. Gil Rémillard, the Quebec Minister for Intergovernmental Affairs, and also with our friend Senator Murray, the Minister of State (Federal-Provincial Relations). I am therefore quite pleased to pursue this matter in the Canadian Senate.

● (1410)

[*English*]

As I see it and judge it, the basic purpose of the Meech Lake Accord is to permit the adherence of Quebec to the Constitution of Canada in a manner noble and acceptable to all the provinces and to the federal government. I do not think anyone would claim that what we have is a perfect document, a document which will resolve forever the constitutional issues facing Canada, or which attempts to resolve all of them. What it is, essentially, is an intergovernmental agreement, an agreement reached by the Government of Canada and the governments of the ten provinces. It expresses a consensus of the 11 governments; and that consensus, imperfect though it may be, is what it is.

The resolution, of which notice was given by the Leader of the Government, incorporates that consensus. The amendments proposed by the Leader of the Opposition obviously do not express the consensus reached by the governments involved. The amendments, I assume, express the consensus of honourable senators on the opposite side.

But, of course, whether senators are on the opposition side or whether they are colleagues on the government side, the various governments of Canada, the Prime Minister and the premiers of the ten provinces have not given up their right to form, express and maintain consensus. They have not delegated that to any of us.

Therefore, I, as a member of this chamber, as a Canadian, as a Newfoundlander, will, with pleasure, support the resolution which expresses the consensus actually reached.

Obviously, many honourable senators on both sides of the house, and people throughout Canada, have spoken long, and frequently very well, on this, and I am not so presumptuous as to think that I will or can add anything new. But it is a subject which I think is of sufficient importance that all of us who wish to express our opinion should obviously do so—and I think that is a view shared by all honourable senators.

It has been pointed out that the Meech Lake Accord in no way resolves problems, which will need a constitutional resolution, with respect to the aboriginal peoples, with respect to the Territories, with respect to the adhesion of new provinces within Canada, and also certain problems with respect to women. Of course, what we have to bear in mind is that it was not intended to do that; and, indeed, one could ask one's self, "Would it be appropriate to intend to do that?" I think that Senator Bazin last evening referred to the point that if one were to go ahead and endeavour to find constitutional resolutions to all of those problems without the participation of Quebec there would be something quite anomalous about it.

[Senator Frith.]

Indeed, I think that without Quebec's adherence to the Constitution, for the federal government and the other nine provinces to presume to come up with constitutional amendments covering those subjects—of the aboriginal peoples, the northern Territories and other subjects—would be as if the federal government and those nine provinces were separating themselves from Quebec. To me, it appears essential that Quebec be an adherent to the Constitution in order that we, all together, make further progress in other important areas requiring constitutional reform.

No one claims that it is perfect, but it is what has been achieved—and I suppose, in the search for perfection, that Voltaire put it better than most of us can. He certainly put it more briefly than most of us can when he said, "le mieux est l'ennemi du bien."

I should like to emphasize the point that nobody claims that this is perfect, but, from another point of view, to attempt to resolve the other constitutional issues, irrespective of Quebec's adherence, would be, in many ways, inappropriate and it would be as if the other participants in the constitutional process—the other nine provinces and the federal government—were, in a sense, in terms of constitutional involvement, separating themselves from Quebec.

[*Translation*]

In Newfoundland, the concepts "distinct society" and "duality" have never been a major problem. During the series of constitutional conferences in 1980, the Newfoundland government prepared a document setting forth its philosophy on development and constitutional reform. The same document and the same philosophy form the basis today of the position taken by the government of Newfoundland and of its support for the Meech Lake Accord.

I would like to read a few pages from this document, which is already historic since it was dated August 16, 1980. The French version was published under the title: *Vers le vingt-et-unième siècle—Tous ensemble.*

> The Government of Newfoundland is convinced that in our country, both federal and provincial governments must be strong and viable. The State cannot be stronger that its constituent parts. This means that the eleven governments involved in these consultations must agree on a distribution of jurisdictional rights that will allow both the federal and the provincial governments to meet their obligations.
>
> The Government of Newfoundland does not envisage a Canada where all powers would be concentrated in the central government, nor a loose association that would weaken the federal government's powers and prevent the Government of Canada from acting effectively.

The document goes on to say:

> The Newfoundland government's approach to constitutional change is based on the conviction that, like individual citizens, the provinces must be in a position of equality. Whether they are large or small, Anglophone or Francophone or both, whether they are contributors to or beneficiaries of the equalization process, whether their resources are land- or sea-based, legal equality is the foundation of the complex relationships in our society.

On the subject of duality we read:

> Canada's duality, as reflected in our official languages, our legal system and our social and cultural values, evolved in a way that is unique to this country. By strengthening the constituent parts of the Canadian federation, we enhance Canada as a nation. Newfoundland believes that this duality should be recognized in the text of a new Constitution.

And in concluding:

> This fundamental principle of equality applies not only to the provinces but to all Canadians, to aboriginal people, to all those who make up our multicultural society, to all men and women, whatever their origin, faith or creed. It is this combination of diversity and unity that is Canada's most precious resource.

• (1420)

This was the philosophy that formed the basis of the position taken by the Newfoundland government during the meetings on constitutional reform and also during the discussions on Quebec's adherence to the Canadian Constitution and the Meech Lake Accord we are discussing today.

[*English*]

The problem of "distinct society" seems to appear to many to be one which is not in conformity with their view of Canada. I think it is regarded by some honourable senators and others as something radical, undermining, threatening of national unity, or however one would wish to phrase it.

Senator Frith: Did you speak of the conflict with one's view of parity? Is that the word you used?

Senator Ottenheimer: I do not recall the word I used—I was ad-libbing.

This fear of "distinct society," I believe, is not well founded, nor is it anything radical or totally new. Its reference in a constitution which is of an entrenched form and not a legislative form will be true of every constitutional provision from this time on.

I think Professor Hogg puts it very well, and I would like to draw the attention of honourable senators to his views which were expressed in a study of his, published just last December, entitled "Meech Lake Constitutional Accord Annotated." I will read briefly from that study:

> The recognition of Quebec as a distinct society is not unique to the Meech Lake Constitutional Accord. The Constitution Act, 1867 created a federal state rather than a unitary state primarily because of the concern of French-Canadians to protect a distinct society in the territory of Quebec. That is an historical fact, never explicitly acknowledged in the language of the Constitution Act, 1867. But the Act does contain several provisions that in effect give recognition to the distinctness of Quebec.
>
> With respect to language, section 133 of the Constitution Act, 1867 provides a guarantee of the use of both the English and French languages in the federal courts, and in the Quebec Legislature and Quebec courts. The guarantee does not apply in the other founding provinces. A similar guarantee was extended to Manitoba when it was created in 1870: at that time, Manitoba had a French majority which feared that it would be swamped by English-speaking immigration;—

which, obviously, happened.

> —the guarantee is in section 23 of the Manitoba Act, 1870. In 1982, sections 16 to 20 of the Charter of Rights extended a similar guarantee to New Brunswick. But no similar guarantee applies in the other seven provinces.
>
> With respect to law, section 94 of the Constitution Act, 1867 authorizes the federal Parliament to make provision for the uniformity of laws relative to property and civil rights and civil procedure in Ontario, Nova Scotia and New Brunswick. This provision has never been used. What is interesting about section 94, however, is that it contemplates uniform laws in only three of the four founding provinces. (Its scope now extends to the nine common law provinces.) Plainly, the assumption was that Quebec's Civil Code and Code of Civil Procedure would remain distinct from the comparable laws in the common law provinces. That is, of course, exactly what has happened.

He then goes on to cite another example with respect to the school system in Quebec. I think the point he is making is that distinctness, the recognition of a "distinct society," is not something that was invented by the 11 First Ministers who agreed on the Meech Lake Accord. It is, according to Hogg—and, indeed, as a recognition of historical fact—a phenomenon which has been operative in Canada for some time.

I could point out as another example the Terms of Union between Canada and Newfoundland. This is a constitutional provision which applies to no other federal-provincial relationship. I will not read it, but it is section 17, the Terms of Union between Canada and Newfoundland, which guarantees to Newfoundland the continuation of what, there, is called a denominational educational system. It points out that public moneys voted must be apportioned on a *per capita*, non-discriminatory basis for those denominations which had recognition in Newfoundland prior to union with Canada. That is quite different from the provisions with respect to confessional education in Quebec. It is something distinctive with respect to Newfoundland.

So, the distinct aspects of our country—whether they are linguistic, cultural or legal—are factors of our history.

[*Translation*]

Most of those who criticize the agreement are opposed to the inclusion of fisheries as a subject for constitutional dialogue. Perhaps fisheries is not sufficiently esthetic or the subject of refined speculation. Sometimes fish smells bad, it even stinks—too bad! These are not valid reasons for excluding fisheries from the constitutional dialogue.

To understand Newfoundlanders' sensitivity on fisheries, one must understand the history and even the social psychology of the people of Newfoundland and Labrador. Those who came to colonize these shores had only one aim—to fish. They did not come to till the land or to cut down trees or to develop hydroelectricity or for the pleasant climate.

Today, of course, men and, increasingly, women work in forestry and mining, in hydroelectric generation and also in the oil industry.

The fact still remains that fisheries are the basis of the economy and the driving force of Newfoundland's social and cultural life. In my opinion, it can well be said that fishing is Newfoundland's *raison d'être*, historically, economically and sociologically.

Why then this fear of including a dialogue, a discussion on the problems of the fisheries in a constitutional setting? Surely it is not because these reasons are not valid. There must be some other reasons.

[*English*]

In Newfoundland today 40,000 men and women depend on the fishery. They are involved either full-time or part-time in the processing aspect or the catching aspect—some aspect of it. One hears that the reference in the Meech Lake Accord with respect to the fishery is putting up for grabs the whole area of jurisdiction, that it is a grab for power. What does Meech Lake say? It says that the First Ministers will discuss "roles and responsibilities in relation to fisheries." If that is a great threat to any power of the federal government or to any economic activity of any province, it must be the most gentle threat that has ever transpired in intergovernmental relations. I really cannot share the view of those who see this as a threat either to federal paramountcy or to the continuing economic activity of other Canadians and Maritimers.

There has been some discussion of the Meech Lake provision for appointment to the Senate. As everyone knows, that is a temporary measure and is not something which is viewed as being permanent.

Reference has also been made to Senate reform. I have to be very careful here, because I do not wish to be accused of conflict of interest. As far as I know, all senators who have spoken on this matter and have referred to Senate reform have supported the concept of an elected Senate and an effective Senate with a suspensive veto concept. I myself support the Triple-E: elected, effective, but also equal.

● (1430)

I support the concept of equality of the number of senators from all provinces and, obviously, appropriate provision for the Territories. I think it is only in this way that in Canada we will be able to balance what we have as the equality of people—one person, one vote—the, roughly-speaking, demographic equality which translates itself at the federal level into elections in the House of Commons and the principle of the juridical equality of the provinces. For example, that Prince Edward Island with 120,000, or Newfoundland with 570,000, and Ontario with 7-point-whatever million possess a juridical equality. Obviously, it does not mean that each is equally rich or equal in terms of employment—it does not mean that—but it means that as constituent elements in the federal system there is a basic equality.

In terms of Senate reform, I would certainly support an elected Senate, and an effective Senate—and I think that means a suspensive veto. I also would be supportive of equality of representation.

In the final analysis, the differences which are apparent during this debate—and I think Senator Kirby probably referred to it yesterday, but in a different manner; and I will be using different terms, because I will not be disparaging things that he disparaged—are basically between two different points of view of Canada. One I would call a highly centralized view, a pyramid in structure, or a hierarchical view, a highly centralized view. The other one I would call a balanced federalism, whereby it is accepted that a strong province or strong provinces are not a threat to a strong federal government and a strong federal government is not a threat to the strength of the provinces; that these are complementary to one another, and we do not build up this false dichotomy of casting federal and provincial governments in adversarial roles.

We often hypothicate that there is always a power struggle, and we have this view of the adversarial position between the federal and provincial governments. I think that is the view of those who see Canada as a highly centralized country. Those of us who view it in terms of a balanced federalism, who welcome the strength of provincial governments and who welcome a strong federal government, view these two orders of government and their strengths, excellences and accomplishments as complementary and supportive one of the other.

Obviously, both views of Canada have been held historically for a long time, are held today, and will continue to be held. I certainly agree that they are held with equal sincerity and conviction by those who adopt one or the other of the views and the various nuances that are in between. I suppose that in the final analysis we are fortunate to live in a country where both views have an equal right to their expression and a tolerant audience from those whose views are different.

[*Translation*]

I thank you, honourable senators, since this is the first opportunity I have to express my thoughts before this House. I am looking forward to the opportunity of working for the good of Canada alongside all honourable senators, Conservatives, Liberals and Independents alike.

[*English*]

Hon. Philippe Deane Gigantès: Honourable senators, I apologize in advance. I may lose my voice half way through, so

I hope that you will be patient and try to interpret my croaking.

I am troubled, particularly by Senator Murray, the honourable senator, the minister responsible for this deed, the Meech Lake and Langevin Accords, for he is demonstrably extremely clever. He is also an honourable man, and I believe he cares for the country. So I can only attribute all of the things that I will find faulty in the Meech Lake Accord not to him when he defends them, but to his loyalty towards his government, because I do not think that he himself fails to see these flaws.

To start with, the process itself is terribly flawed. For example, the speed with which the Special Joint Committee was supposed to produce a report—and did. When I was refusing to sign that report, one of the Conservative members told me that he wanted it on the record that I refused to sign, and I told him that I was very glad that it was on the record, because all of my teachers and editors would have turned in their graves if I had put my signature to something which contained the most horribly loose language.

The other part of the process that I find very disturbing is that we are told conflicting things about the same issue by different people. These conflicts are most apparent in relation to the "distinct society" clause, and examples abound. For instance, in *Debates of the Senate* of March 31, 1988, at page 3050, Senator Murray, the Leader of the Government in the Senate, said this:

> The clause recognizing Quebec's 'distinct society' is an interpretation clause and it neither creates governmental powers nor overrides substantive rights such as minority language rights in the Charter.

Also, in the report of the Special Joint Committee on the 1987 Constitutional Accord we see quotations attributed to Maître Yves Fortier, who first seems to agree with Senator Murray. However, if we look further at that report we find that Maître Fortier contradicts Senator Murray, and, thereby, contradicts himself. In one instance, on page 57, Maître Fortier is referring to those who are afraid that the "distinct society" clause might override the Charter, and he says:

> ... I would simply say we were dealing with a smokescreen.

Why not put in a symmetrical, non-derogation clause that says: The "distinct society" clause does not override the Charter. Honourable senators, the answer comes on page 67 of the same report, where the same Maître Yves Fortier is quoted as saying:

> On the other hand, if it were decided to exempt the whole of the Charter from the effect of the "distinct society" clause, including clause 1 of the Charter, then that would mean the death of the Meech Lake Accord ...

Again, on March 31, 1988, we have Senator Murray saying:

> ... this clause, together with the other parts of the 1987 Constitutional Accord, will allow Quebec to recognize and fully consent to the application of the Canadian Charter, while at the same time ensuring that both the Charter and the Constitution as a whole are interpreted in such a way as to consider those factors ...

Honourable senators, Mr. Bourassa spoke on two occasions in the National Assembly, first on June 18, 1987, and then on June 23, 1987. In his first speech, he said:

> M. le président, je me permettrai, contrairement à mon habitude, comme vous le savez, de me référer à des notes écrites à cause de l'interprétation qui pourra être faite par les tribunaux. Selon la jurisprudence, les déclarations, les intentions du constituant peuvent être très utiles.

● (1440)

He says, in English:

> Mr. President, I shall allow myself, contrary to my habits, such as you know them, to refer to written notes because of the interpretation that can be given to what I am saying by the tribunals. According to jurisprudence, declarations and intentions of the constitution framers can be very useful in interpretations.

Mr. Bourassa wants the courts to know what he means by this accord. He says in the *Journal of the National Assembly* of June 18, 1987, at page 8078:

[*Translation*]

> It should be pointed out that the entire Constitution including the Charter will be interpreted and implemented in the light of the "distinct society" clause. This applies to the exercise of legislative powers and will allow us to strengthen and build on what has been attained.

[*English*]

This is not just an interpretative clause; it is a motor that will drive the actions of Quebec. He continues:

[*Translation*]

> The only limitations to our powers are found in sections 23 of the Charter and 133 of the 1867 Act.

[*English*]

The only limitations he accepts are article 133 of the B.N.A. Act and article 23 of the Charter, the Canada clause, which says that if an English-speaking Canadian moves his family to Quebec, he can put his children in an English school provided he took his elementary education in English. Further:

[*Translation*]

> The right to resort if necessary to section 33 of the Charter.

[*English*]

So Premier Bourassa is saying to us that if there are any obstacles to his interpretation of Meech Lake he will go the "notwithstanding" route. He says that this clause extends to all fields, including immigration, because of the agreement. Here he says:

[*Translation*]

> The exclusive power for Quebec to choose immigrants who want to come to Quebec either from outside Quebec or from Canada ...

[*English*]

The Premier of Quebec is saying that he is going to regulate immigration to Quebec from other parts of Canada. This is what the text says, and I can let Senator Flynn have a look at it if he does not have a copy.

So they will not touch the Canada clause, and they cannot touch article 133. However, they can touch article 6 of the Charter, which says that any Canadian can go anywhere in the country. This point was made shortly after Claude Morin, who was the Minister of Federal-Provincial Relations for the Péquiste government, had spoken about the disadvantages of this immigration clause in the Meech Lake/Langevin Accord and indicated that anybody could come to Quebec. I have just read the answer to you. The premier is saying that Canadians may have a barrier to entering Quebec. Constitutions should be precise, and it is easier if one writes them down precisely. Mr. Bourassa can interpret the Constitution in one way, and Senator Flynn can do so in another.

Let me go on to the topic of spending power. Senator Murray said that the accord recognizes that it is constitutionally acceptable for Parliament to establish new national shared-cost programs. This is what we are being told all the time. This is a "new" federal power which we have been given, as it was never recognized before. The Minister of State for Federal-Provincial Relations, Senator Murray, said that here on March 31, and it is reported at page 3051 of *Hansard*.

> The accord recognizes that it is constitutionally acceptable for Parliament to establish new national shared-cost programs in areas of exclusive provincial jurisdiction.

Mr. Bourassa has an opposite view:

[*Translation*]

> We have taken special precautions to ensure that an opting out provision for Quebec would not be construed as a legal recognition of the power of the federal Government to set up programs in areas of provincial jurisdiction.

[*English*]

Whom should I believe, the Premier of Quebec, who participated and was in the room writing this thing, or Senator Murray? Or is somebody going to tell me that what Senator Murray said is constitutionally acceptable and that what Mr. Bourassa said with regard to juridical recognition is not? Here we are beginning to play Byzantine games and splitting hairs several ways. These are extremely dangerous games to play. Not only are they dangerous but they are distasteful because of the high-pressure salesmanship that resembles more the marketing of some over expensive drug than the creation of the fundamental law of the land. We are being flim-flammed. It is a shell game. It is snake oil. It is as if the public relations people managed to fool the drafters of the new Constitution, because must I assume that the drafters of this new Constitution were vague unintentionally—or intentionally? Which was it? Is it too much to expect them to say, "Look, we wanted to get Quebec into the Constitution in order to get Péquiste votes and therefore we gave them everything they wanted, and more than Leveque had ever asked for, and as a price for doing that we have to give the same powers to all the provinces. We have esmasculated Canada, but it is just too bad. Electorally, it was necessary."

Senator Haidasz: At 5.00 a.m. they were unconscious.

Senator Gigantès: It is the sort of thing the public should know about. We have to be told the facts about these things, and we are not being told the facts. We are being told that this or that part was not acceptable to this or that premier, that premiers objected to putting in a clause protecting individual rights unconditionally, and to putting in the amendment we proposed that the Charter has primacy over everything. We do not live in Soviet Russia, and this particular attitude on the part of a premier or Prime Minister is something the voters should know about. Which premier was it? Was it the Prime Minister alone? Did a number of premiers say that they were prepared to subordinate individual rights in order to strike a deal? The voters of Canada have a right to know. We cannot wait 30 years for the record to be published to find out. This is a matter of immediate policy. A law is being put on the books which affects individual rights.

We have been told that some premiers did not want a provision giving primacy to the Charter. Well, let us hear about it. Which premiers did not want it? Why the secrecy? Senator Murray said that they would not reopen the accord unless there was an egregious error. On Tuesday, during Question Period in the House of Commons, Mr. Mulroney mentioned such an egregious error, which he says he inherited from Mr. Trudeau, and that is the notwithstanding clause. Did he make an effort to remove that clause? That clause is terrible for the individual, and I said as much in 1982, so I take no responsibility for it. However, in 1982 Mr. Trudeau got something in exchange. First, he got a sunset provision for the notwithstanding clause which said that there would be a vote on the matter every five years. In exchange, he also got patriation, the Charter and an amending formula. What did the federal government get this time? I have read these accords thoroughly, I have read Professor Hogg's comments and those of everyone else, and I find that the federal government got absolutely nothing this time.

● (1450)

On March 31, 1988, Senator Murray said that if the accord were reopened, one provincial premier said that he would want a Triple-E Senate. Therefore, they did not touch that and left it for the second round. Honourable senators, you had better forget about the second round. In his closing speech in the National Assembly, Mr. Bourassa said:

[*Translation*]

> There will be no retreat, it gives us total protection . . .

[*English*]

He is talking about what he obtained at Meech Lake.

[*Translation*]

> There will be no retreat . . .

[*English*]

Quebec now has 23 per cent of the seats in this chamber, that is, 24 divided by 104.

Senator Flynn: Including yours.

Senator Gigantès: Including mine. To have a Triple-E Senate there would have to be some retreat on the part of Quebec in terms of giving up seats—not to mention Ontario. Here we are told by Mr. Bourassa: "No retreat."

The talk about the "second round" is something that I particularly resent, because while I am told that we can reform the Senate in the second round, or repair whatever errors were put in Meech Lake, I know that I am not being told the truth. I know that a deal was struck—that people were allowed to bargain about our country and our rights in order to strike a deal, any deal, at any price. We are now being told this myth of the second round where we are going to stamp fish with the coat of arms of one province or another; and where we are going to start debating for the next 120 years what kind of Senate we are going to have.

Why must this be a process that makes us all feel as if the people who made those choices did not care for us? The public out there believes that those 11 people did not care for the individual, because what they produced was something that deals only with government powers. They transferred a fair chunk of federal government power to the provinces and they inserted clauses to protect that government power. However, they did not insert a single clause to protect individual rights. These 11 men had no concern about individual rights. They have concern only for preserving, when necessary, the tyranny of the majority.

Senator Haidasz: Shame!

Senator Gigantès: No constitution is worth the paper it is written on unless it substantially protects minorities. We have the possibility in this Meech Lake/Langevin Accord of having minority rights interfered with, and not only in Quebec. The powers that Quebec has have now been given to all the other provinces. I would entrust my individual rights to Mr. Bourassa any day, but I would not entrust them to some premiers farther west whom I will not mention so as not to be insulting.

Why was this done in this way? Why was it not open? Why were we not told the reason for the decisions that were taken? Why were individual rights totally disregarded? Why would an intelligent and honourable man like Senator Murray get up and tell me that, yes, there was a certain agreement, and then go on to tell me the opposite of what Mr. Bourassa and Mr. Rémillard say as to what the agreement means? The letter that Senator Murray read from Mr. Rémillard here in this chamber only mentioned not curtailing the rights under articles 15 and 28. He mentioned no others. There is no promise in the extracts of that letter from Mr. Rémillard that are in *Hansard* to the effect that Quebec will not try to touch article 6. Article 6 is an important article. It gives me all kinds of rights, and someone may try to change them. I might be told that I cannot go back and work in Quebec. Article 6 states:

(1) Every citizen of Canada has the right to enter, remain in and leave Canada.

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

(*a*) to move to and take up residence in any province; and

(*b*) to pursue the gaining of a livelihood in any province.

(3) The rights specified in subsection (2) are subject to

(*a*) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence;

We have Mr. Claude Morin testifying that the immigration powers given to Quebec are of no use, because Quebec cannot restrict immigration from other provinces. I have read to you a passage from Mr. Rémillard's speech in which he said that they now have the power to curtail immigration, that is, to control immigration coming from outside Canada or from inside Canada.

Honourable senators, we were a country. I think we are less of a country now. I am a neophyte, newly converted to Canada. While in a prison camp in 1950, weighing 97 pounds and seeing everyone around me dying, I decided that I was going to get out and go to a country where I could live well and bring up my children. In a death camp, on Christmas Eve 1950, I picked Canada. I knew a fair amount about Canada and Canadians. I do not recognize this wonderful character of Canada in this document we are asked to approve. That is why I support the leader of the majority in this chamber and will vote for his amendments.

Some Hon. Senators: Hear, hear!

[*Translation*]

Hon. Michel Cogger: Honourable senators, for a while last summer I had the privilege of substituting for our colleague, Senator Tremblay, so that I chaired the proceedings of the Joint Committee of the Senate in the House of Commons on the Constitutional Accord and heard most of the witnesses who also appeared before the Committee of the Whole of this Chamber, including the Right Honourable Pierre Elliott Trudeau.

After last summer's experience and what we have heard in recent months, I have the impression that everything there was to say about the Constitutional Accord has been said. Consequently, I do not intend to prolong this debate unduly by repeating its various elements point by point.

However, I do believe that as a senator from Quebec, I can provide a different perspective, since the province I represent played such an active role and, in fact, formed the crux of the negotiations and was a vital part of the Accord itself and its subsequent ratification.

Perhaps I may say, honourable senators, also as a senator from Quebec, that I am somewhat surprised at the thundering silence observed by my Francophone opposition colleagues. I

am astonished that Quebecers, that Francophone Quebecers, would not have more to say about a question that is so important to Quebecers as a whole.

I said before that we have a different perspective on the question. I think that is legitimate, fair and reasonable, since Quebecers, more than other Canadians, felt the impact of those difficult times from 1976 to 1980, followed by an equally difficult period from 1980 to 1982. All Quebecers, whatever their political stripe, were profoundly affected by the pre-referendum period. At the time, Quebec society was in a social, cultural and economic turmoil.

That is probably why, today, so many Quebecers welcome the Constitutional Accord as a breath of fresh air, as the final gesture that calms the stormy waters. At last, we will be able to live our lives with serenity and dignity.

After the referendum, all Quebecers anxiously awaited the promised constitutional reform and earnestly hoped that the deadlock would be resolved.

I will not go into all the details, but suffice it to say that we had to wait for the Constitutional Accord to break this deadlock.

Honourable senators, I think we should bear this perspective in mind when we consider how we shall vote tomorrow. It will probably be one of the most important decisions any of us ever had to make in this Chamber. Before exercising our right to vote tomorrow, I think we should look at the consequences. I also think we should realize that the status quo is no longer possible. If anyone here imagines or has the illusion that we can simply reject or amend the Constitutional Accord, which would mean rejecting the will of eleven First Ministers, ratified by three provincial legislatures, including that of Quebec, if anyone believes that this can be done and that political life as we know it will simply go on as it has before, he does not realize what this would mean to Quebec.

● (1500)

[*English*]

The point I wish to make, honourable senators—and I think it is the important one in this debate—is that as we vote tomorrow I think it is imperative that we look at the consequences of the vote. Anyone who thinks that we can amend the Meech Lake Accord after it has been ratified by Quebec; anyone who thinks that we can throw it out; anyone who believes or dreams that Canadian political life will keep on going as it is does not know Quebec.

I would like to quote from the words—which I thought were quite eloquent—of Madame Solange Chaput-Rolland, when she appeared before the committee last summer. She said the following—and I wish to make her words mine. To the members of the joint committee she said:

[*Translation*]

> You surely all know that if, for one reason or another, the Meech Lake Agreement fell through, there could be no more negotiations, no more justifications. If Quebec again feels that it is more difficult to enter the Canadian Confederation than to remain outside, you know very well that this can only lead to another form of independence, this time not chosen by a Quebec political party, but perhaps chosen and imposed on Quebec from outside.

She added:

> I tell you quite frankly that in 1982 I wondered whether the pain, quarrels and bitterness that followed the referendum were really necessary.

Honourable Senators, I share Solange Chaput-Rolland's vision of a grim future without the Meech Lake Agreement. However catastrophic it may seem, I believe that it is realistic. And if we were to add to the affront of 1982 another snub in 1988, I shudder to think of the consequences.

Honourable senators, last spring our country's political leaders put on paper their collective vision of the Canada of today and tomorrow. Their act was filled with generosity and understanding in the true search for reconciliation.

I think that tomorrow we will be called upon to show the same sentiments. It seems to me that Canada and Quebec expect no less.

Thank you, honourable senators.

[*English*]

Hon. P. Michael Pitfield: Honourable senators, it is not often that I have spoken at length in this chamber, so if my voice cannot be heard I trust that you will advise me.

I welcome very much this opportunity to speak to you. This is an historic debate.

The Senate's duty to advise with respect to a constitutional amendment flows not only from its widely recognized role as a chamber of sober second thought, as a mechanism for safeguarding federal-provincial interests, but it also derives implicitly from the Constitution Act of 1982.

As senators, we have a duty in constitutional matters that is both special and proper. Let no one say we have no right to be here on this subject. We have a duty to be here. It is a duty which we, among all of the players, are uniquely free to discharge according to our best judgment.

One of the tragedies of recent constitutional development is that members in the other place are subject to tight party discipline in deciding where they stand on constitutional matters. Thus, the Constitution of Canada has become a strictly partisan issue. Brian, John and Ed become the arbiters of what Canada should do and what Canada should be—and I think that is both wrong and unfortunate.

It is hardly surprising that the suspicion lingers throughout the country that, in the case of the Meech Accord, short-term advantage—particularly in Quebec—has been far more influential in party positions than has been the long-term interests of the country. The suspicion lingers that many members in the other place would vote differently if they were allowed to vote their own rather than their party's judgment.

That is not a problem that we in the Senate need have. We can, and I suggest we should, approach the Meech Lake Accord as a matter of personal judgment.

In doing so, I would like to begin by saying that I very much regret having to come down firmly and hard against the Meech Lake Accord. I say "regret" quite sincerely, for I have admired the hard work and ingenuity that our colleague, Senator Murray, has brought to his duties. Notwithstanding that he and I differ markedly in our views on the role of the Senate—and perhaps on many other things as well—so vital is the Constitution, and so obviously sincere and diligent is his effort to resolve some of those dilemmas, that I wish him well and would that I could be more helpful.

• (1510)

We are nearing the end of this debate and the end of an even longer process of inquiry during which the Meech Lake Accord has been closely examined. Rather than look at its detailed provisions, which could go on endlessly, I would simply indicate that I concur with the views so ably expressed last Monday by Senators MacEachen and Frith, and with regard to Senate reform and to the contrasting roots of the 1982 and 1987 constitutional amendments, I concur with the views expressed by Senator Kirby last evening. I would that I could have stated the case nearly as well, and I am pleased that by their already having done so, I do not need to.

So now it is time to draw a conclusion, and in my remarks today I should like to do so by making three points. The first is that the Meech Accord is so riddled with uncertainty that it cannot be allowed to form the basis of a major change in our fundamental law; second, the Meech Accord sows such contradictory expectations in the Canadian body politic that it cannot serve as a basis for political unity in our country; and, third, the Meech Accord will so add to the burdens of trying to govern our country that it cannot form a basis for Canada's future political evolution. For these three reasons I will urge that the Meech Accord be remitted for clarification and improvement. I will urge that senators support the opposition amendment, for though it might usefully go further than it does, it does go in the right direction.

Turning, then, to the first of my judgments, namely, that the Meech Accord is not an acceptable basis for justifying a major change in fundamental law, I say this because the testimony of witnesses before us and the points made in speeches by our colleagues that I have mentioned seemed to me to make a conclusive case that the Meech Accord is a hodgepodge without consistency or coherence, clearly the product of a negotiation without a single clear view of the country. It is badly drafted, it is such a tenuous and fragile agreement that the government is petrified to have it reviewed lest it fall apart under the simple light of clarification. It is so ambiguous as to be virtually all things to all men. Perhaps it was intended to be so.

All this is in a constitutional law, in a fundamental law. There is, if I may use the word, something "sacred" in constitutional law. It is a statement of what a country aspires to be and how it plans to get there; it is a view of the country, and that view of the country is also of our individual and collective futures. That is why the Meech Accord is so terribly important to every Canadian. It is the nature of constitutional law that all our other laws depend on it, that ultimately peace, order and good government depend upon it. Therefore, constitutional law must be consistent and systemic; it must be precise; it must reflect a firm, basic and broad popular consensus; it must be unambiguous. The Meech Accord is none of these things.

On the contrary, some of the players in Meech Lake have indicated that they are not exactly sure what parts of the Meech Accord mean. They say that the courts will ultimately decide what the provisions mean. They say it can be left to the courts, that we do not have to know. I say this is a cop out; I say it is downright irresponsible for ministers of the Crown not to know what they are doing and for them to act not by agreement on what they understand but by agreement as a means of passing the buck to the courts. That, it seems to me, is totally unacceptable.

Ultimately, it has even come to be argued that "Pour protéger la société distincte, il faut éviter de la définir." I am quoting from Yves Fortier. Just so has ambiguity been raised to a constitutional cult.

From this we can understand its importance to the proponents of the Meech Accord and the danger that its critics see in the enshrinement of the principle of representational justice.

From this we can understand the use of non-derogation clauses as a constitutional instrument that Senator Murray says, in a most interesting article, was "developed into an art" at Meech. An art, may I add, the purpose of which, it seems to me, was not to clarify or to reassure but to bridge politically irreconcilable positions.

From this we can understand why we have been led such a merry dance with regard to the phrase "distinct society."

Let me make it clear; it is not a question in my mind of the existence in Quebec of a "distinct society." It is not even necessarily a question of what features of this "distinct society" ministers at Meech were trying to protect, though surely that information should be required of those ministers. What I am raising here is that it is a question of what are the consequences of the differentiation of this "distinct society" from others that may exist in Canada. What, in short, are the consequences that the Government of Canada intends to see flow from the "distinct society" clause?

I find it somewhat patronizing to be read a lecture about how there is a distinct society in Canada. I know that. My question is: What are the consequences that the ministers sought to obtain?

Mr. Bourassa and his ministers have already begun to invoke the "distinct society" clause as a basis for special treatment under federal laws. Les Caisses Populaires Desjardins recently took the same road with regard to its opposition to federal financial legislation. Are these the consequences that were seen as flowing from "distinct society," and, if so, where do they stop?

Senator Flynn: That has been the case for years!

Senator Pitfield: Senator Murray may insist that the Charter is not affected, that women's rights are not prejudiced, that

unanimity is not a straitjacket, and so on, but Mr. Trudeau's case—including his examination of the conclusions of the joint committee itself—stands, in my opinion, unrefuted. The smudge of uncertainty sticks like pitch to the Meech Accord. Despite Senator Murray's strong assertions, it has not been washed out.

The Meech Accord is riddled with uncertainty. No wonder that almost 80 per cent of lawyers polled last November opposed the agreement. A fundamental law so cast cannot last. Its proponents are putting the country at risk. On these grounds alone we must pull back to consider carefully what is being done.

● (1520)

Honourable senators, if there are any doubts, let us go further, let us go a second step. Senator Murray has said repeatedly, "Quebec has chosen Canada. It is time for Canada to choose Quebec." It is a catchy tune, but parts of this argument are unstated, at least as it applies to the Meech Accord. The implicit meaning is that "the people" of Quebec have chosen Canada; it is time for Canada to choose the "government of Quebec." I do not accept that the necessary and only *quid pro quo* from the Referendum is the enhancement of the government of Quebec.

Some Hon. Senators: Hear, hear!

Senator Pitfield: Quebecers can and should benefit in many ways from opting for Canada.

Moreover, I believe that Canada has been key to the survival of French Canada. I believe that Canada continues to have a key role in the survival of Quebec. I find abhorrent the implication in the Meech Accord that the federal government has no role in Quebec with regard to the distinct society. This is surely a prescription for diarchy, the roots of "two nations, separate but equal," each with its own government, competing, if not warring, within the bosom of a single state.

In "la survivance de la langue, la culture, les gens francophones" on this continent, Canada has been no less important, and may, in some respects, have been on occasion more important, than Quebec itself. Much of the Quebec elite and all of the Quebec bureaucracy do not like this fact. But it is true; the people of Quebec know it is true and the elite and the bureaucracy of Quebec know the people know it is true.

That is why Pierre Trudeau consistently swept Quebec.

That is why the federalist role in Quebec is an honourable one.

That is why the proponents of the Meech Accord did not have to trade the vision of a Canada united by what Canadians hold in common for a view of Canada constantly and forever in confrontation, trying to draw a line between a duality—two communities, two nations, two peoples, and some day, regrettably, perhaps two countries.

It is in the name of this duality that this seed of diarchy, the Meech Accord, makes a massive shift of constitutional authority to Quebec. It is not by sections 91 and 92, to be sure; it is not really by a shift of jurisdictions but by a shift of real authority, of real power, nonetheless.

[Senator Pitfield.]

On Monday Senator MacEachen made a powerful analysis of how the so-called "interpretative" clause of the accord will work. I would add only one point to his analysis, and I think it is a key point: It is to a government and a bureaucracy that these powers and the legitimacy of this rhetoric are being transferred, and by the nature of governments and bureaucracies this transfer will be exploited to the full and ceaselessly. That is why definitions and clarity are so vital. That is why a knowledge of what is being agreed to is so terribly important in this case.

By imposing restraints on the federal government, by stopping the spending power, by imposing a representational judiciary, by the ultimate decentralization of the Senate to the provinces, by incorporating—sometimes, I am sure, without knowing it—nationalist rhetoric the federal government has been effectively hobbled. In doing these things the present government has moved skilfully to sell its product. It has developed the idea of "a principle of provincial equality" into an almost magical instrument. What is this "principle"? It is, I take it, merely that every province has a veto on constitutional reform. But that just makes the provinces equal in only the narrowest sense. Quebec voting as a block in federal elections, Ontario as the richest province—they are not made more equal. How the Maritimes or the Prairies really benefit from this "principle of equality" I find difficult to see.

Moreoever, in terms of artful manipulation, the language barrier in Canada has never been so skilfully used as in the presentation of the Meech Accord as one thing in French Canada and another in English Canada. For a while even the Francophones hors de Quebec and English-speaking Montrealers were taken in by this double game.

Leaving aside the minorities, however, the majority in each province continues to receive different and contradictory versions of what Meech means. What happens when they are awakened to reality? Will Quebecers be satisfied with a distinct society that is merely comfortable words? Will the other provinces accept a distinct society that is the basis for Quebec's assertions of authority in foreign affairs or for the control of labour mobility in Canada? "No" will say many others in English-speaking Canada.

I have previously made the case that the Meech Accord is unacceptable as fundamental law. Now I argue that it is unacceptable as a basis for political unity. It is riddled with conflicting expectations. Again, I urge that we pull back and consider more carefully what we are doing.

But, honourable senators, let us go further still. Let us take the third step. It has been argued persuasively, and I think conclusively, that the Meech Lake Accord is an extreme statement of the "pactist" view of Confederation. That is to say that it is the implication of the Meech Accord that Canada is the creature of the provinces. I do not believe that the majority of Canadians believe that to be so. Everything we know about Canadian public opinion suggests that the opposite is the case. Canadians want a strong Canada—a country greater than the simple sum of its parts. A constitution founded on the pactist view cannot last. A country true to

pactist constraints cannot prevail—indeed, probably cannot survive—in the modern, increasingly interdependent world.

We have had our flirtations with pactism periodically in Canada, and though they have been fewer and never approached success to the point the Meech Accord has reached, they represent a legitimate point of view. They correct for excesses of centralization in our governmental system. They keep our country one of the few true federations in the world. But this time our move to the pactist model has not been accompanied by any compensating corrections to the federalist model. We have given away much of the federal power, but have got nothing in return—not clarification of authority with respect to foreign affairs, not removal of the "notwithstanding" clause in the Charter, not mobility rights for all Canadians, not the removal of economic barriers—none of these things that have been so long and urgently needed for the effective functioning of our polity in an increasingly complex and interdependent world.

On top of that, we are now going to lock the Constitution into the straitjacket of unanimity. Having seen the oscillation of actism and pactism, of centralization and decentralization, having taken matters to an extreme of provincialism never before surpassed, the proponents of the Meech Lake Accord propose to freeze the Constitution in the straitjacket of unanimity.

Senator Flynn: That is false.

• (1530)

Senator Pitfield: Having suffered the effects of provincial blackmail on Canada's constitutional development for 50 years, and having just escaped these constraints at the cost of grave and regrettable confrontation during the early eighties, the proponents of the Meech Accord intend to reimpose a broad provincial veto. The process of blackmail is inevitably about to begin again.

The circumstances of the eighties showed that the law cannot be used to paralyze the cycles of history, but that is not to say that sane and responsible men should put their country through the stress of the confrontation implicit in a constitutional straitjacket. Especially is that so where the Constitution has been impregnated with the seeds of diarchy, where the central government is faced, as our government is now faced, by the Free Trade Agreement, with the harsh realities of an increasingly interdependent world.

At least so far as trade in goods is concerned, I am very much a free trader. However, I recognize that the integration of our economy with that of the United States is going to be an extremely testing matter.

It will not have escaped the attention of senators that the strongest advocates of the Meech Accord are from our most decentralist provinces: Quebec, Alberta and British Columbia. This in contradistinction to the traditional federalist consensus in Ontario and the Maritimes which, with the support in Saskatchewan and Manitoba, has heretofore been predominant in Canadian federalism.

I suspect that we are in for a rocky time as Quebec and the West triangulate for their advantage between Ottawa and Washington. We already have had some notice of this kind of situation in Premier Bourassa's early reactions to Ontario and New Brunswick's questioning of his New England energy export contracts. This is not in keeping with the Meech Accord, it was said, and the National Energy Board should keep its nose out of provincial matters.

And this is the approach of a "federalist" government. What happens as public sympathy in Quebec inevitably drifts some day towards a group like the Parti Quebecois? The interaction of the Meech Accord and of the Free Trade Agreement will, unfortunately, militate in favour of more, not less, nationalism in Quebec.

I previously made the case that the Meech Accord is unacceptable as fundamental law. I then argued that it is unacceptable as a basis for political unity. Now I have sought to demonstrate that it is an unacceptable basis for Canada's future evolution. Again, I urge that we pull back and consider more carefully what we are doing.

In the face of all of this, why force the Meech Accord through now? Why has Parliament been so completely excluded from really considering the Meech Accord and forced to pass it without any chance to make improvements? Why has there been no real or meaningful consultation? It is terribly regrettable that the government has forced everyone to get so dug in, to polarize the debate, and to ensure that for many the Meech Accord will never be accepted. Why have we who want to be helpful been forced to become opponents?

The advocates of the Meech Accord say that Quebec was outside the Constitution and had to be brought in in great haste. The extreme urgency was not true, and the rest is only partly true. In fact, Quebec was in. It is the Government of Quebec that was out. While this is very regrettable and undesirable, that it continued to be the case for a short period of time did have certain advantages to all concerned. First, as Senator Cogger was pointing out, it enabled the country in general, and Quebec in particular, to get on with living, most especially with rebuilding the provincial economy. Second, it enabled Canada and Quebec to put the Constitution and constitutional confrontation back into perspective. Third, it gained time for the emergence to power of new commercial and government elites, both in Ottawa and in Quebec, the emergence in Quebec of the so-called entrepreneurial revolution that would put new values and perhaps find new solutions to old arguments.

It is the third of these advantages that has now been lost. Though Trudeau and his colleagues are gone, the new elites have not fully emerged. The entrepreneurial revolution is still in mid-stream. With apologies to Senator Tremblay, and perhaps Senator Flynn and Premier Bourassa, the Meech Accord, at least on the Quebec side, is essentially the product of old hands and it incorporates old—very old—thinking.

Perhaps it was inevitable that the rivalries of Canadian federalism would continue unabated, and that we would pro-

ceed without interruption or respite from the passion of "actism triumphant" to the intensity of "pactism reborn." But the government, the country, this house, the people should be under no illusion that Canada's return to a preoccupation with the Constitution can now be avoided. On the contrary, as Senator Murray has advised, round two is on the way. Indeed, we are to have it every year. As if the Constitution annually is not enough, the same topics can be had under the rubric of economics also every year.

I do not believe that anyone familiar with federal-provincial relations—certainly not anyone in the federal bureaucracy—really thinks Senator Murray's dream of provincial altruism, or federal altruism for that matter, has begun to be realized.

Since the dawn of that brave new world Newfoundland has threatened to separate over fisheries, New Brunswick has been told to get into line on the Constitution, Ontario has been overruled on free trade, Manitoba has been double-crossed on airplanes, Alberta has had a fit on oil taxes, and British Columbia and others have felt ignored on forest products. The list could go on and on and on.

I am not here making any judgments of what was right or wrong. I am simply talking about the heat. In this regard, the Meech Accord will not mark a new age. It will just mark a renewal of federal-provincial rivalry with the feds at a critical—perhaps even a fatal—disadvantage.

I believe many Canadians intuitively sense this to be so. There is no profound, overwhelming popular support for Meech in the country. What support there is is not enough to sustain a change in fundamental law, much less give it any legitimacy.

There is resignation in English-speaking Canada and acceptance in French-speaking Quebec, and this, though viewed from opposite ends, for basically the same reason. The federal government gave away the store, and no one can see how to redeem it from its new owners without seeming to renege. That the Government of Quebec reneged themselves twice in the past is beside the point. That some premiers did not know what they were signing and others signed only when isolated and under pressure seems, even in the light of public reaction—or perhaps because of public reaction—all the more reason for those premiers to brazen it out.

● (1540)

Rather a new government, one elected since the Meech Lake meeting, insists that the accord be reviewed. And I, along with many Canadians, hope that that one will succeed; that, despite the pressures and inducements that the federal government can bring to bear in great size and profusion, there will be a government somewhere that stands up for Canada, explaining that the Meech Lake Accord is not good for Canada and, what is more, that it is not good for Quebec.

It is not good for Quebec, because Quebec is vitally interested in the protection and encouragement that francophone Canadians in Quebec as well as elsewhere have received from Confederation. A Meech Accord that does not carry a national consensus in English-speaking Canada will do no good for Quebec.

On the contrary, a Meech Accord that becomes a focus for stress and confrontation, that is uncertain, that is riddled with contradictory and misleading expectations, that is a crippling burden upon our ability to face an increasingly challenging and interdependent world will ultimately damage Quebec.

So, whether the end is to be that the Meech Accord is reopened for review or referred to the courts for clarification of its confusions, I cannot, honourable senators, for the reasons I have given, support the government's resolution. I will support the opposition's amendments, my only *caveat* being that they could go further to remedy the deficiencies and dangers that I have mentioned.

Some Hon. Senators: Hear, hear!

[*Translation*]

Hon. Jacques Flynn: Honourable senators, we certainly cannot deny that the question before the Senate is of vital importance. If the answer is yes, and the Meech Lake Accord becomes law, it will signal the return of Quebecers to the constitutional fold. Otherwise they will feel even more isolated than they did after the 1982 constitutional statute.

Can we afford to run that risk simply because Meech Lake does not solve certain problems which are not directly related to the main objective I have just mentioned, or which at best are problems of semantics? Well, that is precisely what we are being urged to do in the motion of the Leader of the Opposition, Senator MacEachen.

We have had a very interesting debate. It reminded me of the 1981 constitutional debate when I sat in the chair of the Leader of the Opposition. But, in a way, today's debate is different. We will find solutions to the problems which are not directly related to Meech Lake. Or, in any case, the objections they raise have been disproved. I think that the remarks of Senator Murray in particular have settled a number of the questions, concerns and fears that have been raised.

As I look at it, the opposition has focused on three major issues. First, human rights and particularly the gender equality; then of course we have heard every kind of argument on the meaning of distinct society; and, third, references were made to shared-cost programs, to compensation provided in case a province should decide to opt out and proceed on its own.

I submit that the amendments proposed by Senator MacEachen do not come to grips with or settle these three points. In other words, there is no basic objection to the notion, for example, of the distinct society since it is repeated in the amendment that the interpretation of the Constitution must consider:

> the recognition that Quebec constitutes within Canada a distinct society.

That problem, therefore, if it exists remains unsolved. In this connection, Senator MacEachen mentioned a possible referral to the Supreme Court of Canada. I suggest he was not

thoroughly convinced he was right and that he realizes that the Supreme Court is not in a position to address as vague an issue as this.

● (1550)

In 1978, I believe it was, there was a referral of a precise question dealing with the Senate. The Supreme Court responded. The Supreme Court responded also to a question concerning the provinces' veto in Constitutional matters. However, we could have asked the Supreme Court to give us for instance its interpretation of Clause 15 of the Constitutional Act of 1982; when we look at the court decisions rendered since then, we realize that they certainly took unexpected turns.

I submit again, however, considering the way the amendment moved by Senator MacEachen was drafted, that the Opposition and even independent Senator Pitfield, who voted in favour of this amendment after a very long speech, are going to vote in favour of recognizing Quebec as a distinct society within Canada.

It has also been argued that the distinct society could have the worst consequences. It has been described as a rule of interpretation, but it seems to me that no one emphasized the fact that a rule of interpretation comes into play only when the terms are unclear and require interpretation. When the terms are clear, there is no need for rules of interpretation. It is not possible through a rule of interpretation to change the provisions of the mobility clause mentioned by Senator Gigantès.

Those who oppose the agreement, including Senator Pitfield, have raised all sorts of straw men which they have destroyed angrily. As a matter of fact, the basis for their opposition to the Meech lake Accord is Mr. Trudeau's vision which they would like to perpetuate. They wanted to use Mr. Trudeau's victory in 1982 which managed to tame a separatist government. They wanted to perpetuate this victory. They would not admit that this agreement would rectify the basic shortcoming of the 1982 accord which had excluded Quebec. Not only the government, but Quebec generally. At that time, it was the National Assembly as a whole and not the government which had objected. Now that we have a Liberal government, I do not want them to come and tell me that it is another separatist government. It is the same government.

I submit that Quebec's current position is consistent with what has been evolving over the years. Apparently Senator Pitfield, although he lived in Montreal for quite some time, has forgotten that evolution. Mr. Trudeau mentioned it in reference to Mr. Taschereau, Mr. Duplessis and Mr. Lesage. It is quite a continuity that is found in the Meech Lake Accord.

What Quebecers wanted in 1980, when they voted "no", was a Constitution that would recognize those aspirations that had evolved over the years under successive governments in Quebec. I submit that, whatever Senator Pitfield may think, such was not Mr. Trudeau's vision, that of a centralizing government that would not recognize Quebec's uniqueness.

Whatever one might say, the facts show that after the referendum, when Mr. Trudeau initiated his process of constitutional renewal, when as we saw he stated he would proceed unilaterally, what did Quebecers do? They voted Mr. Lévesque back into office to ensure that the opposition to Mr. Trudeau's methods would continue.

At any rate, what I wanted to suggest concerning this debate, is that the major positions that emerged from Senator MacEachen's amendments do not change the substance of the objections to the report. By voting for the amendments, we will indeed enshrine the three principles of "distinct society", compensation in the area of joint programs, . . . I am looking for the third area, but anyway—

Senator Frith: Provincial involvement in the appointment of judges and senators. So you can support that?

Senator Flynn: What I mean is: those items are in a way side issues.

Senator Frith: Why not support them?

Senator Flynn: The essential part in my view remains the matter I have just indicated of the "distinct society" as a rule of interpretation, but as a rule of interpretation only, and the matter of financial compensation.

Of course, having a say in the appointment of senators and Supreme Court judges certainly ensures some balance between the two levels of Government. That is important. I view that as somewhat of a side issue.

Should we take the risk at this point, by supporting those amendments that will say "no", and so far as the Senate is involved in the Agreement, as Senator Cogger indicated? I am in complete agreement with him. The impact of that rejection, as I said, is to push Quebec back into deeper isolation than ever since 1982.

I think that I should change the subject instead of carrying out a discussion about the interpretation of criticisms which have been heard, especially those of Senator Pitfield. In my opinion, it could be applied *mutatis mutandis* to virtually all cases relating to the Constitution of 1982. If we had discussed the problems raised by the uncertainty due to sloppy drafting, et cetera, we would still be debating the 1982 constitutional bill. You only have to read over tomorrow the speech made by Senator Pitfield and you will realize that it could be applied in reverse to the 1982 proposal.

As I said, I should like to consider the matter within the framework of the procedure set in Part V of the 1982 legislation, that is the constitutional amending formula.

What is an amendment to the Constitution? It is legislation. Legislation is a text on which the competent authorities agree. Ordinary and non-constitutional legislation requires the approval of the Senate and of the House of Commons.

The Senate and the House of Commons have agreed under the Standing Orders which are not included in the Constitution to go through a first reading and a second reading of a bill which is then referred to a committee if necessary. There is also a third reading and the Royal Assent.

In the case of constitutional legislation, a resolution is introduced, but its text must be approved. Who should intervene? Usually, the Senate and the House of Commons at the

federal Government level and either the legislatures of seven provinces representing 50 per cent of the population in some cases or all legislatures when unanimity is required.

All those people must then agree on a text. A piece of constitutional legislation is proclaimed and is not given Royal Assent. We then have a problem because usually the Canadian constitution is proclaimed but it is absolutely necessary to agree on the text.

What prompted me to discuss this matter was the suggestion made by Senator Frith after the Right Honourable Pierre Elliott Trudeau made his presentation before the Committee of the Whole, when he said that the Senate has kept its veto power. I wondered how section 47 could be interpreted this way.

I emphasize that the same text must usually be approved by both Houses and by the legislatures when and in the proportion required. We cannot have two different texts. What happens then if the Senate proposes to amend a resolution already passed by the House of Commons? Had the Senate had a veto power, of course, it could send these amendments and if the House of Commons rejected them, then the draft resolution would die on the Order Paper exactly as in the case of an ordinary bill.

To prevent this—and Senators Frith and MacEachen will remember this since it is provided for in the Constitution Act of 1982—the powers of the Senate were restricted and it was only granted a suspensive veto.

I read section 47. It is perfectly clear and, in my opinion, totally unambiguous. It says:

> 47.(1) An amendment to the Constitution of Canada made by proclamation under section 38, 41, 42 or 43 may be made without a resolution of the Senate authorizing the issue of the proclamation if, within one hundred and eighty days after the adoption by the House of Commons of a resolution authorizing its issue, the Senate has not adopted such a resolution and if, at any time after the expiration of that period, the House of Commons again adopts the resolution.

Thus it is clear that the Senate can accept the resolution passed by the House of Commons as is, in which case the House of Commons has nothing more to say.

The Senate can also say no. In this case, the House of Commons, if it insists, will have to pass the same resolution again. And then the Senate can say yes, with amendments, as Senator MacEachen proposes. But this is exactly the same as if it said no.

A Senate amendment to a resolution on the Constitution adopted by the House of Commons is the equivalent of a no. If you sent this amended resolution, and if the House happened to see fit to accept it, it would have to adopt a new resolution and therefore come back to square one and send it back to the Senate. That is exactly what the situation would be.

The same would apply to the provincial legislatures. A new federal-provincial conference would have to take place. Governments and legislatures would all be back to square one. To propose and adopt an amendment at this stage would mean a refusal to endorse the motion.

In the Senate, a majority is held by the Opposition. What happened in the House of Commons once the question was put regarding the amendments made by Mr. Turner was that 37 Liberals voted in favour of these amendments and the motion was rejected. On the main motion, that is to say the one originally put forward and presented today by Senator Murray, 33 of these 37 Liberals voted in favour without amendment.

In this case, given the way in which the Opposition would have us proceed today, the Senate would never have the opportunity to take a vote on the original motion. I do not believe that this is as it should be. Those who are really opposed to the Agreement should have the opportunity to say so and those who are in favour, such as the 33 Liberals who were in the other place, should be able to voice their support. Moreover, the final vote in the other place was 242 to 16.

[*English*]

Senator Frith: For something that is supposed to be so clear it is becoming a little obscure.

Senator Flynn: What is obscure?

Senator Frith: Anyway, carry on.

[*Translation*]

Senator Flynn: In the other place, 242 members voted for the original motion, without amendments, and 16 voted against. What I am saying is that it is not proper for the Senate to pass amendments without first voting on the motion without amendments.

It is not difficult. The positions expressed by the Government text on the one hand, and the motion in amendment moved by Senator MacEachen on the other, are not irreconcilable since the Senator's party voted for the governement motion in the other place. For these reasons, I submit—

• (1600)

[*English*]

Hon. Allan J. MacEachen (Leader of the Opposition): If the Senate defeats the amendments, as they were defeated in the House of Commons, the main motion will be tested. The only difference is that there is a majority on this side.

Senator Flynn: No, the difference is—

Senator Frith: Instead of one over there!

Senator Flynn: Sure, but I would like the Senate—

Senator Frith: You would like it to be the same!

Senator Flynn: I want the Senate to be able to decide whether it will approve the motion if—

Hon. Royce Frith (Deputy Leader of the Opposition): Then it has to defeat the amendments. You want to change the majority situation, and I don't blame you. I would do the same thing in your place.

Senator Flynn: No, no. I am able to count, and I am very amused—

Senator Frith: This is very amusing!

Senator Flynn: —to see that many senators who are fundamentally opposed to the Meech Lake Accord will be voting for the amendments which in most cases, at least on their substance, are in accordance with the original text which was approved by the Liberal Party in the House of Commons on the last vote.

Senator Frith: Let me make a deal with you. We will let you be the majority here if you will let us be the majority in the other place. How about that?

Senator Flynn: I have a procedural problem with that proposal.

Senator McElman: That is not your only problem, Jacques!

Senator Lucier: That is not the only problem you've got!

Senator Flynn: Senator Lucier, I would suggest that you be quiet.

Some Hon. Senators: Oh, oh!

Senator Flynn: I say that in the best spirit possible. I have great affection for Senator Lucier, although sometimes I think that he goes too far, but I do not mind too much for too long.

Senator Hicks: I feel exactly the same way about you, Senator Flynn.

Senator Flynn: I know that, and I have had an opportunity to test it on a few occasions.

Senator Frith: He usually speaks very highly of you, too, Senator Flynn.

Senator Flynn: You said "usually." In any event, I said that I have a problem with the procedure because of the order of the Senate that says that all questions relating to the motion must be put no later than 3 o'clock tomorrow afternoon. If the questions on Senator MacEachen's amendments were put, let us say, this afternoon, after the vote, I would rise and move the following motion:

> That a message be sent to the House of Commons to acquaint that House that the Senate has authorized the proclamation of an amendment to the Constitution in the terms of the above schedule and to which it desires their concurrence—

The schedule would be the one as amended by the amendments, because Senator MacEachen has indicated that there is no doubt as to the way in which the Senate will dispose of it. My motion continues:

> The Senate adds, however, that if the House of Commons should not concur, the Senate does not oppose the proclamation of an amendment to the Constitution in the terms of the resolutions which the House of Commons adopted on the 26th of October, 1987, if the House hereafter again adopts the said same resolution.

I give notice that I will put this motion immediately after the vote on Senator MacEachen's amendments.

Senator Lucier: Except there is an egregious error.

Senator Flynn: In that way we will learn where the Liberal Party stands. We will know who is against the Meech Lake Accord in a definite way. Certainly Senator Pitfield will be able to vote no, and that should be helpful to him. We will also know whether there is agreement between the Liberal majority here in the Senate and the Liberal members in the House of Commons.

Senator McElman: You are trying to reactivate Valentine's Day.

Senator Flynn: I would think that you would want to be logical.

My reason for doing that is that this will be the last word that the Senate will have on this motion. If it is interpreted as a definite no, I think it would be unfair. I believe that, really, the majority here is in favour of the motion as originally presented rather than no motion at all, and that is why I want the Liberals in the Senate to be able to say to the House that we would rather have this as amended by Senator MacEachen, but, if not, that we are in agreement with our party in the House that a proclamation be made in the terms of the original motion.

• (1610)

Senator Frith: So our action depends on what they say over there?

Senator Flynn: No, not at all.

Senator Frith: Sure, you're saying it does.

Senator Flynn: I do not think we would be bound.

Senator Frith: If they do not agree, they will say, "No, no, boys, we don't like that."

Senator Flynn: You are not bound, but if you are in disagreement with that position at least you will have the occasion to say so and be frank to the end. Otherwise, we will not really know where the Senate stands if it votes only in favour of the amendments and it does not say a word about the original motion.

Senator Frith: Sure, it does—it says, "We want the motion as amended." Then we will say, "We don't really mean it."

Senator Flynn: No, no. Under section 47 of the Constitution Act, you know that the House may adopt the same resolution again and that we will have nothing to say at that point.

Senator Frith: No, I do not.

Senator Flynn: There is no way you can avoid being put in that position tomorrow if you do not agree with that in any way.

Honourable senators, I am not quite sure how to do this, but I give notice to the Chair that if and when the amendment of

Senator MacEachen is put and accepted I shall move that my motion be then put.

Senator Frith: Is that a motion? Are you saying, "if something happens, I will move something"?

Senator Flynn: I am giving notice to the Chair that after the vote on Senator MacEachen's motion in amendment, if it passes, I want to put that before any other question is put.

Senator Frith: You said, "If it is accepted . . . ."

Senator Flynn: I will not move it if the amendments are defeated.

Senator Frith: Why don't you wait for the event and then move your motion?

Senator Flynn: The problem is that if the debate is concluded I will not be allowed to intervene after the vote on Senator MacEachen's motion, because it will be three o'clock, and at three o'clock we are supposed to put all the questions.

Hon. Jerahmiel S. Grafstein: Would the honourable senator allow a question? I hear his argument, but I do not understand it.

Senator Flynn: I was not expecting that.

Senator Grafstein: If Senator Flynn does not expect senators to understand a resolution or a methodology, how can he expect them to support it? I ask this curiously and honestly.

Senator Flynn: I was not expecting you would support it.

Senator Grafstein: I am not suggesting whether I would support it or not. I am trying to understand what Senator Flynn is asking the Senate to do.

The Senate, if it chooses to support Senator MacEachen's motion, is sending a fundamental message about how the Constitution of Canada should be amended, period. Then you suggest we send an afterthought to the House of Commons which says, "Do not accept that particular message; accept another message." Tell me where in constitutional or parliamentary practice such a procedure is acceptable? Name me one example of that. The Senate speaks, and when it has completed its message it listens to the House of Commons respond.

Senator Flynn: This is the problem.

Senator Grafstein: I do not understand it.

Senator Flynn: It is obvious that you do not understand. If you could only read Part V of the Constitution and section 47 you would understand that this is an entirely new procedure. We are practising for the day when the Senate will have only a suspensive veto in all matters. We will be caught in constitutional matters with a suspensive veto. We have never faced that situation, so I cannot give you a precedent. It is entirely new.

Senator Grafstein: If the Senate were to pass Senator MacEachen's motion in amendment, and if we were then to support your resolution, would you then allow other senators to make resolutions, to send their particular message?

[Senator Flynn.]

Senator Flynn: I have no objection to that.

Senator Grafstein: Senator Pitfield has said that he would like to see a different version of the constitutional amendments, so perhaps Senator Pitfield could then put forward his resolution and we could deal with that. Perhaps I may have a different version. Senator Tremblay may have a different version since he has said that he is not satisfied with Meech Lake, in a different context, and that there are imperfections. Senator Murray has told us that he is not satisfied with Meech Lake. Other senators on your side have said that they are not satisfied with Meech Lake. We will have chaos here. It is not parliamentary practice and it is not constitutional practice.

Senator Flynn: May I ask Senator Grafstein a question? If we send a message to the House that we have adopted the motion with some amendments and the House does not agree with the Senate and again adopts the same resolution as it adopted on October 26, which is provided in section 47, do we want to have something to say about that?

Senator Grafstein: Senator—

Senator Flynn: I am asking you.

Senator Grafstein: Let me answer your question with a question. What would we present to the House of Commons? We could present the House of Commons with a cherry tree of resolutions and say to the House of Commons, "Cherry-pick the resolutions that you like." It would be endless, and that is why the practice seems to me to be, with all due respect, unparliamentary.

Senator Flynn: You did not answer the question I asked you. Are you in favour of defeating any motion regarding Meech Lake?

Senator Grafstein: I will not have made that decision until the debate is concluded. You will hear my speech later and I will tell you how I feel about these questions.

Senator Flynn: In any event, whatever may be the opinion of Senator Grafstein, I give notice that I want the Chair to put my motion after the vote on Senator MacEachen's motion in amendment. If, by a miracle, his motion is defeated, I will ask leave to withdraw mine.

Senator Grafstein: Now we are talking.

Senator Flynn: You should have understood that a long time ago.

Senator MacEachen: Honourable senators, I rise on a point of order to make it clear that we accept all that Senator Flynn has said as part of his speech, but it has no status as a formal notice of any motion. It is part of a speech and therefore we all know about it, but we are now in a debate and not under Notices of Motions. Certainly, his motion is a substantive one and could not be received as an amendment to the main motion. If any effort is made to interrupt proceedings when the amendments are dealt with we will be contravening the order of the house.

Senator Flynn: No, no. I think you have forgotten what was said by Senator Frith about that. He said that motion could be

put at any time and that we might be able to speak on the main motion after your amendment will have passed.

Hon. Henry D. Hicks: No.

Senator Flynn: Who said, "No?"

Senator Hicks: I said, "No." I have a very clear recollection of the motion.

Senator Flynn: That was done when Senator Simard started to speak. I am sure Senator Frith will bear me out on that. You will remember it was said that he could speak, and if there was a vote he could speak again.

Senator Hicks: Perhaps I could clarify my position.

Senator Frith: I said that he could speak on both the motion and the amendments if he wished. Then Senator Corbin raised a question of order indicating that he did not see how that would work, because we did not know the order in which the votes would be taken and the order in which persons would speak. Then we said, "Well, yes, but, of course, with unanimous consent we could"; and Senator Corbin said, "If it requires unanimous consent it will not get my consent." The whole thing was wrapped up that way. What you are saying about the exchange between me and Senator Simard is totally irrelevant.

• (1620)

Senator Hicks: The reason why I contradicted you, Senator Flynn—if I appeared to do so—is that my recollection is quite clear that when the house adopted the order it was that all questions should be put not later than 3 o'clock on Thursday; and that would not permit a question on the amendments to be put and then for the debate to continue before the main motion, because the house order required that all questions arising out of the debate would be put not later than 3 o'clock on Thursday. That is why I took issue with you.

Senator Flynn: Do you suggest that we cannot make any motion other than the one that was made by Senator MacEachen?

Senator Frith: Are you moving an amendment?

Senator Flynn: This is an amendment, because it adds to the message.

Senator Frith: There is no message provided for—

Senator Flynn: We can send a message at any time. That is what we did on a previous occasion. I refer honourable senators to *Minutes of the Proceedings of the Senate* for August 13, 1987. In connection with Bill C-22, it was

> Ordered,
>
> That a Message be sent to the House of Commons to acquaint that House that the Senate have passed this Bill with ten amendments—

Senator Frith: It was a bill—

Senator Flynn: Wait a minute. You are in a rush:

> —to which they desire their concurrence.
>
> The Honourable Senator Bonnell moved, seconded by the Honourable Senator Cottreau
>
> That a Message be sent to the House of Commons to inform that House of the recommended amendments, observations, and recommendations on general patent law amendments as contained in the Seventh Report of the Special Committee of the Senate on Bill C-22, An Act to amend the Patent Act and to provide for certain matters in relation thereto.

Therefore the Senate agreed to send another message, other than the one which followed the adoption of the bill, with amendments, at the third reading stage.

Why do you object? Because you do not want to be put on the spot?

Senator MacEachen: Because it is totally irregular. It is a parliamentary monstrosity.

Senator Frith: Honourable senators, perhaps at this point we should again put on the record the Senate's order on the question that is before us and which we are debating. It is:

> That no later than three o'clock p.m. on Thursday next, 21st April, 1988, the Speaker shall interrupt the proceedings and put all questions necessary to dispose of the main motion and any amendments thereto.

If we are looking at another amendment, we can find out whether or not that is in order—but apparently we are not. After we have voted on that motion, in accordance with the house order, if Senator Flynn wishes to put some motions, he will not be precluded. They might be out of order and we might object to that, but there is nothing to prevent him from standing up and moving whatever he wants to move after we have complied with the house order—which is to vote on the questions put by the Speaker, "on all questions necessary to dispose of the main motion and any amendments thereto."

Senator Flynn: You are precluding any possibility of moving amendments after the motion of Senator MacEachen has been adopted or defeated. Suppose for one moment that the motion is defeated. Perhaps someone else would like to move that the "distinct society" paragraph be deleted, purely and simply.

Senator MacEachen: It is too late.

Senator Flynn: Yes. That is exactly what you are saying, that the fact that you moved an amendment is preventing anyone else from moving a further motion in amendment.

Senator MacEachen: No. This arises from the house order.

Senator Flynn: Again I say that the discussion between Senator Frith and Senator Simard was exactly to the contrary, and that is why Senator Corbin intervened and said, "What if we want to make amendments?".

Senator Frith: And then it was suggested that unanimous consent was necessary.

Senator Flynn: He was not saying that unanimous consent was necessary.

Hon. Eymard G. Corbin: Honourable senators, do not misrepresent the point that I was attempting to make the other day. I was attempting to protect freedom of speech. Since then this house has unanimously accepted an order, and we all have to live by it. To me, that is what counts at this stage. The debate that preceded that means nothing any more. It fluttered away with the pigeons.

Senator Flynn: You have changed your mind. I thought you were going to protect me.

Hon. Jack Austin: Honourable senators, I feel certain that the house will not mind if I return the debate to the substantial matters that are before us. I confess to a sense of frustration and invalidation in my participation in this debate, which concerns the value to Canadians of the government's proposed constitutional amendment, 1987 in the form of the resolution placed before us by the government side.

I say "frustration and invalidation" because the attitude of the government has been essentially "our way or the doorway." No changes are to be considered; no improvement is possible. This is it, and it cannot be otherwise.

I maintain that this process is an affront to our parliamentary democracy. The role and responsibility of parliamentarians, as inquisitors of the executive, as guarantors of the right of the public to understand how the public business is being conducted, who will benefit and who will lose, is cast aside. A dominant executive, with a "trained seal" majority in the other place, will have its will.

The government's message to Canadians is, "Trust us," but the standing of the government, and particularly of Prime Minister Mulroney, as expressed in his favourite political polls, shows that the Canadian people do not confide their trust in this government.

Why did the government deny the other place its opportunity to send a committee to consult with Canadians in their own communities? Why did the government severely restrict the list of those who were eligible to be heard here in Ottawa? In 1980-81 I sat as a representative of the Senate on a joint Senate and House of Commons committee to examine the proposals for constitutional change, which resulted in the Canada Act and the Constitution Act, 1982. I sat virtually every weekday for nearly six months, and we heard from Canadians who represented every area and every interest group concerned; and when we concluded most Canadians felt that those constitutional amendments and the Charter of Rights were shaped by them and belonged to them.

Premiers of some of the provinces came before members of this Parliament to argue their case. Parliament played the role it was created to play as the representative of all Canadians. Parliament was then the centre of Canadian attention, the place where it was happening. Parliament was where the interest groups bargained with the government, with the opposition parties and with one another. Our democratic system worked.

What has the Conservative government done with Parliament by comparison? Mr. Mulroney made a deal in the dark of night with ten premiers. I will come to the substance of the deal in my remarks; but as to the process, they all agreed not to consult Canadians, not to consult anyone but themselves, except for show, and to use their parliamentary majorities to ram the deal through. No changes; no improvements; as is; that's it!

• (1630)

The Constitutional Accord could easily have been made *ad referendum* to a normal process of parliamentary inquiry. What would be the harm in that? It could have been made subject to one more meeting with the Prime Minister and the premiers after public hearings in Parliament and in the provinces. What would have been the harm in that? Canadians would have been listened to, and would have been seen to have been listened to. Can anyone ask what would have been the good of that? Obviously, the government asked itself that question and came to the conclusion that it would not be good for the government genuinely to listen to Canadians, and "genuinely to listen" means to be prepared to make changes.

The government was not prepared to make changes, not prepared to listen. Take it or leave it! That is a sad way to conduct the process of nation-building in Canada. It is a sad way to dispense fairness, show concern and give Canadians the conviction that they are in the process and that they can gain from being a part of the system. This process, I repeat, is an affront to Parliament and to parliamentarians in both houses and on both sides of each house. I believe that Senator Walker's friend, the Right Honourable John Diefenbaker, would not have tolerated this process. I believe that the Honourable Davie Fulton would not have tolerated this process, and they were among the best Conservative parliamentarians.

Probably the underlying thinking of the Conservative government is that the end justifies the means. In their view, the absence of the political consent of the Quebec provincial government is so egregious an error of the 1982 constitutional process that to obtain that consent is worthy of the greatest sacrifices of parliamentary process, of federal power and of various other groups of Canadians in the pursuit of their rights and interests. But I submit that a government that cared about the secure building of this nation, with a little more patience, with an agenda longer than one term of office, with a sense of Canadian history could have achieved all of those goals and achieved them securely for all Canadians.

Together with a majority in the Liberal Party and in the country, I regretted the absence of Quebec's political consent to the Constitution Act, 1982. Not only the federal government of the day, of which I was a member, but the governments of the nine other provinces, many of them Conservative, parted company with the aims and objectives of the Quebec provincial government, headed by the Honourable René Lévesque of the Parti Québécois.

Clearly, this was unfinished business and would have to be addressed again by Canadians. Frankly, I had hoped that some time would elapse before that day, time to cool emotions, time to allow maturity to grow in English Canada and in Quebec,

time to change the players from the combatants of 1980-82 to a new generation who could take a fresh approach from the vantage point of an evolving nationhood tested by the world around us.

I believe that Senator Murray has not made a good case for the urgency of introducing these constitutional changes at this time in our constitutional process. Let me be clear that I recognize that the Constitution Act, 1982 did not meet the fairness test with a majority of Québécois. That issue was on the national agenda. In spite of my concerns about the abuse of process, the objective of including Quebec is not in doubt anywhere. The fairness test, as an essential part of our national process, requires also that fairness be evenly applied. This is not the case in this so-called Meech Lake Accord which is before us. Regrettably, the seeds of future conflict exist in the way this accord has been arrived at.

To settle the Constitution all significant groups in Canada must think that the outcome is fair. Do they? Not women seeking assurances of equality of rights, as Senator Marsden has noted; not natives seeking recognition of their role in Canada as a distinct society, as Senator Lucier has said; not minority francophone communities in English-speaking provinces, and not the English-speaking minority in Quebec, and there are many others.

The Leader of the Liberal Party, the Right Honourable John Turner, the Senate Opposition leader, the Honourable Allan J. MacEachen, many of my Liberal colleagues in the Senate and in the other place, and many witnesses who have appeared before us, pre-eminent among them, if I may say so, the Right Honourable Pierre Elliott Trudeau, have all made the case, and made it overwhelmingly, that this accord is so seriously flawed that it needs to be reopened and revised. It should not be passed as it stands.

Senator MacEachen has introduced amendments to the Resolution which are fair and balanced and which, if adopted, would form an excellent base for a further round of consultation with the provinces. Nothing in these amendments would threaten the gains for Canada as a whole which are contained in the present Meech Lake Accord. The amendments would consolidate that constitutional growth and enhance rather than further divide Canadians.

I have no hope that the Conservative government will pay the slightest attention to the voices of concern that are rising throughout Canada today. Of course, Senator Murray says his mind is open in the case of egregious error, but he can find none. While the political judge has his mind made up—

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): That was a statement made by the First Ministers, by the way.

Senator Austin: I understood it was Senator Murray's position that there is no egregious error. Have I misunderstood him?

Senator Murray: No. It was the First Ministers who agreed that only in the case of an egregious error would they agree to reopen the accord.

Senator Austin: Senator Murray is representing his government in this chamber. Do I understand him to say that it is the position of his government that there is no egregious error?

Senator Murray: That is right.

Senator Austin: Then Senator Murray's mind is made up. Still this hearing process is under way, and I wish to argue with Senator Murray a little longer.

Senator Murray: Be my guest.

Senator Austin: My Senate colleagues from the Liberal side have made a comprehensive case for further amendments now. I join with my Senate colleagues in their arguments. The task I wish to undertake is to show that there is an egregious error in the proposed unanimity rule which will apply if this Resolution is adopted.

Some of the most bitter conflict we have experienced in constitution-making has been centred on the amending formula. Until 1982 constitution-making in Canada had floundered on this issue. Failure to agree on an amending formula in the federal-provincial meetings of 1980 led the federal government of the day to proceed unilaterally with a request to the Government and Parliament of the United Kingdom for a constitutional package which included its own preferred amending formula.

A number of factors had moved constitutional change to the top of the priority list by 1980. The growth in economic power in western Canada through the 1970s led to recognition of political ineffectiveness in the federal system. In Quebec it was the need to respond to the explosion of Quebec nationalism, particularly as harnassed by the Parti Québécois for its declared goals of independence and sovereignty association. A traditional Quebec was being transformed by economic, social and cultural modernization. A long series of challenges from western Canada and Quebec unbalanced the role of the federal government and the equilibrium of Canada which had been established in the post-war recovery. The message was clear: Quebec was not satisfied to be a mere province in Canada. Two possible solutions were argued; either escape Canadian federalism through independence or redefine Canadian federalism to a new pan-Canadianism in which Quebec and French Canada could expand in a national system. Certainly, I thought that the Quebec Referendum of 1980 had settled the issue in favour of a new pan-Canadianism on terms stated by Prime Minister Trudeau during that referendum debate.

• (1640)

I have to confess, speaking as a senator from British Columbia, that my province, farthest from Quebec geographically and culturally and with the smallest francophone community in terms of percentages, had minimal interest in the early 1980s in either Quebec's claims or Ottawa's proposed solutions. This was certainly one of the key factors in Mr. Trudeau's low level of support in British Columbia.

The complex judgment of the Supreme Court of Canada, rendered on September 28, 1981, forced the federal government and the provinces back to the bargaining table. Honourable senators will recall that the Supreme Court then found

that unilateral action was legal, but that convention required a substantial degree of support from the provinces. The court did not define "substantial," except to make clear that unanimity was not essential.

Honourable senators will also recall that in the post-Supreme Court bargaining period, an amending formula was hammered out by the federal government and nine of the ten provinces. The federal government gave up its proposal for referenda as a part of the amending procedure and also surrendered its formula which allowed the possibility of an amendment's being passed against the wishes of up to two provinces in each of the western and Atlantic regions. These were replaced by the provisions of the Constitution Act, 1982, proposed by the "Gang of Eight," particularly under the influence of Premier Lougheed of Alberta.

The underlying premise of the existing amending formula in the Constitution Act, 1982 is that all provinces are consitutionally equal and that the only authoritative representative of a province in constitutional matters is the provincial government. By dropping the referenda clause the provincial level was guaranteed that 1980 would never happen again; that is, that a provincial electorate would never again be able to take a position different from that of the ruling provincial elite.

I thought that the Alberta formula for amendment was, in itself, a big barrier to constitutional change. Canadians as citizens are forever, or nearly forever, forbidden to change their Constitution. Only their provincial and federal governments and Parliament can do so with a minimum of seven provinces representing 50 per cent of the population of Canada. If the Meech Lake resolution passes, only unanimity of the federal and all provincial legislatures could permit a referendum to take place.

The resolution before us sets an impossibly high degree of consensus for change. The slowest ship in the constitutional convoy determines the safety and well-being of all. What price will be demanded by the anchor-draggers before they will speed up? Is there any major reform of social policy since the war that could have been won through the use of this formula?

Perhaps we misunderstand the intent. It may be that the unanimity formula is designed to frustrate further change, to force further constitutional debate into silence. It may be that it is designed for stability for those who are in and to protect that stability from those who are out. In this context, at least, the proposed unanimity rule would be logical and understandable in its content and purpose.

However, I submit that it is a hoax of the greatest kind to introduce this amending formula and, at the same time, to promise to the "outs" a post-constitutional amendment agenda, which any person of reasonable understanding must know will be virtually impossible to achieve. What further concessions could the federal government plan to make to the provinces to gain provincial unity of purpose?

The unanimity rule for changes to the Senate and for the creation of new provinces is a real barrier to any future action in those areas. It is silly to suggest that there is any substance to the promise that Senate reform will come about as a result of being a perpetual agenda item in future federal-provincial conferences. The depressing conclusion for the people of the Yukon and the Northwest Territories regarding their constitutional aspirations has been well presented by Senator Lucier and others.

The Liberal amendment here seeks to remove from the unanimity requirement those items which became subject to it at Meech Lake. Senator Murray argued before the Special Joint Committee, on August 4, 1987, that the unanimity rule was agreed to because of the concept of the equality of the provinces. But how were the provinces treated unequally under the previous rule? Seven provinces representing 50 per cent of the Canadian population were recognized. All provinces are equal. They are equally able to agree or to disagree to constitutional change, and each vote for agreement or disagreement is equally cast. It was Premier Lougheed's formula and it was agreed to by eight other provinces.

Senator Murray: We have not changed that, by the way.

Senator Austin: Well, you have with respect to the Senate and you have with respect to the establishment of new provinces.

Senator Murray: But the 7-and-50 is still the general amending formula.

Senator Austin: Yes, but in some special and important cases it is not. In those cases you have adopted a unanimity rule.

Senator Murray: Very well—attack the items that we have added to the agenda.

Senator Austin: I am attacking those items, and I am saying that the rule is unfairly balanced and is designed to prevent change. I am saying that you do not own up in an honest way to your design.

Honourable senators, Senator Forsey, in evidence before us, said:

> The chances of any amendment being adopted even under the seven-province formula are virtually nil. Under the unanimous consent formula, the chances for a change are microscopic.

The federal government is proposing a unique position in seeking to adopt such an aggressive form of the unanimity rule into our Constitution. No other federal government requires such unanimity from its constituent parts in order to amend its Constitution.

In Australia the state legislatures have no role at all to play in constitutional amendment. The proposed amendment must pass both houses of the federal Parliament, a majority of the voters in the country as a whole, and a majority of voters in a minimum of four of the six states. In the United States approval of two thirds of both houses of Congress and three quarters of the state legislatures is the usual method by which to make a constitutional change, although there is a referendum procedure. In Switzerland passage by the Assembly and a majority of the citizens in the cantons is required. Referenda

are in constitutional use in Switzerland, Australia, the United States, Austria, France, Denmark, Ireland, Italy and Sweden.

Honourable senators, there are other and fairer solutions for all Canadians, which can be found and adopted at this stage in our constitutional evolution. The Senate's role is to remind, to prompt, to advise and to elucidate. Canada is a fairness country. Let us ask the federal and the provincial governments to return to the negotiating table to find that fair balance in our federation that will ensure that new and serious grievances are not raised—grievances that will prove to be more threatening over time than the issues we are now trying to resolve.

Hon. Martha P. Bielish: Honourable senators, I first want to thank Senator Lucier for his kind remarks about the attendance of Senator Macquarrie and myself at the Meech Lake hearings in both Whitehorse and Yellowknife. We enjoyed those meetings, in spite of the fact that one might have thought they were difficult. It is never difficult to listen to people who are saying what they desperately want to say and who live as far away as people do in the North. We appreciated everything that they said. We listened to them carefully. I want senators to know that we enjoyed the trip to the North.

Honourable senators, by this time everything that possibly could have been said has already been said twice and three times over. Senator Austin has said he is from British Columbia and is close to the scene there. Senators will realize that I am speaking as the only Conservative senator from Alberta, that it is a privilege for me to present some of the feeling of that province and to put on record some of the things said in the provincial legislature. I shall quote a little later on some of what the premier said in his speech to the Legislative Assembly.

• (1650)

First, I would like to go through the process. I am not as familiar with all legislation that has passed this chamber as some honourable senators are, however, I had to get it on record and learn about it.

The Constitutional Accord of 1987 has been called a miracle. Both Robert Stanfield and J.W. Pickersgill used this term when they appeared before the joint parliamentary committee, and they are right; it is a miracle. For 61 years unanimity eluded us. Just five years ago, when the Constitution was patriated, unanimity escaped us once again with potentially very damaging consequences. Quebec did not share in the agreement. Today there is the widest possible support for an accord that restores Quebec to the constitutional family. Quebec is on-side, all the premiers are on-side, and I hope that all honourable senators will be on-side as well.

Senator Frith: We will be on the right side.

Senator Bielish: The consensus that emerged on June 3, 1987, is the product of political will, political will combined with hard work and many months of consultation and discussion building on past progress in constitutional talks. The Constitutional Accord cannot be properly evaluated as an isolated event. It was not conceived and born stubbornly at Meech Lake. Rather, the accord must be viewed in its proper historical context.

As several witnesses emphasized during the joint parliamentary committee hearings, and as the committee has stated in its final report, the accord was not the result of two all-night bargaining sessions. Its origins extend at least to the unfinished business of the Constitution in 1982, and the issues it deals with have been the subject of discussion, debate, consultation and preparation for even longer. Indeed, all the issues dealt with in the accord have been fully debated by politicians, experts, interested Canadians and commentators for more than 20 years, a point Gordon Robertson and Solange Chaput-Rolland emphasized when they appeared before the committee.

Mr. Robertson, who is one of the most experienced of all Canadians in the area of constitutional negotiations, told the committee that the accord "has to be seen in the context of the negotiations on the Constitution that have been going on, or were going on, from 1968 to the present time." As Madame Chaput-Rolland so aptly put it:

[*Translation*]

It seems to me that for the last 20 years Canadians have preferred living with their problems to solving them.

[*English*]

But the unanimity achieved on June 3, 1987, would not have been possible without the benefit of past debate on the main elements of the accord. The experience with federal-provincial immigration agreements since 1971 laid the basis for resolving the one issue which was not previously an agenda item for constitutional conferences.

The accord is built on the work of decades: the constitutional review of 1968 to 1971; the constitutional exercise of 1975 and 1976; Bill C-60 in 1978; the intensive discussions on the Constitution from 1978 to 1979 and the negotiations that followed the referendum in 1980, as well as the exercise of 1981.

Constitutional renewal reached a milestone with the Constitution Act, 1982. It gave us patriation, an amending formula, the Charter of Rights and Freedoms, recognition of aboriginal rights and our multicultural heritage, a commitment to reinforce our regional strengths and the extension of provincial jurisdiction over natural resources.

These accomplishments are not to be taken lightly, but they were fundamentally flawed by the exclusion of Quebec. With Quebec on the outside looking in, the country was not whole, the circle of Confederation was not complete, so the debate was not over. As Senator Lowell Murray pointed out in his initial appearance before the special committee, a series of events combined to create what he called "a window of opportunity" for the successful resolution of the Quebec issue.

In his August 1984 speech at Sept-Îles, the Prime Minister first set out his commitment to seek Quebec's return to the constitutional fold. Soon after that, in February 1985, the Quebec Liberal Party adopted its constitutional position in *Maîtriser l'Avenir*, with five realistic conditions for ending the constitutional impasse. When it took office in December 1985,

this became the Government of Quebec's program. A fundamental condition was constitutional recognition of Quebec's distinct society.

In the summer of 1986 informal discussion began on Quebec's program. The issue was subsequently reviewed at the August 1986 First Ministers' Conference, where premiers unanimously resolved that their top constitutional priority would be to seek Quebec's return to the Constitution, that the process would be based on the five points Quebec had put forward, and that other areas of concern to them would not be linked to the Quebec round but would be addressed in subsequent constitutional discussions.

With that mandate, Senator Murray and Gil Rémillard, his opposite number in the Quebec government, each had bilateral consultations with their provincial counterparts. In addition, federal and provincial officials began to review the issue in depth.

At their conference in Vancouver in November, First Ministers agreed that discussion should be intensified and expanded in order to evaluate more fully the chance of success of formal negotiations based on Quebec's proposals.

Finally, the Prime Minister concluded that ministers had progressed as far as they could without substantive intervention by First Ministers, and he convened the Meech Lake meeting on April 30. So there has been long and careful preparation, well known to the public, when First Ministers announced agreement in principle at Meech Lake on April 30, 1987, and a unanimous agreement on the Constitutional Accord on June 3, 1987.

There were no surprises, except that unanimous agreement was achieved. The extensive preparation and consultation which characterized the process leading to the accord has continued with the process of ratification. All First Ministers explicitly endorsed the proposed amendments and committed themselves to tabling them in identical form. The accord is being submitted to the further democratic test of debate and votes in Parliament and the provincial legislatures.

The accord will only come into effect when it has passed this test, that is, when it has been approved by majority votes in Parliament and all the legislatures.

I would like to quote from an excerpt of the Alberta *Hansard* dated November 23, 1987, when the premier of that province spoke to the assembly.

● (1700)

He said:

> Mr. Speaker, I'd like to look at this resolution in a variety of ways but first to say that the government of Alberta went into the constitutional negotiations with a certain principle in mind. They then set three targets, three aims that we would like to reach, and then finally there are the actual details that allow us to reach those targets. The government went into this negotiation—and by the way, the government started this negotiation—in Edmonton at the August Premiers' Conference.

I will continue. He further said:

[Senator Bielish.]

> Now, Alberta went into the negotiation wanting to provide a stronger role for regions represented by provinces in the making of constitutional amendments and to result in constitutional amendments that gave a balancing of power, a greater decentralization, if you like, of the powers available to provinces under our Constitution, because as we've said before in this Legislature, the House of Commons is dominated by Ontario and Quebec, then the other House in our Parliament—

He is talking about this house—

> —is also dominated by Ontario and Quebec, and that's a flaw.

You will pardon us for saying those kinds of things, but that is a fact of life when you live in the West or in a smaller constituency. He goes on to say:

> We also felt that since Quebec was not part of the Constitution, our constitutional process was flawed and that that had to be corrected. So we worked to see whether we could get Quebec fully into the constitutional process but on the basis of no special status, and this accord achieves that.
>
> Secondly, we wanted to establish within our Constitution the principle of the equality of provinces. We were able to do that in a variety of ways within the constitutional accord, and all members will see it in the document. This accord establishes the principle of equality of provinces.
>
> Third, Mr. Speaker, we wanted to ensure that we would have Senate reform in our Constitution, not provided for by a letter of agreement or a handshake but in the Constitution. Now, for 100 years people have been talking about Senate reform in Canada, but until this government went through this process, there was never a provision that there would be Senate reform. We have it as the number one item for constitutional reform, and it's guaranteed in the Constitution. In the coming years we will have Senate reform as the number one item, and I believe we will be able to convince the people of Canada and all the governments of Canada that not only should we have Senate reform, but we should have a Triple-E Senate.

I will go on to the next item. He states:

> . . . we've achieved an accord which does decentralize and give greater balance to our constitutional institutions. We have met our aim of bringing Quebec in. We have met our aim of establishing the equality of provinces. We have met our aim in getting Senate reform in the Constitution.
>
> First, Quebec is a distinct society.

This is the first time that I have heard someone describe "distinct society." It has sort of been left up in the air. This is the way he described it:

> . . . it's pretty clear to anybody who travels in Quebec that by recognizing them as a distinct society in Canada, you are really recognizing a fact of life, and that's what the first ministers wanted to do: recognize an actual fact of

life in Canada by the clause that describes Quebec as a distinct society. That clause does not give Quebec any additional powers; it doesn't take powers away from anybody in Canada. But it does recognize a fact of life.

The other thing we were able to obtain in this negotiation is a veto for Alberta . . . Again, it really is foolish to argue that we have equal provinces and then propose an accord that would have perhaps the large provinces, like Ontario and Quebec, have a veto and not the small provinces, and that has always been the argument. We don't accept that in Alberta. We believe again in the equality of provinces; all provinces have a veto if one is going to have one.

The third point we were able to obtain is a curb on the federal spending power, that they could no longer end-run the Constitution of our nation and, by using their huge spending power, get into areas of strictly provincial jurisdiction, as they have in the past. That's no longer going to be allowed . . . A province can opt out of those programs before they're imposed on them and, as long as they meet the general objectives of a program, must be paid for that program.

The fourth item is something that I think is pretty important, that we now will have input into Supreme Court appointments.

The other item which we received input into: the appointment of Senators.

Enough was said in the first place. He goes on to say:

We've also obtained . . . greater input by the provinces into the immigration policy in Canada, and I believe that's important as well. We know that this is an important matter to the province of Quebec, but it's also an important matter to other provinces. Alberta supported Quebec in this matter, and I believe we will have far greater input into immigration to our province and a far better means of planning the future growth and development of Alberta.

. . . the last of the changes in the Constitution, which is to enshrine in the Constitution the principle of first ministers' conferences on an annual basis. This has always been something Alberta has been fighting for.

So, Mr. Speaker, we have achieved our overall principle of a greater balancing of Canada's political institutions to provide greater input from all parts of Canada through the provinces. We have brought Quebec in. We have established the principle of equality for provinces, and we now have Senate reform guaranteed in our Constitution.

In conclusion, honourable senators, it is grossly unjust to claim the 1987 Constitutional Accord was a one-night wonder. The accord was not cooked up in some kitchen overnight, nor was it pulled out of a hat. The process was fully consistent with Canadian democratic practice and reflects the concerted political will of all 11 governments. Without a doubt, the extensive process of consultation leading to the accord contributed to the successful outcome.

To claim that the Constitution was rewritten "on the run" clearly is without foundation. Rather, the accord builds on the consensus that has emerged over the years and lays the foundation for future constitutional growth and adaptation.

Some Hon. Senators: Hear, hear!

Hon. H.A. Olson: Honourable senators, I want to make a few comments in this debate, because I think it is one of the most important and interesting debates that I have been involved in since I came to the Senate some ten or eleven years ago.

I think there have been some excellent speeches analyzing the situation, the attitudes of various regions—particularly the provinces of Canada—respecting what is expected of our Constitution, and, indeed, many of the hopes and aspirations that have been expressed here in regard to all of that.

Perhaps I should go over some of that ground. Many beautiful phrases and great words have been put together describing the need for unity in Canada and the need for us to continue to work toward maintaining the unity of all of Canada. The reason why I should repeat those arguments, perhaps, is that I agree with all of those things. However, I think senators will forgive me if I pass up the opportunity of repeating what has been said so well by a number of senators on both sides of the house.

● (1710)

Honourable senators, my reason for participating in the debate is slightly different—in fact, it may be significantly different—and that is that I believe after you have put all of the great prose together, you must finish up with a document that works. It must be capable of being interpreted by the 11 governments and the courts in Canada so that it works properly. That is why I believe that this Meech Lake Accord is seriously flawed.

Senator Flynn: That is your opinion.

Senator Olson: I have confidence in a number of things, but I also have enough experience in negotiating with other jurisdictions, namely the provinces, to know that someone must be in charge of the national interest, and must have the authority to express the national will. I think the Meech Lake Accord weakens very seriously that capability of the federal government and, indeed, if you put it into the Constitution, it will weaken the authority of Parliament also, and that disturbs me.

There are a great number of points that could be argued with respect to this problem, but I only intend to discuss two of them. One is the unanimity requirement for the future respecting the amending formula. That troubles me a great deal. Honourable senators, the situation is not complicated. When a government is elected, they have earned the mandate to bring in whatever programs they wish under the constitutional law. They will be judged by the electorate at the next election on whether or not the programs were good or bad. But I am afraid, honourable senators, that if we accept the Meech Lake Accord, which includes the unanimity requirement for any future changes—

Senator Flynn: No!

Senator Olson: Senator Flynn, why do you say "no"? Under section 9 of the accord, there is a whole list of matters from (a) to (j) that require the unanimous agreement of the Parliament of Canada and of all of the provinces. That is what it says.

Senator Flynn: On certain matters.

Senator Olson: Yes, and the certain matters are listed from (a) to (j). Perhaps I could ask Senator Murray, even at this stage: When we get to the next phase or to a subsequent phase of constitutional amendments, such as the redistribution of powers between the two jurisdictions, does that require the unanimous consent of all 11 governments?

Senator Flynn: At present, yes.

Senator Olson: It does not say in the Meech Lake Accord.

Senator Flynn: At present it requires unanimous consent.

Senator Olson: I am not sure that that is right, but I think that that has been the practice in any event. In other words, if the federal government wanted to change a provincial jurisdiction or a provincial power, particularly under sections 91 and 92, the agreement of all of the provinces was required. I see Senator Tremblay shaking his head the wrong way.

Senator Murray: You gave the right for the provinces to opt out of such a transfer in 1982.

Senator Olson: Yes, I understand. In any event, I want to get back on the track here because, as I said, I think a government ought to have the right to bring in its program and its policy. However, if we put this accord into the Constitution now, I do not think that a subsequent government can fix it without unanimous consent.

I see that Senator Murray agrees with that. In my opinion, it is not a good idea to include such things that cannot be remedied if you find that they are unworkable—and heaven knows that the unanimity requirement has made constitutional amendments unworkable for years and years.

Senator Murray: The unanimity requirement is only one of several amending formulae in the Constitution—only one of several.

Senator Olson: But you are now adding a number of matters to those that have the unanimity requirement that were not included before.

Senator Murray: Several matters, yes. You can discuss these matters, if you like.

Senator Olson: I do not want to take a lot of time discussing all of the details. You have been over that and Senator MacEachen gave a great analysis of all of those matters, as did Senator Austin and several others. It is easy to go back over it, but I am just telling you that after having listened to all of this debate, I am advising you now that I have come to the conclusion that it would be doing a great disservice to Canada—and indeed to Quebec as part of Canada—to have this kind of unanimity requirement—Senator Pitfield called it "the straitjacket of unanimity"—applied to the amending formula in the future. Therefore that aspect does trouble me.

Honourable senators, the other point that troubles me is this matter of having a constitutional requirement that there be financial compensation for every program that is introduced, in the event that any province does not wish to accept the national program that is offered.

Senator Murray: New national shared-cost programs.

Senator Olson: Yes, that is right, but every program was a new national shared-cost program when it was first introduced, such as medicare, for example—

Senator Murray: —in areas of exclusive provincial jurisdiction.

Senator Olson: Yes, I agree. My friend can use all of these expressions, but what is he going to talk about at the table when the provinces are present? You must be practical about it. I have had some experience in this area because I had the privilege of trying to get the provinces to agree to farm products marketing programs. During that entire discussion with the provinces, at no time did we challenge the jurisdiction of the provinces. They had jurisdiction over such things as the right to set prices and production quotas. We never assumed at all that the federal government had the power to do those things. However—

Senator Murray: It is a shared jurisdiction. It is agriculture you are talking about, is it not?

Senator Olson: Very well, I understand that. It is a shared jurisdiction, but what is not shared is the provincial government's exclusive right to set prices and production quotas.

Senator Murray: Is this agriculture you are talking about?

Senator Olson: Yes, it is agriculture.

Senator Flynn: No—

Senator Olson: Senator Flynn can disagree if he wishes. However, I want him to know that, during all of the months that we negotiated, I never once questioned the exclusive jurisdiction of the provinces, which they claimed.

However, perhaps you should wait until I get to the next stage: After the provinces had had dozens—or perhaps hundreds—of meetings, they came back and said to me: "Mr. Olson, we cannot come to an agreement. We have to have federal enabling legislation in order to get us out of this mess." At that time, eggs were selling for 8 or 10 cents a dozen. That was the most striking problem, but there were others in which the provinces wanted to have some structure whereby they could delegate their authority so that everyone across the country would be treated uniformly and, I hope, fairly. I am telling you of this as an example of the kind of problems you will face when you look for this unanimity that is about to become part of the Constitution.

Honourable senators, in that instance, it was my experience with the provinces that they could hold lengthy discussion and they could all agree that they had a problem and even agree on what the solution might be. But what will happen when it

comes to making a commitment to honour a quota? I remember that with the eggs, quota was to be 475 million dozen the first year divided among the ten provinces. Three or four of the provinces did not come in at all because the quotas were to be based on the history of production for the previous five years—

• (1720)

Senator Murray: Oh, oh!

Senator Olson: —and there was also an adjustment in the formula in the event of an increase in the market. I did not hear what Senator Murray had to say. He will have to wait until I have stopped talking so I can hear him.

I want Senator Murray to know that nice words do not mean much. I appreciated his speech. It sounded great when he talked about all the great things that will come out of this accord. However, there comes a time when you have to apply it, and that is when you get mugged with reality.

Senator Neiman: A great phrase.

Senator Frith: "With" reality or "by" reality?

Senator Olson: By reality. If I said "with", I meant "by." That is when the provinces want every inch and every dollar they can get. That is normal, because it is human nature, but why does the government try to kid us into believing that we will have all this sweetness and light in the future? Every time the federal government wants the support of some of the provinces to meet the unanimity requirement, it will have to buy it. This has been the situation in the past. However, this time such efforts will weaken the federal government and it will not have the wherewithal to buy that support, or the authority to trade for it, when it wants amendments to the Constitution.

I see Senator Murray smiling as though he does not believe that such will be the case. Some of us who have been through these situations perhaps understand better than he does.

In any event, I would like to conclude by saying, again, that I do not want to support changes to the constitutional requirements in Canada that will weaken Parliament's capability to deal with constitutional matters. If this government wants to give away its authority and power and commit Parliament, particularly the House of Commons, to giving a great deal of additional power to the provinces, then go ahead. However, I would not like it to change the Constitution in such a way—though I am afraid that it will happen—that we have a great deal of difficulty remedying the situation long after this government is forgotten. Given the experience of some 60-odd years, this is probably what will happen. From 1927 to 1982 we tried to patriate the Constitution, but we did not because we could not agree on what the amending formula would be when it got to Canada.

There will be federal programs that the federal government will help to pay for. Some people have mentioned day care. Perhaps there will be other social programs that will require a major federal financial contribution to be implemented across Canada and to meet the requirement that there be a uniform base of service available to every Canadian, whether he or she lives in Newfoundland, Alberta, Ontario or wherever. One of the major functions of the federal government is to carry out this redistribution exercise from time to time so that minimum standards can be maintained. We all know of major programs in effect now to which the federal government makes major financial contributions and that the provinces simply could not afford them if the federal government did not make those contributions. Medicare is probably an outstanding example, but there are others. I think that the spending power of the federal government will be weakened by the Meech Lake Accord, and that is one of the reasons why I am apprehensive about it.

Honourable senators, I intend to support the amendments moved by the Leader of the Opposition. I think Senator Flynn expected me to take this position. However, I want to say this—

Senator Flynn: Do you agree with all the amendments, including the one that deals with the "distinct society" concept?

Senator Olson: I did not bring up the "distinct society" clause or any of the other clauses because other senators have dealt with them. I said at the outset that I would deal with the two matters that bother me the most. The unanimity requirement for the future is one of them, and the devolution of the federal government's capability to control federal spending power is the other. I can tell the honourable senator that even if all the amendments were accepted, I would not like to have the Meech Lake Accord added to our Constitution, because the two matters I raised are not sufficiently covered by the amendments. However, I may vote for the main motion after it is amended, anyway.

Senator Flynn: Will you vote for my motion?

[*Translation*]

Hon. Arthur Tremblay: Honourable senators, as a senator representing the Laurentides Electoral College, one of the 24 Lower Canada electoral colleges listed in schedule A, Chapter 1 of the revised Statutes of Canada, I shall describe first of all my perception of the global significance of the constitutional bill now before us.

The purpose of the Constitution Act, 1987, once it is proclaimed, will be to put things back in their proper order in a federation such as ours.

It would not have been natural that the Constitution Act of 1982, the purpose of which was to sever the last colonial link still connecting us with Westminster, should go through all the necessary legal stages without Quebec being part of the operation, the only excluded partner of the federation. It would not have been normal that Quebec should be compelled for instance to abstain from voting as it did during the constitutional conferences on Indian rights, under either the Bourassa government or the previous government.

It was no more natural for that situation to last until 1982. It was even less normal to act as though it would last indefinitely.

When I heard some comments, including those from Senator Pitfield, to the effect that there was no emergency, I really felt the weight of this anomaly which has existed for the past five years. Eventually Quebec and the rest of the Canadian federation would have to get out of the impasse. It is to the honour and credit of Mr. Mulroney to have taken the first initiative towards normalization.

He took this initiative during the 1984 election compaign. He made this solemn promise during a speech in Sept-Îles in early August 1984, a speech widely reported throughout Canada, that should he be elected as Prime Minister, he would have a clear mandate to pursue this objective and convince Quebec's National Assembly to join the new Canadian Constitution with honour and enthusiasm.

He did it, however, in a way which clearly demonstrated how much he was aware of the need to pursue this objective with caution and judgment.

I quote again from the speech Mr. Mulroney made in Sept-Îles:

> I am prepared to examine with the provinces a series of changes to the amending formula. But fully aware of the significance and complexity of federal-provincial issues, I shall not embark upon a Constitutional process in an atmosphere of ambiguity and improvisation. To proceed differently might do much more harm than good. Before taking steps which might result again in a deadlock, we ought to clearly establish the terms and goals and to lay the groundwork for success. The necessary dialogue will begin at the appropriate time and continue within the scope of Canadian federalism with the authorities legitimately elected by Quebecers. I am too respectful of our institutions to suggest that I might even dictate how a province ought to elect its representatives.

• (1730)

In the context of time these words had a significant meaning.

I should think that nobody would deny that this commitment on the part of Mr. Mulroney—the way the objective to be sought and the steps to be taken to achieve it were expressed—nobody would deny that indeed they had something to do with the outcome of the 1984 election throughout Canada.

In any event, the opening of the dialogue by the federal side was duly noted in Quebec City. As the Quebec Premier himself said in the following weeks, it was clearly understood that the ball was then in Quebec's court. From then on it was incumbent on the government of Quebec to indicate on what basis the dialogue might be pursued.

I have no intention of going over the various steps which have been accomplished since then but, if only to correct the impression that may have been created by some of the remarks which I heard many times in this chamber and which opposed the people of Quebec and the government of Quebec in the chain of events, we must at least remember that the five points which were the basis of the discussions which brought us

where we are now, these five points were in the program of the Liberal Party of Quebec. The very fact that Mr. Bourassa was elected was the only endorsement he needed: the people of Quebec gave him a mandate to open the dialogue, to begin the discussions on the basis of the five points which eventually led to the agreement concluded at Meech Lake.

With respect to the general meaning of things, I would not want to go any further, but I think those are the essential elements. The purpose of what we have before us, of the Constitution Act, 1987, is to re-establish, to restore the normalcy of things in a federation such as ours.

So many comments have been made in this chamber over the past three days that we really have to wonder whether it is still possible, as some others have suggested, to come up with fresh considerations at this stage of the debate, after so many speeches. And so, in the perhaps futile hope of making whatever small contribution I might offer for our collective reflection, my intention was to limit myself to a single point, specifically clause 7 of the bill, which has to do with what has been called the spending power as it relates to national shared-cost programs in fields under provincial jurisdiction.

However I should like to refer to the remarks of Senator Pitfield and those of Senator Olson a moment ago with respect to the unanimity required in certain fields.

If I can rely on my notes, Senator Pitfield said something to this effect:

[*English*]

—"To freeze the Constitution in the straitjacket of unanimity."

[*Translation*]

It is not possible to let such a statement go by unnoticed. Allow me to—

Senator Frith: What is the French translation of that?

Senator Tremblay: *Geler l'évolution constitutionnelle dans la camisole de force de l'unanimité.* Note that the expression "straitjacket" in English or "camisole de force" in French causes, shall we say, problems in both languages.

Senator Frith: In English: "mixed metaphors."

Senator Tremblay: Anyway, I think I have understood what Senator Pitfield said. The important thing is to point out how misleading such an expression can be. The general amendment procedure that applies to all constitutional amendments remains as it was except, of course, for this major change brought in by the Meech Lake Agreement that extends to all fields of exclusive provincial jurisdiction the principle already contained in the Constitution Act, 1982, that is, the possibility to opt out of an amendment that would further centralize Canada by transferring something from provincial to federal jurisdiction.

This principle already existed in 1982 whereby a province could opt out and obtain financial compensation; obviously, if such compensation were not given, the taxpayers in that province would in effect be doubly taxed.

This principle was already in the 1982 Constitution for education and other cultural areas and was broadened to all fields of provincial jurisdiction. In this regard, I was very interested to hear Mr. Trudeau's answer to the question I asked him about—

Senator Frith: The one where he asked you why you were asking him?

Senator Tremblay: You noticed it, didn't you? That was very interesting. Anyway, I learned something I was not aware of despite all my research on the subject. He admitted that on November 5 there was no financial compensation coupled with the so-called opting out formula. It was only between November 5 and December 7, the day the vote was finally taken, that financial compensation was introduced for education and cultural matters. But, more important, he added that he offered to Mr. Lévesque to extend that financial compensation to all areas of provincial jurisdiction. So, I asked him: "But what does Meech Lake do?" He answered: "That is what the Meech Lake Accord does." It is there, in the *Debates of the Senate*. This is amusing. There is at least one point of the Meech Lake Accord on which there should be no disagreement.

Coming back to the question of unanimity, let's have a look at the list of items. There were already five items.

[*English*]

Hon. John B. Stewart: Would the honourable senator permit a question?

Senator Tremblay: Yes, but I will use my earphone, otherwise I may not hear you.

• (1740)

Senator Stewart: Honourable senators, I have two related questions. Is Senator Tremblay saying that the provision for compensation where a provincial government decides to stay out of a shared-cost program, such as those for highway construction, health care, and the like, should be the same as where a provincial government declines to transfer its jurisdiction from education and other cultural matters to the Parliament? That is my first question. Perhaps, after he has dealt with that question—

Senator Tremblay: I will come to shared-cost programs in a moment. I am talking about the general amending formula in the Constitution. I want to show that the general formula does apply to all changes in the Constitution. For instance, the division of power, sections 91 and 92, are still under that general amending formula, or those related to it. They are not under the rule of unanimity, and that is the point. The items under the rule of unanimity—

Senator Frith: When you use the word "general" you mean the seven/fifty formula.

Senator Murray: Seven and fifty and then opting out of the transfer.

Senator Frith: When you use the word "general", you are referring to the seven/fifty formula?

Senator Tremblay: Yes. I thought everyone knew about that. I am sorry, I should have read it.

Senator Frith: It is just that subjects have been added to the unanimity formula. It is hard to say whether one is more "general" than the other.

Senator Stewart: I have a second question. Senator Tremblay has referred to what Mr. Trudeau said about compensation to provincial governments that decline to participate in shared-cost programs. Is he saying that that compensation was to go to the government of the province rather than to the people of the province?

Senator Tremblay: I know to what you are referring. You are referring to his own document, published in 1969, if I remember correctly, proposing that when a province would not join, in order not to deprive the people of that province of something to which they were entitled, in this perspective, he would make the payments to the individual person.

Senator Murray: The spending power clause.

Senator Tremblay: He said that the title of the booklet was *Spending Power*. I will talk about that later. To refer to the honourable senator's question, that was his proposal in 1969. In 1982 there is no question of financial compensation in the way of payment to the individual. It is paid to the government. It was his own proposal in the Senate. He has at least accepted the proposal, and he even proposed to enlarge it. That is what I learned the other day, and it is very interesting.

Getting back to the list of items under the rule of unanimity, I should mention first that five of those items were already under that rule in 1982. If you look at the five which have been added, there is, for instance, the principle of the proportional representation of provinces in the Commons. It was under section 42 at the time, and it could have been changed just by a majority of seven provinces plus the federal government.

I never understood at the time why it was under section 42, because it is a basic principle of our democracy, "rep by pop." Why not put that principle under the rule of unanimity?

Senator Austin: It is not the principle of "rep by pop", but by how much "pop" representing each part of Canada.

Senator Tremblay: I am not sure that I understood that.

Senator Frith: It is presently under 42(1). It requires an amendment only under 38(1), which is seven/fifty.

Senator Tremblay: I never understood why it was under the rule of a simple majority.

Senator Frith: Where do you think it should be?

Senator Tremblay: Meech Lake puts it under unanimity. You must admit that there was progress there, to put that kind of item, so basic to our democracy, under the rule of unanimity, instead of keeping it under the rule of a simple majority. Anyway, as a Quebecer, I would not like to be deprived of that just by seven provinces plus the federal government.

Another item is the Supreme Court. The composition of the court was already under the rule of unanimity. We have enlarged the perspective by putting the Supreme Court as a whole under that rule of unanimity. I cannot understand why people have such a strong objection to that. After all, the Supreme Court is a very important institution. Those people who are making so much fuss about the unanimity rule should know that it has been enlarged—

Senator Frith: If it is an important institution, there must be unanimity. Is that the test?

Senator Tremblay: That is further progress, to have enlarged the whole of the Supreme Court, whereas prior to that only the composition was there. I should underline that having the composition of the court under the unanimity rule only in 1982 was a protection for Quebec—implicitly at least; so, at least on that point, Quebec must have had an open mind to allow that for all other provinces also. I could go on.

[*Translation*]

Hon. Gildas L. Molgat: Senator Tremblay, would you allow a question?

Senator Tremblay: Yes, Senator Molgat.

Senator Molgat: It seems to me however that when you say that the Supreme Court change is not really important, we should not look at that clause only.

We must recall that, overall, the Meech Lake Accord introduces major changes to the Supreme Court. So, if we include this now, the whole membership of the Supreme Court is changed. That is a very significant change. There is the matter of appointments, and so on.

So the importance of that change should not be underestimated, should it?

Senator Tremblay: Senator Molgat, I am discussing that kind of obsession some people seem to have that the unanimity rule will freeze the constitutional process.

I am showing that if the unanimity rule that applies to the Meech Lake Accord is extended to items other than those that were already on the list, this would on the one hand constitute progress. On the other hand, this changes nothing to the fact that the general amending formula remains the rule for constitutional amendments outside the items that are listed.

I will not go any deeper into that analysis. I conclude on this specific point by stating quite simply that it is indeed making a scarecrow out of the extension of the unanimity rule to matters other than those already there.

On the two items I mentioned, that extension is perfectly justifiable in the light of those same values that are basic to the Canadian federation.

Those asides in answer to questions that were put to me have brought me beyond the 6 o'clock deadline.

Honourable senators, do I have the choice of continuing or must we stop at six?

The Hon. the Speaker *pro tempore:* It is not yet six, and we stop at six, senator Tremblay.

[Senator Tremblay.]

Senator Tremblay: Rather than stopping in the middle of a sentence, if there is agreement from the Senate I would like . . .

Senator Frith: How long do you still need?

Senator Tremblay: I would think another six and three quarter minutes!

Senator Flynn: Are there other senators who wish to speak?

Senator Frith: Yes, four other senators want to do so.

Senator Flynn: We can then adjourn for dinner.

Senator Frith: If we are to conclude the debate we could go on now; otherwise we should adjourn until 8.

Senator Tremblay: Subject to questions that might be put along the way, I think I can make a moral commitment not to go beyond some ten minutes, to correct the impression my reference to six and three quarter minutes may have left!

The Hon. the Speaker *pro tempore:* Honourable senators, it is now six o'clock and according to the rules I now adjourn the debate until 8 o'clock.

The Senate adjourned until 8 p.m.

At 8.10 p.m. the sitting of the Senate was resumed.

[*Translation*]

The Hon. the Speaker *pro tempore:* The sitting is resumed.

Senator Tremblay: Honourable senators, to resume the dialogue started before we adjourned at 6 p.m., I have not forgotten that in my answer to Senator Frith I made a moral commitment not to exceed 10 minutes. As far as I am concerned, I intend to keep that promise. I may add that when I started my speech I thought I would finish before 6 p.m. As I see it, I ran out of time because of the questions I was asked.

So while I intend to keep my promise, I will ask honourable senators to let me proceed without interruptions, so that once I have fulfilled my part of the agreement, the Senate will decide how much time to spend on questions and answers.

I will now proceed with the matter I intended to discuss and which I announced earlier. I intend to speak exclusively to Section 7 of the 1987 Constitutional Accord concerning shared-cost programs.

This is a kind of tour de force on my part, but in my humble opinion I have always thought we should never discuss these issues without considering the general context of the society in which we live.

Clearly, the issue of exercising spending powers in areas of exclusively provincial jurisdiction should be considered within the context of the various periods in which it arose. I think that in the final instance, it depends on the varying concepts we have had of the role of the State as a dispenser of services to society.

In this respect, I think we would do well to recall that at the time of Confederation, the role of government with respect to the services essentially linked with spending powers was defined in terms that differ vastly from the definition given today.

At the time we were still working with the kind of ideology where government took no responsibility for areas like education, health or welfare services. It was up to families, churches and the private sector in general to play a leading if not exclusive role in providing these services. In this context, government spending was, to all intent and purposes, strictly marginal.

Radical changes have taken place since the time of the British North America Act, especially since the last World War and as a result of the traumatic experiences of the Depression.

Our philosophy has changed to the extent that we now believe access to education, health care and social services should be universal, and depend on need and not on individuals' private resources.

This change in philosophy was worldwide, at least in the western world. It was felt in this country at both the provincial and the federal levels.

Some of the Bennett laws, for instance, were clearly drafted from this perspective. We see the same developments in Saskatchewan, which led the way in many respects. In Quebec, provincial governments under Godbout, Sauvé and especially Lesage were influenced by the same philosophy and made their respective marks. This was also the case with the federal administrations we had during the postwar period.

An inevitable consequence of the new philosophy that evolved with respect to services provided to the individual, if I may use that expression, was that since the distribution, extent of the services required and universal access could no longer be provided from private resources, government had to step in.

So the services involved corresponded, according to the British North America Act, to fields of provincial jurisdiction: health, welfare, education, to name only the largest in terms of funding.

On the other hand, the British North America Act also provided that the federal government would have access to much greater financial resources than the provinces, especially the less fortunate ones, since it could use any form of taxation while the provinces were limited to direct taxation.

I am sorry—well, not too sorry—but I think that it is against this background that shared-cost programs in fields of provincial jurisdiction must be considered.

The question of such programs must be seen against this background. This has been an issue since the role of the state evolved for ideological reasons. I use the term "state" without distinction between the federal and provincial governments, except that shared jurisdiction, as I have just mentioned, implies shared resources, as I also mentioned just now.

Thus the question has always been how to reconcile the exercise of provincial jurisdiction in the fields concerned, since the British North America Act stipulated the requirement for federal participation in funding these programs, the resources being found with the federal government.

In other words, how to exploit what is called the federal spending power without at the same time going against the Constitution regarding the use of this power.

Answers to this question have varied over time. I shall only give one example, that of health programs, which have been mentioned several times; more specifically, health insurance or "Medicare."

I find it interesting that the first federal law in this area was given Royal Assent on December 21, 1966, when the Right Honourable Lester B. Pearson was Prime Minister. I am struck that despite the terms used, the criteria that provincial legislation must satisfy in accordance with this act for the federal government to contribute to program financing are worded so generally that they correspond in effect to "objectives," to use the language of Section 7 of the Meech Lake agreement. I will spare you reading the full text of the key section on this in the 1966 act. Besides, the formulation is somewhat convoluted, but I only ask that you take from it what I shall deduce.

First, it is provincial legislation. That is stated unequivocally in the text. So a regime set up under provincial legislation must meet the criterion of being administered and applied on a non-profit basis. So it is not the private, but the public, sector. For all practical purposes, it is a free service to be applied uniformly for all citizens of the province. Also, it is to be applied for residents of one province who go to live in another one, with some minimum residence requirement—only three months—and provided that the medical services covered by the provincial insurance plan are clearly identified. And that is all. All the rest is administrative, calculation procedures. So much for the 1966 Act.

So today we ask ourselves this question: Would the Meech Lake Accord make it impossible to set up a health insurance plan? I am not convinced when I look at the text of the 1966 statute. In contrast to the 1966 legislation, what about the act which eventually replaced it? What about the act sanctioned on April 17, 1984? What do we find? That it is much more specific, much more analytic, for the act of 1984 refers to criteria concerning federal contributions. Again I seek your indulgence and ask that I be dispensed from reading all these texts, but there are four categories of criteria: public administration, comprehensiveness, universality, portability, accessibility, each such criterion being the subject of a more or less detailed section, but fairly detailed in some cases, until we finally get to a provision which I want to emphasize, a provision which, in my estimation, is *ultra vires* from a constitutional standpoint. This provision concerns . . . well, I will read it:

> In respect of any province in which extra-billing is not permitted, paragraph (1)(*c*) shall be deemed to be complied with if the province has chosen to enter into, and has entered into, an agreement with the medical practitioners and dentists of the province that provides for negotiations and especially that provides for the settlement of disputes relating to compensation through, at the option of the appropriate provincial organizations referred to in paragraph (*a*), . . .

That is the College of Physicians in fact, or the unions of physicians or dentists . . .

> . . . conciliation or binding arbitration by a panel that is equally representative of the provincial organizations and the province and that has an independent chairman; and that a decision of a panel referred to in paragraph (*b*) may not be altered except by an Act of the legislature of the province.

We are out on a limb with this kind of provision which obviously encroaches on labour relations, as we say. We are a long way from the principles, indeed the only one we know, with respect to spending powers. I will quote from memory, but somewhere in my papers I have the exact quotation. A decision of the Privy Council legal committee following the Bennett legislation of 1937 acknowledges that the federal government can spend and allocate sums of money to individuals, institutions or even governments. That power is acknowledged in that decision, but on condition that when so acting the federal government refrain from regulating, legislating in the provincial jurisdiction involved; otherwise its intervention would be *ultra vires*.

I did not refer to this example to suggest that section 7 of Meech Lake and Langevin—that such programs correspond to the provisions of section 7. Section 7 concerns new programs only. I simply wanted to show to what extent a certain approach involves dynamics which, in the case I mentioned, led to a provision which, all things being considered, corresponds to the notion of objective, to provisions which indeed amount to interventions in fields under provincial jurisdiction through federal legislation. That is where the problem lies.

On the one hand the dynamics and on the other the following question: Would clause 7 lead to an obvious centralizing trend and to some kind of balkanization of national programs? The new, eventual, programs?

I find it strange that the term "balkanization" is used with respect to programs under exclusive provincial jurisdiction. To begin with, we can answer that if there is to be some "balkanization" it already exists since those areas are under provincial jurisdiction. Apart from that rather superficial comment, it remains that altogether I am not convinced that the so-called "balkanization" exists, because to obtain federal financing the new shared-cost programs under the Meech Lake Accord will have to be consistent with the national objectives. And this is where we are caught in the semantic trap.

Dr. Johnson, who appeared before the Committee of the Whole, had the following to say about the meaning of the word "consistent":

● (2020)

[*English*]

> Now Meech Lake says "compatible with national objectives." One is forced to wonder why there is the choice of the word "objectives" and the apparent discarding of the vocabulary of shared-cost programs and spending power—

[*Translation*]

Senator Frith: Who said that?

[Senator Tremblay.]

Senator Tremblay: Dr. Johnson, when he appeared before the Senate as reported on page 2851 of our *Debates*.

[*English*]

> An objective is the object of an action.
>
> One also has to ask about the word "compatible." It is true that in the English language the word "compatible" has two meanings: Capable of existing alongside something else or, in the alternative, concordant or consistent with all congruence. The French word "compatible" has only the first meaning.

[*Translation*]

I was puzzled to notice such a difference in meaning between English and French as to the word "compatible". I therefore used my *Petit Robert* and here is what I found:

> Compatible: Qui peut s'accorder avec autre chose.

That is the opposite of what our witness, Dr. Johnson, told us. I believe that the second meaning in English of the word "s'accorder" is included in the first definition in French. The meaning of the word "s'accorder" seems clear to me.

In this case, should we say that to agree with the objectives is not enough? It seems to me that, to use only the example of medicare, the universality and free medical care are all program criteria.

I used this example only to illustrate that it is far from being the problem they want to emphasize by playing this game of semantics. In fact with the help of English and French dictionaries, according to Dr. Johnson's testimony on the English side, and *le Petit Robert* on the French side "compatible" means to agree. They do not just exist in parallel as Dr. Johnson says later on. But enough with this example.

We must go further within the general scope of the Meech Lake Accord. I have gone over my 10 minutes, so I have not kept my commitment. I relieve you of yours, unless you stick to it better than I, which would indeed suit me fine.

To conclude, I shall borrow from Senator Kirby the sort of synthesis he gave us yesterday of the whole problem.

The Constitution Act of 1982 and the proposed Constitution Act of 1987 translate two visions of Canada: the Liberal vision of 1982 and the Conservative vision of 1987. The terms "Liberal" and "Conservative" are not my own but Senator Kirby's.

When I heard him express his thoughts, I felt very clearly that there were not only two, but three visions of Canada. Having heard Senator Pitfield, I wonder now if there are not four, the third being Senator Kirby's. There would be the so-called "Liberal" vision, of which I am not quite sure, if I remember Mr. Pearson. It is the quite modern "Liberal" Mr. Kirby probably had in mind.

So there would be this so-called "Liberal" vision which would be that of a very centralized, but still Federal Canada.

There would be also the so-called "Conservative" vision which would be that of a really Federal Canada.

There would be finally Senator Kirby's vision which, as I understood it in his developments, would be that of a unitarian

Canada within a forseeable future. It goes without saying that I do not deny Senator Kirby's right to dream of a unitarian Canada.

I, for one choose a truly federal vision for Canada. The proposed Constitution Act of 1987 normalizes the situation in a Canada which has been conceived as a true federation.

It goes without saying that I will support it without equivocation or qualification. My 10 minutes having expired, I thank you very much.

[*English*]

Hon. Senators: Hear, hear!

Hon. Henry D. Hicks: Honourable senators, we are now coming to the end of the third day of the debate on this motion of the government leader in the Senate concerning the Meech Lake Accord, and the amendment by the Leader of the Opposition in the Senate, following, as this debate does, on extended hearings in the Committee of the Whole having to do with the Meech Lake Accord where the evidence of constitutional experts—some really expert and some not so expert—have been listened to by all of us.

This has been an interesting exercise and more useful than I expected it would be when it began, because I think that the committee hearings and this debate in our own house have given an opportunity for an important critique of the Meech Lake Accord. Views were expressed on both sides. I venture to suggest, with some sadness, that when the historians have a look at this debate in the years ahead they will find that a great deal more perspicacity has been displayed by the speakers who have questioned and opposed the Meech Lake Accord than by those who have slavishly—perhaps I should not use that term; indeed, I should not impute motives to them—or without sufficient thought, as it seems to me, climbed on the bandwagon of the Meech Lake arrangements.

Well, I will not try to go over all the material that has been covered in this debate during the last three days here. The concept of a distinct society in the province of Quebec has been dealt with by most of the speakers.

Frankly, it does not surprise me at all to characterize the society of Quebec as a "distinct society." I would not have put the term in the Constitution of Canada had I had my way, but undoubtedly there are real elements of a distinct society in the province of Quebec, as I am sure my friends on the Island of Cape Breton and the Island of Newfoundland would also claim. They do not have quite the same language differentiation as the province of Quebec, although I have a large tome in my library at home entitled *Newfoundland English*, which is interesting reading, that puts in some aspects of the use of the English language that are not seen anywhere else in the world. As I say, it is not the declaration of a distinct society in the province of Quebec that bothers me at all; it is the interpretation that some have put upon the inclusion in our Constitution of the concept of a distinct society that bothers me. They have tried to imply that this may override even the provisions of the Charter of Rights and Freedoms; that it may enable certain legislative initiatives on the part of the provincial government of Quebec, and that worries me. I may say that that has been stated by the Premier of that province, Premier Robert Bourassa himself. It seems to me that this may not only establish the distinctness of the society of Quebec, but may encourage its isolation from the rest of Canada—or, just as bad, may encourage the isolation by the rest of Canada of the distinct society in the province of Quebec.

• (2030)

I do not think it is necessary for me to refer further to this, or to refer to the effect of the Meech Lake Accord on women's rights. That was dealt with very ably by Senator Marsden in the address that she made here yesterday. I deplore the fact that the plight of aboriginal peoples has not been adequately dealt with, and I share the concerns of some honourable senators in this chamber who feel directly involved with and concerned about this aspect.

As for the effect of the amending formula and the requirement of unanimity on the likelihood of the creation of new provinces, if at some time in the future this becomes likely or necessary or desirable, again I feel sorry that the people of the Northwest Territories and of the Yukon have, rightly, found reason to be so disappointed in the Meech Lake Accord.

Actually, there are two aspects of this accord to which I want to pay particular attention, and my colleague on my left hand, Senator Olson, has preempted me on both of them because they are the same points that he made. However, perhaps I can say one or two things that are a little different about them. The first, of course, is my concern about the devolution of powers of the central government to the provinces.

I have long felt that Canada does not need stronger provincial governments but needs a stronger central government. I have had some friends say to me from time to time: "You were, for 15 years, a provincial politician, and for more than half that time you were a minister of the government in the Province of Nova Scotia, and for a short period during that time you were the head of the Government of Nova Scotia." Even so, while I know there must always be a certain confrontation in a federal state between the central government and the governments of the states or the provinces, even in those days I did not feel that we should weaken the central government to enhance the powers of the provinces.

Indeed, the Leader of the Liberal Party in Nova Scotia and the Premier, when I first took my place in the Nova Scotia legislature some 40 years ago, was the well-respected and much loved Angus L. Macdonald. Angus L. Macdonald had a powerful dislike of the "feds". He was one who believed in the compact theory of confederation, which was referred to by Senator Pitfield in his remarks this afternoon. Towards the end of Angus L. Macdonald's life and career, I felt that his hostility towards the central government of Canada was so great that it was in danger of harming the interests of the province of Nova Scotia. One should not speculate, but I suspect that if Angus L. Macdonald had persisted in this view for another two or three years, he and I would have had to have a major confrontation about this matter. Therefore, I

myself have always felt that Canada does not need stronger provincial governments; Canada needs a strong hand at the helm of the federal government, the central government here in Ottawa.

Honourable senators, I do not intend to try to enumerate the ways in which the Meech Lake Accord weakens the power and authority of the federal government, because these have been referred to by many who have talked about the appointment of judges, appointments to the Senate, the absolute veto power and the many, many other ways in which the federal government, as a result of the Meech Lake Accord, has given way to provincial interests. Someone said to me recently that, if you looked at the Meech Lake arrangements as if they were a hockey game, the ten provincial premiers were playing for the provincial side, the Prime Minister of Canada was acting as a sort of referee and no one showed up to play for Team Canada at all. This is what worries me so much about the Meech Lake Accord and about the effect of the things that were done therein.

Honourable senators, I cannot say too strongly that I deplore the weakening, either directly or implicitly, of the authority of the federal government that I think will devolve from the adoption of the Meech Lake Accord, if it is adopted in its present form as a part of our Constitution.

The second thing that concerns me is the amending formula. It is totally ridiculous—and I do not think that is too strong a word—to require the approval, even in the most important amendments, of every province of Canada and, of course, of both houses of Parliament. Although the approval of the Senate has been looked after in a way that I would not have designed, but in the way which was designed by the former Prime Minister Pierre Trudeau in the 1982 constitutional changes, it seems to me that the amending formula which required the consent of seven provinces containing at least 50 per cent of the population of Canada was practical and reasonable; that it would protect the minority interests of smaller provinces, and so on and so forth. To throw all that away and give an absolute veto to any one province, no matter what the circumstances might be, is, as I said, ridiculous. One can envisage scenarios in which there might be attempts to trade off consent for all kinds of concessions, which, in my view, would not be in the interest of Canada as a country and in the long run would not even be in the interests of the provinces of Canada either.

So those two points made earlier this afternoon by Senator Olson are endorsed entirely by me. The two things that worry me the most about the Meech Lake Accord are the devolution of power from the central government to the provinces and the imprisoning of our Constitution, as someone said earlier today, in a straitjacket by requiring absolute unanimity for any constitutional amendment.

One might say that perhaps there would be some reason to require unanimity for amendments having to do with basic language rights, or even, I would have said, for constitutional changes. However, in 1982, strangely enough, whereas we left the absolute veto in the hands of the Senate with respect to most legislation, which I do not think was necessary and I do not think is even desirable, we removed the absolute veto that the Senate had over matters having to do with the Constitution. But, in my view, if there is any area in which the Senate ought to have an absolute veto, it is in dealing with matters of constitutional import, and perhaps language rights or something of that nature.

Honourable senators, those remarks constitute the observations that I wanted to make about the Meech Lake Accord, and I wanted my views to be placed on the record. I was very interested in Senator Flynn's unusual suggestion this afternoon concerning the way in which we might try to handle a further amendment of his in dealing with the votes on this motion in amendment at 3 o'clock tomorrow afternoon. I do not think it was a practical view, but I do not mind telling Senator Flynn what my position would have been if his rather bizarre suggestion had been adopted by this house. Accordingly, I can state very frankly now that I propose to vote for the MacEachen amendments, even though I do not think they go far enough in that they ought to have included an amendment which would have removed, or at least watered down to some extent, the absolute veto powers with respect to constitutional amendment. In that respect, I am in agreement with Senator Pitfield and with some of the other senators who have spoken. Therefore, I shall vote for the amendment to the motion put by the Honourable Senator Murray, and I shall vote for the amended motion in the event that the amendments carry. If the amendments do not carry, Senator Flynn will be glad to know, I shall vote against the motion.

So, Senator Flynn, you wanted to find out how members of the Senate on this side would have voted had they had a chance to vote for the unamended motion of Senator Murray, and I do not mind telling you that that is the way I would have voted.

• (2030)

As I said at the beginning, I think this has been an interesting debate. I think it may be very interesting for historians and political scientists in the years ahead to refer back to the positions that have been taken by honourable senators during this debate. I feel quite strongly that those of us on this side of the house will be vindicated by history in the attitude that we have adopted towards this legislation.

Some Hon. Senators: Hear, hear.'

Hon. Mira Spivak: Honourable senators, the debate in this chamber over the past several days has been marked by eloquence, passion and humour, and I include the remarks of the previous speaker. I do not think I can improve on the themes that have been propounded here—

Senator Frith: If anyone can, you can.

Senator Spivak: Thank you. Perhaps you should have waited until I had finished my sentence, because I rise to add my support to the achievement of Meech Lake, to the reintegration of Quebec into the Canadian Constitution, to the recognition of the distinct nature of Quebec's society and to the affirmation in the accord of important components of diversity

in our society. But, as a Canadian woman, I have to say that my admiration and pride in this achievement, a pride which is reflected in the remarks that I have heard made by colleagues from Quebec, is tempered by the fact that concerns raised by women's representatives in Canada have not been resolved to their satisfaction.

The reason these concerns have not been resolved is that women were seeking an amendment to the accord to allay their concerns about the paramountcy of hard-won gender rights, and all the signatories to the accord—at this stage of Canadian political development, they are all men, the premiers and the federal leader—agreed that amendments could not be contemplated, since to amend the accord was to risk the possibility, to use the oft-repeated phrase, of unravelling the accord. In practical terms, I must admit that I agree with that view. If one looks at all the terms contained in the amendment proposed to us by the Opposition here, it is difficult to see how agreement could be reached without beginning negotiations all over again and risking the whole thing. In the words of Madame Chaput-Rolland, "If Meech is to fail for whatever reason, there can be no more negotiations, no more justification," and, without Quebec in the Canadian constitutional family, no further reform of the Constitution—for example, Senate reform—is possible.

Nevertheless, I do not believe that that ends the matter. I would be remiss if I did not devote my brief remarks to the concerns raised by women who have fought for equality rights, against indifference and opposition, and who are afraid that these rights will be weakened before the benefits of sections 15 and 28 of the Charter have had a chance to be tested in the Supreme Court of Canada.

I might also add parenthetically that among those who appeared before the Senate Committee of the Whole on the Meech Lake Constitutional Accord was a coalition of women's groups from Manitoba. Among their number are 21 groups in Manitoba, ranging from the Anglican Church Commission to the Ukrainian Women's Association and to the Provincial Organization of Business and Professional Women's Clubs. So these concerns are widespread in women's groups.

Even a brief glance at the history of the struggle for women's equality sheds light on why women are so concerned about equality and why they are so anxious to have absolute guarantees on what has been accomplished to date. Women have struggled to attain "personhood" and to ensure that human rights legislation prohibits discrimination on the basis of sex. They have struggled for affirmative action programs and for recognition of their distinctiveness.

The history of victory over discrimination is recent. The *Person's Case* in which the Supreme Court of Canada held that women were not qualified persons within the BNA Act and, therefore, not eligible to sit in the Senate, was overturned only in 1929. The *Murdoch Case*, which did not recognize Mrs. Murdoch's contribution to her family and, therefore, entitlements to assets acquired through her work, was as recent as 1975. that case resulted in women lobbying for reform of family laws in every province. The *Bliss Case* in 1979, which denied unemployment insurance benefits to women, inspired women to lobby successfully for equality provisions in the Charter.

With the possibility of equality rights being secured in the Charter, women lobbied in 1981—an extraordinary effort and demonstration of public support—for the inclusion of sexual equality rights in sections 15 and 28 of the Charter. It is important to recognize that, as the National Association for Women and the Law pointed out when they appeared before the Joint Committee on the Meech Lake Accord, "for women equality is still an aspiration." They need to have both provincial and federal governments reaffirm their commitment to women's equality not just in words but in positive action to make the goal of women's equality a reality.It is no wonder, then, given this background, that women would be concerned about the accord, about whether the accord has the potential to place in jeopardy their hard-won rights in the Constitution.

One issue in particular was extensively discussed and analysed by women, the relationship between the Canadian Charter of Rights and Freedoms and the proposed constitutional recognition of Canada's linguistic duality and Quebec's distinct society. The question was asked: Could this recognition override or supersede Charter rights such as sexual equality? In using these new rules of interpretation, women feared that a court might refuse to invalidate a law, despite the fact that it involved gender-based discrimination, on the ground that the law furthered the cause of Canada's linguistic duality or Quebec's distinct society. Just like the recognition of our multicultural heritage, which is found in another interpretation clause in the Constitution, Quebec's distinct indentity and Canada's linguistic duality will be factors the courts can take into account in the future when considering the constitutionality of federal and provincial laws in certain cases where there may be ambiguity.

The joint committee pointed out in its report, "The decision was taken in 1982, when the Charter was introduced, to leave these questions of balance to be determined by the courts on the facts of a particular case", and, "Nothing in the 1987 Constitutional Accord relating to the linguistic duality/distinct society rule of interpretation calls for a different solution".

As we know, in considering Charter cases, the courts determine whether particular federal or provincial legislation or governmental measures conflict with Charter rights and, if so, whether they meet the "reasonable limits" test set out in section 1 in relation to a specific set of facts and in the light of current social realities, whether they be those of Quebec or Cape Breton.

One of these realities is that Quebec is different. Quebec lawyers are *now* free to invoke this reality in their arguments under section 1 of the Charter because, as Professor Lederman pointed out to the joint committee, the courts are now taking into account this reality in their judgments where it is relevant. Since Quebec is *now* free to invoke its distinctiveness in arguments before the courts, it is clear that to provide that the Charter should not be interpreted in a manner consistent with Quebec's "distinct society" would render the clause meaning-

less and would oblige Quebec to give up something it already has. First Ministers agreed that the "distinct society" clause of the accord should operate as an interpretation clause making explicit what has already been implicitly accepted.

But, while the accord does not guarantee or affirm that gender equality rights are absolute, the Charter of Rights does not protect rights in an absolute fashion either. Section 1 of the Charter allows the legislatures, and more particularly the courts, to find that legislation which may in some way infringe on protected rights is constitutional because it represents a "reasonable" limit on such rights. Section 33 allows either the Federal Parliament or a provincial legislature to pass a law which expressly overrides certain sections of the Charter, and this is the notwithstanding clause which may apply to section 15 of the Charter.

In fact, the Charter itself may pose more problems for equality rights than the accord. In his book, Peter Hogg states:

> The new s. 2 does not override the Charter of Rights. On the contrary, s. 2, as a merely interpretative provision, is subordinate to the Charter of Rights. A law passed to preserve linguistic duality or to promote the distinct identity of Quebec would, like any other law, have to comply with the Charter. If the law was contrary to the Charter of Rights, then the law would be invalid.

• (2050)

He goes on to point out that a law that is inconsistent with a Charter right may be saved by section 1 of the Charter if the law is held to come within the following phrase of section 1: "... such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

Senator Frith: But that begs the question.

Senator Spivak: I have not finished.

The concerns raised primarily by women led the joint committee to ask the following questions:

> Are certain values such as gender equality so important that in no circumstances should judges place reasonable limits upon them? Should attempts to advance communal values like Canada's linguistic duality and Quebec's distinct society always give way if they infringe, however minimally, on Charter rights such as gender equality?

One should note that the committee also pointed out that two major women's groups in Quebec, as well as many constitutional experts, did not see any real potential conflict between equality rights and the collective interests of the distinct society.

Senator Frith: Why not take section 16 right out?

Senator Spivak: I have not dealt with section 16 yet. I am just about to deal with it.

Another great area of concern to women's groups, is the so-called "hierarchy of rights" created by section 16 of the accord. The concern was best summarized by Ms. Beth Atcheson in her appearance before the Senate Committee of the Whole. I would refer to page 2872 of the *Debates of the Senate* where it states:

[Senator Spivak.]

> We made our position clear, to say at the very least, that section 16 is a Pandora's box. ... It troubles all of the equality-seeking groups not only because the way it is currently worded it seems to suggest a hierarchy of rights, that some groups are more protected than others, but, more fundamentally, because it is difficult to predict what it actually means."

Some constitutional experts supported the motion that section 16 may mean a hierarchy of rights. On the other hand, Peter Hogg says:

> Clause 16 is a cautionary provision designed to reassure native people and other ethnic, linguistic or cultural communities that the recognition of linguistic duality and Quebec's distinct society is not inconsistent with the protection of other distinct communities in Canada. This conclusion could as easily be drawn from s. 2 itself, which does not imply that linguistic dualism and Quebec's distinct society are the only fundamental characteristics of Canada, and which as an interpretation clause does not in any case override other parts of the Constitution.

The joint committee, in looking at this complex constitutional issue, asks the question: "Whether the courts should be trusted with the responsibility of striking the proper balance between Charter rights and 'reasonable limits'. And if the Courts are to have their hands tied with respect to certain Charter rights and not others, where should the line be drawn?" The joint committee concluded that these issues should be left to the courts to decide since one cannot foresee all circumstances when values may come into conflict; that nothing in the accord calls for a different solution; and that this fundamental decision was taken in 1982 when the Charter was introduced.

Honourable senators, my position on these issues is to welcome Quebec into the Constitution through the accord, but also to pay careful attention to women's issues. These are complex legal issues concerning rights which have been raised by the Charter and by the accord and they need to be reviewed.

The process of constitutional change, as the history of Canada shows, is an evolutionary one. The historic agreement of 1987 completed a constitutional task begun in 1982, bringing Quebec into the constitutional fold and setting in motion a process for constitutional renewal. So the constitutional accord, as the Leader of the Government stated here on Monday, is a continuation of what begins with the BNA Act, goes through the 1960 Diefenbaker bill of rights to the proclamation of the Charter in 1982, and to the 1987 accord. This Quebec round had as its objective the bringing of Quebec back into the Canadian constitutional family, and one of the significant results of that is that the Charter will now apply in Quebec with its willing acceptance, and the section 33 override will, perhaps, be a thing of the past.

Once the Quebec round has been achieved, another discussion of First Ministers' regarding constitutional reform is to take place. The Leader of the Government said here on

Monday that nothing in the 1987 amendment will override or supersede the important achievements in rights and freedoms that Canadians share. This statement is an affirmation of this government's laudable commitment to the equality of women which was stated in the Speech from the Throne in 1984 and which has continued through First Ministers' conferences.

The joint committee, in its suggestions for future constitutional reform, has given us an opportunity to act to address concerns raised by women with regard to equality rights.

The committee suggests that the fact of omissions of worthy items from the 1987 constitutional accord is, therefore, not to be taken as proof that issues not dealt with have been rejected or deemed unimportant. It was stated that:

> Senate reform, aboriginal rights, devolution of power to the territories, multiculturalism, the extension and protection of linguistic rights and further protection of individual rights with the Charter are all matters of utmost concern that must now be addressed by First Ministers.

Quebec has been brought in. If women are not to feel left out of the constitutional process, these concerns should and must be a top priority for constitutional reform. The next round should be the women's round.

Hon. Senators: Hear, hear!

Hon. Gildas L. Molgat: Would Senator Spivak permit a question?

So far as women's rights are concerned, Senator Spivak referred to the report of the joint committee as having said that there is really no problem.

Senator Spivak: I did not say that. I faithfully reproduced their thinking. I examined the report very carefully, because of course this is an issue in which I am vitally interested, as are the women of Canada generally. Having carefully gone through it, I think what I have given is a fair summary of their thinking. They did raise these questions and they did come down on one side rather than the other.

Senator Molgat: They came down on the side that there was no problem; is that correct?

Senator Spivak: As I said in my speech, they came down on the side that there are problems relating to women's rights that have to do with the Charter more than with the accord and that these problems are unintended, I presume because when people draft documents they do not always know what the results will be—as we have seen through the court's interpretation of Charter cases. They have raised the questions that need to be looked at. In fact, I quoted the forum in which they said these ought to be looked at. As you well know, one of their suggestions is that a permanent committee of both houses should be set up to look at constitutional reform.

Senator Molgat: My question, then, is this: How are we to take the presentations that were made to us in this chamber at the Committee of the Whole and, particularly, at the submissions group from groups like the Canadian Advisory Council on the Status of Women—

Senator Flynn: What did they say?

Senator Molgat: —The National Association of Women and the Law—

Senator Flynn: What did they say?

Senator Molgat: Let me finish, Senator Flynn. I am not asking you a question, I am asking Senator Spivak. When I want to ask you a question, I will address you, Senator Flynn.

What about the presentation that was made by the National Council of Women for Canada and all of those groups who, in each case, told us, "Do not pass the accord because it affects women's rights." That was their statement, not mine.

Senator Spivak: I have looked carefully at their concerns and they trouble me. First, it is not clear that they are all making the same recommendation. Some are recommending the inclusion of section 28 and some are recommending a reference to the Supreme Court. It is not clear what the remedy will be.

Second, let us take a practical look at the situation. I am certainly the most junior member in this chamber to present this argument to you, but if we were to begin to accept amendments, and those were to go back to negotiation again, do you really think that, given that long laundry list that has come up here, we could get any sort of process going without going back to square one? I have tried to present that this was really the Quebec round. I believe it was Mr. Pickersgill who said, "It is not a Christmas tree. You can't hang everything on it", and that the possibility for reform is there in the future if the will is there.

● (2100)

I would like to know why it would be harder afterwards. Then we would have the Quebec round. As I have said, I am not sure, in looking at the briefs that the women have presented, what the solutions really are. These are very complex legal issues.

My last point is that they are talking about potential threat. They are worried; they are afraid. What I am saying is that those concerns are real and they need to be looked at, but I am not certain, in my humble opinion, exactly how. There has been a suggestion from the joint committee that this needs to be looked at very carefully in the future, and that indeed the Charter has all kinds of hazards for women's rights, which have been clearly expressed.

Senator Molgat: Senator, is it not true that, while they did have different questions about the accord, they were in agreement on one thing, which is that we should not pass the accord until they are sure they are protected?

Senator Frith: That's what they said.

Senator Spivak: Not all women's groups said that. You are, of course, aware that most of the women's groups in Quebec did not say that; but, if indeed they said that, much as I sympathize with their concerns, I must say that in the matter of solution I disagree with them. If that is what you are asking me to say, then I state that clearly, and I think it is evident from my speech for the reasons I have stated. It is just a question of disagreement.

Senator Flynn: Look at Trudeau's reply to Senator Marsden.

Hon. Jerahmiel S. Grafstein: Honourable senators, the Meech Lake Accord is about the source of democracy—power: who has power in a democratic federal state, who should exercise that power, how should that power be exercised, what checks and balances should there be on the power? Democracy is the means, the Constitution is the method, equality of rights is the goal. In a democratic federal state, each citizen enters into a social contract with the state, and in that social contract there is an exchange of consideration. The citizen delegates powers, and that is exchanged for guarantees of equality of each citizen's rights. Equality, therefore, is the essence of democracy.

As I have sat here and listened to the speeches in Committee of the Whole, and as I have read the report of the Joint Senate and House of Commons Committee on the Meech Lake Accord, and as I have listened in this chamber to senators from across the country, I have learned and come to understand that we are conditioned by our politics.

But we are also conditioned by our roots, by our province, by our education, by our family, by our experience, by our values. All of us examine the source of democracy from a different perspective. How, therefore, should we treat, how should we assay, the question of democratic power?

So where do I stand? I am, first and foremost, by conditioning and by conviction, a Charter of Rights man. From my reading of history, had we had an entrenched Charter of Rights, some of the unhappy and unfortunate pages of our history would have been different. Our treatment of citizens of Japanese descent would have been different during and after the war. How we had approached the War Measures Act in Quebec in the early 1970s would have been different with an entrenched Charter of Rights.

Senator Flynn: That's not true.

Senator Grafstein: How we would have dealt with the "Padlock Cases" in Quebec would have been different had we had an entrenched Charter of Rights; and how we would have dealt with our discriminatory immigration policies over the years under successive governments would certainly have been different. Canada would have been different and better.'

So I am a passionate Charter of Rights man. As a high school student in the 1950s I first was convinced that rights were important. My first hero was Oliver Cromwell. It was Cromwell who came alive in the story of the glorious revolution, the establishment of the first Commonwealth, the creation of a Bill of Rights, the historical battle for the supremacy of Parliament over the Crown, the supremacy of the individual, the supremacy of the rule of law; it was Cromwell who led the way. Then the ideas of that first Commonwealth were the seeds that led to the French rights in the French revolution, and the American rights in the American revolution; and ultimately they led to the Diefenbaker Bill of Rights, and subsequently to our own Charter of Rights in 1982.

[Senator Spivak.]

To add to my earlier education, as a university student in the 1950s I came across an article by an obscure Montreal law professor who had written about economic rights. He went further and said that, "Civil rights were one thing, but a truly democratic state must give each individual citizen equal economic rights."

So since those days I have been a believer in an entrenched Charter of Rights. I was not satisfied that the common law would protect the citizen against the state. A charter of rights in a Constitution became my formula for a positive, optimistic, flowing democracy.

Over 30 years ago, as a law student in 1958, I read an article by that same obscure law professor, named Pierre Elliott Trudeau, who wrote an article on "Obstacles of Democracy". The following are the first sentences of that article:

> Historically, French Canadians have not really believed in democracy for themselves and English Canadians have not really wanted it for others.

He went on to write:

> Such are the foundations upon which our two ethnic groups have absurdly pretended to be building democratic forms of government. No wonder the ensuing structure has turned out to be really flimsy.

Pierre Elliott Trudeau wrote that 30 years ago. Was he right then? Is he right now? In that article he went on to trace the hierarchical authoritarian impulses in our political and social structures that, he said, were obstacles to a flowering of democracy.

So, honourable senators, we would have thought that in the course of the ensuing period, with the quiet revolution in Quebec and with the growth of rights across the country, particularly since 1982, those authoritarian impulses would have ebbed, those negative impulses would have been absorbed.

But after 30 years does the Meech Lake Accord not feed once again, or bring alive, those negative impulses—or, rather, will we continue to move painstakingly and carefully along the glorious democratic path first blazed by Cromwell in the seventeenth century?

The 1982 Charter of Rights, for me, was a magnificent milestone of Canadian history. It placed the sovereignty of the individual over the sovereignty of the state. The supremacy of the individual was above the supremacy of Parliament. Since 1982 witness after witness across this country—in the north, in this chamber, before the joint committee—has attested to the fact that public dialogue in this country has been transformed.

• (2110)

Individual citizens from every part of Canada and individual groups from every part of Canada have been vocally exercising their rights against unreasonable or mindless state power. Honourable senators know from their reading of history that citizen rights are hard to earn and are easily eroded. But we have witnessed, over the past decade, a blossoming of democracy, a true revolution in participatory democracy in Quebec, in Ontario and across the rest of the country. Pluralistic

democracy is not neat.' It is not quiet.' Some have said that the 1982 Charter has provoked a public dialogue that is too raucous. Some have said that excessive demands are now being made by citizens without any comprehension or recognition of responsibilities. Some have said that people are demanding too much without understanding or being prepared to answer the question of who pays for those rights. Yet, like it or not, the nature of the public dialogue in Canada has changed. With the advent of the Charter, the peaceable kingdom of Pierre Trudeau was transformed overnight into a Twentieth Century Commonwealth, an uncommon Commonwealth.

Senator Flynn: That's a joke!

Senator Grafstein: The year 1982 transformed the political landscape. What happened in 1982 was dramatic. We wrestled the sovereignty of our nation away from the United Kingdom.

Senator Flynn: Wrestled!

Senator Grafstein: Yes, we wrestled the sovereignty of our nation away from the United Kingdom and destroyed our colonial status. By that very same stroke we transferred the sovereignty we had wrestled from the United Kingdom from the state to the individual. What a magnificent and astounding step in the progress of democracy!

The role of the Senate changed in that process as well. The Senate became, along with the House of Commons and all of the legislatures, a guardian of the Charter. Time and time again I have tried to remind honourable senators that the Senate's role since 1982 changed to that of being a guardian of the Charter. If legislation comes before the Senate that exceeds the Charter, the Senate has a duty, as the Supreme Court has said, to change that legislation so that it conforms to the Charter. The Supreme Court has said that it does not want to deal with unconstitutional matters, that it does not want to fix legislation or become a legislator.

Senator Murray: Why, then, do you want to refer the "distinct society" clause to the Supreme Court?

Senator Grafstein: Honourable senators, if I could complete my argument you will see where I am coming from on that question.

Senator Flynn: We know where you are going!

Senator Grafstein: The resolution before us does not call for that question in that way. Therefore, what is the Meech Lake Accord? If 1982 was a peaceful revolution, is the Meech Lake Accord a counter-revolution?

Let us take a look at the process. The democratic constitutional process was different with respect to Meech Lake. It was a private process in which democratic power was transferred from the federal state to the provinces in a very unusual fashion. Other senators have talked about this and argued about this and said, in conclusion, that perhaps we did not follow constitutional convention. I agree with those who have argued that point. However, that may be an egregious error, but the major flaw, the truly egregious error, was not the process alone but the assertion that the rights of a province, and the collective rights of that province's society, should be paramount to the rights of the individual. So the Charter was damaged. The painful, step-by-step, evolution of transferring the sovereignty of the state to the individual took a U-turn. Some argued that that was the price of bringing Quebec into the Constitution.

Let me refer to Senator Murray's comments found in *Debates of the Senate* of March 31, at page 3055. He stated:

> Quebec was of course duly bound by the Constitution Act of 1982. But as Mr. Trudeau pointed out yesterday, that province in fact disputed the political and moral legitimacy of that Act as well as of the Canadian Charter of Rights and Freedoms.

He went on to state:

> The Parti Québécois Government systematically resorted to the notwithstanding clause in an effort to make the Charter practically inoperative in Quebec and it made that a condition of Quebec's support for the Constitution.

That says to me that Quebec was not out; Quebec was in. Was not Quebec in that sense operating under the Constitution by using the notwithstanding clause in the Constitution to opt out of certain provisions of the Constitution? Quebec was operating as though it were in the Constitution.

Senator Murray went on to state:

> With Quebec's willing assent to the 1982 Constitution Act, we now have a Charter of Rights which fully expresses pan-Canadian values and is accepted as legitimate throughout all parts of the country.

Are we now to understand that Quebec will not use the notwithstanding clause but will operate differently with the Charter under the Meech Lake Accord? That is a question many have asked and more have answered.

Some have argued that the Charter is now strengthened, as Senator Murray has argued. Senator Murray went on to give us a different view on that question. I refer to *Debates of the Senate* of April 18, 1988 at page 3076, where he states:

> In 1960 Prime Minister Diefenbaker's Bill of Rights set us on a course of articulating and defining the rights and freedoms Canadians share. The proclamation of the Charter in 1982 completed that process. Nothing in the 1987 amendment will override or supersede that important achievement.

He went on to state:

> In 1982 First Ministers agreed it was reasonable that the substantive provisions of the Charter should be interpreted in the light of our multicultural heritage and of aboriginal rights. In the 1987 Constitutional Accord First Ministers have complemented and extended those recognitions by agreeing that it is equally reasonable that the Charter should be interpreted in the light of Canada's linguistic duality and Quebec's distinctiveness.

On the one hand we talk about the Charter being paramount and untouched, and on the other hand we find from Senator Murray the idea that we should interpret the Charter now in a distinct way. Which is correct? Canadians have a

right to know; Canadians have a right not to be confused; Canadians have a right to clarity, not for future cases but for present cases. An argument has been made—and it is a good constitutional argument—that a Constitution is a living tree that evolves over time. Therefore, and Senator Spivak referred to this indirectly, we should not be so precise in demanding definition. Yet every constitutional expert in the western world will tell you that it is important to take a Constitution and apply it to current cases clearly and effectively. And yet we cannot. We cannot deal with the future and we cannot deal with the present. That is why I say that the Meech Lake Accord leaves too much that is too uncertain, too vague, too unfair, too open, too difficult.

On March 30, Mr. Trudeau dealt with the damage to the Charter. At page 3000 of *Debates of the Senate*, Mr. Trudeau stated:

● (2120)

> Mr. Chairman, I will try to answer briefly. The first question asks whether the arrangements of 1987 are damaging to the Charter or to certain groups. I would say offhand that they probably will not be helpful to the aboriginal people, but they will not be damaging, because section 16 has an exclusion that says that the Charter and other sections will continue to operate towards aboriginals and multiculturals. As I indicated earlier, however, the clause on the Yukon and the Northwest Territories certainly can have some very deleterious effects on the possibility of those territories ever becoming provinces in places where the aboriginals, if they are larger in number, can exercise a role in government.
>
> As to the rest of the Charter, from what has been advised to the joint committee people, as it appears in their report,—

and I quote this in answer to Senator Spivak:

> —it is quite clear that the Charter will be affected by the "distinct society" clause. It is quite clear that Mr. Bourassa says it will, that Mr. Rémillard says it will, and that the experts, in whom the committee believed in their report, say it will. I give a different answer from that of Mr. Robertson. He says no; I say yes, the arrangements are damaging to the Charter.

Senator Flynn: Who is the more objective of the two?

Senator Grafstein: Is Senator Flynn asking for evidence?

Senator Flynn: I am asking you this question: As between Robertson and Trudeau, who is more objective?

Senator Grafstein: Who is more objective than Bourassa or Robertson? Robertson says "no" and Bourassa says that the Charter will be affected.

Senator Flynn: No, no; answer my question.

Senator Grafstein: I think, Senator Flynn, that you know my answer to that question. I believe that Mr. Trudeau is an objective constitution expert.

Some Hon. Senators: Oh! Oh!

Senator Flynn: That is the best joke I have heard yet!

[Senator Grafstein.]

Senator Grafstein: One man's objectivity is another man's subjectivity.

Senator Frith: Not all of us can aspire to your cool objectivity, Senator Flynn.

Senator Flynn: I am not cool! It makes me boil when I hear those platitudes.

Senator Grafstein: Honourable senators, I have learned that each successive generation can improve upon the former. I take the liberty, honourable senators, not to quote historians or my elders but to quote my son, Laurence. I asked him last year about his view, as a law student, on this question. Rather than answer me, he decided on his own to do a study of the joint committee's report, and that study was published in the University of Toronto Faculty of Law *Review*, Volume 46, No. 1, the winter edition, 1988. Honourable senators, I was reluctant to do this, but after I heard Senator Doyle quoting colleagues of his, I thought it would be appropriate for me to quote my son. I think he has said this better than I could.

The article is entitled "*Look Back in Anger:* The 1987 Constitutional Accord, Report of the Special Joint Committee of the Senate and the House of Commons." He begins the article by quoting the report of the joint committee at page 58:

> It is not, of course, the task of the Joint Committee to deliver legal opinions, and we do not purport to do so.

and again at page 56:

> We do not believe that the entrenchment of this [distinct society] clause will in any realistic way erode the present constitutional protections of individual rights, including gender equality rights.

That passage was also quoted by Senator Spivak in her comments.

I would like to read from his concluding paragraphs because I share his view:

> Despite its disclaimer about rendering legal options, the joint committee embarks on this task in Chapter VI. It states the problem accurately:
>
> > If section 2 is interpreted to permit governments and legislatures to carry out their respective "roles" at the expense of Charter rights and freedoms, then arguably there would be no "derogation" from the powers of any other level of government or legislature. The "derogation" would be at the expense of individuals and such a derogation is not prohibited by section 2(4).
>
> Based on the "great weight of constitutional opinion", the joint committee concludes that "the fears that entrenchment of the 'linguistic duality/distinct society' interpretation will cause such an erosion are not justified". To the extent that any concerns exist, according to the Report, these "are problems rooted in the Charter provisions of the *Constitution Act, 1982* itself". This seems strange at first blush, but what the joint committee apparently means is this: any derogation of Charter rights will come through a "reasonable limit" finding under s. 1. S. 1 was already brought into existence with the Charter;

hence, the distinct society provision cannot be blamed for any limit on Charter rights that may subsequently be found by the courts, as the Report maintains in the chapter's concluding paragraph.

The article then quotes the report of the committee:

> The decision was taken in 1982, when the Charter was introduced, to leave these questions of balance to be determined by the courts on the facts of a particular case.

It goes on to say:

> Faced with this brand of reasoning, a reader of the Report will find it hard to know how to respond. If the distinct society clause makes the constitutional validity of legislation more likely under s. 1 (as the joint committee says at various stages), then in relevant cases at least some of the abridgement of the Charter's substantive right must be attributable to the new amendment. The joint committee seems to be arguing that, since substantive Charter rights are already limited by s. 1, it matters little if they are curtailed more sharply under the new amendment. But as mentioned above, the Report's simultaneous claim on this point is a seemingly absolute assertion that "entrenchment of this clause will not result in erosion of these rights".
>
> The illogic continues as the joint ccommittee declares that:
>
> > On its face, there is nothing in the 1987 Accord to suggest that the values of linguistic duality or Quebec's distinct society are to override the Charter or that legislation or governmental acts in furtherance of these values are to be immune from Charter Review.

My son now quotes Yves Fortier, an old friend of mine and one of the voices that Senator Murray suggested was federalist, speaking in favour—as indeed he is—of the Meech Lake Accord. Let us see what Maître Fortier, Q.C., said:

> I believe those fears are totally groundless. And if it were not for the seriousness of the organizations that expressed those views, I would simply say we were dealing with a smokescreen.

The articles goes on to say:

> If the fears are groundless, then why not say so by putting in a symmetrical nonderogation clause applicable not only to the distribution of powers but also to the Charter?
>
> The Report goes on to discuss the question of what would happen in the case of a conflict between the distinct society clause and the Charter, spending some time on the potential implications of the recent *Ontario Separate School Funding Reference,* which dealt with the interrelationship between the Charter rights and the constitutional jurisdictional powers granted to the federal and provincial governments. Again the Report quotes Fortier to back up its position that Quebec's distinct society need not necessarily dilute the Charter. Fortier says that:
>
> > The critics who are crying wolf forget that, in comparison with Canada as a whole, Quebec has scarcely been behind-hand in promoting the equality of the sexes. Actually, people seem to be forgetting, within the context of this debate, the very existence of the *Quebec Charter of Human Rights and Freedoms.*

We seem to have forgotten all about that. The article goes on to say:

> The Report also cites Pickersgill's related argument, namely,
>
> > that most of the people who have opposed Meech Lake seem to assume that unless you get something into the Charter . . . nothing can be done about it. They seem to think parliaments and legislatures do not matter . . . which seems . . . pretty absurd since they have to get the votes of the people.
>
> This may indeed provide protection of individual rights within Quebec, but one of the primary reasons for the Canadian Charter was the need to embed these rights firmly in the constitution, rather than leaving them contingent on the ebb and flow of local or national politics. All students of constitutional law will recognize that legislatures do not always adequately safeguard rights, as many well-known cases . . . amply attest.

At this point he quotes a number of those well-known cases.

> The joint committee, given its reading of the distinct society clause as innocuous, has little trouble shrugging off concerns about its conflict with the Charter. When it comes to considering whether gender equality rights should be treated as a special case, and perhaps included in the Accord's section 16 (which explicitly extends nonderogation protection to multicultural and native rights), the Report views the concerns of women's groups outside Quebec as independent of Meech Lake:
>
> > in none of the hypothetical situations cited by the women's groups was it alleged that the "linguistic duality/distinct society" rule of interpretation would have an impact on section 15 itself to permit inequality or discrimination. Rather, their concern is directed to the "reasonable limits" limitation in section 1.

• (2130)

> Of course, toward the end of the chapter, the Report reaches still another conclusion inconsistent with earlier passages.

It says this:

> Under the terms proposed by the . . . Accord neither gender equality rights nor the "linguistic duality/distinct society" rule of interpretation will be given automatic paramountcy in all situations. Neither overrides the other. Neither is automatically subordinate to the other. The courts are entrusted the task of maintaining a proper balance. The outcome will depend on the particular circumstances of the case.

So: equality rights will not be eroded by the clause. But whether they are eroded will depend on the circumstances of the case. (And please do not suppose that the foregoing is in any way a "legal opinion".)

It is only at the end of the section canvassing the potential conflict between the Charter and the distinct society clause that the Report finally communicates the real reason for its confusion and its obfuscation of the central issues raised by the Accord. In the joint committee's own words: "On the hypothesis that the 'linguistic duality/distinct society' rule of interpretation were capable of supporting a violation of equality rights, then it would be essential for section 16 of the Accord to include at least section 15 of the Charter." In the next sentence, though, the Report invokes the words of Maître Fortier, the person who describes the worries about the Charter as a "smokescreen" and "totally groundless".

I would like to quote some of the Report about what Maître Fortier said:

> Yet, as Maître Yves Fortier told us: "I am afraid, however, that if we add to clause 16 of the Langevin accord a reference to certain substantive provisions of the Charter we will be opening a Pandora's box the effect of which will be to create new and quite considerable uncertainty. On the other hand, if it were decided to exempt the whole of the Charter from the effect of the distinct society clause, including clause 1 of the Charter, then that would mean the death of the Meech Lake Accord, period."

At last, the joint committee openly states a coherent rationale for its position. The Accord probably affects the Charter, but this is secondary to the need to secure Quebec's agreement. And Quebec's agreement, as Maître Fortier notes, was conditional on the exclusion of a nonderogation clause pertaining to the Charter. Hence this passage might be labelled the Report's climactic contradiction. It explodes the logic of the lengthy, laborious and acrobatic attempts to minimize the importance of the distinct society clause.

He goes on at length to deal with this question.

The consequences of this disclosure for a proper reading of both the Accord and the Report are numerous. First, it becomes clear that, even if the joint committee and indeed some of the framers of the proposed amendments considered the distinct society clause to have narrow, even negligible meaning, the fact remains that other architects of Meech lake quite deliberately recognized that the clause would offer a measure of insulation from the Charter. Put differently, the Government of Quebec refused to accept a nonderogation clause that would do the same for the rights of individuals as the Accord purports to do for the distribution of powers among governments. In this light, the joint committee's circumlocutions in attempting to characterize the impact of the distinct society clause look ridiculous. The Report's inability to discern a clear, coherent pattern of opinion should give pause to any court considering the document as extrinsic evidence of the intent of the Accord authors.

Second, the new clause will clearly be "capable of supporting a violation of equality rights", to use the Report's phraseology. But although the joint committee claims it would therefore become "essential" to protect those rights in section 16 of the Accord, the Report then implies that this requirement must take a back seat to the need to keep the package wholly intact. And making the Meech Lake Accord subject to the Charter would destroy the deal.

Third, the potential erosion of equality rights does not count for either the architects of the Accord or the joint committee as an "egregious error" requiring amendment. Yet the tone of the Report suggests this was the joint committee's most difficult issue. "Nothing in the proceedings," says the introduction to Chapter VI, "has given rise to more searching examination and consideration on our part." First the joint committee denies the risk but, when confronted by the manifest probability of the risk materializing, the Report shows where its priorities lie. As Maître Fortier says in the context of still another concern about the Accord: "The dynamics that led to the 1987 Accord must not be compromised." But this is not merely a case of procedural negotiating considerations triumphing over substantive issues. This is a case where the erosion of the Charter could not be construed as an "egregious error", because the erosion of the Charter was one of the Quebec government's essential substantive demands.

I would like to read you his concluding paragraph before I conclude. This is a young Canadian looking at his elders, and he says this:

> Future generations will look back at the joint committee's Report in anger. They will be angered by the Report's inability to support even its most elementary positions without lapsing into inconsistency, angered by its obscurity, by its denial of plain reality, by the way it verges on outright duplicity. Further, historians will not be impressed by the intellectual rigour of Canada's leading constitutional experts. For a nation that so recently achieved full independence, a nation so obsessed by its constitution, a nation where individual rights are so fragile, it is the careless attitude of the political and legal élites that prompts the greatest anger of all.

Honourable senators, where does this leave me and where does it leave us? Should we assure that this grand "attempt" to introduce Quebec back into the family of Canada is, in itself, a retrogressive step because we sacrificed the Charter? Is the price of the Charter the price we, as Canadians, should be prepared to pay? Was Pierre Trudeau right in 1958 when he said that there are obstacles to democracy? Is this an obstacle to democracy, an obstacle to a Charter of Rights that should be paramount in our Constitution? Any Constitution? Will the sovereignty of the individual be ahead of the sover-

eignty of the state under the Meech Lake Accord? I believe not.

I believe that the courts will now be compelled to distort individual rights in favour of collective rights under the Accord. This will be true, as Senator Hicks said, not just for Quebec, but ultimately for other provinces. Ultimately, we will have different regimes. Different rights in different provinces.

On my way back to Ottawa this week I ran into a former Lieutenant Governor of the Province of Ontario, Mrs. Pauline McGibbon. I told her I was coming back to talk about the Meech Lake Accord. She said, "Please, please, remind the senators about American history. Remind the senators about provincial rights. Remind the senators about how the issue of stronger rights to states strangled the growth of the United States and led to a civil war. Remind them of that." That may not be a fair comment, but I pass it on from a reasonable Canadian who was Her Majesty's representative in the Province of Ontario.

So, here we are in the Senate, a day before a crucial moment in our history. We are here to enact a play, perhaps a play in the theatre of the absurd. For, in the Senate we find the only legislature in Canada where the debate was open, where the debate was democratic, and where the conclusions were not foreordained. What a strange paradox that the undemocratic Senate becomes a saviour in its own way of the democratic dialogue. Democratic means, to match democratic ends, come in strange packages.

I ask myself this: Is democracy in Quebec and is democracy in Canada so fragile that we cannot absorb simple democratic amendments? I do not believe that. I have listened to senators from Quebec; I have listened to the premiers. I do not believe that democracy in Quebec is so fragile that it cannot withstand good, proper and fair amendment.

We, in the Senate, are in a suspended state. Our critics attack us for inactivity on the one hand and hyperactivity on the other hand. We please no one. Yet are we on the side of history? History depends on the action of people. Leadership can destroy societies as well as create societies. I believe that any derogation from the Charter is a step in the wrong direction.

The Charter for me is a living document. The Charter has its roots in our economic and political blueprint for our future. It shows us how we can curb the power of the state without eroding the power of the state to shape our future. Let democracy—a democracy where the sovereignty of the individual takes priority over the state—emerge victorious.

So my prayer for relief, honourable senators, is simple. Amend the resolution to ensure that the Charter of Rights is first and foremost. Amend the resolution so that the Charter of Rights is paramount. Let me end with this final prayer: Amend, amend, amend, amend, amend, amend, amend, amend, amend—and then, honourable senators, let us say amen.'

Hon. Willie Adams: Honourable senators, I do not expect to be too long tonight. However, I would like a chance to speak. I would like to congratulate senators, especially Senator Lucier, for their speeches.

I would like to say thank you to the senators who travelled with us to the Yukon and the Northwest Territories. I would especially like to thank Senator LeMoyne, who retired three weeks ago. I am sure he would like to be in the Chamber tonight to wind up the debate on the Meech Lake Accord. I would also like to thank Senator Macquarrie, Senator Bielish, Senator Len Marchand, Senator Cools and Senator Fairbairn and the chairman, Senator Molgat. They did quite well, especially in listening to the views of the citizens of the Northwest Territories in relation to the Meech Lake Accord. We feel that we are part of Canada and that we are Canadians. However, we especially feel that we have been ignored by the rest of Canada. I definitely feel that way myself.

This month I will have been in the Senate 11 years. I came here as a Canadian to represent a particular part of Canada, the people of the territories. However, today it would seem that I am here only to represent the rest of Canada, not the people of the territories.

To my way of thinking the Inuit and the Indians are the people who built Canada. We were here first and survived, and we helped other people coming to Canada. The people who came to the north, especially to Hudson Bay, were helped by us. The French traders and others started off there to come up to the territories, and we helped them. In a way this is in the past because today there is a different feeling. Back then we were given a taste of their food and an idea of how they lived on the land. While we were never paid anything for the meat we allowed them, at least we were given tea, sugar, flour and things like that in exchange—at least until it started to get a bit more organized, and then we started to buy a few things from them.

It does not seem so long ago that they showed us how guns could be used to hunt more fox. By the time the hunters reached Hudson Bay they could buy a six-foot or seven-foot gun. We at least could buy one gun. At that time we did not even consider how much it would cost to buy a gun from the Hudson Bay Company. We used to go out on the land and trap and we used the furs to buy a gun long enough to reach the distant fox. Until today, I thought Hudson Bay was as rich as the rest of Canada or as Europe. We wanted to feel we were part of the Constitution of Canada, but now the past is coming back to us. We are not included in the Constitution today.

Perhaps history repeats itself. Other waves of people came into the north to hunt whales and live with the aboriginal peoples. Even famous people—some of them from New York—came up to the Canadian north and lived with us. Sometimes it was because they got caught in the ice and could not go back home. How did they expect to survive in the winter time? They lived on their ships. However the ships were sometimes ruined by ice, and they then ended up living with our people in our communities.

For our part, in 1982 some of the Indian organizations went to England to see how much compensation they could have for

agreeing to have the Constitution come to Canada. It has been a year since the Meech Lake Accord was drafted, and we are still left out of it.

Some of the witnesses we heard when we were travelling in the territories told us, "We feel like second-class citizens." I was going to say tonight that I felt the same way. I was to be the last speaker here tonight, but Senator Molgat will be the last person to speak. I think he did a lot for us by helping us through the worst concerning the Meech Lake Accord.

The people in the territories would like to know what our future is. We do not want to have it determined for us by ten premiers who have never been up there and who do not know what is going on or how the people up there live. All they know is "We want more power." Well, power is not good for the premiers, and in the meantime they will ruin our culture because they do not know how to live with the people up there.

Over the last 30 years, since the government entered the northern community saying it wanted to help us, we have not had a better life. Our people had a better life before the government set out to teach us and the community how to learn the English language and everything else.

Children coming out of school today are not better off. At least people living on the land survived and were happy with their families. Today the children are not better off than they were 30 years ago. In fact, they may be worse off today.

Comparing the old system and the new, since the government stepped in to give us the law of the Government of Canada, approximately 85 per cent of the Indian and Inuit people have been jailed because they have broken the law. But we did not make that law. Other people came up there and made that law. I do not want to see my people affected by that system.

On the one hand, people have come in to help us with our education system and so on, but on the other hand, they turn around and start bringing liquor into the community, and that affects the people in the community in a much worse way than lack of education. To me that is not the way to teach other people. And at first we did not even have the RCMP; we had not even heard of crime before others came into some of our communities. Today, however, we live in crime. At the moment, people come up to the north and we do not really care where they come from. I have lived for many years in the north, but I go back down south because it is better for me to live up in the north and then go south where I can have a better job with better wages. However, that is not the way to do it. In any kind of job you do, if you do it well, you can always be promoted.

● (2150)

I have many good friends both in the north and in the south, and it does not matter to me what nationality they are. However, once the Meech Lake Accord is in place, I think people will start realizing that nationality and colour and race are important. People will start asking themselves: "What does 'distinct society' mean?" Does it mean that if you are French, you are distinct? Does it mean that if you are French you are better than I am? Until last year when the Meech Lake Accord was signed, people never thought about any of this. We are all Canadian citizens. We all have the right to live in Canada and to live our lives in the way in which we ourselves choose, and to develop our country. In my opinion, the Meech Lake Accord changes all that.

The day after Mr. Trudeau's speech, Senator Murray, during his submissions, said that he did not care what Mr. Trudeau said. However, on listening to Mr. Trudeau, I learned about the Constitution. Now I understand what it means. So I say to Senator Murray that we in Canada have a big country; we have different people with different ideas. I say to him that one man, even the Prime Minister, cannot give everything to everyone. Although everyone has the same rights, they may not understand everything about the Constitution. Up in the north, people are already saying to me that the premiers are going to run Canada; that they will take territory away from our two territories; that they will expand, and that we in the Northwest Territories and in the Yukon can do nothing about that. If at some time in the future the two territories want to become provinces, it will be very difficult for them to do so because of the powers that the premiers of the provinces now have.

Some of us in the north have often been of the opinion that education was the ruin of some of us and that it changed some of our lives. Of course, we have always appreciated that education had good aspects to it. I think some of us are beginning to realize that, if we are not careful, we will find that the people from the south will be running everything in the north, including the way we live. People are beginning to realize that if we do not have education, then in the future we will not be in charge of our lives or our business or even our communities. It is becoming apparent to some people in the north that they can no longer survive by living off the land, and the only way to survive is in the same fashion as the white people do, and that is by being in business.

Another aspect of life in the north today is that organizations such as Greenpeace are now telling us what we can and cannot do. They tell us that hunting seals and foxes is bad to the extent that people who, in the past, made a living from their hunting can no longer live on their earnings from this source. Last week when I was in Rankin Inlet, I heard talk about some uranium mine operation starting up at Baker Lake. That was done without consulting the people in the community as to what they thought about uranium mining and what effect it might have upon their community. Greenpeace are now in there, protesting the opening of that mine. They have been in Yellowknife talking to the government, urging the government to disallow the opening of that mine at Baker Lake.

In the meantime, there is unemployment in the community at Baker Lake because Greenpeace has told the rest of the country and the rest of the world that people in the north of Canada are killing and slaughtering animals. They have been so successful with this propaganda that people who hunted for generations can no longer make a living by following their

traditional way of life. So now they have a chance to work in the mine and Greenpeace is saying that uranium mining is not good for the people or for the community. What, then, lies in the future for the people of the north? On the one hand, we have the Meech Lake Accord which will not work; on the other, Greenpeace is running our lives and telling us how we can live in the north.

Living here in Ottawa, as I do a great deal of the time, I sometimes have an impulse to go back north. Even in the small communities as soon as you walk in, at least someone will recognize you and say: "Hi, Willie, how is everything?" In the south, people do not do that. However, with the adoption of this Meech Lake Accord, people will start realizing what is happening and will start asking: "Do you come from Quebec?" They will say: "You are distinct. Why do you come up here? Do we have to help you because you have a distinct society?" In my opinion, it does not matter where you come from or what nationality you are. The important thing that we should concern ourselves with is whether or not we are good Canadians and good citizens and whether or not we have a good way of life. I do not like to ask people where they come from or what nationality they are. I am quite content that they are here in Canada. I think that is the right way to view it.

Honourable senators, I have been in some other places in the world outside of Canada and I am always glad to come back here. I was in Guatemala four or five years ago and, in my opinion, that is no way to live, with the military visible in the streets night and day. I am afraid I did not very much like the idea of having machine guns pointed at me. As far as I am concerned, Canada is a free country and I do not think we should do anything to ruin that. To me, the amending of the Constitution is not the end of the world. We did not have a constitution for over 100 years, and we still have lots of time. This is a vast country and we still do not know what we have here in Canada. In my opinion, we should be concentrating on creating a better future for our children.

The Prime Minister and Senator Murray are anxious to have the Meech Lake Accord approved between now and the summer recess. However, if this is not done and the Constitution is therefore not changed, in my opinion Canada will be no better or no worse.

I have been involved in politics at the municipal level. It is nice for the community to have a little bit of power. It is nice for the mayor to be able to explain to people what he has done for the community. Oftentimes, people at the community level are able to do a better job because they understand the needs of their community. I do not think the premiers understand the needs of our community. They may know what is needed within their provinces, but they should not be telling people in the Yukon and Northwest Territories what to do.

● (2200)

I have talked to representatives of mining companies and oil companies, and there are lots of opportunities in the north. With changes in technology, we can do things today better than we could 15 or 20 years ago. This, in fact, is the case in Rankin Inlet where a nickel mine was closed in 1962. The mining company had found a better deposit in Thompson, Manitoba. The same company was back in Rankin last week to determine whether they should start the mine up again on the basis of improved technology. To me, it is better for representatives of the community to talk to these companies about such matters as creating jobs.

However, once the Meech Lake Accord takes effect, these companies may begin to think that the premiers have the power, that the premiers can do anything they want in their communities without consulting people in the community. Perhaps people are not thinking in this way, but I wonder what will happen once the Meech Lake Accord takes effect. I think that many people in the north are wondering what the House of Commons will do if we send these amendments back to the House of Commons tomorrow. I think that many northerners will recognize, at least, that the Senate tried and that if the politicians refuse to do anything about changing the accord, we had no control. In five or ten years' time, people may be saying that at least the Senate understood what the Meech Lake Accord meant. They will not be saying that about the Prime Minister or Senator Murray.

If we fail in our efforts, I hope that the Meech Lake Accord will not ruin our country or our people. I hope that the Prime Minister and Senator Murray will not forget that we in the north are part of Canada, too, and that we do not want to have our lives ruined in the future. We want to keep our culture, not have it ruined by the ten premiers.

Hon. Charles McElman: Honourable senators, I have listened intently to this debate. I feel more knowledgeable about Canada than I did when it started. I am particularly grateful to Senator Adams and to Senator Lucier, who have spoken to us from their hearts and who have tried to impress upon us the feelings of the people and, yes, governments, but more particularly, the feelings of the people of the Yukon and the Northwest Territories. I do not think that it would be too strong terminology to say that they have shown a sense of deep resentment that the future of those territories and, more particularly, the future of the people of those territories should be left in the hands of the Government of Canada and the ten provinces. I think I understand better their situation, and I hope the Senate understands better the depth of feeling the people of those territories apparently hold today. I can only wish that in their wisdom the people of Canada will recognize that the people who live in the north are quite distinct within the nation and that they should have, at least, the treatment of consideration, but not by, as Senator Adams said, the ten premiers, most of whom have never even seen the north. So, again, I am grateful to both Senator Adams and Senator Lucier for the message they have brought to the Senate.

I would like to speak for a moment about the position of New Brunswick in this debate. First, I should say that I do not and would not pretend to speak for or on behalf of Premier Frank McKenna. It must be accepted that when he speaks, he speaks for the people of New Brunswick. He is a very bright and dedicated young man. He is also a very tough young man, and he has strong fibre. Premier McKenna is dedicated to

improving and enhancing conditions for the people of New Brunswick and the Province of New Brunswick within Confederation, and he is as deeply dedicated to the future of Canada. His position on the Meech Lake Accord is quite clear; he does not accept the seamless-web theory that the accord cannot be amended. He believes deeply that it can be amended by rational debate, discussion and decision and that it should be amended. He is not a "wild card", as some people have expressed it, and as the media seem to wish to cast him. There is nothing wild about the man. He believes in logic.

• (2210)

I have a word of advice for my friend, the Honourable Senator Murray, in his capacity, and for the Right Honourable the Prime Minister— if you wish to discuss matters rationally with Premier McKenna you will find a receptive person for such discussion; but if attempts are made to push or threaten Frank McKenna, you will get the opposite result from that you might wish.

Honourable senators, a word about the proposition that the former Prime Minister, Pierre Elliot Trudeau, is responsible for many of the problems to do with the Constitution. I would like to remind the goverment that Prime Minister Trudeau, of that day, was not the only person at the table. Parliament itself held long, extensive, detailed hearings into the proposed amendments to the Charter and the patriation of the Constitution. Changes were made in what the government proposed. They listened to people from all across the country. There was nothing false about the hearings that took place. They were good for the country. That is the Trudeau whom some tried to cast in the role of a confrontationalist.

It should also be remembered that there were ten heads of government at that time who debated and eventually reached agreement. Nine of them were provincial premiers. It was not Prime Minister Trudeau or his government that opted for the notwithstanding clause, clause 33—it was the premiers of the provinces. At that time, the governments of those provinces were as follows: British Columbia—neo-conservative Social Credit; Alberta—Conservative; Saskatchewan—NDP; Manitoba—Conservative; Ontario—Conservative; Quebec—Separatist; New Brunswick—Conservative; Nova Scotia—Conservative; Prince Edward Island—Conservative; and Newfoundland—Conservative. There were seven Conservative governments, plus the Socreds, one NDP and one Separatist. There were no Liberal governments.

Senator Murray: Except the big one.

Senator Frith: That is a nice way to put it.

Senator McElman: The big one, indeed. The one that spoke for Canada.

Some Hon. Senators: Hear, hear!

Senator McElman: It was big, indeed—big enough to believe that it was time to patriate the Constitution and to become fully a nation. That was opposed.

Property rights were not included. It was not the federal government that wanted property rights excluded, it was provincial governments, particularly those of the west.

[Senator McElman.]

We started out with a strong Charter of Rights and Freedoms which became seriously watered down as the discussions proceeded. It was not watered down by the Government of Canada; it was watered down by the demands of the provinces.

Senator Murray: How did that ever get through Parliament?

Senator McElman: You should not look so puzzled, Senator Murray; you know what I am saying is right.

Senator Murray: I voted against it.

Senator McElman: Because that man, that confrontationalist, was prepared to negotiate to obtain what he thought was awfully important—

Senator Murray: Compromise.

Senator McElman: —for the people of Canada, that is, their own Constitution in their own land, a Charter of Rights and Freedoms for people, not for governments. Those were things he was prepared to negotiate.

Senator Murray: And compromise for.

Senator McElman: All right, compromise. That is a rather honourable process in Canada and it has been for a long time.

Senator Frith: One you have a chance to do tomorrow.

Senator Austin: I am surprised he even knows the word.

Senator McElman: This week, the Prime Minister made rather cutting reference to the notwithstanding clause. Senator Murray speaks of compromise. What a wonderful opportunity this government has had up to this point to negotiate with the provinces to remove that section.

Senator Murray: And keep Quebec out. That is the inescapable inference of what you said.

Senator McElman: No, that is not what I said.

Senator Murray: Yes, yes—keep Quebec out until you fix the notwithstanding clause.

Senator McElman: I said that there was a marvellous opportunity for this government, and the much-vaunted negotiator at the head of the government who is supposed to be the greatest negotiator who has ever come down the pike. Here was his opportunity to negotiate away something that he has told us again this week he finds so deeply offensive—a thing that was so desperately wrong with the Constitution that he inherited. Well, he has missed that opportunity now for sure.

Honourable senators, since it is rather late, I will try to be brief.

I assume that Senator Murray will be closing this debate sometime tomorrow and, before he does, I would like to draw to his attention some of his comments. I refer to the Senate *Hansard* of December 7, 1981 at page 3307 where he was attempting to cast his own views of what Senator Molgat had to say in the debate. I do not see it as being too accurate a reflection but, perhaps, it was close. In any event, he said:

> I am always intrigued by the intellectual gymnastics of some honourable senators.

I am too. It is a study of a lifetime and I enjoy it. He went on to say:

> A year ago they would brook no opposition from eight of the ten provinces of Canada. A couple of months ago, after the Supreme Court handed down its decision, they agreed, in the words of Senator Molgat, that "the provinces must be heard." Tonight Senator Molgat implies that to be committed to the process of provincial consultation is to be committed to whatever the process produces, even if the end result excludes the Province of Quebec. That argument would make Parliament a cipher, and it is an argument that I, for one, can never accept.

I wonder how Senator Murray, in the light of the word "never," could possibly accept the process which tells Parliament that it is a cipher; that tells 11 first ministers they should reach an agreement; and that tells each of the provincial legislatures and the Parliament of Canada that not a word can be changed. What is a cipher? Not the Parliament of Canada alone. What this government has proposed is 11 ciphers for the nation. I, like him, do not accept that. Perhaps he will deal with it tomorrow.

• (2220)

There has also been a bit of good fun poked back and forth about people following party lines. Others have referred to senators who in this and the Meech Lake Accord have not perhaps followed the party line; and there have been attempts to ridicule.

Again, on December 7, 1981, Senator Austin, referring to remarks made by the Honourable Senator Murray, said:

> His speech is deeply felt, I know—

I agree; Senator Murray expresses himself well and with conviction. I have a lot of respect for Senator Murray and for the work he did in New Brunswick over the years. The quotation continues:

> —but could he explain the reasons why his leader in the other place, the Right Honourable Joe Clark, voted in favour of the resolution—

That was the resolution for patriation and amendment of the Constitution. It continues:

> —which is now before us, and why he differs so greatly—

That is, Senator Murray:

> —in his conclusions with that of the Leader of the Opposition in the other place?

Senator Murray said:

> I do differ from the conclusion of my national leader.

So Senator Murray should not be surprised that Liberals, by and large, are as independent of thought as he was at that time.

Some Hon. Senators: Hear, hear!

Senator McElman: I have one further comment. I have, by question, raised the matter of Supreme Court reference, and I recall the answer given by the Honourable Senator Murray and by the Deputy Minister of Justice. I say to him once again—I plead with him once again—that the government, of itself, should do as was done back in 1981, with the reference to the Supreme Court. The answer that it is not possible to do, that it is not possible to frame the question, does not hold water. Despite the legal advice that was given, there is contrary advice, and there are those with good credentials who say that it is more than possible and that it should be done in the interest of the nation.

It is the contention of the government that it really does not know what the "distinct society" clause means. It is the contention of several of the premiers that they really have not the vaguest notion of what it means or what its effect will be. Surely, in the name of reason and common sense, with the possible effect of that clause on this nation, it would not hurt to make an appropriate reference and to get the advice of the court—"which", it is said, "we will get later." Why not get it now before the deed is done?

Some Hon. Senators: Hear, hear!

Hon. Gildas L. Molgat: Honourable senators, it is very tempting at this very late hour in the day, and very late in the debate, to forgo any further comments, particularly when so much has been said on the issue.

Senator Phillips: Yield to the temptation.

Senator Molgat: Well, Senator Phillips, I would if I did not consider this to be the most serious debate that we have been engaged in during my time in the Senate. To me, the very being of Canada is at stake in the debate that takes place here, and I think it is to the credit of the Senate that it has had this extended debate and the extended hearings that were held here, in the Submissions Group, and in the north, to give Canadians an opportunity to debate this issue. I think that the work of the Senate in that regard is an example of exactly what the Senate should be doing. We have provided that opportunity for sober second thought.

There is disagreement as to the best solution to the issue before us. There is no disagreement on the objective. Yes, we do want Quebec to sign. There is no disagreement about that. The question is: How do we arrive at that?

I think that the fundamental question before us is: What kind of Canada do we want; what kind of Canada do we individually seek? What is this country? Is it 10 dukedoms and a weak king at the centre? Is it two nations? Is it a tenuous agglomeration of independent states—or is it something more than that?

To me, the Meech Lake Accord is a 180 degree turn from the direction that I had hoped the country would take. Senator Murray says that it is not, that it is a continuation, that it is an incremental development. Well, I certainly do not see it that way. To me, it opens the door to incremental separatism—not simply separatism of Quebec. We are establishing the base for potential separatism in many other areas of this country. I think that is a fundamental question that faces us here as senators.

Once upon a time I was a Canadien français, associated with my friends in Quebec who were also Canadiens français.

Then they became Québecois, and I became, I am told, Franco-Manitoban. The Saskatchewanites became Fransaskois, and the Albertans became Franco-Albertans.

It seems to me that we are developing in this country a parochialism and an attitude that province comes first and nation comes second. That is what we have to ask ourselves: Is it, indeed, province first and country second, or are we Canadians to begin with?

For me, the direction that this takes is to set us up more and more as provincialists. The moment that we argue against that, we have very bright, good constitutionalists, like Senator Tremblay, who will say, "Oh, you are a centralist." They have raised the bogey of centralism. It is not a question of centralism; the question is: Are we building a nation or are we building 10 provinces? To me, Meech Lake leads to a ten-province development and not to a national development. The national government loses, the provinces gain.

• (2230)

There are those who say, "Oh well, wait until the next round. During the next round we will be able to correct that." Honourable senators, if they could not correct that this time when there was a will to do something and a desire on the part of the provinces to get something done to make a deal, if they could not agree that some of the fundamental things are wrong in the accord—which my honourable friends even admit themselves—what makes them think the next time around they can correct what is wrong?

The only defence they have now is: "You cannot touch it." We are told, "You must not touch it now because it will fall apart. We know it is wrong, but you cannot touch it now. You cannot put in rights for women because it will fall apart."

The provincial premiers are elected. They have a clear mandate. They are there to protect their own provinces. They are not there to protect anyone else's interests. They will fight for their own interests. That is their job. Our job, as national legislators, is to think of the national interest. That is what Meech Lake does not do.

Honourable senators, I had a number of detailed items I was going to deal with. I will forgo a number of them, but there are still a couple I wish to touch on.

Senator Lucier: You have lots of time.

Senator Molgat: The first is the process, the process by which we completed this Meech Lake affair. For 11 men to get together one night and prepare a plan of action is not unreasonable. There were some discussions beforehand—Senator Murray was in charge of them. That was reasonable. There is one egregious error I will come to later when I deal with the north, but that was not an unreasonable method by which to proceed. But to say at the end of that night, "That's it, we eleven have decided." is unreasonable.

Incidentally, while we are talking about the 11, I reject the concept of 11 First Ministers. That is not my view of Canada. There is one Prime Minister and ten premiers. The 11 First Ministers concept, with them all being equal, is exactly part of the problem that this government has. Premiers have clear responsbilities, and in their fields they are certainly the leaders, but there is also a country and there is a Prime Minister.

Let me come back; for those 11 to say, "You cannot touch it." is absolutely against every concept of democracy. True, Senator Murray will say that those are elected premiers. They are elected premiers, but that does not give them a mandate. Most of them were elected by a minority of the people in their province, and since when can they suddenly bind their province and all of the people living in their province to a deal which the people have not even been consulted about? Surely that is a wrong process. To make an arrangement, yes, but then they should go back to get it ratified.

Senator Murray: Well!

Senator Molgat: After saying that we cannot touch it, after saying that there is absolutely no change that can be made? If you said, "Yes, go back and have it ratified with the understanding that it can be changed—

Senator Murray: How many legislatures passed it in 1982?

Senator Barootes: None.

Senator Molgat: Your trouble is you always want to fight the battle of 1982 or the battle of 1867. I am dealing with the accord that is before us. I am not interested in what Mr. Trudeau did in 1982. I am not here to defend his actions. I am dealing with what this government is doing.

Senator Murray: Compared to what?

Senator Molgat: Let me go to the next step. Let us deal with the next item in the process. If you are looking for an egregious error, well, my honourable friend, you have created one. You have one.

Let us deal with the process and how it affects the north. At a meeting of the Senate Task Force on the Meech Lake Constitutional Accord and on the Yukon and Northwest Territories in Yellowknife, Mr. Nick Sibbeston, the Government Leader of the Government of the Northwest Territories, stated:

> From the very beginning, our government has been frustrated in trying to become involved in the Meech Lake discussions. Our government and I as leader were not invited to the Meech Lake meeting. When the results of the Meech Lake meeting became public and we realized that the Northwest Territories was very much affected in the proposed Constitutional Accord, we attempted to get involved. I wrote to the Prime Minister and all of the Premiers asking to be invited to subsequent meetings dealing with the matter.
>
> On June 3, when the First Ministers were holding their meetings in Ottawa in the Langevin Building, Tony Penikett—

And I add that Tony Penikett is the Government Leader of the Government of the Yukon Territory:

> —and I were pacing the streets of Ottawa waiting to be invited into the meeting, which never happened.

That surprised the members of the committee a little, and when he concluded his statement I asked the following question:

> In the process leading up to the Meech Lake accord, it is my understanding that Senator Lowell Murray, the Minister responsible for Federal-Provincial Relations, was negotiating. Were there any negotiations with you; did he come to Yellowknife to discuss with you, or did he invite you to Ottawa to discuss with him?

Mr. Sibbeston replied:

> Not at all whatsoever, sir. Our letters were simply not answered by the Prime Minister and the Premiers.

He repeated that they waited outside the Langevin Block and they were not invited in. I then asked:

> Have you ever met Senator Lowell Murray, the Minister of Federal-Provincial Relations?

Mr. Sibbeston replied:

> No, sir. And I have never met the Prime Minister.

I then asked:

> You have never met the Prime Minister either?

Mr. Sibbeston replied:

> I have never met the Prime Minister to discuss matters of mutual concern. I attempted to arrange a meeting with the Prime Minister last winter and when he became aware of the agenda items, which included constitutional development, the meeting was . . . .It seemed as if we were going to get a meeting with him, but the meeting was suddenly not available. He insulted us by agreeing to have a meeting, just to have a picture taken of him and me. That is the closest that the northern . . . that is the closest I, as Government Leader, have ever got to the Prime Minister. He offered to have his picture taken with me.

That, obviously, surprised me somewhat and I asked:

> Oh! But you have had no discussion with him of any kind in this regard?

Mr. Sibbeston replied:

> Absolutely zero, absolutely nil. Nothing.'

Senator Frith: That seems fairly clear. There is not much doubt there.

Senator Molgat: What does the Leader of the Government of the Yukon Territory have to say? I am referring to Issue No. 1 of the Whitehorse hearings at page 118. Again, I asked Mr. Penikett the following question:

> In the process leading up to Meech Lake, did Mr. Murray, as the responsible Minister, come to see you in Yukon to discuss the matter with you, or did he invite you to Ottawa to discuss it with him?

Mr. Penikett replied:

> Neither Mr. Murray nor Mr. Mulroney had ever communicated with us on the substance of this issue.

I then asked:

> And did not come here to meet with you or your government?

Mr. Penikett replied:

> Neither here nor in Ottawa, nor anywhere else.

• (2240)

Senator Frith: Not even a snapshot for the family?

Senator Molgat: Not even an offer by Senator Murray to have his picture taken with them.

Senator Murray: I am too modest.

Senator Doyle: What happened in 1982?

Senator Molgat: You fellows are certainly obsessed with 1982. Why don't you talk about the issues right now? That is the problem. I am dealing with what is proposed right now in the Meech Lake Accord.

Honourable senators, neither the Prime Minister nor the responsible minister met with the government up there, nor did they discuss anything with the northerners. In the face of that, what do we find? We find serious changes to the north—changes that will be implemented through this accord. There is nothing for them on the question of boundaries; there is nothing for them on the creation of new provinces; there is nothing for them on the matter of the appointments to the Supreme Court of Canada and to the Senate, and there is nothing for them on the matter of aboriginal peoples. And all of this was done with absolutely no consultation. Honourable senators, if there was ever a colonial attitude displayed by a government, it could not have been worse than this.

Some Hon. Senators: Hear, hear!

Senator Molgat: I think back to the formation of my province in 1869 and 1870, when the then Government of Canada sent surveyors out there. They trampled all over the land of the poor Métis, but at least the Métis reacted. It was the lieutenant governor who was sent out of the province and out of their country, much to their credit. At least they got something as a result of their actions. That area was created a province and those people had some rights. But in this case, the government has ridden roughshod over these people of the north without even consulting them.

If there was ever an egregious error, Senator Murray, it is there. If there was ever a case of grand injustice, it is right there.

Senator Lucier: We haven't seen Senator Murray or Prime Minister Mulroney in the north since, either!

[*Translation*]

Senator Molgat: I will only refer to one other matter, although there are many others to cover, that of the situation of French Canadians outside Quebec.

The other day, Senator Simard beat about the bush on that matter but he seemed to indicate that French Canadians outside Quebec were satisfied with the Meech Lake Accord.

I asked him at that point whether he had gone through the speeches made before the Submissions Group on the Meech

Lake Constitutional Agreement. I can only conclude that he did not. I would simply like to correct the impression he left that there was an agreement or a deal or some support. This is not the case, and for very good reasons.

My dear friends opposite are not very interested in listening to what Canadians have to say. They certainly spent very little time listening to the witnesses who came here, and clearly very little time reading what was said.

Let me quote here from issue No. 1 of the Submissions Group on the Meech Lake Constitutional Agreement, that of February 29, 1988. The witness was Mr. George Arès, president of the Association canadienne-française de l'Alberta. Mr. Arès stated on page 1:121:

> The main issue for us is how we can dare to accept the Meech Lake Accord with no changes when it contains serious basic flaws that absolutely must be corrected before the Accord is proclaimed.

He went on to say:

> How can we accept such an accord? For ACFA, this defies the imagination and common sense. Canadians from every province and of every political stripe, representatives of numerous associations, have pointed out serious and pertinent flaws in the Accord. We find it inconceivable that politicians could agree to ratify this accord without correcting these serious flaws.

And further, on page 1:124, he stated:

> ACFA urges the Senate to do everything in its power to prevent the Meech Lake Accord, as it was signed and now stands, from becoming an integral part of our country's Constitution. Once the Accord is proclaimed, it will be very hard to amend it and to correct the serious flaws that it contains.

And finally, he had this to say on page 1:128:

> Obviously, (it) would be Alberta, where the provincial government is making war on its francophones. There are other provinces that are doing the same thing. But for us francophones in Alberta. it is obvious that our provincial government is making war on us. It would like its francophones to disappear.

Well, honourable senators, if the Meech Lake Accord is not amended and if there is no obligation for the Canadian Government both to promote and preserve French-speaking groups outside Quebec, what Mr. Arès suggested will indeed happen, to us at least in western Canada—maybe not in New Brunswick, but in western Canada we will all disappear. That will be the result of the Accord. It will ensure that those groups that have been working to maintain at least a small group that is small but very important however to the concept of Canadian federalism, a group that is very important to an alternative perception of our country, the perception of a great bilingual country, different from the United States, with another kind of richness.

[Senator Molgat.]

This will not happen unless there is an obligation for the Canadian Government to promote, and if provinces in turn do not face up to their obligations.

Senator Murray: Honourable senators, you only have to read Bill C-72 to find out how the Canadian Government will promote bilingualism.

Senator Molgat: My dear colleague should instead admonish his colleagues in the other place who are now stalling.

Senator Murray: Don't worry, I will have the honor to table the Bill in the Senate in due time.

Senator Molgat: As far as Bill C-72 is concerned, my dear colleague, Senator Murray, knows very well it is some of his party's members in the other place who are stalling, not my party's people.

The fact is that with the Meech Lake Accord those groups are going to be a lot worse off than today.

Senator Murray: How's that?

Senator Molgat: Just ask them! It's precisely because the federal Government is not committed to promote bilingualism. You support the two nation theory, not the national bilingualism theory; no, you are going back to the two nation theory.

Senator Murray: Read the Commissioner of Official Languages' comments.

Senator Molgat: Senator Murray, if you have questions for me, I will be happy to answer them.

Senator Murray: Mr. D'Iberville Fortier has already identified the constitutional recognition of linguistic duality as a gain for Francophones outside Quebec; he said so several times.

Senator Frith: He also said something else concerning Meech Lake which is not very encouraging.

Senator Molgat: The fact is that I have just quoted one of the leaders of the French-speaking community outside Quebec. The Francophones in Saskatchewan and those in my province had the same reaction.

So do not come and tell us that the local people are not in a position to judge what effects your actions will have. It is precisely because you do not want to listen. You are so sure that you are right that you refuse to listen to anybody. Senator Murray, did you come here to listen to the witnesses?

Senator Murray: Listen . . .

Senator Molgat: You were never here. You do not want to listen to anybody. The fact is that these groups know what this means for them. So take heed. If you insist on pushing through

the Meech Lake agreement as you are doing, and if you insist on doing nothing else, if you refuse to see what the federal Governement and the provinces are really doing, you need only observe what is going on in Saskatchewan to realize that what is at stake is the disappearance of these groups.

At any rate, as I said at the outset, the entire Meech Lake Agreement will cause the disintegration of this great country. It runs completely counter to the national development of Canada.

On motion of Senator Murray, debate adjourned.

• (2250)

[*English*]

BUSINESS OF THE SENATE

Hon. Orville H. Phillips: Honourable senators, I believe at this time the Senate would welcome a motion that the remaining Orders of the Day stand, that all inquiries stand and all motions stand.

Hon. Senators: Agreed.

The Senate adjourned until tomorrow at 2 p.m.

THE SENATE

Thursday, April 21, 1988

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

Prayers.

[*Translation*]

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

THIRTY-FIFTH REPORT OF COMMITTEE PRESENTED AND ADOPTED

Hon. Royce Frith, Deputy Chairman of the Standing Committee on Internal Economy, Budgets and Administration, presented the following report:

Thursday, April 21, 1988

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

THIRTY-FIFTH REPORT

Your Committee recommends that one-day car rental charges, supported by a receipt, for an intermediate car be permitted as a travel claim or option where appropriate and reasonable, in lieu of taxis or other means of ground transportation.

Respectfully submitted,

ROYCE FRITH
Deputy Chairman

[*English*]

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

Senator Frith: With leave, now.

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

Hon. Senators: Agreed.

Senator Frith: Honourable senators, this is a short report. Normally I would want to give honourable senators a chance to read it before discussion, however, it deals merely with an adjustment in the ground transportation allowance permissible to senators when travelling between airports, or between their homes and airports.

Motion agreed to and report adopted.

QUESTION PERIOD

FISHERIES

CANADA-FRANCE RELATIONS—DISPUTE-SETTLEMENT NEGOTIATIONS—STATUS AND POSSIBLE MEDIATION

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, I wonder whether Senator Murray has anything to tell us about the current situation between Canada and France. A day or so ago I raised in the Senate the necessity of taking some measures to recover from the low state to which Canada-France relations have fallen as a result of the incidents involving St. Pierre & Miquelon and Newfoundland.

My analysis as to the state of the relations has been confirmed by the reception which the retiring Canadian ambassador received in Paris by the President of France and by the Prime Minister of France when he paid his final call on the leaders of the country. Indeed, Minister Bouchard himself described the situation as serious and as requiring special measures to avoid further deterioration.

My question is: Is the government seized with this, and what steps is it proposing in order to overcome the present unsatisfactory situation?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, our conviction is that the best way to start—I think the only way to start—is to find a means by which to agree on a process for resolving the dispute that engages Canada and France on the fisheries question. That is the purpose of the meeting that is taking place today in Paris.

Senator MacEachen: Honourable senators, I made that point a day or so ago, and at that time the minister was not prepared to say when negotiations on the fisheries and boundaries questions would be resumed. He has now referred to a meeting that is taking place today. Could he give us more details as to the purpose of the meeting, the personnel involved, and its location?

Senator Murray: Honourable senators, there is a meeting taking place in Paris. I am aware that Mr. Yves Fortier from our side is attending and that the meeting is about a process by which to resolve the disputes. I underline the fact that the meeting is about mediation, not arbitration.

In any case, three meetings have taken place in the past month or more on the question of interim fish quotas and on the boundaries dispute. Today's meeting, as I say, is an attempt to agree on a process that will let us resolve the disputes. We are not at this moment agreed on a process.

Senator MacEachen: I find it an interesting comment that Canada and France have not agreed on a process. Am I to take from that statement that the agreement—which was announced more than a year ago, which contained provisions with respect to arbitration of the boundaries dispute and proposals with respect to fish allocations, and which was to last throughout 1987, I believe—has now been abandoned or is not in effect? Are we starting again as if that agreement had no longer any bearing on the situation? The simple question is: Has the agreement, to which Premier Peckford and others took exception, and which we referred to the Committee of the Whole, now fallen to one side?

Senator Murray: Honourable senators, the Leader of the Opposition will be aware that, on October 9, the French broke off negotiations on the compromise containing the terms of reference for international judicial settlement of the maritime boundary around St. Pierre & Miquelon off the south coast of Newfoundland. These negotiations also addressed interim fish quotas for French vessels in Canadian waters for the three- or four-year period involved in obtaining a decision on the boundaries dispute. My note indicates that the French have refused to refer the boundaries dispute to judicial settlement without a fish quota agreement.

Honourable senators, I obtained some notes on this matter in response to a question from Senator van Roggen the other day, and I can tell him that the preference of the Canadian government continues to be the International Court of Justice as the most suitable forum for a judicial settlement of the boundaries dispute. There are other options, including the possibility of an *ad hoc* tribunal of five or seven eminent international jurists, that are also under consideration, but no final decision has been made as to which forum would be the most appropriate for the adjudication of this issue.

In any case, Canada has been telling France for over a year that when it comes to Canadian fisheries management, arbitration is totally unacceptable. Canadian fisheries management, setting fishing quotas in Canadian waters, is the responsibility of the Canadian government, not of a third party.

• (1410)

Senator MacEachen: Honourable senators, I appreciate the force of the comment which the Leader of the Government has made with respect to Canada's authority and prerogative in establishing quotas in Canadian waters. The agreement, which was entered into more than a year ago, provides, as we all recall, for the establishement of fish allocations, including a portion of northern cod which is to be negotiated, and also for the reference of the boundary question to arbitration. My understanding is that it is under the umbrella of that agreement that these negotiations have taken place. It is my further understanding that that agreement expired at the end of 1987, and unless it has been extended it is no longer in effect.

My question is: What is the status of the agreement? Is it not in effect, or is it still a guide or an umbrella for our negotiations between Canada and France?

Senator Murray: Honourable senators, I think it would be prudent to obtain a very precise answer to the question the honurable senator has asked.

Senator MacEachen: Honourable senators, I appreciate that answer. But I return to the question of mediation. It is a fact that the government has replaced our negotiator, Mr. Lorne Clark, who appeared, as we all recall, in the Committee of the Whole, by Yves Fortier—at least, that is the name mentioned by the Leader of the Government—and he will conduct the negotiations. These negotiations have failed up to the present, despite the entry of a fresh, new, non-departmental person. It is as if it were a labour dispute and we were to bring in a person like Bill Kelly to help settle the problem between Canada and France. Because of the intriguing possibilities of mediation, I ask: Who will mediate? Will a third country be brought in to mediate the dispute between Canada and France? I would like to get some intimation, if it is available, as to how that process will unfold.

Senator Murray: That is precisely what is being discussed in Paris today.

Senator MacEachen: Will we ask a third country to mediate?

Senator Murray: A trusted third party, yes.

Senator MacEachen: Are we proposing any candidates—

Senator Frith: Is there a long list or a short list?

Senator MacEachen: —as a trusted third party?

Senator Frith: Who is in the running? What is their political background?

POST-SECONDARY EDUCATION

FEDERAL GOVERNMENT SCHOLARSHIPS—AVAILABILITY IN 1988-89—ALLOCATION OF FUNDS—METHOD OF SELECTION

Hon. John B. Stewart: Honourable senators, on Tuesday last the government dealt with a question that I had asked earlier concerning the new federal government scholarship program. I would like now to ask the Leader of the Government in the Senate, the Minister of State for Federal-Provincial Relations, whether these scholarships will be available to students for the academic year 1988-89, and were the details for the program arranged with the universities directly or through the Council of Ministers of Education?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I am almost certain that the answer to the first part of the question is in the affirmative, but I would like to confirm it, and, at the same time, I shall obtain an answer to the second part of my friend's question.

Senator Stewart: Honourable senators, I have another question, one I am sure that the minister, given his responsibilities, will be ready to answer today. The question is this: Will the undergraduate scholars who are to receive federal scholarship money be selected by boards or committees within the colleges

and universities, or will they be selected by a federal agency such as one of the granting councils?

Senator Murray: Honourable senators, when last I looked that matter had still not been determined.

Senator Stewart: Perhaps the minister could tell us when this will be determined. If the minister is saying that this program is to be in place by the beginning—indeed, well before the beginning—of the academic year, these important administrative arrangements will have to be finalized. Otherwise, the program will be in an ungodly mess.

HUMAN RIGHTS

JAPANESE CANADIANS—GOVERNMENT APOLOGY AND COMPENSATION—GOVERNMENT POLICY

Hon. Jerahmiel S. Grafstein: Honourable senators, yesterday in the Senate of the United States a resolution was passed compensating Americans of Japanese descent for actions taken by the American government from 1940 to 1944, including their incarceration and confiscation of their possessions. You will recall, honourable senators, that Americans of Japanese descent were incarcerated in the United States during the war period to 1944. Thereafter they were released and their possessions were returned. The Senate of the United States has decided to compensate each of those Americans of Japanese descent by payment of $20,000 on an individual compensation basis.

The Leader of the Government in the Senate will recall that since 1984 I have persistently asked whether or not the government will fulfill the promise made by Mr. Mulroney almost four years ago—in June of 1984—when he promised during the election campaign that he would compensate Canadian citizens of Japanese descent and apologize for acts taken by the government during World War II and until 1949, when they were first given an opportunity to vote. Is there any change in government policy?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I have nothing new to report on that matter.

FISHERIES

CANADA-FRANCE RELATIONS—DISPUTE-SETTLEMENT NEGOTIATIONS—STATUS AND POSSIBLE MEDIATION

Hon. Roméo LeBlanc: Honourable senators, when I walked into the chamber this afternoon, slightly late, I heard the word "mediation" being used with regard to the present situation between Canada and France. Because of my sense of humour, I thought this meant that somebody was going to arbitrate the discussions between cabinet ministers and the former ambassador to France to try to decide who had done what. Obviously, it is more serious than that. The suggestion that we call in a third party for arbitration between France and Canada is quite extraordinary.

[Senator Stewart.]

My question is this: Would this person or these persons mediate the boundary issue, the fisheries issue, or would the two items be tied together? I consider it a very serious mistake that these two issues shall be linked together, as was done some months ago.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, those are the matters that are now being discussed in Paris. If I can obtain more precise information on what is on the agenda and what is planned, and if I can properly convey it to the Senate, I will do so within a day or two.

Hon. Royce Frith (Deputy Leader of the Opposition): When you say "those matters," I take it you are saying that the possibility of third party mediation, even by another nation, is included in the considerations?

Senator Murray: Definitely.

PRIVILEGE

Hon. Paul Lucier: Honourable senators, I rise on a question of privilege.

Last night, during the presentation by Senator Molgat on the Meech Lake Accord, I interjected. At that time the debate was concerning an injustice that had been perpetrated on the North by the Prime Minister and the minister responsible for federal-provincial relations. In *Debates of the Senate* dated April 20, 1988, at page 3201, I said:

> We haven't seen Senator Murray or Prime Minister Mulroney in the North since, either!

I want to take a minute of your time to say that I want both Senator Murray and the Prime Minister to know that we would welcome them to the North at any time. Whether we agree with what they say or do at times, I do not think is very important. I want them to know that the tradition in the North has always been that we treat our guests properly, and we will continue to do that if they should come to the Yukon or to the Northwest Territories. I not only say that we would do that, honourable senators, I sincerely invite them, if they have an opportunity, to visit the North.

● (1420)

THE CONSTITUTION

MOTION FOR PROPOSED CONSTITUTION AMENDMENT, 1987—MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

> Resuming the debate on the motion of the Honourable Senator Murray, P.C., seconded by the Honurable Senator Tremblay:
>
> THAT,
>
> WHEREAS the *Constitution Act, 1982* came into force on April 17, 1982, following an agreement between Canada and all the provinces except Quebec;

AND WHEREAS the Government of Quebec has established a set of five proposals for constitutional change and has stated that amendments to give effect to those proposals would enable Quebec to resume a full role in the constitutional councils of Canada;

AND WHEREAS the amendment proposed in the schedule hereto sets out the basis on which Quebec's five constitutional proposals may be met;

AND WHEREAS the amendment proposed in the schedule hereto also recognizes the principle of the equality of all the provinces, provides new arrangements to foster greater harmony and cooperation between the Government of Canada and the governments of the provinces and requires that conferences be convened to consider important constitutional, economic and other issues;

AND WHEREAS certain portions of the amendment proposed in the schedule hereto relate to matters referred to in section 41 of the *Constitution Act, 1982*;

AND WHEREAS section 41 of the *Constitution Act, 1982* provides that an amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by resolutions of the Senate and the House of Commons and of the legislative assembly of each province;

NOW THEREFORE the Senate resolves that an amendment to the Constitution of Canada be authorized to be made by proclamation issued by Her Excellency the Governor General under the Great Seal of Canada in accordance with the schedule hereto.

SCHEDULE
CONSTITUTION AMENDMENT, 1987
Constitution Act, 1867

1. The *Constitution Act, 1867* is amended by adding thereto, immediately after section 1 thereof, the following section:

"**2.**(1) The Constitution of Canada shall be interpreted in a manner consistent with

(*a*) the recognition that the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec, constitutes a fundamental characteristic of Canada; and

(*b*) the recognition that Quebec constitutes within Canada a distinct society.

(2) The role of the Parliament of Canada and the provincial legislatures to preserve the fundamental characteristic of Canada referred to in paragraph (1)(*a*) is affirmed.

(3) The role of the legislature and Government of Quebec to preserve and promote the distinct identity of Quebec referred to in paragraph (1)(*b*) is affirmed.

(4) Nothing in this section derogates from the powers, rights or privileges of Parliament or the Government of Canada, or of the legislatures or governments of the provinces, including any powers, rights or privileges relating to language."

2. The said Act is further amended by adding thereto, immediately after section 24 thereof, the following section:

"**25.**(1) Where a vacancy occurs in the Senate, the government of the province to which the vacancy relates may, in relation to that vacancy, submit to the Queen's Privy Council for Canada the names of persons who may be summoned to the Senate.

(2) Until an amendment to the Constitution of Canada is made in relation to the Senate pursuant to section 41 of the *Constitution Act, 1982,* the person summoned to fill a vacancy in the Senate shall be chosen from among persons whose names have been submitted under subsection (1) by the government of the province to which the vacancy relates and must be acceptable to the Queen's Privy Council for Canada."

3. The said Act is further amended by adding thereto, immediately after section 95 thereof, the following heading and sections:

"*Agreements on Immigration and Aliens*

95A. The Government of Canada shall, at the request of the government of any province, negotiate with the government of that province for the purpose of concluding an agreement relating to immigration or the temporary admission of aliens into that province that is appropriate to the needs and circumstances of that province.

95B.(1) Any agreement concluded between Canada and a province in relation to immigration or the temporary admission of aliens into that province has the force of law from the time it is declared to do so in accordance with subsection 95C(1) and shall from that time have effect notwithstanding class 25 of section 91 or section 95.

(2) An agreement that has the force of law under subsection (1) shall have effect only so long and so far as it is not repugnant to any provision of an Act of the Parliament of Canada that sets national standards and objectives relating to immigration or aliens, including any provision that establishes general classes of immigrants or relates to levels of immigration for Canada or that prescribes classes of individuals who are inadmissible into Canada.

(3) The *Canadian Charter of Rights and Freedoms* applies in respect of any agreement that has the force of law under subsection (1) and in respect of anything done by the Parliament or Government of Canada, or

the legislature or government of a province, pursuant to any such agreement.

95C.(1) A declaration that an agreement referred to in subsection 95B(1) has the force of law may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement.

(2) An amendment to an agreement referred to in subsection 95B(1) may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized

(*a*) by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement; or

(*b*) in such other manner as is set out in the agreement.

95D. Sections 46 to 48 of the *Constitution Act, 1982* apply, with such modifications as the circumstances require, in respect of any declaration made pursuant to subsection 95C(1), any amendment to an agreement made pursuant to subsection 95C(2) or any amendment made pursuant to section 95E.

95E. An amendment to sections 95A to 95D or this section may be made in accordance with the procedure set out in subsection 38(1) of the *Constitution Act, 1982,* but only if the amendment is authorized by resolutions of the legislative assemblies of all the provinces that are, at the time of the amendment, parties to an agreement that has the force of law under subsection 95B(1)."

4. The said Act is further amended by adding thereto, immediately preceding section 96 thereof, the following heading:

"*General*"

5. The said Act is further amended by adding thereto, immediately preceding section 101 thereof, the following heading:

"*Courts Established by the Parliament of Canada*"

6. The said Act is further amended by adding thereto, immediately after section 101 thereof, the following heading and sections:

"*Supreme Court of Canada*

101A.(1) The court existing under the name of the Supreme Court of Canada is hereby continued as the general court of appeal for Canada, and as an additional court for the better administration of the laws of Canada, and shall continue to be a superior court of record.

(2) The Supreme Court of Canada shall consist of a chief justice to be called the Chief Justice of Canada and eight other judges, who shall be appointed by the Governor General in Council by letters patent under the Great Seal.

101B.(1) Any person may be appointed a judge of the Supreme Court of Canada who, after having been admitted to the bar of any province or territory, has, for a total of at least ten years, been a judge of any court in Canada or a member of the bar of any province or territory.

(2) At least three judges of the Supreme Court of Canada shall be appointed from among persons who, after having been admitted to the bar of Quebec, have, for a total of at least ten years, been judges of any court of Quebec or of any court established by the Parliament of Canada, or members of the bar of Quebec.

101C.(1) Where a vacancy occurs in the Supreme Court of Canada, the government of each province may, in relation to that vacancy, submit to the Minister of Justice of Canada the names of any of the persons who have been admitted to the bar of that province and are qualified under section 101B for appointment to that court.

(2) Where an appointment is made to the Supreme Court of Canada, the Governor General in Council shall, except where the Chief Justice is appointed from among members of the Court, appoint a person whose name has been submitted under subsection (1) and who is acceptable to the Queen's Privy Council for Canada.

(3) Where an appointment is made in accordance with subsection (2) of any of the three judges necessary to meet the requirement set out in subsection 101B(2), the Governor General in Council shall appoint a person whose name has been submitted by the Government of Quebec.

(4) Where an appointment is made in accordance with subsection (2) otherwise than as required under subsection (3), the Governor General in Council shall appoint a person whose name has been submitted by the government of a province other than Quebec.

101D. Sections 99 and 100 apply in respect of the judges of the Supreme Court of Canada.

101E.(1) Sections 101A to 101D shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws under section 101 except to the extent that such laws are inconsistent with those sections.

(2) For greater certainty, section 101A shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws relating to the reference of questions of law or fact, or any other matters, to the Supreme Court of Canada."

7. The said Act is further amended by adding thereto, immediately after section 106 thereof, the following section:

"**106A.**(1) The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the Government of Canada after the coming into force of this section in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that is compatible with the national objectives.

(2) Nothing in this section extends the legislative powers of the Parliament of Canada or of the legislatures of the provinces."

8. The said Act is further amended by adding thereto the following heading and sections:

"XII—CONFERENCES ON THE ECONOMY AND OTHER MATTERS

148. A conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once each year to discuss the state of the Canadian economy and such other matters as may be appropriate.

XIII—REFERENCES

149. A reference to this Act shall be deemed to include a reference to any amendments thereto."

Constitution Act, 1982

9. Sections 40 to 42 of the *Constitution Act, 1982* are repealed and the following substituted therefor:

"**40.** Where an amendment is made under subsection 38(1) that transfers legislative powers from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply.

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

(*a*) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(*b*) the powers of the Senate and the method of selecting Senators;

(*c*) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;

(*d*) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province was entitled; to be represented on April 17, 1982;

(*e*) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;

(*f*) subject to section 43, the use of the English or the French language;

(*g*) the Supreme Court of Canada;

(*h*) the extension of existing provinces into the territories;

(*i*) notwithstanding any other law or practice, the establishment of new provinces; and

(*j*) an amendment to this Part."

10. Section 44 of the said Act is repealed and the following substituted therefor:

"**44.** Subject to section 42, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons."

11. Subsection 46(1) of the said Act is repealed and the following substituted therefor:

"**46.**(1) The procedures for amendment under sections 38, 41 and 43 may be initiated either by the Senate or the House of Commons or by the legislative assembly of a province."

12. Subsection 47(1) of the said Act is repealed and the following substituted therefor:

"**47.**(1) An amendment to the Constitution of Canada made by proclamation under section 38, 41, or 43 may be made without a resolution of the Senate authorizing the issue of the proclamation if, within one hundred and eighty days after the adoption by the House of Commons of a resolution authorizing its issue, the Senate has not adopted such a resolution and if, at any time after the expiration of that period, the House of Commons again adopts the resolution."

13. Part VI of the said Act is repealed and the following substituted therefor:

"PART VI
CONSTITUTIONAL CONFERENCES

50.(1) A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once each year, commencing in 1988.

(2) The conferences convened under subsection (1) shall have included on their agenda the following matters:

(*a*) Senate reform, including the role and functions of the Senate, its powers, the method of selecting Senators and representation in the Senate;

(*b*) roles and responsibilities in relation to fisheries; and

(*c*) such other matters as are agreed upon."

14. Subsection 52(2) of the said Act is amended by striking out the word "and" at the end of paragraph (b) thereof, by adding the word "and" at the end of paragraph (c) thereof and by adding thereto the following paragraph:

"(*d*) any other amendment to the Constitution of Canada."

15. Section 61 of the said Act is repealed and the following substituted therefor:

"**61.** A reference to the *Constitution Act 1982,* or a reference to the *Constitution Acts 1867 to 1982,* shall be deemed to include a reference to any amendments thereto."

General

16. Nothing in section 2 of the *Constitution Act, 1867* affects section 25 or 27 of the *Canadian Charter of Rights and Freedoms*, section 35 of the *Constitution Act, 1982* or class 24 of section 91 of the *Constitution Act, 1867.*

CITATION

17. This amendment may be cited as the *Constitution Amendment, 1987.*

And on the motion in amendmnt of the Honourable Senator MacEachen, P.C., seconded by the Honourable Senator Frith, that the motion be amended as follows:

(*a*) in paragraph 1 of the Schedule by deleting subsection 2.(1) and substituting the following therefor:

"**2.**(1) The Constitution of Canada shall be interpreted in a manner consistent with

(*a*) the recognition that the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec, constitutes a fundamental characteristic of Canada;

(*b*) the recognition that Quebec constitutes within Canada a distinct society;

(*c*) the recognition that aboriginal peoples constitute a distinctive and fundamental characteristic of Canada;

(*d*) the recognition of the multicultural nature of Canadian society, and in particular respect for the many origins, creeds and cultures as well as the differing regional identities that helped shape Canadian society; and

(*e*) the recognition of the advantages of developing the Canadian economic union."

(*b*) in paragraph 1 of the Schedule by deleting subsection 2.(2) and substituting the following therefor:

"2(*a*) The role of the Parliament of Canada **to preserve and promote, and the role of the** provincial legislatures to preserve and, **subject to subparagraph (2)(*b*) to promote,** the fundamental characteristic of Canada referred to in paragraph 1(a) is affirmed.

(*b*) The role of a province in relation to promotion applies from the time it is adopted by a resolution of the legislative assembly of that province."

(*c*) in paragraph 2 of the Schedule by deleting section 25 and substituting the following therefor:

"25. Where a vacancy occurs in the Senate, and until an amendment to the Constitution of Canada is made in relation to the Senate pursuant to section 42 of the *Constitution Act, 1982,* the government of Canada shall, within six months after the vacancy occurs, call an election in the province or territory to which the vacancy relates for the purpose of filling that vacancy, and, notwithstanding the provision of section 29 of the *Constitution Act, 1867,* for a term of nine years."

(*d*) in paragraph 6 of the Schedule by deleting subsections 101C.(1) and (2) and substituting the following therefor:

"**101C.**(1) Where a vacancy occurs in the Supreme Court of Canada, the government of each province **and the elected government of each territory** may, in relation to that vacancy, submit to the Minister of Justice of Canada the names of any of the persons who have been admitted to the bar of that province **or territory** and are qualified under section 101B. for appointment to that court."

(2) **Subject to subsection (5),** where an appointment is made to the Supreme Court of Canada, the Governor General in Council shall, except where the Chief Justice is appointed from among members of the Court, appoint a person whose name has been submitted under subsection (1) and who is acceptable to the Queen's Privy Council for Canada."

(*e*) in paragraph 6 of the Schedule by adding immediately after subsection 101C.(4) the following:

"(5) Where an appointment is made in accordance with subsection (2) and, if within a period of three months, no name which has been submitted under subsection (1) is acceptable to the Queen's Privy Council for Canada, the Chief Justice may make an interim one-year appointment from among justices of the Federal Court of Canada or provincial Superior Courts."

(*f*) in paragraph 7 of the Schedule by deleting subsection 106A.(1) and substituting the following therefor:

"**106A.**(1) The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the **Parliament** of Canada after the coming into force of this section, in an area of exclusive provincial jurisdiction, if the province carries on a **compatible program which meets minimum national standards.**"

(*g*) by deleting paragraphs 9, 10, 11 and 12 of the Schedule and substituting the following therefor:

"9. Sections 40 to 42 of the *Constitution Act, 1982* are repealed and the following substituted therefor:

40. Where an amendment is made under subsection 38(1) that transfers legislative powers from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply.

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

(*a*) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(*b*) the right of a province of a number of members in the House of Commons not less than the number of Senators by which the province was entitled to be represented on April 17, 1982;

(*c*) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;

(*d*) subject to section 43, the use of the English or the French language;

(*e*) the Supreme Court of Canada; and

(*f*) an amendment to this Part.

42.(1) An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with subsection 38(1):

(*a*) the powers of the Senate and the method of selecting Senators; and

(*b*) the number of members by which a province or territory is entitled to be represented in the Senate and the residence qualifications of Senators.

(2) Subsections 38(2) to (4) do not apply in respect of amendments in relation to matters referred to in subsection (1)."

"**42A. Notwithstanding subsection 42(1) of the *Constitution Act, 1982*, the establishment of new provinces and the extension of existing provinces into territories shall be a matter exclusively for the Governor General in Council and the elected government of the territory affected.**"

(*h*) in paragraph 13 of the Schedule by deleting subsection 50.(2) and substituting the following therefor:

"(2) The conferences convened under subsection (1) shall have included on their agenda the following matters:

(*a*) the aboriginal and treaty rights of the aboriginal peoples of Canada, including self-government;

(*b*) Senate reform, including the role and functions of the Senate, its powers, the method of selecting Senators and representation in the Senate;

(*c*) roles and responsibilities in relation to fisheries **at the first meeting only;** and

(*d*) such other matters as agreed upon."

(*i*) by deleting paragraph 16 of the Schedule and substituting the following therefor:

"**16. Nothing in the *Constitution Amendment, 1987* derogates from any of the rights and freedoms guaranteed by the *Canadian Charter of Rights and Freedoms* or affects Part II of the** *Constitution Act, 1982.*"—(*Honourable Senator Murray*).

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, let me first congratulate and thank honourable senators who have participated in what has been, for me at any rate, an extremely interesting and stimulating debate on a very important subject.

Let me single out, if I may, the speech made by our newest senator, Senator Gerry Ottenheimer from Newfoundland.

Hon. Senators: Hear, hear!

Senator Murray: He made an excellent speech, delivered in both of our official languages, from the perspective of considerable experience in politics and government in his province. He also revealed an admirable national vision.

Senator Ottenheimer is the first senator to have been appointed to this place under the interim process of the Meech Lake Accord, and I may say that if the process produces many senators of his high quality, then Parliament and the country will be the winners from Meech Lake.

Hon. Senators: Hear, hear!

Senator Murray: Speaking in the Committee of the Whole on March 31, Senator MacEachen described something I had said as "apocalyptic." The word kept coming back to my mind as I listened to the debate in the last couple of days—the word "apocalyptic" in its dictionary sense of "an impending grand or violent event." It kept coming back to me, especially when I heard the rhetoric about diarchy, massive transfers of authority and even about counter-revolution in this debate. I must say it is to wonder whether this is the same Meech Lake Accord that John Turner says that he is on the right side of history in supporting and Senator Royce Frith says that he finds nothing in it that he likes. I wonder, in listening to those two former senior public servants, Senator Pitfield and Senator Kirby, now become prophets of doom, whether the Meech

Lake Accord in which they see the impending disintegration of our country is the same Meech Lake Accord that Gordon Robertson, J. W. Pickersgill, Eric Kierans and so many others applaud.

Senator Frith: The answer is: Yes, it is the very same one. It is precisely that.

Senator Murray: What is it that inspires such holy terror on the part of some honourable senators? Well, it is the "distinct society-linguistic duality" interpretation clause in our Constitution. Yesterday our colleague, Senator Flynn, dealt very concisely in one or two sentences with the role of an interpretative clause in our Constitution. Where there is a substantive provision in the Constitution that is ambiguous, that is not clear enough, then the interpretative clause can be brought into play to shed some light on that ambiguity or that lack of clarity. Yet, honourable senators are terrified of it. They say they do not know what "distinct society" means, and yet they voted for it—they voted for its inclusion in the Constitution at the Liberal conference of 1986.

Some of them say, as Senator Marsden said, "Oh, yes, we agree that Quebec is distinctive," and "Oh, yes, we agree that Quebec's distinctiveness must be protected," but they do not want to put it into the Constitution or, if they do want to put it in the Constitution, they insist that it be absolutely meaningless, void of all meaning or significance.

An Hon. Senator: What is the government's definition of "distinct society"?

Senator Murray: I do not mean any personal offence by this, but I cannot help but remark that in some of the speeches I heard in the last day or two there runs not far beneath the surface a real paranoia about Quebec.

Some Hon. Senators: Hear, hear!

Senator Murray: I really wonder on the basis of what folklore some honourable senators and their gifted sons, Senator Grafstein, have formed their impressions of Quebec society.

Hugh MacLennan's phrase, "Two Solitudes," kept coming back to me as I heard some of the speeches that were delivered in the course of this debate and the underlying fear of Quebec and Quebec society.

An Hon. Senator: Come on!

[*Translation*]

Honourable senators, my friends opposite are suggesting an amendment that would exempt the Charter of Rights and Freedoms from the Agreement. What they want, in fact, is to have the Charter interpreted in accordance with our multicultural heritage and native rights under sections 25 and 27 of the Charter but not in accordance with the reality that Quebec constitutes a distinct society within Canada. I do not think that the Charter would thus reflect the true character of Canada.

The new provision on the distinct society would only be a symbolic gesture, meaningless for Quebec. The Liberals make this proposal although the Right Honourable John Turner

himself said in the other place that there was no conflict between the "distinct society" provision and the Charter of Rights and Freedoms.

[*English*]

Liberal senators know that the Government of Quebec would never accept, and that this government would never propose, that the "distinct society" clause be void of meaning. The reason is clear.

An Hon. Senator: What does it mean?

Senator Murray: Legal experts tell us that in interpreting the Charter the courts already take into account different social realities, be they those of Quebec or of Cape Breton. The Quebec government—

Senator Frith: Don't bother putting it in!

Senator Murray: —can already use Quebec's distinctiveness in the context of a section 1 argument of the Charter, and the courts have taken this into account in rendering their decisions. Our legal advisers point, as a matter of example, to the Protestant School Board case in this respect.

The "distinct society" clause put in the Constitution gives Quebec the added assurance that this reality will continue in the future. In this way the accord makes explicit what has been an implicit presumption of judicial interpretation. To have exempted the Charter from the application of the "distinct society" clause would have meant a loss for Quebec vis-à-vis the *status quo*. Quebec would have been left with less than it had before Meech Lake.

Senator Frith: What?

Senator Murray: Is it realistic to expect that the wounds of 1982 could be healed in this fashion?

Honourable senators, we hear Senator Marsden expressing grave fears about the interpretation clause overriding fundamental rights and freedoms, and Senator Wood asserting that Meech Lake would enable Quebec to prohibit bilingual signs. Honourable senators, the power of any provincial legislature to curtail rights and freedoms set out in our Charter arises not from this accord but from the "notwithstanding" clause which the previous government agreed should be part of the Charter of Rights.

Senator Frith: Which you did not negotiate out!

Senator Murray: I heard Senator Kirby the day before yesterday, and Senator McElman last night, stating that the Liberal Party was against, and continues to be against, the "notwithstanding" clause.

What revisionist history is this? What is it doing there if they were against it? They brought it to Parliament and they got it through Parliament. The answer is that the "notwithstanding" clause is part of the enormous compromise that Mr. Trudeau had to make in order to secure patriation of the Constitution.

Some Hon. Senators: Hear, hear!

• (1430)

Senator Murray: In order to secure patriation of the Constitution, he allowed provinces the power to override the Charter.

And what about the rest of the compromise? Part of it had to do with minority language rights. I heard Senator Kirby the day before yesterday asserting that Ontario and New Brunswick had shared what he called the federal government's bilingual vision in 1981-82. How I wish it were true. New Brunswick signed on, but Ontario never signed on, and neither did any other province sign on to the entrenchment of minority language rights in our Constitution.

But, you know, Mr. Trudeau had a judgment call to make, and the question was: "If I cannot get minority language rights entrenched in that Constitution, should we put off patriation until we can get it done?"; and his answer was, "No."

When I hear Senator Kirby and Senator Molgat raising the Saskatchewan situation and blaming it on the Meech Lake Accord, well, in the context of disappointed expectations, I can accept that argument from someone like Jean-Robert Gauthier, who voted against the 1982 exercise precisely because, in his view, it abandoned the minority language groups. But coming from senators who were actively associated with the passage of the 1982 exercise it absolutely lacks credibility.

Honourable senators, the essence of the argument that is used by Senator Kirby and Senator Molgat and others is that we should have kept Quebec out until we had entrenchment of minority language rights agreed to. We should have kept Quebec out, others say, until we had aboriginal rights settled. We should have kept Quebec out now, according to their amendment, until we get the advantages of the development of the Canadian Economic Union—another hobby horse of my honourable friend, Senator Kirby—until we got that agreed to.

Honourable senators, will someone tell me—I ask the question in a rhetorical way, because I do not have time to discuss the answer—

Senator Frith: We might not take it rhetorically. Give us a chance to answer.

Senator Murray: I have until 3 o'clock. You can take the time after I have finished. Will someone tell me how the interests of minority language groups are served by the constitutional isolation of Quebec? How are the interests of our aboriginal peoples served by the isolation of Quebec? The truth of the matter is that the absence of Quebec from the table—

An Hon. Senator: Nonsense!

Senator Murray: —is inimical to the interests of minority language groups, and it is hardly less inimical to the interests of aboriginal peoples, as we found in the constitutional conferences of 1985 and 1987, when the absence of Quebec was one of the factors that led to our failure to achieve a consensus and to achieve an amendment of self-government for our aboriginal peoples.

An Hon. Senator: Right on!

Senator Murray: Honourable senators, it is clear to me, from the amendments that have been proposed, that the Liberal senators do not agree that the highest priority should be attached to the repatriation of Quebec to our constitutional family before moving on to other constitutional issues. It is ironic, it seems to me, that this is the case, since some of those same honourable senators were at the source of Quebec's isolation in the first place. Their amendments today would make Quebec's return contingent upon achieving Senate reform. They have an amendment that would provide for the election of senators for a nine-year term. Where is the evidence that the 11 signatories to this accord would readily accept such fundamental changes now? Yet they would put off Quebec's reintegration into the constitutional family in order to achieve that.

Honourable senators, there has been an agreement since August 1986 that Senate reform is a second round issue, and the terms of the Meech Lake Accord fully reflect the distinction that the First Ministers have made between the Quebec round and the second round.

Then, honourable senators, we turn to the doomsday scenarios about the Meech Lake provisions on the spending power. What does the Meech Lake decision on the spending power do? As Mr. Pickersgill has pointed out, it affirms for the first time, in a constitutional sense, the power of Parliament to spend in areas of exclusive provincial jurisdiction. What we are talking about here is the new régime for new national shared-cost programs in areas of exclusive provincial jurisdiction.

I say in passing that the example the Honourable Leader of the Opposition cited the other day—the new national anti-pollution program—does not qualify, since the environment can hardly be said to be a matter of exclusive provincial jurisdiction.

[*Translation*]

The Trudeau government proposed in 1968 and again in 1978 and 1979 that the consent of a majority of the provinces with a majority of the population would be required before the federal government could implement a new joint program.

[*English*]

It was a consent mechanism that Mr. Trudeau proposed, a consent mechanism of a majority of the provinces with a majority of the population before the federal government could even launch a new shared-cost program.

Honourable senators, it was quite a bogey that Senator MacEachen raised on Monday in suggesting it would be impossible under Meech Lake for the national government ever to launch a program such as Medicare. I say it would have been a lot more difficult for the federal government to negotiate Medicare under Mr. Trudeau's consent mechanism, and probably a lot more expensive as well.

I also want to note in passing that in their years in office my friends opposite never included standards in a shared-cost program. I draw honourable senators' attention to the following passage in the joint committee's report:

> There will inevitably be federal-provincial negotiations leading up to the establishment of any such program. Such negotiations are as likely in future to result in a reasonable compromise on such programs as has been the

case in the past. Thus, standards, conditions or criteria could well form part of the program approved by all the governments.

Honourable senators, let us remember that, although there is a national framework for health care in Canada, there are, in fact, ten separate provincial programs that vary in a number of respects. In some provinces the provincial share of the cost is covered by the Consolidated Revenue Fund; in others there is a monthly premium paid by individuals who earn more than a basic monthly income; in some provinces ancillary services are covered. But all provinces respect the national objectives of universality, accessibility and portability. In short, the national objectives are met in Medicare notwithstanding provincial variations in methods of provincial financing, administration and ancillary services.

Medicare could have been established under the Meech Lake Constitutional Accord. Parliament would still have the right to offer financial inducements. Public opinion, when the time is ripe to introduce a program, would still operate. All provinces, whether officially opted in or carrying out their own programs or initiatives, would receive financial support from Parliament if their programs or initiatives are compatible with the national objectives. But the new provision on the spending power will place a higher premium on cooperation and intergovernmental negotiations. In doing so, it will lower the risk too frequently encountered in the past of sudden, unilateral federal changes in conditions and funding that present special hardships for the smaller provinces.

I heard the day before yesterday Senator Stewart's apprehensions on the spending power and what that would do to the poorer provinces. I say to him that a lot more damage has been done to the poorer provinces by the exercise of unilateral actions by the federal government in cutting back on revenue guarantees, unilaterally imposing caps, maximums and ceilings on the federal contribution to shared-cost programs. A lot more damage has been done to the poorer provinces by that kind of provision than could ever be done by this kind of provision. In fact, I say that this new process will make it far less likely that a federal government will be able to do that sort of thing and get away with it.

● (1440)

Honourable senators, let me say a word about the amending formula. Senator Tremblay spoke of it last evening in some detail. The general amending formula requiring the consent of Parliament and seven provinces with 50 per cent of the population is still with us. We have added some subjects to the list of matters that will require unanimity. Senator Tremblay mentioned proportional representation last evening. I say to that: Why not, because it is one of the fundamental things about our democracy?

To Senator McElman, who worries about the effect of unanimity on smaller provinces and poorer provinces, I say that there is the Senate floor that protects the representation from the provinces in the House of Commons from falling beneath a certain minimum that is covered by the unanimity rule. I say to him: Who does the unanimity rule protect there if it is not the smaller provinces?

Senator Kirby and others have said that Senate reform will be impossible under the Meech Lake Accord. I say to him and to those others that it is my conviction that Senate reform is impossible so long as Quebec is not at the table, and I ask the question whether it is a good thing for Confederation to have a situation in which a province—or perhaps three provinces—can have their representation in the Senate reduced without their consent. Senator Kirby clearly thinks it is all right. Indeed, nothing comes through more clearly from what he said in his speech the other day and from his view of what a reformed Senate should look like than that he and others in this place would be perfectly willing to reduce the representation of Quebec, for example, in the Senate without Quebec's consent. I say to honourable senators that you do not do things that way any more.

Some Hon. Senators: Hear, hear!

Senator Murray: The creation of new provinces will change the working of the amending formula, and the change in the amending formula requires unanimity, so why not the creation of new provinces and why, as Senator Macquarrie pointed out the other day, quoting Professor Tom Courchesne:

> Should the richer provinces of Ontario, Alberta and British Columbia have the veto over the creation of new provinces when the poorer provinces, which might be affected financially by this, have no veto?

Honourable senators, our colleague, Senator Pitfield, in his speech the other day paraphrased that old cliché of Lord Durham's about two nations warring in the bosom of a single state. Perhaps this is a timely moment to comment on the charges by him and by Senator Kirby that the accord somehow affirms the compact theory of Confederation. What is being affirmed through the Meech Lake Accord is not the compact theory but a vision of cooperative federalism that is deeply Canadian, but anathema to the government that Senator Pitfield and Senator Kirby served. What is being rejected is not a strong central government, for there is no change to the division of powers through Meech Lake. What is being rejected is a unilateral and confrontational approach to governing Canada—an approach that betrays the federal vision and only breeds division and distrust.

It is illuminating that this is the same accord which Mr. John Turner has said is good for Canada and good for Quebec. Mr. Turner is, indeed, on the right side of history, as he said on June 4, because he knows that far from leading to the compact theory, the accord is based on a vision of partnership and interdependence in the federation. I suspect that Mr. Turner supports the accord, because he, too, rejected the unilateral and confrontational approach espoused by Senator Kirby and his former leader—and as he, Mr. Turner, indicated in a speech in Vancouver on August 1, 1984, during the course of his election campaign, when he said:

> I am going to give you a strong national government that yet respects the provincial jurisdiction and the impetus of

> the regions. And I want to say that if we do work together and that if we do pull together, I believe that we can realize the potential that we all thought we had.

How foreign to the vision of Canada espoused by Senator Kirby and Mr. Trudeau! This accord is concrete affirmation that this government, too, rejects the unilateralism of the 1980s—the National Energy Program, for example, and we all know what Mr. Turner said about that when he was in private practice—and that this government stands for a new sense of partnership. Nor does the Meech Lake Accord lead to "two nations," as Mr. Turner himself said in the other place on September 29.

Honourable senators, Senator Kirby talks about two visions of Canada. However, it is not a Liberal vision and a Conservative vision that he has in mind. The two visions of Canada that he refers to are two visions of Canada warring within the bosom of a single political party, namely, the Liberal Party of Canada.

Some Hon. Senators: Hear, hear!

Senator Murray: We have the Right Honourable John Turner and his colleagues in the House of Commons sharing one vision of Canada and we have the gang of 81 reunited here in the Senate of Canada.

Some Hon. Senators: Hear, hear!

[*Translation*]

Senator Murray: Honourable senators, the amendments proposed by the Opposition would require the governments to reopen practically all the sections of an agreement that has unanimous support.

[*English*]

I suggest that those who propose such amendments are not seeking to improve the accord, as they claim. The amendments being proposed are killer amendments. They have one purpose in mind—they are designed to kill the accord. And for some Liberal senators, even those killer amendments are "far from being adequate"—as our colleague Senator Kirby told the press the other day.

[*Translation*]

Honourable senators, the government is not prepared to jeopardize the opportunities for national reconciliation and constitutional progress that the Agreement represents by reopening the negotiations. The government shares the conviction of Mr. Gordon Robertson, former Secretary of the Cabinet, Senator Kirby's and Senator Pitfield's distinguished predecessor, who stated before the joint committee:

> . . . it seems quite unlikely . . . that a better agreement than the present one could be negotiated.

[*English*]

Finally, honourable senators, I leave you with a word from the premier of the smallest province in our country, Premier Joe Ghiz of Prince Edward Island, who played a key and very honourable role in the Meech Lake process. Speaking the other day to the Institute of Island Studies at the University of Prince Edward Island, he said:

> I should say that I envy somewhat those people—perhaps including some on the panel before me—who can address the Accord on the basis of what it might have been or how it can be improved in some theoretical fashion. I envy them because I enjoy the challenge and freedom of debate. As a First Minister living in these times I am, however, somewhat constrained by reality. The real-life challenge before me and other First Ministers is to heal the wrongs of the past and restore a sense of belonging and partnership to the people of Quebec who felt betrayed by the way the 1982 Act came into being. I am constrained by the fact the Accord is the product of an extraordinarily complicated series of negotiations, is the result of goodwill and generosity of spirit, and is the beneficiary of a certain amount of good fortune in that a complex puzzle of elements came together with success. Having gone through the experience, Mr. Chairman, I am constrained by the knowledge that if the Accord is reopened to deal with a threat which the weight of evidence says does not exist or is very remote, then the country will be exposed to almost certain political and social harm. This harm will come from denying Canada future constitutional evolution and from the alienation that will grow in Quebec.

Those were the words of Premier Ghiz of Prince Edward Island.

Senator Frith: Pretty apocalyptic stuff, that!

Senator Murray: Honourable senators, there is no pragmatic reason to reopen the accord, if it is not to be scuttled, since many of the changes sought will be easier to achieve in future than in the present context. I submit that there is no morally justifiable reason to do so either. Quebec was the only party left isolated in 1982, unlike a number of those now seeking changes.

Senator Buckwold: Down with provincial vetos!

Senator Murray: I now invite all honourable senators to unite in ending that isolation and unblocking the process of constitutional reform by ratifying this accord unamended.

Some Hon. Senators: Hear, hear!

● (1450)

Senator Frith: Oh, come on—take a bow, for goodness' sake.

MOTION IN AMENDMENT ADOPTED

The Hon. the Speaker: Honourable senators, as it is now 3 o'clock, pursuant to the Order of this house we shall proceed to the vote on the motion in amendment of the Leader of the Opposition. It is moved by the Honourable Senator MacEachen—

Some Hon. Senators: Dispense!

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators.

• (1500)

The Hon. the Speaker: The doors of the chamber will now be locked.

Motion in amendment carried on the following division:

YEAS

THE HONOURABLE SENATORS

Adams	LeBlanc (*Beauséjour*)
Anderson	Lefebvre
Austin	Lewis
Bosa	Lucier
Buckwold	MacEachen
Cools	Marchand
Corbin	Marsden
Cottreau	McElman
Davey	Molgat
De Bané	Neiman
Denis	Olson
Frith	Petten
Gigantès	Riel
Grafstein	Rizzuto
Graham	Robichaud
Guay	Stanbury
Haidasz	Steuart (*Prince Albert-Duck Lake*)
Hays	Stewart (*Antigonish-Guysborough*)
Hébert	Stollery
Hicks	Turner
Kenny	Watt—47.
Kirby	
Kolber	
Lang	
Langlois	
Leblanc (*Saurel*)	

NAYS

THE HONOURABLE SENATORS

Asselin	Barootes
Atkins	Bazin
Balfour	Bélisle
Bielish	Marshall
Cochrane	Muir
Cogger	Murray
David	Ottenheimer
Doyle	Phillips
Flynn	Roblin
Kenny	Rossiter
MacDonald (*Halifax*)	Sherwood
Macdonald (*Cape Breton*)	Simard
Macquarrie	Spivak
	Tremblay
	Walker—28.

ABSTENTIONS

THE HONOURABLE SENATORS

Nil

Hon. Gildas L. Molgat: Honourable senators, Senator Fairbairn, who is unavoidably absent for medical reasons, has asked me to report that had she been present she would have voted in favour of the motion in amendment.

Hon. Jacques Flynn: Honourable senators, I move—

Senator Frith: What, in the middle of a vote?

Senator Flynn: I move, seconded by Senator Roblin:

That the motion as amended be further amended by adding after the last line the following paragraph:

That a Message be sent to the House of Commons to acquaint that House that the Senate has authorized the proclamation of an amendment to the Constitution in the terms of the above schedule and to which it desires their concurrence; the Senate adds however that if the House should not concur the Senate does not oppose the proclamation of an amendment to the Constitution in the terms of the resolution which the House has adopted on the 26 of October, 1987, if the House hereafter again adopts the said same resolution.

[*Translation*]

Hon. Azellus Denis: Could you read the French version, please?

Senator Flynn: Here is the French version:

Que la motion telle qu'amendée soit de nouveau amendée en ajoutant après la dernière ligne le paragraphe suivant:

Qu'un message soit transmis à la Chambre des communes pour l'informer que le Sénat a autorisé la proclamation d'une modification de la Constitution dans les termes de l'annexe ci-dessus et à laquelle il désire son agrément.

Le Sénat ajoute toutefois que si la Chambre décidait de ne pas indiquer cet agrément, le Sénat ne s'oppose pas à la proclamation d'une modification à la Constitution dans les termes de la résolution que la Chambre a adoptée le 26 octobre 1987, si cette dernière préfère adopter de nouveau ladite même résolution.

[*English*]

Senator Frith: Honourable senators, on a point of order, this motion is clearly out of order. Apart from its other weaknesses and apparent weaknesses, which would be there even it were made at an appropriate time, if such exists, it is clearly an inappropriate time now, because we are operating under a house Order that says:

> That no later than three o'clock p.m. on Thursday next, 21st April, 1988, the Speaker shall interrupt the proceedings and put all questions necessary to dispose of the main motion and any amendments thereto.

At three o'clock p.m. today there was only one amendment, and we voted on that amendment. I suggest that Your Honour put the motion that he announced he was going to put, in accordance with the house Order. This motion is clearly out of order. I expect it would be out of order even later for other reasons, but it clearly is out of order now.

Senator Flynn: The house Order speaks only of deliberation.

Senator Frith: No, it does not. It does not say anything about that.

Senator Flynn: Yes, it does. The Speaker has to "put all questions necessary." The motion does not say "questions put before the Senate at that time."

Senator Frith: It says, "questions necessary to dispose of the main motion and any amendments thereto."

Senator Flynn: In any event, your objection is very easily understood. You are afraid and you lack courage.

Senator Frith: Honourable senators, this has nothing whatever to do with courage; it is a point of order. I do not know how courage comes into it. I suppose Senator Flynn thinks he is very courageous. Let me say simply that the question of courage is also out of order and has nothing to do with the fact that this is a disorderly motion.

Senator Corbin: Put the question on the motion, as amended!

The Hon. the Speaker: Honourable senators, in *Debates of the Senate* of April 19, 1988, Senator Phillips' motion said, in part:

> That any recorded division demanded on any amendment proposed to the said motion be deferred until the conclusion of the debate on the said motion; and
>
> That no later than three o'clock p.m. on Thursday next, 21st April, 1988, the Speaker shall interrupt the proceedings—

I am in a bit of a quandary here. At 3 p.m. today we were debating Senator McEachen's amendments, and I think that prohibited Senator Flynn from introducing a motion. On the other hand, it was agreed that we would vote on the main motion.

Senator Frith: Your Honour, you must proceed with the house's Order that has asked you to do what you are doing.

Senator Flynn: Your Honour, I suggest that when in doubt you have to allow the motion to be put, unless the Senate decides that they want to impose closure.

Senator Frith: Honourable senators, perhaps I should remind you that the motion that established the house Order was a motion by the government.

Some Hon. Senators: Hear, hear!

Senator Flynn: That does not change the meaning.

Senator Frith: No, it does not change anything for you.

Senator Molgat: Honourable senators, on a point of order, Senator Flynn could have moved his amendment previously. There was only one amendment before the Senate. There was a possibility of a second, sub-amendment, had he wanted to move it. Therefore, it is incorrect to say that he did not have an opportunity to move it. He could have added it on to the proposed amendment in exactly the same way.

• (1520)

The Hon. the Speaker: In my opinion, honourable senators, we will have to vote on the main motion.

Some Hon. Senators: As amended!

The Hon. the Speaker: It is moved by the Honourable Senator Murray, seconded by the Honourable Senator Tremblay—

Some Hon. Senators: Dispense!

Senator Frith: This is as amended.

The Hon. the Speaker: Yes, I said that in the first instance, but not in the second.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators who are against the motion, as amended, please say "nay"?

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

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

Senator Frith: We are all here.

The Hon. the Speaker: Let the doors be locked.

Senator Petten: Ring the bell!

Hon. Charles McElman: Honourable senators,—

Senator Flynn: You cannot intervene.

Senator McElman: I am not intervening. The bells do have to ring, however briefly, but they have to ring. There are senators who are not in their seats.

Senator De Bané: I believe Senator Simard left the chamber for a couple of minutes.

The Hon. the Speaker: Let the doors be opened. Please call in the senators.

The Hon. the Speaker: Let the doors be locked.

Motion, as amended, carried on the following division:

YEAS

THE HONOURABLE SENATORS

Adams	LeBlanc (*Beauséjour*)
Anderson	Lefebvre
Austin	Lewis
Bosa	Lucier
Buckwold	MacEachen
Cools	Marchand
Corbin	Marsden
Cottreau	McElman
Davey	Molgat
De Bané	Neiman
Denis	Olson
Frith	Petten
Gigantès	Riel
Grafstein	Rizzuto
Graham	Robichaud
Guay	Stanbury
Haidasz	Steuart (*Prince Albert-Duck Lake*)
Hays	Stewart (*Antigonish-Guysborough*)
Hébert	Stollery
Hicks	Turner
Kenny	Watt—47.
Kirby	
Kolber	
Lang	
Langlois	
Leblanc (*Saurel*)	

NAYS

THE HONOURABLE SENATORS

Asselin	Doyle
Atkins	Flynn
Balfour	Kenny
Barootes	MacDonald (*Halifax*)
Bazin	Macdonald (*Cape Breton*)
Bélisle	Macquarrie
Bielish	Marshall
Cochrane	Muir
Cogger	Murray
David	Ottenheimer
Phillips	Sherwood
Roblin	Simard
Rossiter	Spivak
	Tremblay
	Walker—28.

ABSTENTIONS

THE HONOURABLE SENATORS

Nil

[*Translation*]

MESSAGE TO COMMONS—PROPOSED MOTION

Hon. Jacques Flynn: Honourable senators, I move, seconded by Senator Roblin, that a message be sent to the House of Commons in the same terms as the motion I presented previously. Shall I dispense?

● (1530)

[*English*]

Hon. Allan J. MacEachen (Leader of the Opposition): Can we have copies of the motion?

The Hon. the Speaker: This is a motion by Senator Flynn, seconded by Senator Roblin, that a Message be sent to the House of Commons adding after the last line the following paragraph:

> That a Message be sent to the House of Commons to acquaint that House that the Senate has authorized the proclamation of an amendment to the Constitution in the terms of the above schedule and to which it desires their concurrence; the Senate adds however that if the House should not concur the Senate does not oppose the proclamation of an amendment to the Constitution in the terms of the resolution which the House has adopted on the 26 of October, 1987, if the House hereafter again adopts the said same resolution.

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

Senator MacEachen: Honourable senators, before you put the motion, which has not yet been put, I wish to raise a point of order with respect to the acceptability of the motion. In order to really advance the point of order, I think we need some clarification from the mover and the seconder.

As I read the proposed motion, Senator Flynn, seconded by Senator Roblin, is moving, if it is put:

> That a Message be sent to the House of Commons to acquaint that House that the Senate has authorized the proclamation of an amendment to the Constitution in the terms of the above schedule . . .

Here I take it for granted that "the above schedule" is the amended resolution—

Senator Flynn: Obviously!

Senator MacEachen: —which contains the amendments which have been proposed and carried on this side of the house and opposed by the government, and amendments which the Leader of the Government called "killer amendments," on which there is now a motion asking that a Message be sent to the House of Commons asking the House of Commons to concur in the "killer amendments."

Senator Frith: That is what it says.

Senator Flynn: That is what it says.

Senator Frith: That is what Senator Flynn wants to do!

Senator MacEachen: Am I understanding it correctly?

Senator Flynn: The Senate itself, yes. But it was not adopted on division.

Senator MacEachen: But the Senate is now asking the House of Commons to accept the amendments.

Senator Frith: He is asking the Senate to do that; that is right.

Senator Flynn: That is the effect of the decision of the Senate.

Senator MacEachen: But it is not the effect that we are asking for now. There is a new motion in which Senator Flynn, seconded by Senator Roblin, is now requesting, having voted against these amendments, that they should be sent to the House of Commons with the request from the Senate that the House of Commons concur in the "killer amendments."

Senator Flynn: You don't want that?

Senator MacEachen: That is what is said.

Senator Frith: That is what it says.

Senator MacEachen: I would like to know if Senator Murray would support that motion to ask the House of Commons to concur in that.

Senator Frith: Yes; the "killer amendments"! Let's hear it!

Some Hon. Senators: Hear, hear!

Senator Frith: Yes, you now want the House of Commons to concur in them.

Senator MacEachen: Not only that, but you voted against them at first, whereas now you would be voting for them. That is the first—

Senator Flynn: Are you on a point of order?

Senator Frith: Yes, he is on that point of order.

Senator MacEachen: Yes, I am on a point of order.

Senator Flynn: If you are on a point of order, don't discuss the motion itself. Don't discuss the substance.

Senator Frith: What do you mean? What should he discuss? The price of tea in China? He is discussing whether the motion is in order or not. Why is he not allowed to discuss the motion?

Senator Flynn: A point of order is not as to the meaning of the motion; we can discuss that!

Senator Frith: A lot of bizarre stuff today!

Senator MacEachen: Honourable senators, I have been asking for clarification of the first portion of the motion, and it is now clear that Senator Flynn is asking the Senate to adopt a motion which would request the House of Commons to concur in the schedule, namely, the amended motion, which includes the so-called "killer amendments."

Senator Frith: That is right.

Senator MacEachen: That's the first clarification, and he says "yes" to that.

Senator Frith: Senator Murray says "yes" to that?

Senator Murray: The Message is going anyway.

Senator Frith: Yes? Good! But you are asking for concurrence in it.

Senator Murray: He is noting what you did.

Senator Frith: Do we have something of the road to Damascus—a change of heart?

• (1540)

Senator MacEachen: I do not say that Senator Flynn's motion said, "to take note of the amendments," but now the Senate, presumably supported by the government members—

Senator Frith: And the government leader.

Senator MacEachen: —and the Leader of the Government, is asking the House of Commons to accept amendments which they themselves refused to accept, because the wording is:

> That a Message be sent to the House of Commons to acquaint that House that the Senate has authorized the proclamation of an amendment to the Constitution in the terms of the above schedule

—namely, the amended resolution—

> and to which it

—namely, the Senate—

> desires their concurrence;

So, suddenly we have it clarified that the government, including the Leader of the Government, even though he would refuse to vote for the "killer amendments," would send them to the House of Commons and ask the House of Commons to support them. That's the motion.

Senator Frith: It's the government representative in the Senate, the minister in charge, who wants to do that.

Senator MacEachen: I go now to the next part, which says:

> the Senate adds

—we are asked to add—

> however that if the House of Commons should not concur—

Well, I ask the question: Will the House of Commons have an opportunity to concur? In other words, will the government undertake to put a motion before the House of Commons asking the House of Commons to concur in the "killer amendments"? I want to find out—

Senator Frith: This question is not rhetorical, as yours were.

Senator MacEachen: —whether the government will undertake, "if the House of Commons should not concur—"

Senator Flynn: This is my motion. The Leader of the Opposition is arguing on the meaning of the motion. He is arguing, in a way, against the motion rather than on the point of order. You may make jokes. Your people are bound to laugh. They are obliged to find you funny, but you are not as funny as you think, or as you sound.

Senator Frith: And you are a lot funnier than you think you are.

Senator MacEachen: There may be an element of amusement arising from the content of Senator Flynn's motion, seconded by Senator Roblin, but there is a very important procedural point here which is related to my point of order: namely, is it proper to put any motion to which there is attached the condition, the hypothetical, "if the House of Commons should not concur"? Only the government would be able to put a motion seeking concurrence. So I am saying that there is a hypothetical condition, namely, that a motion would go before the House of Commons, put by the government, asking the House to concur in these amendments—which, if put, would indicate that the government now has accepted the amendments which we have moved in the Senate; otherwise, there is no meaning.

The Senate adds, "if the House of Commons should not concur." Well, to achieve that it must have a motion asking it to concur, which can only be moved by the government. Will that condition be fulfilled?

Senator Flynn: You are making a joke of this, but it is not a joke.

Senator MacEachen: Honourable senators, this is very serious. Yesterday I described this proposed motion as a "parliamentary monstrosity." It is now a political monstrosity, because, if the government puts a motion to concur, it goes on to say, "and if that motion is defeated . . .". In other words, we are asked to believe that the government will put a motion to concur, and that the House of Commons will then disregard the wishes of the government and vote against it. The government will then put its original resolution, and if those two conditions are fulfilled, then we will say, "Well, we accept some other resolution."

So I find the conditions impossible—conditions and qualifications about which we are in ignorance and about which we cannot formulate any judgment.

Senator Frith: And it's out of order.

Senator MacEachen: For that reason I think it should be removed quickly from further public scrutiny and put in the desk—and then put the lights out!

Senator Frith: Or perhaps in the dustbin.

Senator MacEachen: The "killer amendments." Let's go for them, boys, and the Prime Minister will move their concurrence.

[Senator MacEachen.]

Senator Frith: We are awaiting your reply.

Senator Flynn: The Leader of the Opposition does not deserve a reply, except something that would be unparliamentary.

The Hon. the Speaker: Honourable senators, there is a motion on the floor.

Senator Frith: But we are saying it is out of order.

The Hon. the Speaker: Well, I have not been asked for a ruling.

Senator Frith: We are asking for a ruling on whether it is out of order.

Senator MacEachen: I am sorry, Your Honour. I raised a point of order. I have argued that this motion is out of order, and I ask for a ruling on the grounds that it is replete with conditions, which is unacceptable in a motion of this kind, asking the Senate to deal with unknowns—conditions which we know will not be fulfilled.

The Hon. the Speaker: Of course, we do not know that. With regard to the motion being out of order, on August 13, in connection with Bill C-22, a vote was taken and a motion was moved by the Honourable Senator Bonnell:

> That a Message be sent to the House of Commons to inform that House of the recommended amendments, observations, and recommendations on general patent law amendments as contained in the Seventh Report of the Special Committee of the Senate on Bill C-22—

That was after the vote had been taken on:

> An Act to amend the Patent Act and to provide for certain matters in relation thereto, as amended.
>
> The question being put on the motion, it was—
>
> Resolved in the affirmative.

I find some similarity—

An Hon. Senator: Conditional motions are always out of order.

● (1550)

Senator Frith: What were the conditions? There were no conditions. There were no "ifs", "ans" or "buts." Are you ruling that this one is in order on that basis? Are you ruling on the basis of that precedent—which, it seems to me, is not applicable; there are no conditions at all—that therefore this is in order?

Senator Guay: As an ex-Minister of Justice, Senator Flynn will tell you all about it!

The Hon. the Speaker: Honourable senators, if you will allow me about ten minutes, I will take it under advisement.

Hon. Senators: Agreed.

The Hon. the Speaker: If honourable senators agree, while I deliberate, I would ask Senator Asselin to take the Chair and continue with Orders of the Day.

Senator MacEachen: We would prefer to have a short recess.

The Senate adjourned during pleasure.

● (1610)

The sitting of the Senate was resumed.

SPEAKER'S RULING

The Hon. the Speaker: Honourable senators, when deciding whether or not a motion is in order, the Chair must rule according to the rules and practices of the Senate.

It appears to me that with respect to this motion, most of the arguments are centred around the logic of the motion. It is not for the Chair to decide whether or not a motion is logical. For example, if a motion were proposed saying, "If it rains tomorrow, the Senate will adjourn at three o'clock," the Chair would be bound to put such a motion and the senators would decide on the merits of the motion.

With respect to the procedural problem of attaching a condition to a motion, in this instance the House of Commons is not bound to deal at all with the Senate's resolution. It appears to me that Senator Flynn is suggesting that if the House deals with the resolution certain events will follow which the Senate has agreed with. If that is the desire of the Senate, I feel the Chair cannot stand in its way.

The Chair, however, has other procedural concerns about this motion. Rule 46(*s*) states that no notice is required for "other motions of a merely formal or uncontentious character." It appears that this motion cannot be characterized as "merely formal or uncontentious." It therefore requires some advance notice. This shortcoming disturbs the Chair. It is for this reason that I must rule the motion of Senator Flynn not in order.

BUSINESS OF THE SENATE

Hon. Orville H. Phillips: Honourable senators, after the last two rather lengthy days, I believe that the Senate would be in a mood to stand all remaining orders, all inquiries and all motions. Therefore, I move that that be the case.

Hon. Senators: Agreed.

ADJOURNMENT

Leave having been given to revert to Notices of Motions:

Hon. Orville H. Phillips, with leave of the Senate and notwithstanding rule 45(1)(*g*), moved:

> That when the Senate adjourns today it do stand adjourned until Tuesday next, April 26, 1988, at two o'clock in the afternoon.

Motion agreed to.

The Senate adjourned until Tuesday, April 26, 1988, at 2 p.m.

THE SENATE

Tuesday, April 26, 1988

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

Prayers.

CUSTOMS TARIFF

BILL TO AMEND—FIRST READING

The Hon. the Speaker *pro tempore* informed the Senate that a Message had been received from the House of Commons with Bill C-118, to amend the Customs Tariff.

Bill read first time.

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

On motion of Senator Phillips, bill placed on the Orders of the Day for second reading on Thursday next, April 28, 1988.

THE CONSTITUTION

CONSTITUTION AMENDMENT, 1987—MESSAGE TO COMMONS—NOTICE OF MOTION

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I give notice that on Thursday next, April 28, 1988, I will move:

> That a Message be sent to the House of Commons to inform that House that the Senate has authorized the proclamation of an amendment to the Constitution in the terms of the following schedule, to which it desires their concurrence:—

The schedule is the motion in amendment that we adopted last week. If senators wish, I can read it.

Hon. Allan J. MacEachen (Leader of the Opposition): Dispense!

(*For text of Message, see today's* Minutes of the Proceedings of the Senate.)

QUESTION PERIOD

THE SENATE

ABSENCE OF GOVERNMENT LEADER FROM CHAMBER

Hon. Orville H. Phillips: Honourable senators, Senator Murray is absent today. He is in Atlantic Canada on government business. He will be in the chamber tomorrow. If there are any questions that honourable senators feel cannot wait until tomorrow, I will take them as notice and obtain the answers.

FISHERIES

CANADA-FRANCE RELATIONS—DISPUTE-SETTLEMENT NEGOTIATIONS—STATUS AND POSSIBLE MEDIATION

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, I will not give notice of any questions, but I wonder whether Senator Murray informed his colleague as to the status of the fisheries-boundaries agreement about which I asked him last week and about which he took notice. If the information is available, I would be pleased to have it from Senator Phillips. If not, I can easily wait until tomorrow.

Hon. Orville H. Phillips: I believe I shall be able to provide the honourable senator with an answer tomorrow.

AGRICULTURE

GRAIN—INITIAL PAYMENT FOR 1988-89 CROP YEAR—REQUEST FOR ANSWER

Hon. H.A. Olson: Honourable senators, I would like to register a complaint with respect to the way questions are answered in this chamber. For several days now I have been asking the Leader of the Government if the initial prices for the 1988-89 crop year could be announced so that the producers in western Canada would have that information now, near the end of April, and could govern their plans accordingly. That announcement is usually made in March. As late as last Thursday—perhaps last Wednesday—the Leader of the Government in the Senate gave me confirmation that the price for the current crop year had been changed, and had risen by $10 per tonne in the case of one category and $15 per tonne in the case of another category. I specifically asked the Leader of the Government if he could tell us about the ensuing crop year, 1988-89. He gave an undertaking to get that information for me.

My complaint is this: The next day an announcement emanating from the offices of the minister responsible for the Wheat Board was made in Winnipeg. That leads me to the conclusion that the government and the minister, if he had been in touch with the other ministers, knew the answer to that question last Thursday. However, he refused to give the answer in this chamber. I think that is treating this chamber and the legitimate questions that are put to the government with something less than the respect they deserve. Therefore, I would like the Leader of the Government or the Acting Deputy Leader of the Government to take this grievance to the right parties. I would also like a full and complete answer to

my question. The newspaper article said that the increase was going to be $10 to $20 per tonne in some cases. We did not get a specific answer from the Leader of the Government with the kind of detail that producers and, if I may say so, senators deserve.

Now that you know the background to the grievance, I am sure the honourable acting deputy leader will want to take some action to ensure that this does not happen again.

Hon. Orville H. Phillips: Honourable senators, as a relative newcomer to this chamber, I have heard similar questions over a number of years concerning the Wheat Board. I have also heard similar complaints. However, I shall direct this complaint to the Leader of the Government in the Senate when he returns.

Senator Olson: And perhaps his colleagues also?

Senator Phillips: Yes.

(*Later:*)

Senator Olson: Honourable senators, I would like to ensure that the acting deputy leader understood part of the question. Did he give an undertaking that he would communicate with the minister responsible for the Wheat Board so we can obtain further details respecting the announcement of the initial prices for 1988-89? I think he gave an undertaking that he will convey it to the Leader of the Government in the Senate, but I would like to have the answer before we adjourn on Thursday, April 28. Therefore, I would like him to give an undertaking that he will contact the minister responsible for the Wheat Board in order to obtain the details of that announcement.

Senator Phillips: Honourable senators, I shall be happy to contact the minister of state responsible for the Wheat Board.

INDIAN AFFAIRS

CONTROL OF EDUCATION—IMPACT OF MASTER TUITION AGREEMENT

Hon. Len Marchand: Honourable senators, I have a question that I would like Senator Phillips to bring to the attention of Senator Murray when he returns tomorrow.

I have had a rather urgent communication from an organization supporting all Indian bands in British Columbia. This communication relates to the master tuition agreement on education between the Government of Canada and the Government of British Columbia. There have been continuing negotiations relating to the bands' attempt to get out of that agreement and the government turning over the responsibility of funding education to the bands.

Recently, I understand that the Government of Canada, through the Minister of Indian Affairs, signed a new five-year agreement with the Province of British Columbia. The bands are very angry about this. Self-government is very much in the minds of all our people nationally, and control of Indian education is certainly a current topic. It is one of the areas in which they can and should have control.

This master tuition agreement, as it now stands, sets the whole process back a great deal. I want to inform Senator Phillips that I would like to raise this rather urgent matter with Senator Murray tomorrow.

● (1410)

Hon. Orville H. Phillips: I thank the Honourable Senator Marchand for his notice, and I shall see that Senator Murray is advised of this.

CANADA-UNITED STATES FREE TRADE AGREEMENT

EXCLUSION OF BRITISH COLUMBIA FROM ADJUSTMENT COMMITTEE

Hon. Raymond J. Perrault: Honourable senators, I hope that the honourable senator will take as notice a question that I would like to have answered by the Leader of the Government in the Senate when he deigns to return to the chamber to listen to questions from the opposition.

The first effects of this free trade deal between the United States and Canada—at least, the proposed free trade deal, "free trade" being a misnomer—has been a statement by certain banks in the province of British Columbia that they will not loan money to our grape growers, because this arrangement will ruin the grape and wine industry in the province of British Columbia.

The same thing is happening to the grape producers on the Niagara escarpment. All the government has offered in response to the pleas for assistance from the grape growers are excuses and vague statements that the government will look after things.

I want to ask the honourable senator why it is that the third largest province in Canada, the Province of British Columbia, has been totally excluded from the adjustment committee that is being put in place to assist those who will be dislocated by this Mulroney-Reagan deal. We were promised representation on that adjustment committee, and, cynically, the Prime Minister of Canada has left British Columbia off. It is not good enough. The waffling statements being made today by the government to the grape and wine producers of Canada are not good enough. We want some answers. He has 24 hours to get some facts together.

Hon. Orville H. Phillips: Would the honourable senator like to repeat the question?

Senator Perrault: I knew the senator was out of touch, but now he has lost his hearing!

ANIMAL PEDIGREE BILL

SECOND READING

On the Order:

Resuming the debate on the motion of the Honourable Senator Bielish, seconded by the Honourable Senator

Macdonald (Cape Breton), for the second reading of the Bill C-67, An Act respecting animal pedigree associations.—(*Honourable Senator Marchand, P.C.*)

Hon. Len Marchand: Honourable senators, I do not plan to take up much time on this bill. It is not a controversial bill and we do not want to hold it up unduly. These amendments have been a long time in coming and are generally welcomed by the industry. But there are a couple of points in the bill that we would like to deal with. We would like to have it referred to committee where we could call officials—and perhaps some other witnesses if need be, but mainly we would like to start by hearing officials from the department.

I shall relate a few of the concerns to you. There was concern about the ability of one breed association, for instance, to register or identify the animals of any other breed or breeds. A conflict of interest could develop, for instance, where the competitive breed would be dependent on another breed for their registration procedures.

There was also some concern raised about the meaning of the word "register" in connection with the use of the word "purebred." For instance, the word "register" could cover animals which have as little as 50 per cent of the blood of the breed to which they are registered.

Honourable senators, these are just a few of the items that come to mind. I am sure if this bill were referred to committee, and if we had the officials before us, we could clear up the matter very quickly and proceed to third reading of the bill in quite short order.

Hon. Martha P. Bielish: Honourable senators—

The Hon. the Speaker *pro tempore:* I draw the attention of honourable senators to the fact that if the Honourable Senator Bielish speaks now her speech will have the effect of closing the debate on the motion for the second reading of this bill.

Senator Bielish, do you wish to speak now?

Senator Bielish: No.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Bielish, bill referred to the Standing Senate Committee on Agriculture and Forestry.

WESTERN ARCTIC (INUVIALUIT) CLAIMS SETTLEMENT ACT

BILL TO AMEND—SECOND READING

On the Order:

Resuming the debate on the motion of the Honourable Senator Macquarrie, seconded by the Honourable Senator Roblin, P.C., for the second reading of the Bill C-102, An Act to amend the Western Arctic (Inuvialuit) Claims Settlement Act.—(*Honourable Senator Adams.*)

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, Senator Adams intends to speak to this order today. I understood he was on his way into the chamber, but he has been detained in his office. Perhaps we could proceed with other orders and then revert to this order when he arrives in the Senate.

(*Later:*)

Leave having been given to revert to Order No. 4:

Hon. Willie Adams: Honourable senators, I apologize if I have delayed the debate on Bill C-102, to amend the Western Arctic (Inuvialuit) Claims Settlement Act. I would like to congratulate Senator Macquarrie on his speech on this matter a couple of weeks ago. I read that speech with great interest, since it is always good to hear people say nice things about the territories.

• (1420)

I am concerned about some of the organizations that are coming into the north and am glad, therefore, to see this Bill C-102 being introduced. The Inuvialuit claim was settled some time ago, around 1984, giving the Inuvialuit the right to claim the ownership of land which consists of so many thousand kilometres in an area between the Beaufort Sea and the Mackenzie Delta. Since the claim was approved by the government and the Inuvialuit we have not heard very much about its effect on the community. I have not heard of another claim that would be better for the people. Or, for that matter, for the lawyers. They usually get their money before the community gets any. I refer here to lawyers who draw up the regulations that will guide the government and the organizations. I have heard Senator Watt make similar comments. For some time he was involved in the negotiations surrounding the James Bay Agreement. I believe that newspaper reports indicated a couple of years ago that something like $300,000 was spent on the legal fees for that agreement. I do not know how much it has cost the Inuvialuit so far, but I hope that they do not end up with the same expense.

There is one other thing I would like to tell honourable senators. I have spoken to some of the people in the community and I think they will feel much better when they have more control over activities in the Beaufort Sea, the Mackenzie Delta and the rest of their territory. They are particularly interested in being more involved in the negotiations between Ottawa and the oil companies interested in exploring on their property. In the past couple of years oil and gas prices have gone down, and this has affected exploration in the north. The Inuvialuit have hired experts who are familiar with dealing with oil companies to represent their interests with regard to their property.

I began my speech on Bill C-102 by indicating that I did not know how much money had been spent toward the settlement of this land claim. Not too long ago I heard and read in the newspapers about a request that some of the leases involved in the agreement, and particularly some of our organizations that are part of the agreement, be audited to determine how much was spent prior to the agreement with Ottawa. The people in

the community want to know what the agreement means in this regard. We receive so many millions of dollars from Ottawa to create jobs in the communities, particularly in small businesses. I would like to know some time in the near future whether there will be an audit of these organizations to determine how the money was spent.

It is hoped by those living in the community that this agreement will result in job creation and more money being available to those who earn their living off the land. Often, as a result of agreements such as this, many high-paid jobs are created for, say, directors of the organization. However, it is hoped that in this instance the money will go directly to those people living in the community.

I believe that those who run the organization for Inuvialuit are familiar with how that operation should be run. As a matter of fact, only a couple of years ago, when oil and gas exploration slowed down in the north, it was decided that the Nunasi Corporation should buy some of the shares of NTCL.

The Standing Senate Committee on Energy and Natural Resources is keeping a keen eye on the future of oil and gas exploration, especially as it relates to northern parts of Canada. As you know, in 1980 there was a boom in the territories, but, by contrast, in the last three or four years practically nothing has happened.

It seems that much of the focus has been on the Mackenzie Delta, with lesser emphasis on what has been happening to the Inuvialuit community.

The people of the north will be quite prepared to go along with any Inuvialuit organization so long as it has the best interest of the Inuvialuit community at heart.

It is my understanding, honourable senators, that this bill may be referred to committee. It is my understanding from telephone conversations with the president of COPE that he sees no problems with the bill and that it should be passed immediately. However, I think the bill should be referred to committee for further study.

Hon. Senators: Hear, hear!

• (1430)

Hon. Heath Macquarrie: Honourable senators—

The Hon. the Speaker *pro tempore:* I wish to inform honourable senators that if the Honourable Senator Macquarrie speaks now his speech will have the effect of closing the debate on the motion for second reading of this bill.

Senator Macquarrie: Honourable senators, I always feel momentarily so important when His Honour the Speaker issues that warning, which conveys the impression that my few words would be so effective and almost catastrophic.

I would just like to say how much I appreciate what Senator Adams has said. I have always had a high regard for him; but that regard and high opinion were enhanced when I had the opportunity to visit his jurisdiction with the Meech Lake Task Force and saw at first hand how highly he was regarded, how faithfully he served his people, and how he responded to, and discharged, that high repute with such modesty and restraint.

He is far too young for me to say that he is a sort of father to his people, but perhaps he is a slightly older brother to most of them. I appreciated the way in which he moved among his people and the way he hosted us who came from other parts of the country.

I appreciate what he has said, and it is my intention, after we conclude this phase of second reading, to move that the measure be referred for study by the Standing Senate Committee on Social Affairs, Science and Technology, where people from the department may be heard and where we can hear the views of honourable senators such as Senators Adams, Marchand, Lucier, Watt, Fairbairn and others who are very well informed on these matters.

I do not claim to be an expert, having visited the Northwest Territories twice, but I do claim to have great interest in this legislation. I know that the minister is interested in it and that he would like to have a full discussion and wider participation by the people in the north whose future is so very important to all of us.

Hon. Senators: Hear, hear!

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

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

[*Translation*]

CONSTITUTIONAL ACCORD, 1987

CONSIDERATION OF REPORT OF SPECIAL JOINT COMMITTEE— ORDER WITHDRAWN

On the Order:

Consideration of the Report of the Special Joint Committee on the 1987 Constitutional Accord (Parliamentary Document no. 332-571A).—(*Honourable Senator Tremblay.*)

Hon. Arthur Tremblay: Honourable senators, given last week's debate on the constitutional resolution and since we have heard many witnesses in this chamber after the tabling of the report of the Joint Committee on the Meech Lake Accord, I wonder if it is necessary to resume the debate on that report. If honourable senators agree, I suggest that we consider that item, which would have been timely a few months ago and given everything that has happened since then, to have been indirectly debated.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I agree that during last week's debate on the Meech Lake Accord reference was made several times to the report of the joint committee which is on the Orders of the Day. Therefore, we can decide to have it withdrawn with the unanimous consent of the Senate. The order having been debated, we agree to have it withdrawn.

The Hon. the Speaker *pro tempore:* Honourable senators, do you agree that this item on the Orders of the Day be withdrawn?

Hon. Senators: Agreed.

Order withdrawn.

[*English*]

CANADA-EUROPE PARLIAMENTARY ASSOCIATION

FIFTEENTH ANNUAL MEETING HELD IN BANFF, ALBERTA

Hon. Heath Macquarrie rose pursuant to notice of Friday, October 9, 1987:

> That he will call the attention of the Senate to the Fifteenth Annual Meeting of the Canada-Europe Parliamentary Association held in Banff, Alberta, from 21st to 25th September, 1987.

He said: Honourable senators, I am torn between two realities. All my political life I thought it was very foolish and even hazardous for any member to involve himself twice in the day's occupations. Despite the fact I spoke for only a few minutes in reference to Bill C-102, here I am again, but the—

Senator Frith: By popular demand! A return engagement. Look at it that way.

Senator Macquarrie: It is almost that. I was going to say that I have been getting the odd little dig about how ancient some of my inquiries are. If that is popularity, I suppose I shall have to live with it. I have been told that it has been quite a while since I set down this inquiry about the Canada-Europe Parliamentary Association meeting which was held in Banff last fall.

Most of us in Parliament know that it is much easier to find oneself selected to attend a parliamentary meeting held in Canada than in the shadow of the Mauna Loa, the Great Wall of China, or some other faraway place with a strange sounding name. In any case, I knew what I was doing when I put my name down for the Canada-Europe meeting in Banff, one of the most glorious parts of our country. Anyone who goes there could not fail to exult in the beauty of the mountains, the streams, the flora and the fauna. We held our closing meeting at the Banff Springs Hotel, one of the great hostelries of the world, which was celebrating its 100th anniversary. That great entrepreneur, Sir William Van Horne—for whom I have the greatest regard, because he opened both his heart and his purse strings to Sir Robert Borden when he was running for election in 1911—said, "If we can't export the scenery, we'll import the tourists." That is why the Banff Springs Hotel was built and it has enjoyed an excellent reputation for 100 years—quite a long time for Canada.

● (1440)

Sometimes, honourable senators, these events work out well; sometimes they are fair, sometimes they are poor, and sometimes they are great. But as I recall that evening, everything worked very well indeed. The scenery outside the window of the salon was totally inspiring, and the conduct of the meeting under Mr. Ellis was perfect in every way. The service and the cuisine left nothing to be desired—there was nothing the Europeans or any others could teach those people in that regard. Every little incident seemed to add something to that which went before and caused all of us to think that it was good for us to be there. Mr. Hovdebo noticed in the main lobby a poster saying, "We are better together"—which I believe is from an advertisement of a Canadian airline—and made a comment about how fitting it was for Canadians and Europeans.

The exchange of views between the Europeans and the Canadians was most useful. Sometimes, however, I thought it became a little distorted. Because I come from Prince Edward Island I know how important the fisheries are. I noted, however, that we discussed fisheries for 129 minutes, which left only 29 minutes remaining for such things as human rights, development policies, and third world debt. I thought that perhaps we got carried away downstream, if I might use that expression. And sometimes things are almost there but not quite realized. Mr. Hovdebo, I am sure, was quite prepared to talk about his party's view on NATO. While not being a paid adviser to the New Democratic Party, I will still have served it, in a way, by my advice. I think that with respect to NATO some political people make a great mistake. They do not realize that Canadians who are committed to NATO—and even Mr. Trudeau found out how much they are so committed—are not in that position because they worship Capitol Hill in Washington. Many are committed to NATO because they realize it is enormously important for Canadians to conduct a dialogue with Europeans in a friendly and meaningful way. In fact, in that regard, I said at this meeting that I have often thought, when I have seen American statesmen going over to Europe to brief Europeans on important world problems, that they usually took their microphones with them and left their earphones in Washington. It is far wiser to listen to the Europeans on many matters about which they have learned through painful experience. That is why I think that, while we in Canada do not articulate too much about foreign policy—and we know, as Robert Thompson said 20 years ago that the Americans are our best friends whether we like it or not—on the other hand, I think we consciously value our close association as equals with the Europeans.

It is often said that these delegations are not worth very much, that they are only junkets. However, the long discussion on fisheries was a useful one. Mr. Henderson, MP, from Prince Edward Island was extremely well informed on the subject. Afterwards some Europeans indicated that they were re-thinking their position on the seal question. They said that perhaps they had made a mistake, that perhaps their allies were more important than their actresses—that is my expression, not theirs. However, we were at a parliamentary gathering where there was no press. "So what can I do about my recantation?" said the German delegate. And there was something in what he said, honourable senators.

Senator Rossiter was with us, as was Senator Rousseau, who made a most excellent presentation on some important and timely problems. I was pleased that at the closing banquet our

colleague, Senator Olson, told an excellent story, which I hope he passes on to senators either today or at some other time, because it provides a great illustration of his knowledge of some of the basic problems encountered in agriculture.

Honourable senators, I have now discharged my duty in proceeding with this inquiry, and if not moving it off the Order Paper, at least altering it in terms of sponsorship. I must say that I was very proud to represent the Senate in this beautiful part of Canada at a meeting with delegates from countries whose importance to us cannot be overestimated.

Hon. Senators: Hear, hear!

Hon. H.A. Olson: Honourable senators, I want to join with Senator Macquarrie in making reference to some discussions that took place at this meeting of the Canada-Europe Parliamentary Association in Banff a few months ago. I thank Senator Macquarrie for all of his kind words about those of his colleagues, including me, who attended that meeting. I also want to say that his contribution to discussions that took place, particularly with respect to the fisheries problem, was extremely useful in generating a better understanding on both sides of the Atlantic about the ramifications of the sort of action that has been taken by the European Parliament with respect to seals and, from there, to fisheries, and, I suppose, to all animals hunted, trapped and so on. We had an extremely useful exchange.

I also want to agree with him when he said that perhaps many of us do not fully appreciate the value of these meetings at which parliamentarians really get down to the business of telling it like it is to each other. In other words, these discussions are not filtered down through diplomatic channels, through the media or whatever. I did not keep track of the time spent discussing agricultural problems or the consequences to Canada, for example, of the subsidy war going on between the European Economic Community and the United States, and the depressing effect all of that has on international cereal and grain prices. I believe Senator Macquarrie said that they took 129 minutes to deal with the fisheries matter and something less than 30 minutes to deal with a whole list of other extremely important subjects. I guess I have to take some comfort from the fact that you cannot solve all the problems of the world at one meeting. I do not know the precise number of minutes spent on agriculture, but enough time was spent to have a very clear exchange of views. The Canadians stated their position very clearly on the extent of the damage being done because of the fight or the war or the contest, whatever you want to call it, between the United States and the European Economic Community.

● (1450)

I think it was useful in another respect, and that is that it helped me to understand that there was another point of view than the one we picked up at a number of the meetings we had in Geneva, Brussels and Paris only a few weeks before. That group was also a parliamentary group made up of members of all parties who went to the OECD in Paris, to GATT in Geneva, and to the administrative offices of the EEC in Brussels. We were mostly talking to the administrators. When we were in Banff we were talking to the politicians, the ones who are directly involved with and get reaction from the people who are affected. In Senator Macquarrie's case, that would be fisheries; in my case, of course, it would be agriculture.

After talking to the politicians in Banff, I have a great deal more hope now than I did after talking to the administrators in Geneva and Brussels that they are going to find a solution. I remember being in Geneva, for example, and the representative for the European Economic Community at the GATT was a West German. One day he said to me, "Senator Olson, if you are putting your hopes on the fact that the industrial sector of West Germany is getting tired of paying the subsidies to agriculture and that it will only come to an end when they refuse to make further payments of $30 billion a year, don't hold your breath, because you will wait a long, long time." That is the political reality in Europe, and in Germany in particular, from some of the grain-growing areas where there are relatively small farmers who depend on the political action and the subsidies they are receiving to keep them going. By the way, they get three or four times as much per hundredweight of grain than Canadian farmers get.

To get back to what the representative for the European Economic Community was telling me, he said, "Don't hold your breath, because the political importance of Bavaria and a couple of other small provinces to the government in West Germany is so great that they will be paying it and paying it and not complaining about it either." So there is this business of the United States and Europe trying to test who has the deeper pockets. For each of those countries to pay subsidies of $30 billion per year you would think it would not take them long to get weary. But the representative of the EEC said not to expect that weariness to emanate from the German industrial establishment, which is paying the larger portion of the taxes to maintain these subsidies. That discouraged me.

In case senators do not know who was in attendance at Banff, the Canadian guests were the members of the European Parliament. While they do not have a great deal of administrative responsibility at the moment, they explained to us that they are moving gradually, but steadily, into the area of more and more administrative responsibilities for the economic, financial and other activities in Europe. After I had been talking to those people, I felt a lot better, and I felt that there was a disposition by the politicians to resolve this matter, because they were aware of the distress it was causing not only in Canada but in the United States and other parts of the world.

I only wanted to add a few words to what Senator Macquarrie had to say about this meeting.

Senator Macquarrie: Don't forget your story, senator.

Senator Olson: I told a story at the banquet, and I appreciated the response I got. The story deals with surpluses in the agriculture area. It is called "the champagne story," but I will not tell it here. It is better told at a banquet, but it was so appropriate.

Senator Frith: Try us!

Senator Olson: Well, if you want to hear it, I will tell it. I should explain, honourable senators, that during the discussion on agriculture there was one common theme, and that was that there were surpluses everywhere—surpluses of beef in Ireland; surpluses of grain in France, Canada and the United States; mountains of butter in parts of Europe and other places.

The story comes from a situation back in 1969 and 1970 when I was Minister of Agriculture. There was a desperate situation in Canada because of surpluses of wheat and other things at that time. In a situation such as that, you need a little comic relief.

The story goes like this: There was a couple who had been married for ten years. When the husband looked back on those ten years he decided that his wife had been very helpful to him. So, he was going to buy her something she had always really wanted. He tried to remember her fantasies.

I see my wife is in the gallery!

The husband tried to remember her fantasies, and he remembered that she had fantasized about having a bath in champagne. He decided that that was what he would do. He bought four cases—that is, 48 bottles—of champagne, warmed it and put it in the bathtub. His wife got in the bathtub and had a bath. When she was finished, he looked at all this champagne and, of course, he had to make a decision: whether or not to pull the plug. He looked at it and it looked the same; he smelled it and it smelled all right; he tasted a little and it tasted all right. So he decided that he would put it back in the bottles.

He proceeded to fill the bottles, and after filling the forty-eighth bottle there was a cup left over. Now, the problem was not what to do with the surplus, but the fact that little bit of surplus was known and it lowered the value of all the rest!

Senator Macquarrie will understand that when you have been talking about surpluses, and the depressed prices that a little surplus gives, the story was perhaps appropriate at the time.

● (1500)

I think it was an extremely useful meeting. Some of the indications that have come out of Brussels since—maybe the meeting was not in Brussels, but it was certainly in Europe—where the heads of state met to discuss what they were to do about future farm subsidies, bear out that the indications we got from those members who were in Banff at the meeting were far more accurate than some of the other impressions that one could have picked up if one talked only to the administrators. Since then I think they have even adjusted the assessment on some of the countries. The Prime Minister of the U.K., Margaret Thatcher, has been against paying these enormous subsidies, and I think they have made some adjustment in the assessment of the U.K. because of that.

In any event, whether that is a fact or an impression is not important. What is important is that I now sincerely believe that we will find some resolution to this problem, because the politicians, thank God—or whoever is responsible—appear to be in charge of making some of the changes that are necessary so that we can get some common sense back into the international grains arrangement. This, by the way, started to come through clearly at Banff when we were talking to the politicians from Europe.

So, honourable senators, I think it was a useful meeting. Lots of other meetings are useful, too, but this one was particularly topical. The discussions that we had about fisheries and agriculture were topical, useful, and, as I said before, very worthwhile.

Perhaps I could close by saying that we were happy to have this meeting in my part of the country, and I hope that the Canadians, as well as the other guests, were happy with the arrangements that were made.

Hon. Senators: Hear, hear!

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

INTERNATIONAL TERRORISM

MEETING OF SUBCOMMITTEE OF NORTH ATLANTIC ASSEMBLY IN ANKARA, TURKEY

Hon. William M. Kelly rose pursuant to notice of Wednesday, April 20, 1988:

> That he will call the attention of the Senate to the meeting of the Sub-committee of the North Atlantic Assembly on International Terrorism, held at Ankara, Turkey, from April 5 to 8, 1988.

He said: Honourable senators, I want to say at the outset that the meeting I am to report on, probably for reasons that I think will become clear, will not include a preamble such as the excellent preamble of Senator Macquarrie on the ambience, and so on. Of course, I can never try to equal the eloquence of Senator Olson, but I would like to report on the committee meeting at this time.

During the past year the North Atlantic Assembly created a special subcommittee to study and report on international terrorism. I was appointed as the Canadian delegate to that committee, representing the Canada-NATO Parliamentary Association.

During the week of April 4 I attended a meeting of the subcommittee which was held in the cities of Ankara and Diyarbakir in Turkey.

The meeting was extremely well organized and was attended by representatives from Denmark, West Germany, Greece, the United Kingdom, Turkey and myself from Canada.

Following the lifting of martial law in Turkey, which followed the most recent elections and the arrival of the new government, a serious increase took place in terrorist activities, primarily in the provinces of Eastern Turkey, close to the borders of Syria, Iraq and Iran. The perpetrators of the incidents were dissident Armenians. The terrorist attacks occurred primarily in small villages, where small groups of terrorists, two or three, would move into a village or small

settlement and kill everything and everyone—men, women, children, and even animals—and then disappear.

Honourable senators, as background I would like to comment on the government structure, and then go on.

The current government structure of Turkey consists of a central government in the western form, with a prime minister and cabinet. The country is then divided into provinces, each with an elected government headed by an appointed governor. Within each province cities, towns and villages have their own elected governments.

In terms of security—again the western system—each city has its municipal police force responsible to the municipal government. The villages and outlying regions are policed by the gendarmes, which functions under the direction of the Ministry of the Interior. Finally, the army, navy and air force, under the direction of the Ministry of Defence, exist for the protection of the country ouside its borders and also provide supplies and training to the gendarmes.

Due to the serious increase in terrorist activities, it was decided to designate 11 of the provinces as a "state of emergency region" and move part way back toward a form of martial law, but under the auspices of the Ministry of the Interior rather than the Ministry of Defence, thereby giving the responsibility for control to the gendarmes rather than the army. For this special purpose an additional governor was appointed with responsibility for all 11 provinces, specifically for matters involving counter-terrorism. Responsibility for countering terrorist activity in cities remains with the municipal police, but is coordinated by this new "super governor" and his staff. The remainder of the counter-terrorist work was, and is, being carried out by the gendarmes—also, of course, under the direction of the "super governor" and his staff.

During our visit we were briefed by the Minister of National Defence and his senior officials, the Minister of the Interior and his officials, the Chief of Internal Security and his officials, the Major General commanding the gendarmes and his officials, and were flown by helicopter for part of the trip to areas where terrorist attacks had occurred. During the course of that trip we were flown along the borders between Turkey and Syria, Turkey and Iraq, and parts of the Iranian border. Also during part of that journey we landed at one of the mountain camps and met with one of the local armed village forces who are described as "village guardians."

Our main objective as a committee was to develop some understanding of the problem and to see first-hand a command structure that had been found to be most effective in situations of this sort. Turkey was considered an ideal subject for study, because there they had faced a real problem and had been able to design, through actual practice, a command structure that worked. It was clear that there is a continuing commitment in that country to the protection of the rights and freedoms of the individuals with minimum challenge to these rights and freedoms, but at the same time to bring a bad situation under reasonable control. The success of the initiative was evident in the sharp reduction that took place in terrorist activities almost immediately.

But, honourable senators, some alarming facts which came to light during our discussions bear on events that have occurred in Canada, and which perhaps may occur again.

Honourable senators may recall the study and report—which I am sure you are getting tired of hearing about—carried out by the special committee of this chamber which, among other things, analyzed an attack which took place in Ottawa at the Turkish Embassy on April 1, 1986. At that time an attempt was made to seize the Turkish ambassador. The ambassador, fortunately, escaped by jumping out a second storey window of the embassy.

I think it might be useful to review the chronology of similar attacks through the 1970s and early 1980s, if you will just bear with me:

January 1973 Santa Barbara, California, Turkish Consul General murdered.

October 1975 Vienna, Turkish Ambassador assassinated.

October 1975 Paris, Turkish Ambassador assassinated.

February 1976 Beirut, First Secretary of Turkish Embassy murdered.

May 1976 Frankfurt, Essen, Cologne, simultaneous bomb attacks on all three consulates.

June 1977 Rome, Turkish Ambassador to the Holy See assassinated.

June 1978 Madrid, Turkish Ambassador murdered.

October 1979 The Hague, the son of Turkish Ambassador assassinated.

December 1979 Paris, tourism attaché at Turkish Embassy assassinated.

July 1980 Athens, administrative attaché at Turkish Embassy assassinated.

December 1980 Sydney, Turkish Consul General assassinated.

March 1981 Paris labour attaché at Turkish Embassy murdered.

June 1981 Geneva, secretary at Turkish Consulate assassinated.

January 1982 Los Angeles, Turkish Consul General assassinated.

May 1982 Cambridge, Turkish Honorary Consul in Boston murdered.

June 1982 Lisbon, administrative attaché and his wife at Turkish Embassy assassinated.

July 1982 Rotterdam, Turkish Consul General murdered.

August 1982 Ottawa, military attaché at the Turkish Embassy assassinated.

September 1982 Bulgaria, administrative attaché at Turkish Consulate assassinated.

July 1983 Brussels, administrative attaché at Turkish Embassy murdered.

July 1984 Brussels, administrative attaché of Turkish Embassy assassinated.

• (1510)

Hon. Royce Frith (Deputy Leader of the Opposition): What is the distinction between "assassination" and "murder"?

Senator Kelly: The result is the same.

Senator Frith: Yes, I had observed that. At least, that is certainly what I understand, but is the distinction that one is done in public and the other is done in private?

Senator Kelly: In response to that question, I might say to honourable senators that I anticipated that exact question from Senator Frith, and I was prepared to give him the answer I gave. I am very pleased that the honourable senator did not let me down.

However, that is the way in which they are recorded in the chronology that appeared in a recent publication put out by the Turkish Embassy, so I simply used their wording. I was also puzzled at the difference, and the reason for the one as opposed to the other. My impression is that the distinction is where the occurence took place. When it took place actually inside an embassy or a consulate, they seem to refer to it as an assassination; when the incident took place on the street, they seem to refer to it as murder.

As you know, in the judgment of our own committee, we insist that these are not political acts; that these are simple criminal acts, so my terminology would normally be murder in any case.

Honourable senators, there is little question that the ambassador in the Turkish Embassy in Ottawa was well aware of all of the facts that I have just recited, and no doubt in his attempt to escape he believed that he was escaping certain death. Senators may remember that our own committee was highly critical of the behaviour of our media, where Mike Duffy displayed on live television the location of the escaping ambassador at the foot of the wall, which certainly would have made the work of the terrorists quite easy had they happened to be using the television sets in the embassy—a not unusual activity of terrorists in such incidents, because part of their tactic includes measuring the psychological effect of their activities. Therefore, it is very normal, in an incident where an embassy is taken over and occupied, that the television sets are switched on and the terrorists are watching the local news stations; the radios are switched on and the terrorists are listening to the local news.

I cannot help wondering if Mr. Duffy would have reconsidered his action had he known what had taken place in numerous other incidents around the world where Turkish ambassadors were involved. I cannot help but wonder if our own Solicitor General would not have reconsidered his decision not to get involved in discussions with media and not to play a role as catalyst in encouraging discussions amongst media people on appropriate behaviour during such incidents. Had he known what took place in all of those other embassies and consulates around the world involving Turkish ambassadors I believe he might have reconsidered, since in each of those cases the ambassador was murdered.

The results of the counter-terrorism initiatives in Turkey are impressive, and the command structure offers some interesting lessons for others. The problem I see developing now is that as it becomes more and more difficult for dissidents to use terrorist tactics inside a country, the risk will increase that the targets will become more and more government offices abroad—in this case Turkish offices abroad. Countering terrorism of this sort must include not only the protection of the sites themselves but must also include the most careful possible screening of all those entering the country, particularly the refugee flow, and this is an area in Canada where, at the moment, we are probably the weakest of all the NATO countries.

Hon. Finlay MacDonald: I wonder if I could ask Senator Kelly a question. Perhaps he could refresh my memory. I had thought that in the particular incident to which he referred concerning the Turkish Embassy in Ottawa the fault lay mainly with a police officer at that particular scene when he was briefing the reporters. To my recollection, Mike Duffy was not solely responsible for the release of that information. However, I cannot remember the detail, and perhaps Senator Kelly can refresh my memory.

Senator Kelly: Honourable senators, I think Senator MacDonald is mixing up two incidents. I remember the incident to which you refer where the police officer gave out information on the deployment of the SWAT team.

In the case I was referring to, Mr. Duffy was operating or directing the operation of a live camera and the material was being piped directly back into the television station and going out on the airwaves. That was the matter to which the committee took objection. You will remember that there was a great deal of discussion about how clearance on the spot could be achieved. In other words, once that material is captured on the live camera, could there be a delay while some senior official undertakes the responsibility of saying, "Yes, let's go," or "Hold it!"? There was no such interface at that time, nor is there now, to my knowledge.

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

The Senate adjourned until tomorrow at 2 p.m.

THE SENATE

Wednesday, April 27, 1988

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

Prayers.

QUESTION PERIOD

THE CONSTITUTION

CONSTITUTIONAL ACCORD, 1987—METHOD OF APPOINTMENT TO SUPREME COURT OF CANADA AND OTHER BODIES AND APPLICATION OF OTHER PROVISIONS BETWEEN SIGNING AND PROCLAMATION OF ACCORD

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I have a question for the Leader of the Government in the Senate and it has to do with the filling of a vacancy in the Supreme Court of Canada and other vacancies.

For practical purposes I would refer to the vacancy on the bench of the Supreme Court of Canada. I understand that appointments to some other vacancies would normally be made under the old regime. Is it government policy that the seat in the Supreme Court of Canada will be filled by the federal government in the traditional fashion—by the Prime Minister after consultation with the provinces—because, for now, the Meech Lake formula does not apply to the appointment of judges to the Supreme Court of Canada in the period before the constitutional amendment comes into force?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Yes, honourable senators, that is a correct statement of policy.

Senator Frith: Is it also correct to say that when the Meech Lake agreement was reached with the First Ministers the understanding was that those aspects of the Meech Lake Accord applicable would apply during the period between the agreement and the issuance of a proclamation?

Senator Murray: No, honourable senators, part of the political accord reached by the First Ministers was that Senate appointments would be made according to the interim procedure, even in advance of proclamation of the Meech Lake amendment. That was part of the accord relating to Senate appointments. No such agreement was reached with regard to appointments to the Supreme Court of Canada.

Senator Frith: Or to other section 96 appointments, that is, other superior court judges?

Senator Murray: Other superior court judges are not covered by Meech Lake, honourable senators.

Senator Frith: Right. So, as I said, we can speak only about the vacancy or vacancies in the Supreme Court of Canada.

Was the appointment procedure for judges of the Supreme Court that is provided for in the Meech Lake Accord specifically excepted, or was it just not mentioned? In other words, was it the understanding at the time between the federal government and the premiers that it would apply to the Senate and that it was specifically provided that the section that deals with appointments to vacancies on the Supreme Court would not apply in the interim—or was it simply just not mentioned?

Senator Murray: The latter is the case, honourable senators. I can only speak for what is in the accord, and what is in the accord is that the interim procedure for appointment of senators would be followed by the Prime Minister, even in advance of proclamation of the Meech Lake amendment. There was no such commitment with regard to appointments to the Supreme Court of Canada.

I can, and do, say, however, that in the lifetime of the present government there have been, if my memory serves me correctly, three appointments to the Supreme Court of Canada, and in all cases I think it fair to say that there has been very close consultation between the federal government and the province concerned.

Senator Frith: Honourable senators, I am sure that is true. I was not suggesting that there had not been such consultation in the traditional way. What other parts, if any, of the Meech Lake Accord are to apply in the meantime—to use the expression which I am sure my honourable friend understands, in view of what we have been discussing?

Senator Flynn: In the amendment?

Senator Frith: No, in its original form.

Senator Murray: The matter of Senate appointments is the one that comes to mind immediately. My honourable friend will have to give me a few minutes to reflect as to whether there are others.

Senator Frith: My honourable friend might well imagine what other aspect of the Meech Lake Accord would interest me in terms of interim application—that is, the amending formula. That is, will unanimity apply? Was there an understanding with the premiers that during the interim period the amending formula would require unanimity?

Senator Murray: Honourable senators, the provincial premiers, as long ago as August 1986, agreed in Edmonton that the first priority would be to get Quebec back into the constitutional family, and that other constitutional reforms would be put off until a second round. So the question raised by my honourable friend is quite hypothetical. We do not

envisage any initiatives to amend the Constitution until we have ten provincial players at the table.

Having said that, I should note the one exception that has come up—that is, an amendment to the Constitution affecting, as I recall, confessional schools in Newfoundland, which required the consent only of the House of Commons and Senate and of the Legislative Assembly of Newfoundland.

Senator Frith: Very specifically, honourable senators, what I think Parliament and the people would like to understand is the following: Is it correct that the understanding and agreement that was reached at Meech Lake and confirmed at Langevin is that the Meech Lake amendment, tabled by the Leader of the Government in the Senate—the government initiative—will not take effect and that Her Majesty's representative, the Governor General, will not be asked for a proclamation on the basis of the 1982 formula, but only on the basis of a resolution by the House of Commons and the Senate and by all or each of the provinces?

Senator Murray: Honourable senators, that hypothesis was never considered.

Senator Frith: What!

Senator Murray: As a practical matter, because some of the amendments to the Constitution involving the Meech Lake agreement required unanimous consent, it was obvious to everybody that it would take unanimity to put it together. As it took unanimity to put it together, it will take unanimous consent to reopen it, and anything less than unanimity will inevitably lead to the unravelling of the accord.

Senator MacEachen: But it is supposed to be without seams! "Unravelling" is an unfortunate expression to use when talking about a seamless webb.

Senator Frith: Certainly, one would start to unravel a garment at the seams, but no seam is to be found here.

Senator Murray: Unravelling is very much on the minds of those opposite today!

Senator Frith: The Meech Lake Accord is very much on my mind today, and on yours also.

I think the Leader of the Government in the Senate will understand that most Canadians understood that the formula for implementation of the Meech Lake Accord was unanimity, and not seven of the provinces with 50 per cent of the population, as under the current law. In other words, legally there is no question that Meech Lake could be implemented under the 1982 formula, depending on the subject matter.

Senator Murray: Yes.

Senator Frith: Is it correct to assume that that is so for all aspects of the Meech Lake Accord? In other words, no aspect of the Meech Lake Accord will be implemented without unanimous consent, that is to say, in accordance with the Meech Lake formula rather than the 1982 formula.

Senator Murray: Honourable senators, these are very complicated hypotheses that the honourable senator is raising.

[Senator Murray.]

He is correct in stating that some of the elements of the Meech Lake Accord could have been implemented by the federal houses of Parliament together with seven provinces having 50 per cent of the population. Other than those amendments would require unanimity. As a practical matter, it was therefore necessary to obtain unanimity to put together the package, and I, for one, do not see as a practical matter how the package could hold together in the absence of unanimity.

Senator Frith: I do not think that is much of an answer, but it is a start.

FISHERIES

CANADA-FRANCE RELATIONS—DISPUTE-SETTLEMENT NEGOTIATIONS—STATUS OF JUDICIAL ARBITRATION AND SELECTION OF MEDIATOR

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, may I ask the Leader of the Government whether he can bring us up to date on the results of the negotiations in Paris on the boundaries and fisheries dispute, and whether the two parties—namely, Canada and France—have selected a mediator or have decided upon the country from which they will select a mediator?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, the answer to the second part of the question is in the negative; we have not yet reached agreement on the country or person or persons who will mediate.

There has been agreement by our representatives *ad referendum* to governments that we would have mediation of the dispute on quotas covering the period when the boundaries dispute is under judicial consideration.

• (1410)

Senator McEachen: The word "arbitration" is the word that was in the agreement that was signed. Has it now been decided by the two parties to send the boundaries dispute to judicial arbitration and, while the arbitration is proceeding, the mediator will attempt to reach a solution of the fish quotas? Am I correctly understanding the situation?

Senator Murray: The question of the quotas is to cover the period during which the boundaries dispute is being judicially adjudicated. There will be no quotas in the absence of an agreement to put the boundaries dispute to judicial settlement. That agreement has not yet been reached. The terms of reference for this boundary adjudication are now under discussion between our two countries.

REFERRAL OF DISPUTE TO INTERNATIONAL COURT OF JUSTICE—GOVERNMENT POSITION

Hon. George van Roggen: Honourable senators, I would like to ask a supplementary question of the Leader of the Government in the Senate.

A week or so ago I asked whether or not it was still the position of the Government of Canada that it would be pre-

pared to submit the question of the boundaries to the International Court of Justice, that the French were resisting this and have been to date. I believe you undertook to give me—

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): With respect, my friend might look at last Thursday's *Hansard*. I did endeavour to answer that question.

Senator van Roggen: I am sorry, I was not here.

I would like to pursue my supplementary question. Has an agreement been reached at this time between the two governments to send the boundary dispute to a court or an arbitrator?

Senator Murray: That matter is still under discussion. The terms of reference are still under discussion.

PARLIAMENT

CANADA-UNITED STATES FREE TRADE AGREEMENT—TIMETABLE FOR LEGISLATIVE IMPLEMENTATION OF PROVISIONS

Hon. Stanley Haidasz: Honourable senators, I would like to ask the Leader of the Government in the Senate to inform us this afternoon if the Prime Minister was correct in saying that he will not ask the Governor General to dissolve this Thirty-Third Parliament before this Parliament has passed all of the implementing legislation with regard to the Canada-United States Free Trade Agreement.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I am confident that the Prime Minister would much prefer to go the people with the Free Trade Agreement and other important legislation having been passed by Parliament. However, I would very much doubt that he would have tied his hands in the way my friend suggests on the exercise of his sole prerogative to recommend dissolution to Her Excellency.

Senator Haidasz: Could the Leader of the Government tell us, then, whether the implementing legislation for that Free Trade Agreement is ready, and, if so, when will it be presented to the Senate and the House of Commons for approval or disapproval?

Senator Murray: Honourable senators, the legislation will soon be ready and will soon be presented in the other place. I am encouraged to think that it will be acted on expeditiously by that chamber and by this chamber, given the continuing high levels of public support for the Free Trade Agreement with the United States.

I am also encouraged by the fact that the Standing Senate Committee on Foreign Affairs is discussing the agreement that was reached with the United States, and I would encourage honourable senators concerned to consider very seriously whether a pre-study of the trade legislation might not be in order.

Senator Haidasz: When the Leader of the Government in the Senate says "soon," does he mean before June 24 next?

Senator Murray: Yes, honourable senators.

FISHERIES

CANADA-FRANCE RELATIONS—DISPUTE-SETTLEMENT NEGOTIATIONS—GEOGRAPHIC LOCATION OF FISHING PATTERNS AND QUOTAS

Hon. Roméo LeBlanc: Honourable senators, I would like to ask the Leader of the Government in the Senate a question. When he uses the phrase "there will be no quotas until the judicial process," is he talking about the French or the people of St. Pierre & Miquelon fishing inside the disputed zone or outside the disputed zone in what are traditionally called Canadian waters?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): I am talking about the quotas on which we are asking for advice from a mediator. Until there is agreement on the terms of reference to submit the boundary dispute to judicial interpretation, the mediation process will not begin. I would have to look to see exactly what the proposed terms of reference for the mediator are in order to answer the honourable senator's question in detail.

Senator LeBlanc: If there is to be mediation, I suppose that there is an object or a subject that is being mediated. Is it the fishing patterns and the quotas within the disputed zone around St. Pierre & Miquelon, or is it what is called the "Canadian waters quota"? This is what triggered this fight when the government appeared to have agreed to allow fishing in 2J&3KL, which is considered to be the crucial zone for Newfoundland cod stocks.

Senator Murray: Well, honourable senators, I know what the question is that my friend is asking, but I would have to consult my notes more carefully, and I will do so.

[*Translation*]

THE CONSTITUTION

CONSTITUTIONAL ACCORD, 1987—INTERPRETATION OF "DISTINCT SOCIETY" CLAUSE VIS-À-VIS ANGLOPHONE CANADIANS

Hon. Azellus Denis: Honourable senators, regarding the reference in the Meech Lake Agreement to the distinct society, could the Leader of the Government in the Senate tell us whether this part of the Meech Lake Agreement endangers the English language or the English-speaking community? Would it be in great danger? If not, why not?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, the interpretive clause on the distinct society is closely related to the interpretive clause on Canada's linguistic duality. This clearly stipulates that we have two language communities in Canada: English-speaking Canadians concentrated in nine provinces but also present in Quebec and Francophones centred in Quebec but also found across the country.

So the distinct society clause is tied to the linguistic duality clause as a fundamental characteristic of our federation.

Senator Denis: You mean that this clause will not exclude English or the English community in Canada or cause it to disappear?

Senator Murray: Far from it, honourable senators.

[*English*]

ARCTIC SOVEREIGNTY

ENVIRONMENTAL CONCERNS—LACK OF CONSULTATION WITH ABORIGINAL PEOPLES

Hon. Charlie Watt: Honourable senators, I was watching a television program with great interest when the question of Arctic sovereignty was being talked about. I would like to ask a question of the Leader of the Government in the Senate concerning a subject related to Arctic sovereignty.

Canada will have to make a stand sooner or later—probably in the highest court of the international communities—relating to Arctic sovereignty. Realizing that, there seems to be a great lack of communication between the various countries that are anticipating working in the North where there is scientific knowledge that needs to be collected from the Arctic waters. By that I mean that there are a few countries utilizing the Arctic waters, including the Soviet Union. I know that a committee was established some years ago to determine how the various countries could educate themselves in order that they might have a better understanding of the sensitivity of the Arctic environment.

● (1420)

I would like the Leader of the Government in the Senate, together with his cabinet colleagues, to realize that a communication gap between the South and the North in this country really does exist, and that we must do whatever we can to close that gap if we are sincere in our efforts to do something meaningful concerning the scientific knowledge that we, as a country, require. I think there is a need to work out some arrangement whereby we can begin to focus on the certain fundamental issues which relate to the Arctic, keeping in mind the fact that the aboriginal people have been occupants of those Arctic islands and have utilized the Arctic waters and the sea ice for many years. I cannot begin to say how long we have been occupants of the North, but, in any event, we have been there for a lot longer than anyone else.

I would say to the Leader of the Government in the Senate: What do we know about the scientific requirements of this country? What do the aboriginal peoples, the Inuit, the "Eskimos", know about the technical requirements needed by this country in order to determine how the Arctic should be handled? I am sure you have your own opinion on that matter, but the reality is that people live up there in the North. We have learned to cope with the North and we have learned to live with it. We have lived through the hardships, including starvation, but the aboriginal peoples, or what is left of them, are still there in the North.

Another problem that we have had in the past is in trying to bring back from the Soviet Union the Inuit, the "Eskimos" who originated from Alaska. At some time in the past they

managed to go across the land bridge to the other country, but because of the international situation they have been unable to return to their home base.

By listing all of these things I am attempting to illustrate that there is a definite need for us to do our utmost to close the gap between the South and the North so that we can start focusing on some of the fundamental issues which affect our people and also affect the Arctic. I would suggest to the Leader of the Government in the Senate that he regard this matter in a serious light and work with his cabinet colleagues to establish a way in which this communication gap can be closed.

Coming from the Arctic as I do, in my opinion, there is a need to establish some sort of a platform or system whereby knowledge can be exchanged. Until the aboriginal peoples in the North know exactly what it is that the government requires of them and of the North, it will be very difficult for them to work with the government in order to help this country.

Honourable senators, in my opinion, what began yesterday with the passage of the bill respecting the western Arctic is an important event for this country and also for the other countries surrounding it. However, without the input of the aboriginal peoples who live in the Arctic, I think the people of Canada and of the other countries surrounding the Arctic would have a great deal of difficulty in realizing and understanding what life in the Arctic really means. Does this country consider the Arctic an area it can fool with as it pleases? If so, it had better consider the effect of its actions on the atmosphere of this planet.

● (1530)

I am sure that many people think that I am talking over my head here, but I speak from experience and from what I know of the part of the country from which I come. It is a very sensitive area and a sensitive issue. We must overcome the barriers between the South and the North if we intend to do anything within the Arctic waters that will be beneficial to Canada.

Senator Steuart: Yes or no.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I appreciate the representations the honourable senator has made. I shall study them more carefully and I shall ask my colleagues to do the same. If there are points that I believe call for immediate response, I shall be glad to place that response on the record as soon as possible.

NATIONAL DEFENCE

REPORT OF ADVISORY GROUP TO MINISTER ON REGULATION OF POLITICAL ACTIVITIES IN CANADIAN FORCES ESTABLISHMENTS—RECOMMENDATIONS 3 AND 4—GOVERNMENT ACTION—QUESTION WITHDRAWN

Hon. Lorna Marsden: Honourable senators, last Wednesday, April 20, I asked the Leader of the Government in the

Senate about a report from the Minister of National Defence on political activities on Canadian Forces bases. By accident, I met the minister, discussed my questions with him and got my answers. Therefore, I would like to withdraw my question.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I will not stand for these kinds of private arrangements between my colleagues! As a matter of fact, Senator Phillips has a delayed answer to the question, which he had intended to present later today.

Senator Argue: Let's hear from Senator Phillips!

THE CONSTITUTION

CONSTITUTIONAL ACCORD, 1987—DEFINITION OF QUEBEC AS DISTINCT SOCIETY

Hon. Stanley Haidasz: Honourable senators, not wishing last Thursday to interrupt the concluding speech on the Meech Lake Accord debate made by the Leader of the Government in the Senate, this afternoon I would like to ask him whether he would enlighten us in an explicit way on what the government means by Quebec as a "distinct society"?

Senator Flynn: Ah, come on!

Senator Haidasz: Here's is your chance.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I must draw to the attention of Senator Haidasz that the matter has been thoroughly canvassed in the Question Period here since last May, again in the Committee of the Whole when I testified at the end of March, and during last summer and fall before the joint committee. I believe that there is really nothing I can usefully add to the matter at this time. I do say, however, that my honourable friend must have known what he meant when he voted for it at the last Liberal Convention.

Senator Argue: What is going to happen to the accord in Manitoba?

Senator Haidasz: Honourable senators, I am asking the Leader of the Government to tell me his government's definition of "distinct society." Does it mean that Quebec is an autonomous province and society and that, therefore, it can do whatever it wants, particularly in light of the fact that it has not signed the Constitution Act, 1982?

Senator Argue: Hurray for Manitoba!

Senator Murray: Honourable senators, with regard to the autonomy of any province, I think the honourable senator would do well to review various constitutional arrangements, beginning with the BNA Act of 1867.

Senator Haidasz: Will the Leader of the Government in the Senate tell us today whether the Province or the Government of the province of Quebec is legally and constitutionally bound to follow the Constitution Act, 1982, even though that province has not signed it? Yes or no?

Senator Murray: The legal and constitutional position on that matter has never been in doubt so far as the Government of Canada is concerned. What we are talking about is a moral and political agreement of the Government of Quebec to the 1982 act which was not forthcoming. Our position is that a Constitution which does not have that moral and political commitment on the part of one of the major partners in Confederation is very seriously flawed. I made a speech on this subject in the course of the 1982 debate to which I would refer my honourable friend.

● (1430)

Senator Haidasz: Therefore, we are to conclude, honourable senators, that the Government of Quebec is not legally and constitutionally bound by certain articles of the Constitition Act, 1982.

Senator Murray: Not at all, honourable senators, I have never suggested that Quebec was not legally bound by the 1982 act. She is.

FISHERIES

CANADA-FRANCE RELATIONS—DISPUTE-SETTLEMENT NEGOTIATIONS—STATUS OF FORMER AGREEMENT—APPEARANCE OF FORMER AMBASSADOR TO FRANCE AND MINISTER OF FISHERIES AND OCEANS BEFORE COMMITTEE OF THE WHOLE

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, for clarity, may I ask the Leader of the Government a question on fisheries and boundaries which I intended to ask earlier?

Am I understanding the situation correctly by concluding that until the terms of reference for the arbitration have been agreed upon—

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): On the boundary.

Senator MacEachen: —that the mediation process on the fish quotas will not commence?

Senator Murray: That is my understanding of the situation. In any event, there will be no quotas.

Senator MacEachen: Earlier, honourable senators, I asked whether the agreement from which these subject matters flow had been extended or had lapsed, because, as I understand it, that agreement had expired at the end of 1987 and I wonder whether it has been extended or just forgotten about.

Senator Murray: Honourable senators, I think it would be accurate to say that it has been overtaken by events.

Senator MacEachen: So, there is no agreement. In any event, it has not been extended.

I wonder whether, not having concluded an agreement either on fish or on boundaries at the end of 1987, the two governments might have agreed to extend it for another year in order to work out their problems. I wonder whether that active extension has taken place.

Senator Murray: I believe I undertook to obtain that information for the Leader of the Opposition the other day. I apologize that I do not have it. I will bring it in tomorrow.

Senator MacEachen: I have one final point on this, and that is with respect to the Committee of the Whole. I have expressed an interest in having some witnesses, already mentioned, come before the committee so that we could ask these questions and get some detailed answers.

Can the Leader of the Government tell us if he has asked Mr. Bouchard whether he will come, or Mr. Fortier or, at a certain point, the Minister of Fisheries, so that we can conclude our discussion in Committee of the Whole on fisheries and boundaries?

Senator Murray: I have not done that, honourable senators, but I shall make inquiries immediately.

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Orville H. Phillips: Honourable senators, I have three delayed answers to questions.

ENERGY

GEORGES BANK DRILLING MORATORIUM—CONSULTATION WITH GOVERNMENT OF NOVA SCOTIA

Hon. Orville H. Phillips: Honourable senators, the first delayed answer I have is in response to a question asked on April 19, by the Honourable Allan J. MacEachen, regarding Energy—Georges Bank Drilling Moratorium—Consultation with Government of Nova Scotia.

Hon. Allan J. MacEachen (Leader of the Opposition): I wonder if the honourable senator would be good enough to read that answer into the record.

Senator Phillips: Certainly.

In recent weeks the Minister of Energy, Mines and Resources and his officials have consulted regularly on this issue with the Government of Nova Scotia, including a meeting between the Honourable Marcel Masse and the Honourable Ken Streatch, Nova Scotia Minister of Mines and Energy, which was held on March 28.

It has been the policy of the Nova Scotia government for some time to seek a moratorium on drilling on the Georges Bank. It is clear that the Nova Scotia government fully supports the announced moratorium. The Premier of Nova Scotia was informed prior to the announcement made by Minister Masse.

Senator MacEachen: Honourable senators, I am not trying to pick a quarrel with the honourable senator, but is it a fact that the Government of Nova Scotia has sought a moratorium, or did they seek an outright prohibition of drilling on Georges Bank? There is a difference between a moratorium—which has been announced until the year 2000, I believe—and an outright prohibition, period. I was of the impression that the Government of Nova Scotia had sought an outright prohibition. Could we have some conclusive comment on that point?

Senator Phillips: Honourable senators, I will ask the minister responsible to attempt to clarify his answer in such a way that the honourable senator will understand.

Senator Olson: He is sitting right there—the Minister of State for Federal-Provincial Relations. Ask him!

NATIONAL DEFENCE

REPORT OF ADVISORY GROUP TO MINISTER ON REGULATION OF POLITICAL ACTIVITIES IN CANADIAN FORCES ESTABLISHMENTS—RECOMMENDATIONS 3 AND 4—GOVERNMENT ACTION

Hon. Orville H. Phillips: Honourable senators, the second delayed answer I have is in response to a question asked on April 20, by the Honourable Lorna Marsden, regarding National Defence.

(*The answer follows:*)

> The Minister of National Defence has accepted recommendations 3 and 4 of the report. The new policy will permit political meetings, advertising, and statements on the part of dependents and civilian occupants within the confines of individual married quarters in Canada. As well, the present restrictions on political canvassing and the distribution of political advertising to married quarters and single quarters on Canadian Forces bases will be removed. While security or privacy considerations will dictate that some quarters remain closed to canvassing, the objective is to ensure minimum interference with the right of the occupants to be informed on political matters.

AGRICULTURE

GRAIN—INITIAL PAYMENT FOR 1988-89 CROP YEAR—REQUEST FOR ANSWER

Hon. Orville H. Phillips: Honourable senators, the third delayed answer I have today is in response to a question asked on April 26, by the Honourable H.A. Olson, regarding Grain—Initial Payment for 1988-89 Crop Year.

(*The answer follows:*)

> These are the press releases to be tabled today, as requested by the honourable senator.

Documents tabled.

NORTHERN CANADA POWER COMMISSION (SHARE ISSUANCE AND SALE AUTHORIZATION) BILL

SECOND READING

Hon. Efstathios William Barootes moved the second reading of Bill C-125, to enable the Northern Canada Power Commission to issue shares, to authorize the sale of those shares to the Government of the Northwest Territories, to

repeal the Northern Canada Power Commission Act and to provide for related matters.

He said: Honourable senators, I rise today to speak in support of the Northern Canada Power Commission Share Issuance and Sale Authorization Bill. This bill, when enacted, will enable the Northern Canada Power Commission to issue shares, to authorize the sale of those shares to the Government of the Northwest Territories, to repeal the Northern Canada Power Commission Act, and to provide for related matters.

Bill C-125 is enabling legislation for an agreement in principle which was signed in February of this year by Nellie Cournoyea, Minister of Energy, Mines and Resources in the Northwest Territories, and our federal Minister of Indian Affairs and Northern Development, the Honourable Bill McKnight. That agreement provides for the sale of the Northern Canada Power Commission to the territorial government.

As honourable senators know, this bill has received the support of all parties in the House of Commons. That is because it is beneficial to all the parties involved and because it is an important and historic step in the political evolution of the Northwest Territories.

The federal government is seeking Senate approval of Bill C-125 so that the sale and transfer of the NCPC may be accomplished as soon as possible. I believe this legislation deserves our unqualified support for a number of reasons.

The first is that northerners are eager to assume control of their day-to-day lives, which, incidentally, was so evident in the several speeches in this chamber during the Meech Lake Accord debate last week. They are doing that by achieving and accepting responsibility for provincial-type institutions, programs and services now administered by the federal government.

Residents of the Northwest Territories have special ties to the Northern Canada Power Commission. The commission was established in 1948 as the Northwest Territories Power Commission, a federal crown corporation set up to provide electrical services and power to mining operations in the Northwest Territories. In 1956 the commission's name was changed to reflect the fact that its services had then been extended to the Yukon.

Over the years NCPC evolved into the principal federal agency which was generating and transmitting electrical services in the territories. A year ago the Yukon assets of the commission were transferred to the Yukon territorial government. I had the privilege of introducing that bill, Bill C-45, in this chamber. Today we are reviewing legislation that would complete the transfer of power and electrical generation to the Northwest Territories.

It is ironic, honourable senators, that it has actually taken 40 years to transfer control of this rather vital service to the people who depend on it. To delay the transfer any longer would be a miscarriage of our responsibilities as legislators.

NCPC, as it exists today, is a commercially viable utility that serves some 13,000 customers in the territories. It has an installed capacity of 137.7 megawatts, and last year it sold 385 million kilowatt hours of electricity. It will continue to be a viable utility after transfer to the territorial government, but it will also be more responsive to local needs and more accountable to the people of the Northwest Territories.

● (1440)

Unlike the Yukon agreement of a year ago, which required federal financing, the Canada-Northwest Territories agreement is a simple cash sale. Honourable senators will recall that the Yukon sale was an asset sale.

In effect, honourable senators, the Government of Canada will sell the newly created and acquired shares in the Northern Canada Power Commission to the Government of the Northwest Territories. NCPC will then become the Northwest Territories Power Commission.

The two levels of government have agreed to a price of $53 million. To finance this purchase and the utility's planned capital expenditures of $25 million in 1988-89, which are additional, the territorial government must exceed its currently authorized borrowing limit. To allow for that, the federal government will process an order in council to increase the Government of the Northwest Territories' borrowing authority.

The price includes all of NCPC's operations in the Northwest Territories, including its 53 generating stations. In addition, Public Works Canada will transfer the housing in several of the communities involved.

Under the terms of the agreement, federal subsidies of electricity rates to small businesses and private households in remote communities in the Northwest Territories will end on the date of transfer. Upon transfer, the successor utility will continue to have the same access to those facilities, to the use of federal lands and to the water rights that are involved.

A key element in the agreement, and one about which I know that honourable senators will be interested to hear, is the protection afforded to current employees of NCPC. Both levels of government have given assurances that the transfer—which means that the utility's head office will eventually be moved from Edmonton to the Northwest Territories—will occur with a minimum of disruption to NCPC employees. At that date the NCPC staff will become employees of the Northwest Territories Public Service. They will continue to receive a compensation and benefits package at least equivalent to the package they now receive.

Honourable senators, this transfer is fully consistent with the federal government's northern political and economic development framework. That framework is based on the following principles: first, that, like all Canadians, northerners have the right to self-determination; second, that government services should be administered at the local level as close as possible to the people served; and, third, that Canadians should not be subject to overlap, duplication or extra costs in the delivery of government services.

Devolution is a necessary and desirable process arising out of that framework; and the transfer of NCPC assets to the Government of the Northwest Territories is only the latest in a

series of measures taken to facilitate that process. They include the formula financing arrangements established between Ottawa and both territorial governments; the transfer of NCPC Yukon assets to the Government of the Yukon in 1987; and the transfer of a host of other programs and responsibilities to the territorial governments. For example, there was the transfer of the forestry service in 1987; the transfer of health services to the eastern Arctic in 1987; and the anticipated or planned transfer of health services to the western Arctic government.

The sale of NCPC also meets those principles contained in the Memorandum of Understanding signed by the federal and territorial governments in November 1985. Those principles were as follows: first, that the quality and integrity of electrical services in the territories be maintained; second, that the legal and financial integrity and the mandate of NCPC be maintained during the transition period; third, that the interests of Northern Power customers be protected; and, finally, that NCPC employees affected by the transfer be given fair and equitable treatment.

As a result of this agreement, the people of the Northwest Territories will soon be managing their own utility and their own affairs in that regard. For the first time there will be local control over rates, subsidies, planning and services. Elected leaders, who are directly accountable to the people of the Northwest Territories, will make decisions on capital projects and on using the territories' electrical system to stimulate economic development and diversification.

I am sure that honourable senators will join with me in commending both levels of government for negotiating this agreement in such a short period of time and for the benefit of everyone involved.

It is rather appropriate, in relationship to the recent debate on the Meech Lake Accord in this chamber, that this bill is being discussed today. We heard at length, particularly from my good friends, Senators Lucier, Adams and others, regarding the future aspirations of the Yukon and the Northwest Territories for provincial status. This bill, when enacted, will be a further step forward in the preparation of the Northwest Territories toward provincehood. We can do our part in that respect to ensure that the process is not stalled by providing quick and unanimous support for Bill C-125.

Some Hon. Senators: Hear, hear!

Hon. Paul Lucier: Honourable senators, I wish to make a few comments concerning Bill C-125. I was in the chamber last year when we passed Bill C-45, the bill that was mentioned by Senator Barootes, which gave the Government of the Yukon Territory control over the Northern Canada Power Commission in the Yukon.

I should again like to thank Senator Barootes, as I did last year, for the fine job he has done in connection with these two pieces of legislation. They are very important to us in the North and we appreciate the comments he has just made.

I believe the Yukon has proven, during the past year—and it will be proven again by the Government of the Northwest Territories in the next little while—that when responsibilities such as this are given to it, it does a good job of dealing with them. Bill C-45 gave the Yukon an opportunity to do something a little bit different, to take over a crown corporation from the federal government and to include the private sector in the working part of the arrangement. It has worked very well in the Yukon, as I know it is going to work in the Northwest Territories. I spoke to the Honourable Nellie Cournoyea yesterday or the day before about Bill C-125. They are very anxious to see it. I think that she should be thanked, along with members of her government, for her input into this procedure.

• (1450)

This is a difficult procedure for them. They do not have too many people to call upon to put these things together. When a small cabinet such as that found in the Northwest Territories is trying to put together packages which result in the borrowing of $80 million or $83 million, that is not taken lightly. They take their responsibilities very seriously in the Northwest Territories. I think the Government of the Northwest Territories should be congratulated on the excellent job it has done in this regard.

What makes this bill very acceptable to us is the fact that the employees of the Northern Canada Power Commission will be very well looked after. Whether those employees come from Edmonton or other areas of Canada, when they land in the territories they quickly become Yukoners or citizens of the Northwest Territories. Just as I do, they see the rest of Canadians as being outsiders when they go up there.

As I said, the employees of the Northern Canada Power Commission will have their interests safeguarded in this agreement. I congratulate the government on the effort it made in that regard. When Bill C-45 was passed respecting the Yukon, that was a key element of the bill. That key point is present in this bill. Their interests must be protected, and they are protected in this piece of legislation.

Honourable senators, as you are aware, I have taken this government on for its treatment of northerners as far the Meech Lake Accord is concerned. I will not back off from anything I have said in that regard. The Meech Lake Accord is not kind to the North, but, in spite of that, I take this opportunity to congratulate the government—and I shall congratulate the minister personally if I have an opportunity to speak to him—on the continued devolution of powers to the Northwest Territories.

This government has followed the tradition of seeing that the North is recognized as an important entity, started by Prime Minister Diefenbaker. That tradition was continued by the Liberal government when it was in power, and, quite frankly, except for the skip of Meech Lake, that tradition has been continued to a large extent by this government.

As Senator Barootes has stated, one has to look at this in the long term. We want to show Canadians that we, as northerners, can govern ourselves properly. We can do that if we are given the opportunity. This legislation gives us that opportu-

nity. I think it is important that we continue this process. The elected representatives of the Northwest Territories and the Yukon Territory are responsible people. When they do not act in a responsible manner, they answer to the electorate, as is correct, and that is the way we want it to continue.

We have no interest, as I have said before, in seeking provincial status at this time, but we certainly have a strong interest in continuing to go down that road. We know we are going to get to that point, although we do not know when. I thank Senator Barootes for introducing this piece of legislation. Quite frankly, honourable senators, I have no problem at all in supporting this bill.

Senator Barootes: Honourable senators—

The Hon. the Speaker *pro tempore:* Honourable senators, if the Honourable Senator Barootes speaks now his speech will have the effect of closing the debate on the motion for second reading of this bill.

Senator Barootes: —I want to thank Senator Lucier for his most gracious remarks, particularly his reference to the late 1950s and early 1960s and the tradition embarked upon by the various governments that have been in power since then, including the current government.

Indeed, the evolution of devolution—which is what is happening here—does bring services closer to the local level, and the closer we get those services to the local level—be it provincial, territorial or municipal—the more accountable they are, the better they are received, and the more closely administered they will be. We, too, congratulate the Government of the Northwest Territories, and particularly its minister, on achieving this result.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE OF THE WHOLE

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

Hon. Efstathios William Barootes: Honourable senators, I move that the bill be referred to a Committee of the Whole and that the Senate resolve itself later this day into a Committee of the Whole to receive the minister so that he can answer questions with respect to the bill.

The Hon. the Speaker *pro tempore:* It is moved by the Honourable Senator Barootes, seconded by the Honourable Senator Macdonald (Cape Breton), that this bill be referred to a Committee of the Whole later this day.

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

Hon. Orville H. Phillips: Honourable senators, I believe someone has gone to get the minister. I suggest that the Senate do now resolve itself into a Committee of the Whole to hear from the minister.

Hon. Royce Frith (Deputy Leader of the Opposition): If the minister is ready, I think we should do that, honourable senators. I know that Senator Lucier has some questions he wants to raise with the minister.

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

Hon. Senators: Agreed.

Motion agreed to.

CONSIDERED IN COMMITTEE OF THE WHOLE

The Senate was accordingly adjourned during pleasure and put into a Committee of the Whole on the bill, the Honourable Rhéal Bélisle in the Chair.

● (1500)

Senator Phillips: Mr. Chairman, pursuant to rule 18, I ask that the Honourable William McKnight, P.C., Minister of Indian Affairs and Northern Development, be invited to participate in the deliberations of the Committee of the Whole.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

● (1510)

Pursuant to rule 18 of the rules of the Senate, the Honourable William McKnight, P.C., Minister of Indian Affairs and Northern Development, was escorted to a seat in the Senate chamber.

Senator Phillips: Honourable senators, I have the pleasure to introduce to you the Honourable William McKnight. Mr. McKnight was elected to the House of Commons in 1979. He has been Minister of Labour and is now Minister of Indian Affairs and Northern Development.

Do you have a statement for us, Mr. McKnight, or are you prepared to answer questions?

The Chairman: Honourable senators, the Senate is in Committee of the Whole on Bill C-125, to enable the Northern Canada Power Commission to issue shares, to authorize the sale of those shares to the Government of the Northwest Territories, to repeal the Northern Canada Power Commission Act and to provide for related matters.

Is it your wish, honourable senators, to listen to the statement that will be made by the minister if he wishes to do so?

Senator MacEachen: We would be delighted to!

Hon. Senators: Agreed.

The Chairman: Honourable minister?

Hon. William McKnight, P.C., Minister of Indian Affairs and Northern Development: Thank you very much, honourable senators.

First, I would like to apologize for my tardiness. I was making a television clip for a fund raiser for a high school—and I know that all senators would understand that.

The bill that honourable senators are proceeding with today represents a continued devolution of the responsibility to the

duly elected governments north of 60. It is a responsibility that those elected legislators in both Yukon and the Northwest Territories are ready and willing to accept and are certainly capable of administering. It is our belief—and I am sure it is a belief shared by honourable senators—that the people who can best look after a public utility such as an electric utility are those who live in the region and have the ability to respond through an elected legislature.

An Hon. Senator: Hear, hear!

Mr. McKnight: This is the second part of the divestiture of the Northern Canada Power Commission. The first was divested to the Yukon over 12 months ago. I appreciate the assistance I received from senators at that time. This, the final divestiture to the N.W.T., will conclude the involvement of the Government of Canada in the Northern Canada Power Commission.

I would be pleased to answer any questions that honourable senators may have.

The Chairman: Thank you, Mr. Minister.

I have on my list the Honourable Senator Lucier to start with. Any other senator who wishes to speak will show his willingness by raising his hand later.

Senator Lucier: Thank you, Mr. Chairman.

I would first like to welcome the minister. It is a pleasure to have you here, sir. As has been stated before, you are well known in both the northern territories, and we appreciate what you are doing with this bill. As I stated earlier in reply to Senator Barootes' comments, it is an ongoing devolution of power to the people of the Yukon, where we like to see it.

You just said, sir, that you are anxious to conclude this agreement. So are we, but only because we think that you should now start to move something else into our area. We want you to continue the trend that you have set.

Mr. Minister, one of the questions I would like to ask concerns the headquarters staff in Edmonton. The staff from Edmonton will eventually be moving to the Northwest Territories if they so choose, but in any case the Edmonton office will cease to operate. Is that correct?

Mr. McKnight: That is correct. Opportunities for employment are being offered to the present employees at headquarters. Naturally, because the ownership and control will go north of the 60th parallel, I am not sure where the headquarters will be located—that is the responsibility of the Government of the Northwest Territories—but employees in Edmonton have been offered their jobs at the new headquarters.

Senator Lucier: We talk about Public Works housing being part of the deal. In most of the communities the housing is supplied by Public Works for the people who are now employed by Northern Canada Power—I think I am correct about that. If so, I would assume that that is what you mean when you say that the Public Works housing will continue to be part of the deal.

Is there a possibility that the people who will be moving from Edmonton to the Northwest Territories will also receive some kind of Public Works housing until they are established in the territories?

Mr. McKnight: As the honourable senator is aware, a majority of the housing in the Northwest Territories is supplied by Public Works Canada in the more remote communities. The Public Works housing that will be made available will be that that is not presently occupied, or as units become available for those people in headquarters as they move from Edmonton.

In the bill, the housing that is available will be the housing that the present employees are being housed in. So there is no dislocation of those employees who are already employed and live north of 60.

• (1520)

Senator Lucier: I will move on to the employees. As I stated earlier, one of the keys to Bill C-45, as far as we in the North were concerned, was the fact that the employees of Northern Canada Power Commission in the Yukon were able to continue to enjoy the same benefits they enjoyed as employees of the previous Northern Canada Power Commission. I know that there are extra benefits that the employees will receive due to the fact that the commission will now be owned by the Government of the Northwest Territories. However, if there are some benefits that they now have that are not enjoyed by other members of the Public Service of the Northwest Territories, will they maintain those benefits, or is there a chance that any benefits that they now have will be taken away from them?

Mr. McKnight: I am pleased to inform the senator that all benefits that presently exist, including those pension benefits, will be continued. In addition, by becoming members of a different bargaining unit, but of the same union, a dental plan and some other benefits, which I could identify later, are available to the employees at this time.

Senator Lucier: So it could be better, but it could not be any worse?

Mr. McKnight: That is correct, sir.

Senator Lucier: Mr. Chairman, quite frankly, I think that the questions that I had have pretty well been answered. I have gone through the *House of Commons Debates* and there were some pertinent questions that were asked in that place and answered there also.

Perhaps some other honourable senators have some questions to ask. I thank the minister for answering the questions that I had.

The Chairman: I thank Senator Lucier. Next on my list is Senator Buckwold, and then Senator MacEachen.

Senator Buckwold: First of all, I would like to welcome another distinguished son of Saskatchewan, and one who has brought great distinction to his office and to himself. We are delighted to welcome you here to the Senate.

Hon. Senators: Hear, hear!

Senator Buckwold: My only concern is with respect to the ability of the new corporation, whose shares will basically be owned, I gather, by the Government of the Northwest Territories, to finance the capital requirements of a power producer and distributor. Many of us in this chamber have had some experience with power companies and provincial agencies. I, personally, have been a director of Saskatchewan Power Corporation and I know of the immense requirements for long-term capital by such corporations.

My question, then, is: How will this matter be handled in an area of the country which has a limited ability to raise long-term capital, and will the Government of Canada be available to give the necessary financial assistance and back-up that is required to produce the kind of power that is needed?

Mr. McKnight: Senator, the assurances that you need can be found in the Government of the Northwest Territories, itself, which is on a very sound financial footing. The share value of the new share offering will be available to be used to go to the market in order to acquire any long-term capital that is needed. We had a long discussion with the Government of the Northwest Territories and the people involved in privatization from the Government of Canada and we were assured that the opportunity and the strength to acquire long-term financing was there on the part of the Government of the Northwest Territories. Also, the shares with which they can go to the market at that time are of considerable value.

Senator Buckwold: I can say that I doubt whether the share capital would provide nearly the requirement of the long-term financing for any kind of major projects, and I am delighted to hear that this has been considered and that there will be the kind of back-up that is required.

Perhaps I can get from the minister a statement that the Government of Canada will be available to ensure that the territorial governments will have the financial backing—and probably the guarantees—that are required for the sometimes hundreds of millions of dollars that may be needed.

Mr. McKnight: Senator, because of the fiscal transfers that take place between the Government of Canada and the Government of the Northwest Territories, the federal government is, in all cases, the final backstop. However, the Government of the Northwest Territories, as the Government of the Yukon Territory, is strong and is recognized by the financial community of Canada as being able to operate in a very businesslike manner. Its strength alone, senator, will allow it to borrow the long-term capital that will be needed to finance this operation.

Senator Buckwold: Thank you, Mr. Chairman.

The Chairman: Next on my list is Senator MacEachen.

Senator MacEachen: Mr. Chairman, perhaps I will ask my question when you call the clauses.

The Chairman: If there are no other senators who wish to question the witness, we will proceed.

Honourable senators, shall consideration of the title of the bill be postponed?

Hon. Senators: Agreed.

The Chairman: Shall clause 1 relating to the short title of the bill stand?

Hon. Senators: Agreed.

The Chairman: Shall clause 2 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 3 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 4 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 5 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 6 carry?

Senator MacEachen: Mr. Chairman, with respect to clause 6, this is, I am sure, a point that can easily be clarified. I understand that "the Corporation" referred to in clause 6 is the Northern Canada Power Commission, because in clause 2, the interpretation clause, the definition of "corporation" is given. It states:

> "Corporation" means the Northern Canada Power Commission, a corporation without share capital established by the *Northern Canada Power Commission Act* and continued by section 3;

Clause 3 then states:

> **3.**(1) The Corporation is continued as a corporation with share capital.

Then clause 6 says:

> **6.**(1) The property, rights and interests of Her Majesty held in the name of the Corporation and used in relation to its operations in the Northwest Territories are transferred to the Corporation.

I presume that we are talking about the same corporation. My question is: Is it an expression with legal significance that you are transferring the property rights and interests from the corporation to the corporation? That simply confuses me.

Mr. McKnight: Senator, I can share your confusion. I had not looked at the bill in that way. I suppose where it says in clause 6:

> in relation to its operations in the Northwest Territories are transferred to the Corporation.

We could perhaps substitute "the new corporation" or a name. However, it is not the responsibility of the Government of Canada to put a name on the new corporation.

Senator, you are asking a legal question and I am a dirt farmer, so I shall have to have advice on that matter.

Senator MacEachen: Senator Phillips is sitting next to you. He is a good lawyer.

Senator Buckwold: He is a dentist!

Senator MacEachen: In any event, I just wanted to know why it was necessary to include a provision transferring property from the corporation to the corporation, and referring to precisely the same corporation. However, I just leave my question in suspense.

Mr. McKnight: I very much appreciate it, senator.

Senator Frith: It is what lawyers call a nice question.

The Chairman: Are there any other questions on clause 6? If there is none, shall clause 6 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 7 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 8 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 9 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 10 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 11 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 12 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 13 carry?

Hon. Senators: Carried.

● (1530)

The Chairman: Shall clause 14 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 15 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 16 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 17 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 18 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 19 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 20 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 21 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 22 carry?

Hon. Senators: Carried.

[Senator Buckwold.]

The Chairman: Shall clause 23 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 1, the short title carry?

Hon. Senators: Carried.

The Chairman: Shall the title carry?

Hon. Senators: Carried.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.

The Chairman: Mr. Minister, we thank you for taking the time to come here today, and we hope that you will come back.

The Hon. the Speaker *pro tempore:* Honourable senators, the sitting is resumed.

REPORT OF COMMITTEE OF THE WHOLE

Hon. Rhéal Belisle: Honourable senators, the Committee of the Whole, to which was referred Bill C-125, to enable the Northern Canada Power Commission to issue shares, to authorize the sale of those shares to the Government of the Northwest Territories, to repeal the Northern Canada Power Commission Act and to provide for related matters, has examined the said bill and has directed me to report the same to the Senate without amendment.

THIRD READING

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

Hon. Efstathios William Barootes: Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*b*), I move that the bill be read the third time now.

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

Hon. Senators: Agreed.

Motion agreed to and bill read third time and passed.

ROYAL ASSENT

NOTICE

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

RIDEAU HALL
OTTAWA

27 April 1988

Sir,

I have the honour to inform you that the Honourable Claire L'Heureux-Dubé, Puisne Judge of the Supreme

Court of Canada, in her capacity as Deputy Governor General, will proceed to the Senate Chamber today, the 27th day of April, 1988, at 5.15 p.m., for the purpose of giving Royal Assent to certain Bills.

Yours sincerely,
Léopold H. Amyot
Secretary to the Governor General

The Honourable
The Speaker of the Senate
Ottawa

EMERGENCIES BILL

FIRST READING

The Hon. the Speaker *pro tempore* informed the Senate that a Message had been received from the House of Commons with Bill C-77, to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof.

Bill read first time.

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

On motion of Senator Phillips, with leave of the Senate and notwithstanding rule 44(1)(*f*), bill placed on the Orders of the Day for second reading at the next sitting of the Senate.

COPYRIGHT ACT

BILL TO AMEND—REPORT OF COMMITTEE—DEBATE ADJOURNED

The Senate proceeded to consideration of the Twenty-Third Report of the Standing Senate Committee on Banking, Trade and Commerce (Bill C-60, An Act to amend the Copyright Act and to amend other Acts in consequence thereof, with certain amendments), presented in the Senate on March 24, 1988.

Hon. Ian Sinclair: Honourable senators, it is with a great deal of pleasure that I take this opportunity to draw to the attention of the Senate a piece of legislation that cries out for an even-handed approach on—

The Hon. the Speaker *pro tempore:* Senator Sinclair, would you move the adoption of the report first, please?

Senator Sinclair: I thought that I would do that at the end of my remarks.

Some Hon. Senators: Oh, oh!

Senator Lefebvre: Have it your way, Ian.

Senator Sinclair: Very well then. I move the adoption of the twenty-third report of the Standing Senate Committee on Banking, Trade and Commerce.

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

Hon. Royce Frith (Deputy Leader of the Opposition): Explain!

Senator Sinclair: As I was saying earlier, it is with a great deal of pleasure that I draw to the attention of the Senate a piece of legislation that requires action to bring about an eveness, an even playing field, and to support vividly and without any ambiguity whatsoever students and the educational system of our country, which are being overlooked in the bill that has been presented to the Senate. This omission was dealt with in one of our amendments. People look upon copyright law as a very complicated area and one in which certain people over the years have made a great deal of money. Some of those people have been lawyers and some of them have not been lawyers. I was a little startled to find, with regard to two collectives, that Canadians spend some $40 million annually on rock and roll music and other pieces that run all the way from good music to opera to "When did you last kick the can?" or some of those other delightful pieces one hears.

This bill creates monopolies. We all know that monopolies have only one compulsion, and that is to take all the traffic will bear, unless they are regulated in some way. This is why in copyright law an even field or balance, exclusions and careful drafting are essential. If any one of these elements is missing, then great harm is done to all people, both creators and users.

• (1540)

This bill does some good things, and there is no reason why, in the time available, good things cannot be done and things that are not good cannot be corrected. One of the good things that is introduced in this bill is moral rights. They are very welcome to creators. Another good thing introduced here is protection through the Department of Consumer and Corporate Affairs to software and high-tech utilization and placement of what we call "computer technology." Those things can be done.

The bad things come in two areas. First, the minister appeared before the committee and talked with some pride about the fact that she was leading the parade. She said that no other country had, as yet, introduced a requirement of exhibition by statute dealing with the visual arts. She was proud that "Canada was going to lead the way," she said. There is nothing wrong with leading; where the harm comes is when you lead and you do not know where you are going. She certainly showed that she did not know where she was going on the exhibition-right principle in this bill, because the whole community—creators, curators, museum managers and others—recognized that clause 2 of the bill, as drafted, was seriously flawed and needed some change. They got together and arrived at an agreement. Unfortunately, somebody whispered in their ear that if they amended it, as they had agreed, it would cause some delay. It was suggested that what they should try to do was to convince the other party not to require this amendment at this stage of the copyright legislation, but to put it off. "Well," said the other side, "uh, uh, not us"; that isn't the deal we made. The deal we made was to have this

amendment now, not to allow this section to proceed, as the Canadian Bar Association said, "with some question as to how it is to be interpreted."

What it really does is give to somebody who is not an owner an ability to interfere with an owner's right in regard to a painting. For instance, they can even go so far as to say to a museum that has received a painting from a donor that it cannot be hung along with other works that would normally be part of the exhibition, but that it has to be put up on a pink wall with a green light. Of course, the curator would say, "No, not in my museum." If this bill is passed, we will have given that person the right to say, "If you will not do what I want, you cannot hang it at all." This is how far this goes and this is why people have said that there are difficulties with the clause. "Certain difficulties with the clause" is the wording of the Joint Copyright Legislative Committee of the Canadian Bar Association.

Mr. Duncan Cameron, who appeared before our committee, is a man of quiet voice, with 30 years experience in dealing with and managing museums. He appeared on behalf of the Association of Curators and Directors. He stated that determining and locating the holder of a copyright, the exhibition right, could create an onerous administrative burden for exhibitors. He stated that, further, the holder of the copyright can determine whether or not the work of art may be exhibited and that he or she may also determine when, where and in what context the work is exhibited. Honourable senators, that relates to my example of the pink wall and the green light. Copyright holders do not have to be the artists, because this bill is silent on that.

An interesting thing, honourable senators, is that the proposed legislation specifically says that you cannot assign a moral right, but that you can assign these other rights. Therefore, you can own all the rights, such as reproduction rights, ownership with all its aspects, with the exception of exhibition rights, and find that no museum, no matter how much it wanted a painting, would take it, because it would not be prepared to take it into its organization and to make it part of its repertoire when it would be unable to deal with it in all the ways that curators and museums might wish.

As I indicated, honourable senators, this whole area of exhibition rights is a controversial matter—one that sets artist against curator, curator against artist, and neither can exist alone. That is the funny part about this, because museums need artists and artists need museums. Therefore, it is essential that these two very important segments of our society get together. And they did, but their deal was aborted. It is most unfortunate that the government decided to proceed, and particularly to proceed by introducing a completely new right into the visual art community without resolving what obviously was a matter of great controversy and great difficulty.

Therefore, I do point out that lest you be misled by certain publicity and other matters, this matter affects not only museums and galleries; it influences and affects schools of art, universities and any other place where artistic works are publicly displayed.

[Senator Sinclair.]

The committee was somewhat taken aback, if I may use that phrase, by having the minister acknowledge—not easily, but she did acknowledge—that they were concerned with the definition of "artistic work" as it is carried in the interpretation clause of Bill C-60. She informed the committee that they were engaged in reconstituting what would be an "artistic work." She told us they were going to come up with a revised definition.

Of course, this again points out the necessity of solving these problems before introducing new legislation and new rights. For that reason the consensus of the committee—and when I speak of the committee here I am referring only to the majority, but I will have a word to say about that later—is that the exhibition right should be withheld until these fundamental issues are effectively dealt with and the parties that know most about them, that is, the museum associations, the directors, the curators and the artists, arrive at an accommodation that enables all of them to live in harmony. That will benefit not only artists but all Canadians who appreciate art.

• (1550)

So much for that amendment. But before I leave it, it might be well to draw to your attention one rather unusual aspect of this exhibition right and how it adversely affects people. The following is an extract of a letter received from Conservator of the University of British Columbia, Miriam Clavir:

> The UBC Museum of anthropology has the distinction of having been the first to innovate and build a visible storage rather than a closed storage system, allowing the public access to over 90% of the collections rather than the usual 5%. As our storage is on public view, it appears we would have to pay public exhibition rights on all our pieces all of the time. This would not be possible financially, and we would be forced to close this much admired and now internationally copied public service.

Honourable senators, I draw that to your attention to show how what looks like a simple matter can mushroom and cause harm to people, to students and to those who are interested in the whole subject of anthropology.

If I may, I will turn now to another aspect. This comes under the general legal definition of what we call collective management. This bill gives monopoly power to a collective. It enables the participants to take their repertoire, to acquire the rights from the owners, and to say to the users, "Either deal with me, pay what I say, or you must not touch my repertoire in any aspect."

As I indicated earlier, such monopolies generally have to be closely watched; and they have to be closely watched particularly where they deal with such matters as the right to study, the right to do research, the right to lift from learned journals entire articles.

As I have indicated on more than one occasion, when we go to school, one of the things we like to think about is getting an A. One of the ways to get an A is to work hard; but another way to get an A is to make sure that we completely cover an issue that we start. In other words, don't just try to lift little

bits out of manuscripts; take the whole manuscript, study it carefully, and make sure that we interrelate the various parts.

Under this bill, a student could not do that. If he were doing research and wanted an entire manuscript, he would be in breach of copyright. If it was part of the repertoire—

Senator MacDonald (Halifax): He is not. It is illegal now.

Senator Sinclair: My friend knows all about copyright law. Maybe he does. I say that if he wants to sue me, go ahead, but this bill enables him to give the right to a collective, who will say, "You cannot have any of the articles out of the X Law Review, because you have to take my whole repertoire."

I suppose that we should all be concerned about the rights of people who create things—writers; and I am sure that every honourable senator is much concerned about protection and full monopoly rights being extended to collectives holding the works of such distinguished authors as Davey, Doyle, Newman, Berton, and Mulroney. They all need help. They all need to be protected—and I suppose they need to be protected from students as much as from anybody else.

An Hon. Senator: And from voters.

Senator Sinclair: Someone said they have to be protected from voters. I think voters may be able to protect themselves. In any event, here we are the only country in the free world which is allowing a collective to establish monopoly rights in the education field without reasonable exceptions—where the courts have put a very restricted view, a very restricted interpretation, on the existing provision of the Copyright Act.

We have also to bear in mind that once we set up these collectives, make an arrangement with them, have the arrangement approved by the Copyright Appeal Board, and it then becomes legally enforceable, we always have to remember that there is some maverick out there who may not have joined the collective, and he will be tripped up, if he is a nasty person, in the way that Senator Barootes said: "I, individually, have a right, if you copy the whole manuscript and you are a student, to make life difficult for you."

So we have to be careful to define what use can be made of copyright material in the education system. That is why we had such strident, forceful presentations on behalf of school trustees, of presidents of universities, of school teachers and librarians, who said, "Don't proceed. Save us from these great collectives until we know what we are going to deal with, what exemptions we are going to have under fair dealing, what exemptions we will have for education work, what exemptions we will have for spontaneous use."

The overwhelming weight of evidence was therefore directed to the action taken by the government of dealing with this very complicated issue in two phases, and not maintaining a level playing field.

I was impressed by a letter that the committee received from Susan Merry of the Special Libraries Association, Copyright Law Implementation Committee. I will quote one small extract as follows:

> Missing from the present bill is a balancing of the interests of authors and publishers with the needs of users. It is necessary to ensure that Canadian researchers have access to information equal to that provided in other countries as, for example, the U.K., the U.S. and Australia, where exemptions for certain uses within libraries, research centres or archives are provided in their copyright acts.

● (1600)

What does the minister say to that? In that trembling contralto voice, she says, "Wait until phase two." But the educationalists say, "No, you wait, minister, until fairness is brought into this bill." Thank goodness the Senate was there to bring an amendment that brings fairness to all. The minister said that phase two is imminent, phase two is just around the corner. She said that anybody that is going to be hurt is going to be looked after in phase two. She said to look after her artists, her writers, and not to worry about the users, to leave that for the future.

As I said, thank God for the Senate that brings fairness to the minister with the amendment it has proposed.

Honourable senators, I do not want to take too much time this afternoon, but it is very easy to see that the minister got carried away. The minister introduced the bill in May of last year. It wandered around in the other place under no forced draft, was given no priority, it just took its place along with other bills of little moment, I suppose, if there are any bills of little moment, but, in any event, some nine months later it came to the Senate. That was in the latter part of February. The bill was then referred to the Standing Senate Committee on Banking, Trade and Commerce. The members of that committee obtained a précis of the material that was brought forth in the committee of the other place, gave it intensive study and put their finger on the flaws that had to be corrected. We said that the main thrust of the bill had the full support of the committee. It protects—maybe more than protects; maybe it goes too far—the creative side. However, it certainly does not look after the other side, the user side. Users' rights must be adequately protected. Balance must be maintained in copyright matters. The amendments the committee made make this possible.

Certain people appeared before the committee who said, "Don't touch it, please." Possibly the minister was one of those people. She said that there was such a heavy agenda in the other place, that there were so many things that had to be done, that the time was so short, that if the Senate fixed this bill, if it brought fairness to bear by proposing amendments and referred it back to the House of Commons, it would get lost in the shuffle over there. We were told not to do anything even if it were flawed, to just quiet down and not do a thing.

One witness who appeared before the committee asked what the point was in having hearings before the Senate if, although the Senate might recognize problems, it would pass the bill anyway. That witness said the Senate committee had to have some purpose behind it, that if the committee saw problems

with the legislation it should send it back with recommendations for amendments. That is exactly what we have done.

All members of the committee, those from this side of the chamber and the opposite side of the chamber, expressed concern over the two-stage approach, but the members of the committee who sit opposite did not support the aforementioned amendments, at least when we signed off the report.

I wish to read a letter from the Chief Librarian of the University of Toronto Library. All members of the committee have received a copy of this letter. She writes:

> I write to emphasize the importance of your voting in favour of the Senate Committee's amendments to Bill C-60.

She goes on to state:

> I join other Canadian universities, colleges, schools, libraries and museums in urging the Senate to pass the Senate Committee's recommendations on copyright.

It could not have been better said, honourable senators, and, as I have said, when we signed off the report, our colleagues who support the government did not support the amendments, but, in view of the numerous people who do, and in view of the necessity of being fair, I expect that they will support the report when it comes to a vote.

Hon. Richard J. Doyle: Honourable senators, I am indeed grateful to Senator Sinclair. If I may dare speak on behalf of Senator Davey, I am sure that he, too, will be filled with gratitude for the senator's concern about our individual positions under the law of copyright.

It did occur to me that a question of conflict of interest might come up here. I do own a copyright. I might say that I checked with my accountants before coming here and found that over the course of the past 35 years that copyright has returned me $2.70. That would put me in a very difficult position. However, the bill, fortunately, does not apply to work that has been written, sculpted, painted, broadcast, or whatever, in the past. It is not a bill that is retroactive. Nevertheless, the concern is hard to come by, and we are grateful.

Senator Sinclair: I do not like to interrupt the senator, but I suggest that he is wrong. The bill does apply to—

Senator Doyle: I will certainly not say that the honourable senator is wrong; I never do. Yes, indeed, I will check on that, but my accountant has checked and tells me, "There is not a penny in the bill for poor old Doyle."

Honourable senators, it is a great disappointment to me that those who are asked to sponsor legislation in this chamber are not always able to follow a bill through the committee process. I understand that committee appointments cannot always be made on the basis of legislation that might be reviewed, and sponsorship cannot be limited to committee members. At any rate, I was honoured to be asked to speak to Bill C-60 on second reading and, at the same time, regretted that other committee responsibilities would keep me away from the subsequent hearings. When possible, however, I did attend the meetings when the Banking, Trade and Commerce Committee considered the proposed amendments to the Copyright Act. I was welcomed with great courtesy by the chairman and by the deputy chairman.

[Senator Sinclair.]

● (1610)

But, for the most part, I am no better informed than any other senator in this chamber in my understanding of the report, which found its way to my desk before the Easter break. I know what it says; I know how it was presented to committee members and how they voted on its recommendations, but I do not understand how it could have been adopted or how I could defend it from attack as the very stereotype of what might be expected from the aging keepers of the *status quo* in this blessed place. If I did not suspect that the fate of Bill C-60 was a by-product of a larger exercise in political delay and diversion, I would have to concede that it did speak for out-of-date, out-of-reason, out-of-conscience service to recognized establishments, that it is testimony to the fact that the Senate is what it is cracked down to be.

Honourable Senators, what we are dealing with here is a bill intended by the minister to open the doors to fair practice for artists, authors, composers, performers and choreographers; to give them bargaining rights and negotiating vehicles and voices in the use made of their work; to lift them out of the constraints that have lasted the 64 years of the present act's lifetime; to go beyond the time when it was considered reward enough for Milly to have her nice little water colour of the Gatineau shown at the Art Gallery of Ontario, or a sufficient source of pride to Willy to have his book of poems right there on the shelves of the public library alongside the works of Pauline Johnson and Duncan Campbell Scott. Creators, of course, have had other compensations. They have had buckets of praise. As Flora MacDonald, the Minister of Communications, said in her testimony to the Banking Committee:

> Politicians are always the first to acknowledge the importance of Canada's artistic and cultural heritage. We talk about uniqueness and identity, about the soul and the spirit of the nation living in the expression of our artistic personality. We are ready to rush into print at the merest suggestion, real or imagined, of a threat to our country's intellectual independence, and the battle is never so thick, so furious, as when one of our beloved cultural institutions faces the least constriction of its pipeline to the national treasury.

The minister then separated what we say from what we do, and, although there is little in their report to confirm it, I cannot believe that any one of the committee members was not appalled to hear that the average annual income of a professional writer in Canada today is about $10,000. Librarians, who classify and distribute their books, earn twice and three times that amount. Teachers, who draw upon their books in classrooms, earn three, four and even five times that amount. But writers—writers are the economic elite of the cultural community. Painters, sculptors, choreographers, composers and film makers too often must turn to incomes from other occupations to finance the products of their talents. For some of them, if it were not for public grant money there would be

no money at all. And some of us say that when artists seek such support they "suck at the public trough."

Miss MacDonald told the committee that our artists do not want lifetime sinecures and pensions but respect for their rights as creators—rights which in many cases already exist, but which remain unenforceable. She said:

> It is the opinion of the Government — an opinion which I am happy to say is supported by both opposition parties in the House of Commons — that it is high time to stop paying lip service to those rights and to prove our commitment to them. This is what Bill C-60 will do.

The bill, we all know, would not begin to relieve all of the risks and disappointments of an artist's life. But it would, after 64 years in which attempt after attempt was made to achieve copyright equity, provide rules for the game that were not tilted unbelievably in the user's favour.

Was it too much to expect that the committee's report would, at least, be written from the point of view of the creators we would protect rather than from that of the users we would shelter?

A subsequent bill is to deal with exceptions for users—those who wish to provide maximum access to classroom, library, gallery, archival and museum use of the expertise, elegance and beauty of the work our artists have provided. There is no quarrel with that, but the committee asks, "Why not wait for the other shoe to drop and have everything come together in one big bill for everybody? What's a year?"

Are we to wait? Are we to seek compromise between the two factions, which have been unable to agree, when agreement seems impossible as long as the users have everything to gain and nothing to lose from stalemate?

It must be interesting to honourable senators to note that the committee had no difficulty with that section of Bill C-60 which provides copyright protection for the information technology industry—a corporate sector which has great need of legislation to halt the drain of $400 million and 8,000 jobs annually.

At the close of her lengthy examination by members of the Banking Committee, Miss MacDonald said this:

> I have not heard much comment this evening on behalf of a segment of the community which has been disenfranchised for 60 years; and I think there really has to be some balance in this. I recognize the concerns of the educational institutions, I also recognize the clout and weight of the educational institutions. Certainly they have many people involved in it. I recognize also that authors, artists and creators are not well organized, that no one really speaks very clearly for them or with any great power.

It was after the minister spoke that we were made aware of how strongly Canadian creators were willing to speak on their own behalf. A delegation of artists, authors and composers appeared at the Senate door to present a message to this chamber. If I may, I will quote from it:

> Copyright infringement has become institutionalized in Canada, and the damage done to the owners of the stolen property is considered to be of such little consequence that it is sanctioned and encouraged by teachers, librarians and museum directors.

I might say that when this message was delivered, several of us were there to meet those representatives. Senator MacDonald was present as the deputy chairman of the committee, and Senator Frith, Senator Phillips, Senator Anderson and Senator Rossiter were also on hand.

I quote further:

> We do not believe that the people support the system of institutionalized theft of Canadian authors' works. Nor do we believe that the public wishes to finance political action that has forced artists and authors to engage in a protracted 30-year battle to secure their rights.

● (1620)

And then this:

> For without the revenues that should accrue from the sale and use of copyright works produced here, Canada will continue to depend on imports of works by foreign authors and artists, made in environments where such work is properly protected.

And finally:

> To the Senators of Canada we say this: You can vote to pass Bill C-60 or send it back to Parliament. If you choose the latter course, your message will be clear and unequivocal. You will be telling Canadian authors and artists that you refuse to put into place the legislative tools necessary to bring the level of protection for our work up to the standard of developed countries around the world.

Senator Sinclair has just told us what a number of the users of copyright have said. Perhaps I should mention the names of those groups that were represented at the door of the Senate who sent that message to you: The Canadian Music Publishers Association; the Canadian Musical Reproduction Rights Agency Limited; the Canadian Artists' Representation; Composers, Authors and Publishers Association of Canada Ltd.; Playwrights Union of Canada; the Canadian Recording Industry Association; the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA); the Performing Rights Organization of Canada Ltd.; Periodical Writers Association of Canada; the Writers Union of Canada; the League of Canadian Poets; Canadian Songwriters Association; ANPAC/RACA, Association of National Non-Profit Artists Centres; Information Technology Association of Canada; Canadian Independent Record Production Association; Independent Artists Union; Canadian Reprography Collective; Canadian Authors Association; Canadian Copyright Institute; Writers Federation of Nova Scotia; Manitoba Writers Guild Inc.; Saskatchewan Writers Guild; the Association of Canadian Publishers; and the Canadian Conference of the Arts. There are 24 organizations, and there have also been individual letters from persons concerned with this legislation, just as Senator Sinclair says he

has received letters from the presidents of universities and the chairmen of the associations representing libraries and others.

The signatories of that message are hoping that there will be some sensitivity from this place they have not yet recognized. I should say that there were words spoken clearly and powerfully on creators' behalf by senators from both sides of this place while the bill was before the Senate Standing Committee on Banking, Trade and Commerce. Those words are not reflected in the report submitted to this chamber.

Conscience should tell us what to do with it.

Senator Frith: Honourable senators, I move the adjournment of the debate.

Hon. Duff Roblin: Would my friend object if I were to make my contribution to the debate at this moment?

Senator Frith: No. That is why I looked around to see if anyone wanted to speak. Of course, not only Senator Roblin but everyone here or anyone out in the corridors who wants to speak may speak. At the end of that process I would like to adjourn the debate.

Senator Roblin: I would like to thank my friend. I acknowledge his courtesy.

I had some hesitation about rising, because, after listening to the moving statement made by Senator Doyle, I think my contribution might be regarded as a bit of a plodding counterpoint to the picture that he sketched as to the emotional, cultural and intellectual aspects of his statement and the view that this Senate ought to concur in this bill without amendment at the present time, a view with which I concur.

This bill has not had an easy passage. In the other House there were some 256 briefs, 88 witnesses appearing, five months of discussion in committee. In our own chamber it also received more than the usual amount of consideration, and it aroused more than the usual amount of interest on the part of people from many sectors of the public who had views they wished to present to this chamber to influence us in the decisions which we were about to take. We heard about many different kinds of intellectual rights: copyrights, computer software, industrial design, choreography, and in that wide range of intellectual activities to which I think the vast majority of the dollars and cents signs are attached we found ourselves able to agree.

However, there was one category of person who is gifted in the presentation of cultural activities—the creative artists of the country—whose case we have decided to put aside for the time being, because we do not like the way in which this bill deals with it. I am glad the chairman made it clear—and I thank my friend, Senator Doyle, for emphasizing the fact—that the committee was not unanimous when this amending motion was placed before it. In fact, on one or two occasions—at least one occasion—if it had not been for the casting vote of the chairman, I do not think we would have advised the Senate to amend this bill.

So, it was a matter of some real debate and concern, and I pay my respects to those who presented points of view which differ from my own. I only wish that I had been eloquent

[Senator Doyle.]

enough at that time to persuade them that another view was possible.

When you come down to the essence of the quarrel, the meat of the substance that divides us, it is quite simple: It is the interest of the creative artist versus the interest of the user. It is as simple as that. The various types of creative artists were listed by my friend who just spoke, and we know that they cover the whole gamut of our cultural activities. We know from what the chairman of the committee said that the users consist of very important bodies of people in the educational field, in museums, and in institutions of that kind. That is where the balance lies. These various issues can be decided by accepting the point of view of the creative artist or accepting the complaints of the users that the situation is not agreeable to them.

If I were to sketch the case for the artistic community, I could do no better than to plagiarize Senator Doyle, so I will not do that. He is much more eloquent than I can be, being much closer to this cause. All of us understand from common sense and from our observations that people in the cultural field do not get a very good economic deal. Most of the time they do not get enough money to keep body and soul together. This situation is nothing new. It has been with us for 64 years, since the last time this legislation was amended.

It seems to me that if we have that concern for the cultural character of our country, if we really believe that that aspect of human life and activity ought to be encouraged to establish a truly Canadian approach to these humane matters, then surely the question as to whether or not the people who have the genius to express these cultural ideas and notions have some expectation of adequate support, and the work that they do is something that cannot escape our notice. In my opinion, it should not escape our favourable notice.

Low rewards for creative people have been the order of the day as long as most people in this chamber have been alive. We are now offered an opportunity to do something about this. Let us consider it carefully.

Bill C-60, unamended, is what I call the artists' charter. But if the amendments proposed by the committee are accepted, then, I believe, we have to call it the users' charter, because the creative artists are back where they have always been, which is nowhere in particular. I think I could include the chairman of the committee in the group of user witnesses, although he is not here to hear this encomium delivered. Every one of these witnesses, I think without exception, expressed sympathy with the statement of the artistic community. They had plenty of sympathy, and said that something should be done. But they all wanted some kind of amendment to the bill that would protect them from the impact of the legislation which is before us now. If the Senate has its way in adopting the resolutions from this committee, then sympathy is about all that they will get—at least until some time in the rather indefinite future, and I will certainly come to that.

● (1630)

Let us try to understand what the users are complaining about, because it is not good enough simply to dismiss what they have to say without some reasonable consideration of their point of view.

I hope I do not minimize their problems if I say that one of the main things that came through to me was: "Senate, House of Commons, government, you are making a change." Whenever you make a change of this sort, which affects a lot of people, you will find that they will consider that change troublesome, inconvenient and rather awkward. "We will have to do something differently from what we did before. In fact, we will have to deal with the artists. We have never had to do this in any regular or legislated manner heretofore, but now we will have to deal with the artists. You are asking us to do this." There were plenty of impressions that certainly came across to me that the people who were complaining about this bill were really saying, "This will be a considerable inconvenience to us if you put this through, and, what's more, it will probably be rather expensive. We do not want to do it until we have our point of view fully expressed in the legislation."

These two questions of "a change, something new, inconvenience and awkwardness," married to the question of money and, "how much will it cost us?" were the two impressions that came across to me from the people who were objecting to this bill.

I see that one of my senatorial comrades is shaking her head. I daresay she will put me right in due course, but that is the way it impressed me as I listened to the evidence before the committee.

One of the things we examined was, "Well, how much money is it likely to cost?" Indeed, the whole purpose of Bill C-60, as far as this and other clauses are concerned, is money. People will have to pay for something they did not have to pay for before. That is the purpose of the bill; that is the idea. So there has to be a concept of money. When you get to a concept of money, all kinds of institutions, which have a hard time with their budgets right now—and I do not minimize that in any way—feel that they will be asked to put up more money than they have had to put up so far, and they find that a difficulty that they are not willing to face at the present time.

When the minister was in the committee, she told us what that extra money was likely to be. I do not know how accurate her estimate was—it was a number of millions of dollars—but considered as a per cent of the total amount of money spent on education, museums and all that vast apparatus of public service, it certainly did not strike me as being an excessive amount.

It seems to me that these monetary fears are exaggerated, because, in spite of the fact that my honourable friend, the chairman of the committee, talked about "monopoly power" and the fact that these collectives and other people would have "monopoly power" to impose whatever they like—that is the impression he gave me—on the users who will be subject to this bill, that is not the case.

Before the bill was amended, there was a clause in there, 50.2(1), which set up an appeal board to deal with cases where the user and the supplier of a cultural artifact or service could be entitled to go if they found that they did not think they were getting a fair deal one way or the other. It is not an unrestricted monopoly situation; it is a monopoly situation in respect of a certain artistic creation. But there is a procedure and a mechanism to ensure that the monopoly power is not abused.

It is just like a public utility board, I guess. I am sorry that the chairman of the committee is not here, because he knows all about appearing before public utility boards in order to deal with monopoly situations.

Senator Flynn: But he has forgotten.

Senator Roblin: But in their zeal the committee has decided to abolish this appeal board. If you look at the amendments, the appeal board is out the window; it is abolished. Well, not entirely. It is abolished for one year, or until such further time as may be decided by the people who are in charge of this administration. In other words, it is given an indefinite hoist. No one can say, reading the proposed amendments to this bill, when, if ever, this monopoly control board will be reinstituted. Why it is being tossed out astonishes me. I cannot find any rational reason why that should be the case.

I suppose one could say, "Roblin, read a little further in the amendments and you can find a reason." Of course, I guess I can. It does not really matter what they do about this appeal board, because the collective which it is designed to control is also knocked down with this bill. It is postponed for one year, or until such further time as it may be proclaimed. In other words, it is given an indefinite hoist.

So the two matters—the collective, which is designed to mobilize the artist's rights, and the appeal board, which is designed to ensure that the user gets a fair deal—are knocked out of this bill and put on indefinite hold. That is a curious procedure for this Senate to adopt, in view of the explanation of the nature of the amendments given to us by the chairman of the committee. The collective is gutted; it is out. Whether it will ever come back, heaven only knows.

The other thing that this bill does is that it removes entirely the exhibition rights. Exhibition rights are struck out. They are not just given an indefinite hoist like these other two items. They disappear; they are struck out. No nothing! They are killed. They are excised. They are abolished. The very core of the case for the artistic community resides in the exhibition rights. If they are discarded from this bill and struck from it, as indeed they are, then there is nothing at all for these cultural activities to rest their hopes upon. The exhibition rights are the very heart of the rights that the artists hope to acquire. If we adopt this report, they will be abolished and they will be out of it—period.

So the Senate has been nothing if not thorough. It has taken all the clauses of the bill that have to deal with artistic rights and has got rid of them, saying that they are no longer part of this piece of legislation. The hopes of the creative artists will

be sadly misplaced if this Senate decides to proceed on the course recommended in the report before us now.

The exhibition rights are excised, the collectives are indefinitely postponed, and the appeal board designed to assure fair play is also indefinitely postponed—all on the ground that there are some further things that need to be brought in before we can consider this bill. I suggest to you, as my honourable friend just did, that that is a false argument, because if you say, "We will not pass any legislation until some people outside the legislative ambit have made their decision," where does it leave us as arbitrators of the public good? Waiting for what they decide to do if and when they decide to do it? Surely, that cannot be the function of law makers.

The procedures that are laid down in this bill provide that the creative artists can proceed at once with their collectives and appeals. The question of resolving the differences between the two parties can be settled in these appeal boards, which are public operations where the whole artistic community and the nation as a whole can take part or see what is going on.

The procedure for resolving any ambiguities that one finds distressing in this bill is provided for, in my opinion, because of the appeal board, which is given the full power to adjudicate on these matters. It is a public procedure on which all can be informed and in which all can take part. Therefore, to say that I do not like this bill and I will not pass it because it has some defects in it; that there are some definitions lacking and matters of that kind which, we can all agree, might well be of concern; to say that they are sufficient in themselves to lead us to amend this bill in the way in which we have done and take whatever risk there is—and I am no expert on that, but it might get lost in the shuffle in the other place—I am not sure that that should weigh our considerations to any great extent.

• (1640)

However, to say that the defects that we perceive in this bill are sufficient for us to amend it and thereby risk its abandonment is, I think, not justified.

Honourable senators, if there are points in this bill that concern the users, as they no doubt concern the artistic community, we had in this bill before it was amended a procedure for adjudication which, it seems to me, would take care of these difficult matters in a reasonable and democratic way. However, if we say that we are not going to do it until outside parties get together and make up their minds as to what they are going to do, what then becomes of the legislative authority of this chamber? Are we merely to react to the kind of propositions that are put to us by outsiders when we now have the opportunity to do the right thing ourselves? It seems to me, honourable senators, we should not consider that course. It seems to me that we should decide right here and now that this bill should not be amended and that it should be passed in its present form.

Some Hon. Senators: Hear, hear!

Hon. Lorna Marsden: Honourable senators, I wonder if Senator Roblin would entertain a question. As he points out, I would like to speak on this matter tomorrow in order to make the argument for the other side. However, Senator Roblin said in his speech just now—and I may not have the precise words—that if the amendment on exhibition rights is accepted, then exhibition rights are killed for all time. Does that mean that Senator Roblin has some information that we do not have that the minister is not planning a second phase of this bill? In other words, is it not possible for the minister to reintroduce exhibition rights in the next stage of the bill, as everyone has agreed?

[Senator Roblin.]

Senator Roblin: I am sure my honourable friend appreciates that a bill can be brought in at any time by anyone to do anything. Therefore, when I talked about its being abolished I meant with respect to this bill. With respect to this bill, it has not merely been given an indefinite hoist, as has been done with the tribunal or with the collective rights. Those matters have been given an indefinite hoist, and it is hard to tell when they may be proclaimed. However, this particular clause has been struck entirely from the bill, so, unless and until there is some new legislation—and who knows whether that will come?—it is dead. It is certainly dead in this bill, and it cannot be resurrected by any order-in-council action if we pass this bill as amended.

Senator Marsden: I thank Senator Roblin, but hasten to point out that he has just put his finger on my question. He just said, "until there is some new legislation, and who knows whether that will come?" If I understood the minister correctly, we were promised the next phase of that legislation very quickly. I would like to ask Senator Roblin: Is that no longer true?

Senator Roblin: Honourable senators, I am dealing with the bill that is before the chamber now. When my friend shows me the new bill, then I will be willing to talk to her about it.

Senator Marsden: We, too, are very anxious to see the new bill.

Senator Roblin: You may wait a while.

On motion of Senator Marsden, debate adjourned.

[*Translation*]

STANDING RULES AND ORDERS

SEVENTH REPORT OF STANDING COMMITTEE ADOPTED

On the Order:

> Resuming debate on the motion of the Honourable Senator Molgat, seconded by the Honourable Senator Olson, P.C., for the adoption of the seventh report of the Standing Committee on Standing Rules and Orders (rule 106 of the *Rules of the Senate*) presented in the Senate on 22nd March, 1988.—(*The Honourable Senator Flynn, P.C.*)

Hon. Jacques Flynn: Honourable senators, I had the opportunity to reread what Senator Molgat had said and my own remarks. I have no real objection to adopting the report. I would not object to putting the question.

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

Hon. Senators: Agreed.

Motion agreed to.

[English]

WAR VETERANS ALLOWANCE AND CIVILIAN WAR PENSIONS AND ALLOWANCES

GOVERNMENT CONSIDERATION OF AMENDMENT OF LEGISLATION—DEBATE ADJOURNED

Hon. Jack Marshall, pursuant to notice of Tuesday, April 19, 1988, moved:

> That in the opinion of this House, the government should consider the advisability of amending the *War Veterans Allowance Act* and Part XI of the *Civilian War Pensions and Allowances Act* in order to provide for the payment of an allowance, as defined under each of those Acts, to any Canadian veteran or qualified civilian of World War I, World War II or the Korean conflict, or to any widow or orphan of such a veteran or qualified civilian as defined in those Acts, whether or not such veteran or qualified civilian, widow or orphan has resided in Canada at any time since either of those wars or the Korean conflict, as the case may be; and
>
> That, within 120 days after the adoption of this resolution, the Leader of the Government in the Senate should consider the advisability of tabling in the Senate the response of the government to this recommendation.

He said: Honourable senators, in view of the fact that the hour is late and that Royal Assent is scheduled for this afternoon, I shall not speak on this motion this afternoon but shall move the adjournment of the debate.

On motion of Senator Marshall, debate adjourned.

The Senate adjourned during pleasure.

● (1650)

At 5.15 p.m. the sitting of the Senate was resumed.

The Senate adjourned during pleasure.

ROYAL ASSENT

The Honourable Claire L'Heureux-Dubé, Puisne Judge of the Supreme Court of Canada, in her capacity as Deputy Governor General, having come and being seated at the foot of the Throne, and the House of Commons having been summoned and being come with their Deputy Speaker, the Honourable the Deputy Governor General was pleased to give the Royal Assent to the following bills:

> An Act to provide for emergency preparedness and to make a related amendment to the National Defence Act (*Bill C-76, Chapter 11, 1988*)
>
> An Act to enable the Northern Canada Power Commission to issue shares, to authorize the sale of those shares to the Government of the Northwest Territories, to repeal the Northern Canada Power Commission Act and to provide for related matters (*Bill C-125, Chapter 12, 1988*)

The House of Commons withdrew.

The Honourable the Deputy Governor General was pleased to retire.

The sitting of the Senate was resumed.

The Senate adjourned until tomorrow at 2 p.m.

THE SENATE

Thursday, April 28, 1988

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

Prayers.

AGRICULTURE AND FORESTRY

SIXTH REPORT OF COMMITTEE TABLED

Hon. Dan Hays: Honourable senators, the Standing Senate Committee on Agriculture and Forestry has the honour to table its sixth report, respecting its examination of farm finance, assessment of current problems and consideration of policy and programs, entitled "Financing the Family Farm to the Year 2000".

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

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

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

THIRTY-SIXTH REPORT OF COMMITTEE PRESENTED

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I have the honour to present the thirty-sixth report of the Standing Committee on Internal Economy, Budgets and Administration.

May I suggest, honourable senators, that either the Clerk or I read it? It is quite short. I shall be proposing that its consideration be adjourned so that we may have an opportunity to look at it; but rather than dispense with its reading, I think it important that honourable senators know its content.

The report reads as follows:

> Your Committee recommends the approval of the *Guidelines for Senators' Research Expenditures* attached to this Report.

There is a schedule attached.

> With respect to the Ad Hoc Committee, your Committee recommends that it be established and composed of the following Senators: Hays, LeBlanc (*Beauséjour*), Leblanc (*Saurel*), Molgat, Nurgitz, Phillips, Sinclair and Tremblay.

That is a total of eight senators.

> Your Committee also recommends that Senator LeBlanc (*Beauséjour*), be the Chairman of the said Ad Hoc Committee.
>
> Respectfully submitted,—

It is signed by me as deputy chairman of the committee.

The guidelines run to three pages.

(*For text of appendix to report, see Appendix, p. 3262.*)

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

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

ORDER OF CANADA

NOTICE OF INVESTITURE CEREMONY

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, this is not really a report from the Internal Economy Committee. I merely wish to apprise honourable senators of something about which they may or may not know, and about which I think the Senate in general should know. The ceremony for the Order of Canada investiture will take place in the Senate chamber on Friday, May 6, 1988, at 6 p.m. That arrangement has been made because the accommodation that is normally used at Rideau Hall is not available, and Her Excellency asked if she could use the Senate chamber on two occasions. This is the second of those two occasions. So it will take place on Friday at 6 p.m., and there will be a reception in some of the adjacent rooms—I believe in the Reading Room and in the foyer.

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

Hon. Senators: Agreed.

ADJOURNMENT

Hon. Orville H. Phillips, with leave of the Senate and notwithstanding rule 45(1)(*g*), moved:

> That when the Senate adjourns today, it do stand adjourned until Tuesday next, 3rd May, 1988, at two o'clock on the afternoon.

Motion agreed to.

QUESTION PERIOD

THE CONSTITUTION

CONSTITUTIONAL ACCORD, 1987—SUGGESTED FURTHER CONSIDERATION BY FIRST MINISTERS

Hon. Paul Lucier: Honourable senators, I have a question for the Leader of the Government in the Senate concerning the

Meech Lake Accord. One thing that was consistent during the hearings, from everyone who made presentations, whether to the task force, to the Committee of the Whole, and even to the joint committee, was that they did want an accord. They agreed with the principles that the government was trying to establish; they agreed with what the government was trying to do—

Senator Flynn: I disagree!

Senator Lucier: —but they had problems with the contents of the Meech Lake Accord.

Now that Premier McKenna has said that he will not accept the accord as written, and that Sharon Carstairs has said that the accord is "dead" as far as she is concerned, and Justice Willard Estey of the Supreme Court of Canada has said that the accord should be looked at again—

Senator Flynn: What?

Senator Murray: Who was the last person you referred to?

Senator Lucier: Justice Willard Estey.

Senator Flynn: He is retired.

Senator Lucier: He retired on Monday; he has not gone yet.

Yesterday the results of a poll were released that indicated there are now only 25 per cent of Canadians who support the Meech Lake Accord.

Is the government considering recalling the premiers to try to come up with something that would make the Meech Lake Accord acceptable rather than just let it die? It seems to me that the objective of everyone in this exercise has been to try to improve the accord.

Senator Flynn: That's not true! You want to kill the accord.

Senator Lucier: Senator Flynn may laugh, but it does not take much to make him laugh.

Senator Flynn: You tried to kill the accord, not improve it.

Senator Lucier: One has to change it to improve it. I do not know whether or not Senator Flynn understands that.

Senator Flynn: You wanted to kill it!

Senator Lucier: I am trying to ask a serious question. I think the people of Canada want some kind of an accord that would allow Quebec to sign. That is what I am trying to say, and that is what Canadians have told us.

Is the government considering bringing the premiers back together to come up with something that is acceptable?

Senator Buckwold: Or is the government going to kill it?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, the government will see the Meech Lake Accord through to the end. We are committed to the Meech Lake Accord. The choice is not between this accord and some other hypothetical accord; the choice is between this accord and no accord.

With regard to the situation the honourable senator has described, he persists, as the saying goes, in seeing the glass half empty. I prefer to see the glass half full, or more than half full.

• (1410)

Senator Lucier has mentioned the Premier of New Brunswick. The Premier of New Brunswick has decided to send the accord to a parliamentary committee. As far as I am aware, he has not anticipated the recommendations of that committee, nor has he said that he would not accept the accord. Mrs. Carstairs is the Leader of the Opposition in Manitoba. The Premier designate of Manitoba has stated that he is in favour of the accord and has undertaken, as had his predecessor, to send the accord to a parliamentary committee. I trust that Mrs. Carstairs, the new Leader of the Opposition of that province, would not attempt to block a study of the accord by a parliamentary committee.

On the other hand, the accord has been ratified by the provinces of Saskatchewan, Alberta and Quebec. It will be placed before the legislators of the province of British Columbia during the present session. This is also the case in the provinces of Prince Edward Island, Nova Scotia and Newfoundland. In Ontario, a legislative committee is nearing the end of its work. I would expect, therefore, as I have said on previous occasions, that the vast majority of the provinces will have ratified the Meech Lake Accord by the summertime.

Senator Lucier: Honourable senators, it seems to me that the Leader of the Government is not being realistic. The three provinces that have passed the accord tried to sneak it through in a hurry before anyone found out what was in it.

Senator Buckwold: There was not even one public hearing!

Senator Lucier: The accord has not yet been ratified by every province, and the people of Canada are now taking a look at what is really in it. I believe the Leader of the Government is now saying—and I would like him to confirm this—that it is going to be this accord or no accord at all. Therefore, what he is saying, in effect, is that this government is going to kill the accord. If there must be unanimity in the ratification of the accord and there is no such unanimity, then the accord will die. The Premier elect of Manitoba said yesterday that the accord will not be one of his priorities. Obviously, he will not be able to get it through, so he is not going to introduce it. In effect, then, this government is saying, "Fine, let it die!" Is my understanding correct?

Senator Murray: Honourable senators, the Government of Canada, together with ten signatories to the Meech Lake Accord, has committed itself to that accord. We will see it through to the end.

Senator Flynn: If you don't like it, you can lump it!

CONSTITUTIONAL ACCORD, 1987—TERMINAL DATE FOR APPROVAL—PROVISION FOR WITHDRAWAL OF PROVINCIAL APPROVAL

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, I wonder if the Leader of the Govern-

ment would clarify a point for me. I believe that some month in 1990 is the terminal date by which all of the signatories to the accord have the opportunity to take legislative action with respect to it. If the action is taken, then, presumably, the accord will be the law of the land. If not, it will not become the law of the land. That is my first point.

My second point is this: Is it contemplated that a province could reverse a position previously taken if there were an election before the terminal date? Let us take, for example, the case where an election took place and a new government sought the legislative disapproval of the accord before the expiry date. Is that contemplated or provided for at this time? Could a legislature within the specified time frame withdraw its adherence to the accord?

Senator Flynn: You can read the Constitution as well as anybody else can.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, with regard to the second part of the question, my information is that a new legislature can withdraw its support for the accord at any time prior to proclamation, but not after proclamation, of course.

Senator Flynn: And a legislature could also support the accord if the previous legislature had refused to approve it.

Senator Murray: With regard to the first part of the question, the date, if my memory serves me correctly, is June 1990.

COPYRIGHT ACT

BILL TO AMEND—REPORT OF COMMITTEE—DEBATE CONTINUED

On the Order:

> Resuming the debate on the motion of the Honourable Senator Sinclair, seconded by the Honourable Senator Haidasz, P.C., for the adoption of the Twenty-Third Report of the Standing Senate Committee on Banking, Trade and Commerce (Bill C-60, An Act to amend the Copyright Act and to amend other Acts in consequence thereof, with certain amendments), presented in the Senate on 24th March, 1988.—(*Honourable Senator Marsden*).

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, Senator Marsden has agreed that I proceed. When I have concluded, she will either adjourn the debate or speak on this bill.

I am in a difficult position on this bill, Bill C-60, and the report of the committee. I am between, I guess, what some people these days call a rock and a hard place. I suppose if I have to describe them, the rock would be my own personal feelings about this bill, and the hard place is the position that, so far, the majority of the Liberal caucus is taking on the bill. That is one way of describing it. A dilemma is, perhaps, another way of describing it. Another way of picturing it could be this: The cartoonist who does the cartoon called "The Far Side" did one showing a devil standing in front of the gates to hell. On the top of one gate or door a sign said, "Damned if you do," and on the top of the other gate a sign said, "Damned if you don't." The devil, armed with a fork, was saying to the poor chap who was standing in front of the gates, "Come on, come on, it's one or the other!" Fortunately, that is not the only final response available to the Senate under our rules.

[Senator MacEachen.]

Honourable senators, I do not want to review all aspects of this bill. Senator Sinclair and Senator Doyle have done so, and I believe they have summarized well the results of the studies of this bill both here and in the other place. My understanding of its essence is that it provides for the collective enforcement of rights that already exist. It does not create copyright. These rights exist and have existed for many years. However, this bill makes it clear that they can be enforced collectively. They could be enforced collectively now. There is nothing to prevent the collectives from forming, but there is a question mark as to whether that would be contrary to restrictive trade practices legislation.

There are weaknesses in the bill. I think it is too bad the legislation is being enacted in two stages. I think it would be much better—and those who support the bill have admitted that it would be much better—if it were enacted in one stage and not two stages. Many of the problems that have arisen have resulted because of that.

Other weaknesses have been underlined by Senator Sinclair, and I agree with many of them. On balance, it is a judgment call, and the metaphor used has been to describe it in terms of a level playing field. I have never understood what that metaphor means. It never seemed to me to be an appropriate metaphor. I know that it means to say there are some unfair playing conditions, but I cannot picture a playing field as unlevel. You think of a billiard table perhaps being unlevel, or you think of a pinball machine being unlevel, but not a playing field. If it is saying that it has some bumps in it, then that is fair to both sides.

In any event, the idea is that there are two players and that it is unfair to one of them because the playing field is not level. I notice that Mr. Safire, who writes a weekly column in the magazine section of the *Sunday New York Times*, has launched an inquiry into the subject under the auspices of our ambassador to Washington, Mr. Gotlieb. Excuse me for that parenthetical comment, but the next time someone uses the words "level playing field," I hope they can explain the appropriateness of the metaphor.

As Senator Doyle has said, and as Senator Sinclair has agreed, it has been a long wait for the creators who own copyright—a wait of 64 years—and I do not think it is fair to ask them to, in effect, continue to subsidize the users, which is really what they are doing, by refraining from enforcing the rights they have and have had for so long. Again, on balance, what we gain by passing this bill without amendments greatly outweighs the interests of those who want further delay.

• (1420)

So, as senators may know, I have tried for a week or ten days—longer, really—to find a compromise between the position of the minister on the bill and the amendments that are proposed by the committee. I can report that that undertaking is not yet over; it is not dead. I think it is still a possibility. I hope—if honourable senators agree—that Senator Marsden will adjourn the debate and give us at least until next week to see if we can come up with an agreement between the minister and the majority members of the committee. If we can't, honourable senators, we should get rid of it next week and return it to the House of Commons, either with these amendments or, I hope, with amendments that the minister would be prepared to accept.

I hope I have made it clear that I am not speaking for my caucus, I am speaking for myself. My Liberal colleagues are not to take this as an appeal on the basis of my position as deputy leader, but I do not mind if they accept its appeal on its merits—that is up to them.

For those reasons, and between those two positions, I felt that I owed an explanation to all of my colleagues in the Senate as to why I propose to abstain. I believe the bill should be passed without amendments, but at the present time we, in the Senate, operate on the party system, and I do not want to vote against my party.

On motion of Senator Marsden, debate adjourned.

CUSTOMS TARIFF

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Eileen Rossiter moved the second reading of Bill C-118, to amend the Customs Tariff.

She said: Honourable senators, Bill C-118, to amend the Customs Tariff, gives effect to the tariff amendments tabled by the Minister of Finance as part of the budget of February 10, 1988. They have been in effect on a provisional basis since the day following the budget, as is the traditional practice.

The House of Commons has given speedy approval to this bill and I believe that we should do the same. The tariff changes in the bill are of benefit to the Canadian firms and individuals who requested them, and they do not adversely affect other Canadians. These amendments reflect the long-standing practice of amending the Customs Tariff as part of the budget process in order to respond to new problems and needs in the tariff area which require statutory amendments to the legislation.

The package of tariff measures in this bill is quite small compared to most previous budgets. It is, nevertheless, important to those who benefit from the changes. The oil sands industry is receiving duty-free entry for a wide range of equipment it has to import. Farmers will benefit from removal of the duty on steel rods used in the construction or repair of silos. Transportation companies and consumers are the beneficiaries of the amendments which remove the tariffs on certain air compressors and differentials used in motor vehicles. Consumers also gain from tariff elimination on certain model kits. The tariff on burial shrouds is being removed at the request of a synagogue in Vancouver. The blind will benefit from removal of the duty on certain audio tapes which are used to make cassettes.

The bill contains a few technical amendments as well. Most of these are designed to ensure that goods which have been entering Canada free of duty for some time will continue to do so, notwithstanding certain technological changes in the products or other factors which, without corrective action, would result in their reclassification and the assessment of duties on them.

It is important for senators to note that none of the products covered by these tariff changes is made in Canada, so, as I said, the amendments do not have a negative impact on Canadian manufacturers.

In light of these factors, I hope that we can all agree that this bill is a good one and need not be held up. I urge my colleagues to approve it without delay.

Some Hon. Senators: Hear, hear!

On motion of Senator Frith, for Senator Sinclair, debate adjourned.

EMERGENCIES BILL

SECOND READING—DEBATE ADJOURNED

Hon. William M. Kelly moved the second reading of Bill C-77, to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof.

He said: Honourable senators, I rise today to speak to Bill C-77, which has been referred to as the Emergencies Bill. In several respects, this bill is a companion piece to Bill C-76, the Emergency Measures Act, passed by the Senate on March 31 of this year.

The bill before us today finally implements a commitment of this and previous federal governments to replace the outmoded and draconian War Measures Act with more balanced and appropriately safeguarded emergencies legislation.

Everyone in this chamber knows the history of the War Measures Act. It was passed quickly and in some panic in August 1914, as our infant country tried to put itself on a war footing to respond to the conflagration about to consume Europe. It was used to intern suspected "communists" in Canada in the days following the Russian Revolution in 1917, and it was used in one of the darkest periods of our history to intern Japanese Canadians during the Second World War.

The War Measures Act was used most recently in 1970 in response to a perceived "apprehended insurrection" in Quebec. I see no point in dredging up the history of this unhappy period and debating whether the government of the day acted reasonably and properly in invoking the act at that time and under those circumstances.

There are, however, three basic points that I should like to make that spring to mind from that experience. First, whether

or not invocation of the act was required to meet the situation in Quebec at the time, it never should have been used as a pretext for arbitrary arrest and detainment of people in Simcoe, Ontario, or Winnipeg, Manitoba.

Second, I think the best that can be said of the events in 1970 is that when the government went to the cupboard, the only thing available was the War Measures Act, a very blunt instrument designed, as its name suggests, for wartime use.

The third point resulting from the 1970 experience is that as a practical matter—because of the 1970 experience and the subsequent reaction to it—the War Measures Act will almost certainly not be used again in peacetime, or, at least, it will not be used for anything short of an urgent threat of an insurrection akin to a coup d'état.

In other words, Canada does not have, as a practical matter, access to legislation to define governments' responses to emergencies of lesser magnitude than a pending declaration of war. As such, we stand alone. Every industrialized country in the world and every province in Canada has emergency legislation to allow governments to respond to a range of emergency situations. I think that everyone in this chamber agrees that this lack represents an unacceptable situation that cannot be allowed to persist.

One of the most enduring and fundamental principles of government is *salus populi suprema lex*—the safety of the people is the supreme law. As parliamentarians, we would be derelict in our duty not to correct this anomaly. Agreement that the anomaly must be set right is the easy part. How to do it is fraught with complexities and divergent views.

This is a complex and difficult bill. I have thought long and hard on how best to describe it and have come up with the following two basic objectives that this bill is trying to achieve: The first is to provide Canada with a legislative framework that allows governments to take measured and appropriate, but effective, responses to a host of peacetime emergencies that may occur within Canada. The second objective is to solve the dilemma posed by President Lincoln toward the end of the American Civil War:

> It has long been a grave question whether any government not too strong for the liberties of its people can be strong enough to maintain its existence in great emergencies.

In short, how can we protect the civil rights of citizens while, at the same time, providing governments with effective powers to respond to emergencies?

● (1430)

Let me take those two objectives as foundations for the examination of this bill. As I said earlier, the War Measures Act was designed for use in wartime. Its powers are too blunt, wide-ranging and draconian for use in lesser emergencies. In order to allow governments to make an appropriate response to a host of emergencies, Bill C-77 defines four kinds of emergencies, each with its measured response. The four types are: public welfare emergencies, public order emergencies, international emergencies and war emergencies. These four emergencies fall under the umbrella of "national emergency" as defined in clause 3 of this bill, which reads:

> For the purposes of this Act, a "national emergency" is an urgent and critical situation of a temporary nature that
>
> (a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or
>
> (b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada and that cannot be effectively dealt with under any other law of Canada.

Honourable senators, let us now look at the bill's definitions of each of the four subsidiary emergencies.

Public welfare emergencies are those peace-time challenges that are brought on by forces of nature—drought, storm, earthquakes, fire, flood—and by man—chemical spills, contagion, major accidents, and so on. Although these emergencies may bring about social disruption and imperil property and the safety of Canadians, there is no threat to the security of the state, and it will usually be isolated in one or a few provinces. Public order emergencies encompass actions by a relatively few people within Canada that endanger the safety and security of Canadians or the security of the state. Terrorism would fall within this category of emergency, and, once again, the emergency would tend to be isolated in one or a few provinces, although there may be a danger that these emergencies could spread.

Questions have been asked, for example, why a terrorist incident could not be handled locally by the RCMP, the local police forces and perhaps by the Special Emergency Response Team under the current Security Offences Act. As the hijacking of the Kuwaiti Airlines' 747 in April demonstrated, terrorists are becoming increasingly sophisticated. It is conceivable that a hijacked jet could fly from place to place in Canada. We have known since 1975 that some terrorist groups have access to highly lethal, chemical, radiological, bacterial agents that could devastate a huge area. Terrorist attacks on electrical, natural gas and telecommunications systems could trigger an emergency, chaos and civil disorder that could be regional, or perhaps even national, in scope.

For these kinds of reasons the Security Offences Act is, unfortunately, inadequate, and more general legislation along the lines of Bill C-77 is required.

"International emergencies" is defined to cover periods of international tension such as the Cuban missile crisis, where a declaration of war may result. The declaration of a state of emergency, less than a full war footing, allows a country to take the civil, military and economic measures necessary to prepare for war, without taking the precipitate and perhaps provocative step of declaring war. Obviously, such a declaration would apply to the entire country. "War emergencies" are those for which the current War Measures Act was designed. Under this bill, such an emergency may be declared only at a

time of war or conflict, actual or imminent, and would, obviously, apply to the entire country.

Let me now turn to the second dilemma this bill attempts to resolve; balancing a government's requirement for effective action with civil rights of citizens. The current War Measures Act is particularly flawed in this respect. It lacks any real safeguards to protect individual rights and freedoms. Bill C-77 attempts to correct these flaws in the following ways.

Bill C-77 confirms Parliament's pivotal role in controlling developments. The bill requires the government to convene Parliament within one week of declaring any emergency. Once Parliament is in session, the government must describe the actions it has taken and the reasons for those actions. Time must be allocated to debate the subject continuously for three sitting days. Parliament has the authority to negate any motion for continuation of an emergency. Even after Parliament has confirmed a motion for the declaring of an emergency, Bill C-77 provides a mechanism whereby ten or more members of this place, and twenty or more members of the other place, may table a motion to revoke an emergency declaration, and ten hours of debating time must be allotted and the motion voted on.

The bill also requires that an all-party joint review committee of the Senate and the House of Commons be constituted when a declaration of emergency occurs. All orders and regulations relating to the declaration would be referred to Parliament. Any secret orders may be referred to the committee and the committee would have the power to revoke or amend them. Furthermore, the committee would report to Parliament every 60 days during the time in which an emergency declaration is in force or whenever an emergency declaration is continued or revoked.

In these ways, Parliament will have a very effective way to guard against excessive zeal by a government, both by approving the initial emergency declaration and the orders and regulations thereto; and by monitoring the on-going need for an emergency declaration at any time.

Any action taken under Bill C-77 would be subject to full review by the courts and the courts could declare null and void any emergency declaration under this bill.

Whereas the War Measures Act is silent on the question of compensation, Bill C-77 provides for mandatory reasonable compensation to people who suffer loss or injury through its application.

Under the War Measures Act, there are no time limits. Under Bill C-77, precise time limits for the length of any emergency are clearly set out: 90 days for a public welfare emergency; 30 days for a public order emergency; 60 days for an international emergency; and 120 days for a war emergency. After these periods, the government must take action to continue the emergency declaration, if required.

Under Bill C-77, as I said earlier, not only declarations of emergencies but also all orders and regulations are subject to review by Parliament. This is not the case with the War Measures Act. The War Measures Act can be invoked on what the act calls "conclusive evidence," and the action is not subject to contest or review. Under Bill C-77, the government must base its actions on reasonable grounds, and, as I mentioned earlier, those grounds can be examined and contested by Parliament and the courts.

Pursuant to an amendment in the other place, the bill specifies that the Governor in Council cannot order the detention, the imprisonment or internment of Canadian citizens or landed immigrants on the basis of race, national or ethnic origin, colour, and so on.

Honourable senators, there are those who claim that governments should refrain from the use of general emergencies legislation in favour of *ad hoc*, narrowly-focused statutes enacted by Parliament whenever the country is confronted with an emergency situation. In this way, the argument goes, the measures adopted would more likely be linked to the problems involved and the affected parties would enjoy whatever safeguards flowed from a parliamentary debate.

I find this argument difficult to credit on a practical level. I also do not believe this approach would necessarily protect civil rights any better. I think it far better that the government and Parliament put in place a framework to handle emergencies during a time of calm that allows calm deliberation rather than responding *ad hoc* when emotions may well be running high. Would, for example, Japanese Canadians or suspected communists have fared any better through special legislation passed by Parliament during a period of war hysteria? I think not.

Is this bill perfect in its protection of individual rights and property during a declared emergency? It is probably not, but, in my view, this bill goes further in this regard with both substantive and procedural safeguards than analogous emergencies legislation in the United States, Germany, the United Kingdom or Australia. It is certainly a vast improvement over the current legislation.

Will Bill C-77 allow the federal government to respond effectively to emergencies? Honourable senators, in this regard, I have some concern. I think it would be helpful, when this matter goes to committee, that these concerns be aired with the minister and his officials and put to rest.

I am concerned that the bill's requirement for extensive consultations with all provinces affected by an emergency declaration may erode the federal government's ability to respond fully and with dispatch.

● (1440)

In the case of a public welfare emergency, the federal government may not declare an emergency without prior consultation with the lieutenant governors of the provinces that are affected. In the case of a public order emergency confined to one province, a federal declaration may not occur without a request coming from the lieutenant governor of that province.

In the case of a public order emergency, the lieutenant governors of the provinces affected are to be consulted before or after the declaration.

In the case of an international emergency, or a war emergency, the lieutenant governors in council in each province must be consulted to the extent that the federal government believes "it is appropriate and practicable to do so in the circumstances."

In this context, I must ask: What does "consultation" mean? What happens, in this context, if, after consultation, one of ten provinces opposes the action, or five out of ten oppose, or nine out of ten oppose? Furthermore, what effect will this bill's requirement for extensive consultation have on the so-called emergency doctrine?

Simply described, the emergency doctrine is the ability of the federal Parliament unilaterally to exercise concurrent or exclusive jurisdiction over matters that otherwise would fall within exclusive provincial jurisdiction in order to respond to an emergency situation.

Government officials inform me that this provision is entirely workable—and therefore I believe it is—on a practical basis, and that what is meant is that the federal government would be required to at least "notify" affected provincial governments prior to the declaration of an emergency.

If that is what is meant, I trust that this intention and understanding will be aired during the committee hearings so that it can appear on the record for reference later on, should questions arise as to whether the federal government honoured the letter or spirit of the legislation in its consultations with provinces prior to or after the declaration of an emergency.

Honourable senators, let me make it clear what I am saying. I am not proposing an amendment. I simply think it is worth the time and effort to explore this matter and have the record clearly set out what was intended by this wording. I think that would be the purpose of the committee to which we refer this bill.

I am also concerned about an amendment agreed to in the other place, which now appears in Bill C-77 as subclause 59(3). The clause would permit only one house—the Senate or the House of Commons—to revoke a declaration of an emergency. This obviously is a major change from the requirement for agreement of both houses, as the bill was originally drafted.

This was presented to me as something of a victory for the Senate. The problem, to my mind, of course, is that this clause is a two-edged sword. Obviously, the House of Commons can revoke a declaration without the involvement of or approval by the Senate, as well as the Senate's revoking a declaration without review or approval by the House of Commons.

I also wonder about the constitutional precedent that we are setting here. We have a bicameral Parliament. Our Parliament speaks as a Parliament only when both houses agree. What precedents are we setting when we allow one house alone, and independently, to revoke a declaration that has been approved by both houses? What impact is this precedent likely to have on our constitutional fabric? Have these implications been considered, and are they worth whatever benefits are foreseen? I wonder.

I wonder whether, in our haste to replace a manifestly "bad" or "deficient" act with a far better one, we are giving too much away or setting precedents that will return to haunt us later. As the "chamber of sober second thought," they are issues that, I believe, should concern us, and I strongly urge the committee and all honourable senators to turn their minds to them and to receive assurances from the minister and his officials.

Honourable senators, I want to see this bill passed, because I think it represents a vast improvement over the current situation. I also want to see it passed during this Parliament, because it would be a shame to waste all of the effort that has gone into this bill and the substantial progress made to date.

The simple fact is that Canada requires balanced legislation to allow the federal government to respond appropriately and effectively to emergency situations. I think we all agree with that proposition.

I do have some concerns, however, about the legislated requirement for federal-provincial consultations and the ability of one house to revoke an emergency declaration. In committee I will be looking to the minister and his officials for assurances on these matters. Having said that, I think that the "fundamentals" of the bill are right.

Honourable senators, I commend this long overdue and important bill to your careful attention.

Hon. John B. Stewart: Honourable senators, I wonder if Senator Kelly would consider two questions.

Senator Kelly: Honourable senators, I counselled with Senator Stewart—whom, I must say, I respect and fear—and reminded him that if he were going to ask me a question, and he asked for my permission, my answer was going to be "no." He will have a chance to ask questions in committee, surely.

Senator Stewart: There was an assertion in the honourable senator's speech, and I wanted to be sure that he meant what he said, because I could hardly believe that he meant it seriously. But if he wants to leave it on the record, I will not object.

Senator Kelly: In that event, I have no choice but to answer "yes." I will try to answer the honourable senator's questions.

Senator Stewart: As I understood the honourable senator, he said that the statute that would eventuate from this bill would give us a situation that would parallel that which prevails now in the United Kingdom. I ask him if that is true with regard to the provisions of the bill concerning international emergencies and war emergencies. I believe his statement is inaccurate on that point. It is a very important statement, because it helps sustain the legitimacy of the bill.

Senator Kelly: Honourable senators, I believe I said that we started out far behind those countries mentioned and that this measure puts us ahead. I did not regard any part of this as being in parallel with any of the countries I mentioned.

Senator Stewart: Does the honourable senator realize that there is nothing on the statute books of the United Kingdom

comparable to our War Measures Act as of this date, nor has there been for years?

Senator Kelly: Yes, I am aware of that; but I am also aware—as I think we all are—that even though the War Measures Act sits as part of live legislation for the moment, we are also aware, from a practical standpoint, that it would not, under any circumstances, be used—I am sure, because of history—for anything other than for war emergency, and therefore effectively it is just as dead.

Senator Balfour: What about the Official Secrets Act?

On motion of Senator Hicks, debate adjourned.

[*Translation*]

COASTING TRADE AND COMMERCIAL MARINE ACTIVITIES BILL

SECOND READING

On the Order:

Resuming the debate on the motion of the Honourable Senator MacDonald (Halifax), seconded by the Honourable Senator Barootes, for the second reading of Bill C-52, An Act respecting the use of foreign ships and non-duty paid ships in the coasting trade and in other marine activities of a commercial nature.—(*Honourable Senator Langlois*).

Hon. Léopold Langlois: Honourable senators, this bill amends the Canada Shipping Act with respect to the coasting trade in Canadian waters. As honourable senators know, I am sure, the present legislation on the coasting trade in Canada is contained in Part XV of the Canada Shipping Act. Its provisions, dating back to the 1900s, forbid ships not flying the British flag to take part in Canada's coasting trade. Bill C-52 will therefore replace Part XV, which will be repealed.

The legislation will reserve the coasting trade for ships flying the Canadian flag and will broaden the scope of the laws on the coasting trade to include from now on: (i) all commercial marine activities within 12 miles of the Canadian coast; (ii) all commercial marine activities related to resource exploitation or exploration and to passenger transport within 200 miles of the coast.

However, some exceptions must be mentioned: First, hydrocarbon-drilling platforms; second, fishing vessels covered by the Coastal Fisheries Protection Act and oceanic research activities for the Department of Fisheries and Oceans.

Third, passenger ships with facilities to accommodate 100 persons or more for the night.

Fourth, ships operated or financed by a foreign government which has sought and received permission from the Secretary of State for External Affairs to conduct research activities in Canadian waters.

Fifth, vessels helping ships in distress.

Sixth, rescue operations more than 12 miles from the Canadian coast.

An exemption procedure similar to the existing one to allow foreign registered ships to take part temporarily in the commercial activities covered by the act is included in the new Act.

Fines up to $25,000 per infraction are provided for violations of the law. The act will be enforced by the persons named for this purpose by the Minister of Transport.

Enforcement procedures are provided to permit the detention and possible sale of a vessel. Safeguards have been provided to protect the privacy of the crew's quarters.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Phillips, bill referred to the Standing Senate Committee on Transport and Communications.

• (1450)

[*English*]

WAR VETERANS ALLOWANCE AND CIVILIAN WAR PENSIONS AND ALLOWANCES

GOVERNMENT CONSIDERATION OF AMENDMENT OF LEGISLATION—DEBATE CONTINUED

Leave having been given to revert to Order No. 8:

Resuming the debate on the motion of the Honourable Senator Marshall, seconded by the Honourable Senator Phillips:

That, in the opinion of this House, the government should consider the advisability of amending the *War Veterans Allowance Act* and Part XI of the *Civilian War Pensions and Allowances Act* in order to provide for the payment of an allowance, as defined under each of those Acts, to any Canadian veteran or qualified civilian of World War I, World War II or the Korean conflict, or to any widow or orphan of such a veteran or qualified civilian as defined in those Acts, whether or not such veteran or qualified civilian, widow or orphan has resided in Canada at any time since either of those wars or the Korean conflict, as the case may be; and

That, within 120 days after the adoption of this resolution, the Leader of the Government in the Senate should consider the advisability of tabling in the Senate the response of the government to this recommendation.—(*Honourable Senator Marshall*).

• (1500)

Hon. Jack Marshall: Honourable senators, I do not want to spend a great deal of time on this subject today, because I introduced an inquiry in a similar context in December of 1987 and spoke to it extensively on March 1, 1988. I can eliminate many of the recommendations that I would otherwise have made, because they are all contained in my address of March 1. What I want to outline today is what happened after I gave notice of this motion on April 19.

Mr. Percy Mercer, the National Secretary of the Canadian Veterans' Association of the United Kingdom, appeared before the Subcommittee on Veterans' Affairs and Senior Citizens on April 20, 1988. He gave evidence to support the repeated requests of that association of 1,000 strong to strike out one of the clauses of the Veterans' Charter, a clause that restricts Canadian veterans from eligibility for war veterans allowance or civilian war allowances and demands that they return to Canada for 365 days in order to qualify. I should tell honourable senators that Mr. Mercer is a Newfoundlander who decided not to return to Canada after the war. He served during World War II not as a Canadian but as a soldier with the 59th Newfoundland Artillery Regiment under British command. He was one of those veterans who decided to remain in a foreign country—in this case, the mother country—and take up a new life. He chose to live in the United Kingdom in a small part of the free world he fought for. Through his initiative, he became successful and does not need the war veterans allowance, but he has taken it upon himself, as secretary of the Canadian Veterans' Association of the United Kingdom, to work on behalf of those veterans who do need the allowance.

Honourable senators, it is strange that so many years after the War Veterans Allowance Act was introduced in 1930 we have found, through evidence like that of Mr. Mercer, that somebody is not doing his job. Mr. Mercer testified before the committee about a widow, a Mrs. Simmonds, now aged 88, who wrote to him on March 25, just prior to his leaving for Canada. She told him how difficult it was to get by these days and to keep her home going. Her husband was a prisoner of war for three and one-half years. Mr. Mercer said:

> To my knowledge he received no compensation during his lifetime, and certainly she doesn't get any compensation now except the £16 a month, from the Assistance Fund for the Needy.

The government kindly gives that amount to some 260 veterans overseas. At this point, I interrupted him. Honourable senators, we have in place a POW Compensation Act, which was introduced 11 years ago, and that veteran, Mr. Simmonds, should have been receiving a 25 per cent POW compensation, which is the equivalent of the disability pension of 25 per cent and is now $404.30 per month. Further, his wife should now be receiving a pension of half that amount, which is $202. That would help her considerably. Whoever represents the Department of Veterans Affairs—and I understand that it is somebody from the Department of External Affairs—did not contact Mr. Mercer with this information and really ought to have been responsible for advising these people of these allowances. It is obvious that in all these years their record of service or medical records were never checked for possible eligibility for pension benefits.

Honourable senators, I was happy that two officers of the Royal Canadian Legion found the committee meeting interesting enough to attend and listen to the evidence. I discussed this with Mr. Ed Slater, the Director of the Service Bureau of the Royal Canadian Legion, and Miss Janet Mather, Imperial Service Officer of the Royal Canadian Legion, both of whom were in attendance, and they confirmed that I was right. The next day they took from Mr. Mercer the names of all of those who were in destitute condition, many of whom served in battles in different parts of Europe, in order to check their medical records to see whether such veterans were entitled to disability pensions.

Honourable senators, as a result of a visit by the committee to the Department of Veterans Affairs Headquarters in Prince Edward Island, we found that they are looking at 14 or 16 cases of veterans who might have been entitled to disability pensions for many years. Honourable senators, here we are many years later bragging about the greatest legislation in the world, yet there are people living in destitute conditions who might have been receiving a lot more money than they have received—money that they desperately needed. This supports the allegation that the Canadian government should look after these people and do away with that outdated and outmoded clause in the act which restricts them from receiving the War Veterans Allowance unless they return to Canada for 365 days. They must wait here for no other reason than that, only to get an allowance they are due.

Honourable senators, upon looking through my files, I found an article that appeared in *The Evening Telegram* of St. John's, Newfoundland, September 8, 1987. It is headed "Premier declares Sept. 6-12 Legion Week". In closing, the article states that:

> ... in the Act to Incorporate the Royal Canadian Legion, Chapter 84 of the Statutes of Canada, shows that under "Purposes and Objects" the Legion is obligated as follows:
>
> > To ensure that proper attention shall be paid to the welfare of all who have served and the welfare of their dependents, and to see to the maintenance and comfort of those who require special treatment, particularly the disabled, sick, aged and needy, and to promote the welfare of their dependents.

There have been resolutions for the past ten years from the Legion to do what I am asking the government now to do—to eliminate that clause which is so unfair.

Honourable senators, many inconsistencies are especially noticeable in the correspondence that has been exchanged over the past four years. This all started in 1984. In October of 1984 Mr. Donald Smith, the Agent General of the Province of Nova Scotia, who is also a veteran and president of the Canada-UK Veterans' Association, wrote to the Minister of Veterans Affairs. There are two responses to his letter. The minister, in a response dated November 22, 1984, finished by saying:

> Having said the above you can rest assured that both I and the officials in my Department are giving serious consideration to relaxing this requirement even further, and will be doing so, if it is at all possible bearing in mind the current economic climate.

Honourable senators, that is the standard response from government. A couple of weeks later, on September 10, the minister sent another letter in which he stated:

> I cannot see a strong case being made to extend the income maintenance provisions of Canada's social assistance legislation, of which War Veterans Allowance is a part, to individuals who elected to remain in another country at the end of the war or who now reside in another country and want to apply for a Canadian benefit such as War Veterans Allowance.
>
> There are no plans at the present time to amend the War Veterans Allowance Act with respect to the eligibility requirement for veterans residing abroad.

On the one hand, honourable senators, the government is giving encouragement and, on the other hand, it is taking that encouragement away.

● (1510)

Just recently the minister appeared before the House of Commons committee and the same question was asked by one of the members of Parliament. He is asking the minister about a reciprocal agreement—

At this point the proceedings were interrupted by the sounding of the fire alarm.

Senator Marshall: Somebody doesn't like me!

The Hon. the Acting Speaker: Honourable senators, I have no alternative but to adjourn the Senate because of the sounding of the fire alarm.

Hon. Orville H. Phillips: Honourable senators, I believe Senator Marshall has adjourned the debate. He can complete his remarks on another occasion.

On motion of Senator Marshall, debate adjourned.

The Senate adjourned until Tuesday, May 3, 1988, at 2 p.m.

APPENDIX

(*See p. 3252*)

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

APPENDIX TO THIRTY-SIXTH REPORT

APPENDIX

Guidelines for Senators Research Expenditures

A research allowance has been proposed by the Committee of Internal Economy and subsequently approved by the Senate. The proposal allows those Senators who require it to draw down up to $40,000 in the fiscal year 1988-89 for the purpose of research and office assistance in relation to their duties in the Senate.

The $40,000 is broken down into two components:

A. Up to $10,000 which may be allocated at the Senators' discretion, and

B. Up to $30,000 which may be allocated upon application to an Ad Hoc Committee which is to be established.

The purpose of the research allowance is to provide funds to assist Senators in carrying out their duties in relation to their Senate responsibilities.

While the monies allocated must be expended on Senate related activities, Senators should have full discretion in selecting the public policy topics and studies they wish to pursue and these funds may be utilized for other matters such as the preparation of speeches, draft replies to correspondence, clerical assistance or other related matters according to the needs of the individual Senator.

Inasmuch as this is the first year of operation it should be considered a pilot project subject to further review and amendment by the Committee of Internal Economy. The Ad Hoc Committee of Senators would be expected to allow latitude when reviewing applications in order to ensure that each Senator is able to carry out his or her mandate in a manner consistent with the Senators interests and objectives in the Senate. Likewise, individual Senators must be conscious of the requirement to expend public monies prudently.

Procedures

1. Senators wishing to utilize their maximum of $30,000 allocation will apply in writing to the Ad Hoc Committee indicating:

   A. The general area or areas of work to be undertaken.

   B. The expected duration of the work, and

   C. The maximum amount of money to be expended.

2. The Ad Hoc Committee will meet as required to review the applications:

   A. On approval, the appropriate Senator will be advised and the application will be forwarded to the Personnel and Finance Branches for administrative purposes.

   B. If the Committee has reservations about an application the Senator will be advised as to the reservations and will be given an opportunity to appear before the committee at its next meeting in person.

3. Once a Senator has received approval from the Committee he or she will be authorized to commence the contracting process and upon obtaining a suitable candidate or candidates, arrange with the Personnel Branch for the execution of the appropriate contract or contracts.

   Provided the general area or areas of work does not materially change from the initial application the Senator is entitled to spend a sum, up to the amount approved for the fiscal year, and make any personnel changes necessary without further recourse to the Committee.

4. The Personnel Branch is responsible for the preparation and maintenance of standard forms of contract, subject to the following points:

   A. Contracts are not to extend beyond the fiscal year.

   B. The amount expended is not to exceed the total that has been authorized.

   C. Each contract must provide for termination after reasonable notice.

   D. Senators who are letting contracts shall establish the terms and conditions of each contract.

   E. The contractor will not be an employee of the Senate or the Senator. Accordingly, payroll

deductions at source will not be made and employee benefits are not available.

F. Individuals under contract with Senators must be 18 years of age or over. Senators cannot engage their own parents, spouse or children under contract.

G. Full-time employees of the Senate, House of Commons, Library of Parliament, any Department or Agency of the Federal government, or other individuals receiving full-time employment income from the consolidated Revenue Fund, may not be hired by Senators under Contract.

H. Senators may share the costs of an individual or firm under contract out of their $10,000 discretionary allowance. The $10,000 allowance may also be utilized for facilities and equipment related to their Senate duties.

I. All contracts must be in relation to work or studies being undertaken by a Senator in their capacity as a Senator.

J. No person shall be paid a contract fee if such person has not performed the services. Services shall be performed during the period for which payment is authorized. Aggregate payments to an individual of firm shall not exceed $100,000 per fiscal year.

5. The Finance Branch is responsible for:

A. Making all payments, according to the contract, directly to the contractor.

B. Advising each Senator, who has received committee approval for expenditure of funds, of the amount expended, and balance remaining on a quarterly basis for the first three quarters and monthly in the last quarter.

C. Providing a record of expenditures, under the heading "Research Allowance" for each Senator utilizing the research monies, in the annual publication of Public Accounts.

6. Office space and office equipment for additional staff.

A. A limited budget has been make available in the 88/89 Estimates for office equipment for additional staff. Senators cannot expect equipment to be provided beyond basic items such as a desk, chair, typewriter, telephone and office supplies.

B. Space is also severely restricted. Senators who cannot accommodate additional staff in their existing office space may encounter delays before additional common space for staff can be obtained.

THE SENATE

Tuesday, May 3, 1988

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

Prayers.

QUESTION PERIOD

INDIAN AFFAIRS

CONTROL OF EDUCATION—IMPACT OF MASTER TUITION AGREEMENT—GOVERNMENT ACTION

Hon. Len Marchand: Honourable senators, last week I raised this matter in the absence of the Leader of the Government, and Senator Phillips took it as notice. My question relates to the master tuition agreement on Indian education between the Province of British Columbia and the Government of Canada which has been in effect for some time.

Through negotiations with the Indian people of British Columbia, it was what they called "effectively cancelled" in July of 1987, but on April 20, 1988, the Minister of Indian Affairs and Northern Development signed a new five-year master tuition agreement between the federal government and the Province of British Columbia. This was done despite the clear and explicit objections of the Indian people of British Columbia.

Over many months the Indian people of British Columbia have been negotiating in good faith in an attempt to reach a mutually agreeable solution to the problem of the master tuition agreement. They are deeply disappointed by the action of the Minister of Indian Affairs and Northern Development.

Can the Leader of the Government in the Senate shed some light upon this and perhaps tell us why this particular action was taken?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I regret that I am not in a position to do that today. I noted the question in *Senate Debates* that was asked last week by Senator Marchand. I have asked the office of the Minister of Indian Affairs and Northern Development for a reply. I shall make further inquiries and will bring in a reply during the course of the present week.

Senator Marchand: Similar agreements are now commonplace in most of Canada. It would not have been a revolutionary move to have done away with the master tuition agreement in British Columbia and to allow bands, tribal councils or other government units to make tuition agreements with local school boards.

Control over education is largely related to control over the money paid to the local school district, and the $20 million spent on behalf of primary and secondary education of Indian children would go a long way to reaching that goal.

We Indians from the province of British Columbia think that we have some of the best educators to be found anywhere in this country, whether they be Indian or non-Indian. We have made a deliberate attempt over the past number of years to direct some of our people into the field of education. That is something of which we are very proud, and we feel slighted by this action.

I have two questions: Why did the minister do what he did, and will the minister get back to the bargaining table with the Indian people of British Columbia with the view to either throwing the current MTA out this year or next year?

Senator Murray: Honourable senators, while my friend was asking his supplementary question I located some information that had been sent to me by my colleague following Senator Marchand's question of last week. I can only place this information on the record at this point.

My colleague states that the federal government accepts financial responsibility for the education of Indian students who live on reserve or crown land, that for such students attending provincial schools the federal government reimburses the per-student costs incurred by provincial authorities, subject to agreed-upon terms, and that the new federal-provincial agreement with British Columbia provides for the development of local level tuition agreements between Indian bands and provincial school districts.

My colleague insists that this new provision, which is the result of consultation with Indian representatives, supports Indian control of Indian education.

He states further that, given the previous lack of any meaningful involvement by bands in provincial education, the possibility of bands now being able to negotiate local level agreements is regarded as a major positive development.

Senator Marchand: Honourable senators, the Indian people do not agree with that assessment. It is not a positive development. The minister still has control over the money, and that is where the power is. If the Indian people had control over that money, where the power is, this would be a great step forward. That would be a step toward getting the quality of education we want in British Columbia. Provincial governments understand the language of dollars, especially the Government of British Columbia.

Senator Murray: Honourable senators, as I understand it, provincial legislation and fiscal arrangements with school dis-

tricts in that province have precluded any type of tuition agreements at the local level.

I understand the position that is being advanced by my friend and by the people he represents. They want the federal government to enter into bilateral agreements with them and to advance the funds to them so that they can negotiate with the school districts. That seems to be the issue between the bands and the minister at this point. I can only undertake to convey to my colleague, Mr. McKnight, the views and representations made by Senator Marchand on this issue.

Senator Marchand: Honourable senators, I will conclude by saying that I will wait for Senator Murray's report to me. I have indicated the position of the Indians of British Columbia.

With the permission of honourable senators, I would like to table a telegram that they sent to me concerning this issue.

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

Hon. Senators: Agreed.

Document tabled.

AGRICULTURE

WESTERN CANADA—DROUGHT CONDITIONS—GOVERNMENT ASSISTANCE

Hon. Joyce Fairbairn: Honourable senators, I have a question for the Leader of the Government in the Senate which pertains to the distressing drought conditions that exist at this moment in western Canada across the prairies, and the prospects that perhaps the most disastrous summer in many, many years will affect the farmers in those areas.

Could the Leader of the Government in the Senate undertake to give senators an outline of the preparation of the cabinet to date for the prospect of this drought?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I am aware of the concern expressed by the honourable senator, because I have heard it directly from ministers in provincial governments in the west as well as from my own colleagues. However, for a more substantial report I will have to inquire of the appropriate federal minister.

Hon. H.A. Olson: Honourable senators, I have a supplementary question. The most immediate problem is to find some means of taking care of brood cow herds, because the grass has not even started to grow this spring. Is any help contemplated to move these cattle to somewhere where they do not have to be dispersed, or to move feed into the area where the drought exists?

Senator Murray: Honourable senators, I will take that question as notice.

THE CONSTITUTION

CONSTITUTIONAL ACCORD, 1987—VIEWS OF FORMER JUSTICE OF SUPREME COURT OF CANADA

Hon. Jerahmiel S. Grafstein: Honourable senators, I have a question for the Leader of the Government in the Senate.

Last week former Supreme Court Justice Estey, in a parting series of interviews, implied that the division of powers and the Charter may be affected by the Meech Lake proposals made by the government.

Would the minister responsible be prepared to comment and give his views in light of the former Supreme Court judge's view?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, the comments were made by a private citizen—

Senator Olson: A former Supreme Court justice!

Senator Murray: —who may be a former Supreme Court judge, but who spoke, I trust, as a private citizen.

If I recall the quotation correctly, he thinks things should be left as they are. He further believes that some aspects of Meech Lake could lead, as he puts it, "to the ruination of Confederation." I wonder whether he thinks that prolonging and perpetuating the isolation of Quebec would lead to the ruination of Confederation, and whether he gives a damn about that!

Some Hon. Senators: Hear, hear!

Senator Grafstein: I raised that question not by way of making a political argument but in light of the proposition that the Leader of the Government in the Senate gave for considering changes. His point was that if there were no "egregious errors"—that being the test with respect to the division of powers, the effect on the Charter, and so on—this was not an unreasonable cost with respect to the relationships between the provinces in order to invite Quebec, as he said, "back into Confederation."

• (1410)

My question is not related to the argumentation but, really, to the substance of his point. A respected jurist, a former Supreme Court judge, implies that there may be a change in the division of powers, and also implies that this may affect the Charter. I am asking the Leader of the Government to direct his attention to the issue of whether or not, in light of that *ex cathedra* opinion, that may not constitute grounds for considering that there may, in fact, be an egregious error.

Senator Murray: I think my honourable friend needs some instruction on what an *ex cathedra* judgment or opinion is, but that is another point.

The honourable senator infers something from Justice Estey's statement. I do not know whether or not that inference is warranted. All I can do is observe that his former lordship has entered into the political debate, and I wish him well in his new business career.

ECONOMIC SUMMIT, 1988

DEBT AS GLOBAL PROBLEM—AGENDA ITEM

Hon. Allan J. MacEachen (Leader of the Opposition): I will resist a commentary on that testy remark by the Leader of the Government.

However, by way of soft postscript, I should add that at least Justice Estey has left his job, unlike some ambassadors who are still in the public service and have engaged fully in politics. I said, "fully in politics." I should say: engaged in political debate, without any concealment of their political position. However, that is not the point I want to raise with the Leader of the Government, now that he is in a better mood.

I have in my hand a brochure, or, shall I say, a somewhat lavish document—moderately lavish—produced for the official visit of Prime Minister Mulroney to Washington on April 27-28. In this document there is a reference to the Toronto Economic Summit. It is to that subject that I want to address myself. I would like to quote a sentence from this document:

> The Summit leaders will seek to strengthen initiatives taken in such fields as economic policy coordination, trade (including agriculture), and debt.

Honourable senators will recall that the Standing Senate Committee on Foreign Affairs, some months ago, did release and present a report on the question of Third World debt. I am pleased that the matter is to be dealt with at the Toronto Economic Summit.

My question is this: Is the matter of debt as a global problem on the agenda of the Toronto Economic Summit as a separate item—and I hope it is—and will Canada be taking any intiatives to have the summit leaders focus on some of the proposals which have been made by the Senate committee and others in an effort to resolve the debt crisis?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, with regard to the first part of the question, I do not know the answer. I do not know whether debt is a separate item on the agenda for the summit, but I shall endeavour to find out.

I do remind the Senate that in our own way the Government of Canada has taken some initiatives with regard to debts owed by governments in the Third World. There was an intiative announced at the time of the francophone countries' conference, and I believe an initiative was announced at the time of the Commonwealth Conference in Vancouver.

In any case, I shall ask for a report on the matter from the Prime Minister's office.

Senator MacEachen: Honourable senators, I do appreciate that steps have been taken by the Government of Canada to relieve the debt problems of the poorest countries, particularly debts between governments. I have in mind the situation of middle-income debtor countries, including major debtors in Latin America.

[Senator Murray.]

RE-ENERGIZING OF DEBT STRATEGY—POSSIBLE CANADIAN PROPOSALS—THIRD WORLD DEBT PROBLEM—ROLE OF WORLD BANK—GOVERNMENT POSITION

Hon. Allan J. MacEachen (Leader of the Opposition): Perhaps I might just ask two other questions, which the Leader of the Government in the Senate can take as notice if he wishes. In a speech that he made in Ottawa on April 24 of this year, entitled "Perspectives on the 1988 Summit", Mr. Wilson dealt with the question of debt, particularly the debt situation of the middle-income countries which he himself said was worrisome. He then went on to say that new efforts are required to re-energize the debt strategy.

I wonder whether Canada is considering making some proposals on new efforts at the Economic Summit. I fully agree with the minister that new efforts are required to re-energize the debt strategy. That is my first question.

My second question has to do with the negotiations that are currently taking place between Brazil and the banks on rescheduling its debt. My understanding is that a proposal had been made that the World Bank take a guarantee position in this debt situation with respect to Brazil. I also read somewhere that the World Bank itself, and the United States Government, had resisted any such role for the World Bank.

It was certainly the view of the Senate committee that the multilateral institutions, and particularly the World Bank, should take an increased role in the resolution of the Third World debt problem. I am wondering whether Canada expressed a view on this matter and whether Canada also opposed—for whatever reason—this idea that the World Bank should take a guarantee position in the current negotiations with Brazil.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I will inquire what information can be brought forward on both of those subjects.

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Orville H. Phillips: Honourable senators, I have delayed answers to several questions.

FISHERIES

CANADA-FRANCE RELATIONS—DISPUTE-SETTLEMENT NEGOTIATIONS—STATUS AND POSSIBLE MEDIATION

Hon. Orville H. Phillips: Honourable senators, the first delayed answer I have is in response to a question raised in the Senate on April 21, 1988, by the Honourable Roméo LeBlanc, regarding Fisheries—Canada-France Relations—Dispute-Settlement Negotiations—Status and Possible Mediation.

(*The answer follows:*)

> No, the two issues are not linked together. The mediator will discuss interim quotas while the negotiators will continue discussions aimed at referring the boundary dispute for a decision.

Senator Phillips: The next delayed answer is in response to questions on the same subject-matter raised in the Senate on April 21, 26 and 27 by the Hon. Allan J. MacEachen.

(*The answer follows:*)

The agreement of January 1987 contained some time limits which have now passed. The mediation agreement which has recently been agreed to is designed to allow discussions on the substantive issues to resume so that we can achieve a resolution of the boundary dispute, as referred to in the earlier agreement.

ENERGY

GEORGES BANK DRILLING MORATORIUM—CONSULTATION WITH GOVERNMENT OF NOVA SCOTIA

Hon. Orville H. Phillips: Honourable senators, I have another delayed answer. This is in response to a further question raised in the Senate on April 27, 1988, by the Honourable Allan J. MacEachen, regarding Energy—Georges Bank Drilling Moratorium—Consultation with Government of Nova Scotia.

(*The answer follows:*)

The proposal to impose an environmental moratorium on Georges Bank drilling had been discussed between Mr. Masse and the province prior to the April 18 announcement.

This proposal for a moratorium is supported by the Government of Nova Scotia and is entirely consistent with our mutual desire to protect one of the "richest most economically important fisheries in the world".

As the minister indicated at the time, federal and provincial officials have been actively meeting and are close to an agreement on appropriate amendments to proposed federal and provincial legislation which would provide for a moratorium and for a public review of exploration drilling on Georges Bank prior to the year 2000.

COPYRIGHT ACT

BILL TO AMEND—REPORT OF COMMITTEE ADOPTED

On the Order:

Resuming the debate on the motion of the Honourable Senator Sinclair, seconded by the Honourable Senator Haidasz, P.C., for the adoption of the Twenty-Third Report of the Standing Senate Committee on Banking, Trade and Commerce (Bill C-60, An Act to amend the Copyright Act and to amend other Acts in consequence thereof, with certain amendments), presented in the Senate on 24th March, 1988.—(*Honourable Senator Marsden*)

Hon. Lorna Marsden: Honourable senators, the bill to amend the Copyright Act, Bill C-60, is very difficult legislation. I think it is worth emphasizing—although I know that honourable senators recognize this fact—that the current Minister of Communications did not originate these amendments to the Copyright Act. In fact, they have been around for a long time. Also, this minister has inherited from her predecessor some of the complexities with which we are now faced.

As the report of the committee states, and as we all agree, since no one has dissented, copyright law in this country needs amendment. Also, we are all in agreement that most of the changes contained in this bill are needed. They are worthy and satisfactory amendments, and those arguments have been reviewed by previous speakers on this motion.

However, some balance is required. As I have said before, during my speech on second reading of this bill, the relationship between creators and users is a symbiotic relationship. In other words, one does not exist without the other. It is the role and duty of Parliament, and of the Senate, to ensure that there is a balance as between the demands made on both sides, and, furthermore, that there is an orderly process. It is because of the need for balance and for an orderly process that I support the amendments proposed by the Banking, Trade and Commerce Committee.

● (1420)

In speaking on second reading, Senator Doyle and I both suggested many changes that might be made to the legislation, and I am sorry to see that so many of the issues that were raised have not made it further; but this is not the end of the process, and I am sure that we will be able to consider such changes in the future.

I should like to say that the debate in committee and in the Senate has been informed by many excellent speakers on both sides of this issue. There has been a thorough airing of the problems in correspondence, in committee, and in conversation, and it is impressive how many Canadians who will be affected by this bill have participated in the debate and have represented their interests very fairly and honestly on both sides of the issues.

We have heard from a great many people who were mentioned by Senator Doyle, and also from others: from elected school trustees, librarians, teachers at all levels of the education system; from associations representing all of those institutions, from the software and music industry, from graduate students, and from many others, and they have made serious and compelling cases to which we have listened, I hope, with open minds.

I should like to comment on the speeches made on April 27 by Senator Doyle and Senator Roblin. Senator Doyle made a very good case concerning the need of creators, particularly artists—I believe he had mainly artists in mind—for earnings; and, of course, he is quite right. There is a very great need. Senator Doyle was praised by Senator Roblin for the emotional content of his speech. I am tempted to say that that is the trouble, that you men are so emotional that it is hard to deal with you. But I won't say that, because I know that it usually goes the other way.

But I would like to suggest that Senator Doyle is absolutely right, that there is a need for an increase in earnings for artists in this country. It has existed for a long time. I agree with him unequivocally, and I suggest that the government should quickly set about allowing deductions of all expenses of artists under the tax law, allowing them to defer income from year to year—because, of course, they face great inequalities in earnings—and that the government substantially increase its grants for those agencies which support the arts in this country, including, of course, all of the granting councils, the Canadian Broadcasting Corporation—the second channel would do a great deal to support the earnings of many artists—and increasing grants to public galleries, theatres, dance companies, exhibitions, work for External Affairs, and so on. There are many ways in which the earnings of artists could be, and should be, substantially raised in this country, and copyright, I am afraid, would make only a very marginal contribution to the increase in earnings, although it might make a more substantial one to some other occupational groups. I am in agreement with Senator Doyle on the need for increased earnings, but not on this remedy.

Senator Roblin called Bill C-60 the artists' charter, and it is on this and one or two other points that I am in substantial disagreement with him. This should not be a situation of its being unbalanced in favour of one side or the other, of the artists or the users. It surely is our role and our duty to try to balance those interests. The amendments that have been proposed are very mild amendments to bring about some balance. But Senator Roblin went on to make two comments which, I must say, I regarded as being offensive, and I indicated so at that time. He suggested that people who are in disagreement with the amendments proposed to Bill C-60 are in disagreement because they do not want change and they think it might cost them some money. I dispute both these charges absolutely fundamentally. Change is being called for and change is coming.

An international expert from Norway on changes to copyright law recently visited Ottawa. He pointed out that in Norway, where copyright amendments were brought in with all educational exemptions in them, there have been six years of negotiation and they still have not reached agreement with the collectives on changes that are needed. I would also like to point out that meetings are going ahead with reprography and other collectives in this country. Only last Monday the large school boards in Ontario indicated willingness to proceed. But one has to proceed in an orderly way. As long as it is not clear to those institutions that must make an agreement with collectives whether there will or will not be exemptions or how the system is going to work, matters cannot proceed in an orderly way. These amendments allow for orderly procedure and allow for a delay of only one year. If the Norwegian example is anything to go by, such changes will take longer, but I hope we can do better than that.

Senator Roblin also raises the question of costs. I have not heard any witness say that amendments should not be proceeded with on the basis of additional costs. I challenge Senator Roblin, who, unfortunately, is not here but may read this debate, to find any testimony to that effect in the records. Of course there will be additional costs, and everybody, as far as I know, accepts that. Taxes will rise, for example. It is only fair that those copyright expenses should be paid. Who will pay and how they will pay are matters that have yet to be worked out exactly, but the fact that there will be increased costs is accepted. I suggest to honourable senators that Senator Roblin is incorrect in both of those accusations against people who are proposing amendments.

[Senator Marsden.]

I was very much hoping that the minister would find it possible to put forward the second phase of the legislation while this matter was still in process, because there is a great deal in the current bill which would be highly desirable to put through. I was hoping that the minister would find it possible to put forward details of the second phase content and a timetable. After all, phase two was promised for last year, and, as I understand it, the meetings on the various matters that are in contention have proceeded in a satisfactory way.

There are three areas in which it would seem to me to be highly desirable for the minister to bring forward her proposed changes in the second phase. It would be desirable if the minister were to say that she intends to incorporate the agreement that is apparently worked out with respect to exhibition rights and public museums. She told us in her testimony before the committee that she intends to redefine "works of artistic craftsmanship." I understand that that is far advanced. It would be helpful if the minister were to say to us what she proposes in that regard. Of course, it would be helpful if she were to clarify the definition of "public exhibition," which I understand is defined in case law. It would be helpful, indeed, if the minister could tell us the categories of educational exemptions that are being proposed so that orderly negotiations between collectives and educational institutions could proceed. It would also be helpful if the minister could tell us that single copy exemptions in public libraries will be allowed. These are essential for scholarly research and for those citizens who use public libraries in this way.

We are being asked, however, to pass a law which contains clauses that the minister has indicated will be substantially amended very quickly in the next phase of the bill. We are being asked to pass legislation which, in effect, the community knows is not going to be working legislation with respect to exhibition rights. That is a very disorderly process and one that is difficult to condone.

• (1430)

With respect to education, with exemptions, I believe that passage of this bill without amendment would freeze the process. After all, as senators on the other side have been at pains to point out, there is an imbalance of power, and this imbalance of power will not be helped by passage of legislation which does not say what types of educational exemptions are to be brought forward. The only possible solution is to support the amendment here. I have already made the case with respect to public libraries.

I still hope that the minister will find it possible to amend the Copyright Bill, Bill C-60, and bring it back within this parliamentary session. I urge her to do so. In the meantime, I propose to vote for the amendments that the committee has put forward and hope for very fast progress in changes to copyright.

Some Hon. Senators: Hear, hear!

Hon. Finlay MacDonald: Honourable senators, I am not going to delay the sorrowful passage of this report. I have just a few short observations to make as one who attended all of the meetings of the committee dealing with this particular bill. I can assure you that the work of the committee was not very onerous, since it only sat on three days and heard 20 witnesses.

The observers who attended the meetings obviously knew a great deal more than the committee members about this subject. It was the first time that I, as a member of that committee, had that feeling. I always felt that members of that particular committee knew as much as the witnesses did, or, if we did not, we would employ professional assistance to advise us. We did not have that.

As you will remember, it was a close run situation on the vote to report the bill without amendment. The vote was seven to seven. Thus, we find ourselves in the situation we do today.

I congratulate the distinguished academic Professor Marsden on her remarks. They reminded me of the enormous amount of mail we seem to be receiving in connection with this subject. I do not know who has been reading it. I have mail which I think I should read into the record, and, particularly, I have a letter from the distinguished President of York University, which states:

> Dear Senator:
>
> I am writing you as a University President, as a well-published scholar, and as a sometime teacher of industrial property law, to ask that you support a delay in Bill C-60—

He goes on to say:

> My concerns . . . are not with the general principle of the law. They go immediately and dramatically to its impact on universities and other educational institutions. The new legislation will adversely affect archival research, scholarly commentary, the preparation of informal teaching materials, and library and other administrative practices. It will entail great aggregate costs to users, with little advantage to individual creators.

Good heavens! Why did he not add, "the ruination of Confederation" and "the spread of some communicable diseases"?

The other three letters I have are from friends and they are all from the office of the president.

Senator MacEachen: Who is the president you quoted?

Senator MacDonald: I quoted the President of York University, Mr. H.W. Arthurs.

I now quote three other presidents: The President of Saint Mary's University; the President of University College of Cape Breton; and the President of Ryerson. They are all old friends. They all write, "Dear Finlay . . . ," and then follows the same letter. It is the same letter under a different letterhead. I ask you: Has a committee ever been subjected to establishment institutions as we have in this instance when dealing with galleries, museums and universities?

I believe Senator Marsden has a question.

Senator Marsden: I urge you to read the letter from Brian Segal again. It is quite different from the letter from Harry Arthurs. I also have both of them in front of me.

Senator MacDonald: The letter is dated April 25. Would you care for me to read the whole letter? It is identical to the letter I have from two other university presidents. I will be happy to table the letters. Mr. Arthur's letter is the fourth letter and is different.

Senator Marsden: And I shall table mine.

Senator Frith: There may be a copyright question here!

Senator MacDonald: I get the distinct impression from senators on the other side that had a few more weeks elapsed we might have had a different situation on our hands. I would particularly commend Senator Frith's comments of April 28, when he said:

> As Senator Doyle has said, and as Senator Sinclair has agreed, it has been a long wait for the creators who own copyright—a wait of 64 years—and I do not think it is fair to ask them to, in effect, continue to subsidize the users, which is really what they are doing, by refraining from enforcing the rights they have and have had for so long.

Here, he mentions his key point when he says:

> Again, on balance—

That is the word used so often by Senator Marsden during her discourse.

> —what we gain by passing this bill without amendments greatly outweighs the interests of those who want further delay.

The intentional taping of recordings and the photocopying of books, articles and works of art are illegal acts under the existing system. The copying of computer programs has become a daily practice and normal routine in major publicly-funded institutions such as schools, universities, libraries, museums and art galleries. Copyright infringement has become institutionalized in this country and the damage done to the owners of the stolen property is considered to be of such little consequence to this place that it is sanctioned and encouraged. We have been influenced by teachers, librarians and museum directors. We apply ourselves to a bill for creators and we listen only to the users. It is not a particularly great day for this chamber.

Some Hon. Senators: Hear, hear!

The Hon. the Speaker *pro tempore:* It is moved by the Honourable Senator Sinclair, seconded by the Honourable Senator Haidasz, P.C., that this report be now adopted.

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

● (1440)

Some Hon. Senators: No.

Some Hon. Senators: Yes.

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

Some Hon. Senators: Yea.

The Hon. the Speaker *pro tempore:* Will those honourable senators who are against the motion please say "nay"?

Some Hon. Senators: Nay.

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

And two honourable senators having risen.

The Hon. the Speaker *pro tempore:* Please call in the senators.

● (1450)

The Hon. the Speaker *pro tempore:* The doors of the chamber will now be locked.

Report adopted on the following division:

YEAS

THE HONOURABLE SENATORS

Adams	Hays	Marchand
Anderson	Kenny	Marsden
Argue	Kirby	Olson
Austin	Kolber	Petten
Bosa	Langlois	Sinclair
Cools	LeBlanc	Stewart
Corbin	(*Beauséjour*)	(*Antigonish-*
Cottreau	Leblanc	*Guysborough*)
Croll	(*Saurel*)	Stollery
Guay	Lefebvre	Turner
Haidasz	MacEachen	van Roggen—29.

NAYS

THE HONOURABLE SENATORS

Atkins	Macdonald	Simard
Bélisle	(*Cape Breton*)	Spivak
Bielish	Macquarrie	Steuart
Cogger	Muir	(*Prince Albert-*
David	Murray	*Duck Lake*)
Doyle	Nurgitz	Walker—22.
Flynn	Phillips	
Kelly	Robertson	
MacDonald	Roblin	
(*Halifax*)	Rossiter	

[The Hon. the Speaker.]

ABSTENTIONS

THE HONOURABLE SENATORS

Frith Thériault—2.

Hon. L. Norbert Thériault: Honourable senators, I did not speak on the motion, but I want to explain why I abstained.

Senator Guay: That's not necessary!

Senator Thériault: I have nothing against the amendments. My concern is that if the bill is sent back to the other place, it will never be brought back on the order paper and will die because of an election or something. I believe that the artistic community wants this bill, as bad as it is, and therefore I abstained.

● (1500)

THIRD READING

The Hon. the Speaker *pro tempore:* Honourable senators, when shall this bill, as amended, be read the third time?

Hon. Ian Sinclair, with leave of the Senate and notwithstanding rule 45(1)(*b*), moved that the bill, as amended, be read the third time now.

Motion agreed to and bill, as amended, read third time and passed.

CUSTOMS TARIFF

BILL TO AMEND—SECOND READING

On the Order:

> Resuming the debate on the motion of the Honourable Senator Rossiter, seconded by the Honourable Senator Tremblay, for the second reading of the Bill C-118, An Act to amend the Customs Tariff.—(*Honourable Senator Sinclair*).

Hon. Ian Sinclair: Honourable senators, on Thursday last the Honourable Senator Rossiter explained this bill on second reading. I would recall to you two remarks that she made. She noted that the amendments in the bill reflected the long-standing practice of amending the Customs Tariff as part of the budget process in order to respond to new problems and needs in the tariff area which require statutory amendments to the legislation. She further noted that the products covered by the tariff changes are not made in Canada.

Honourable senators, the bill is not one that requires very much analysis. It arises in part through the harmonization process of tariffs that the Senate dealt with in another bill earlier this year, and in part by updating and changing lan-

guage to fit changes in commercial life. However, in order to take a look at this bill with officials to find out if there is anything beyond that, and in view of the fact that customs matters sometimes are difficult to follow, I would suggest—and I hope Honourable Senator Rossiter will agree—that the bill be referred to the Senate Standing Committee on Banking, Trade and Commerce. I hope that we could hear from officials early next week, and that would be all that would be required.

Motion agree to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Rossiter, bill referred to the Standing Senate Committee on Banking, Trade and Commerce.

SENATE AND HOUSE OF COMMONS ACT

BILL TO AMEND—SECOND READING—ORDER STANDS

On the Order:

> Resuming the debate on the motion of the Honourable Senator Murray, P.C., seconded by the Honourable Senator Roblin, P.C., for the second reading of the Bill C-83, An Act to amend the Senate and House of Commons Act.—(*Honourable Senator Stewart (Antigonish-Guysborough)*).

Hon. Jacques Flynn: Could someone tell us why Senator Stewart is standing this order? It has been on the order paper since February 4, 1988.

I am raising this point so that someone will warn him that we would like to know tomorrow if he intends to say something or if he is stalling.

Hon. Allan J. MacEachen (Leader of the Opposition): Perhaps Senator Flynn would explain why the government let the bill stand for three months on the order paper.

Senator Olson: At least that long.

Senator Flynn: It is before the Senate. I have nothing to do with the other place.

Senator MacEachen: I am talking about this chamber. You let it stand here.

Senator Flynn: We waited for someone to move on the other side. In any event, we have been dealing with this bill for a long time.

Senator Olson: Nice try, but wrong!

Senator Flynn: You don't know what you're talking about!

Senator Olson: You were not waiting for anybody on this side.

Senator Flynn: There have been discussions as to how this bill could be disposed of, and that is why there was a delay on the part of the sponsor of the bill. Since then, Senator Stewart has stood this order without giving any reason. If he says that you do not want to proceed with the bill, at least we will know where we stand.

Senator MacEachen: Honourable senators, I think it is a fact that the bill was not moved by the government and it rested on the order paper for several months. There were certainly no discussions with me as to what ought to be done with the bill.

I do not think it is very seemly for Senator Flynn to complain about this delay in light of the delay which he tolerated when the bill was stood in the name of the Leader of the Government in the Senate.

Senator Flynn: I do not mind the delay as long as it is explained. That is the point.

• (1510)

Senator Olson: You did not explain it when you did it.

Senator Flynn: You certainly did not ask for an explanation, so don't complain now. In fact, stay put, if that is all you have to say.

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

THIRTY-SIXTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the thirty-sixth report of the Standing Committee on Internal Economy, Budgets and Administration (guidelines for Senators' research expenditures), presented in the Senate on April 28, 1988.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I move the adoption of this report.

Motion agreed to and report adopted.

PROBLEMS OF THE AGED

SUBJECT MATTER REFERRED TO COMMITTEE

Hon. M. Lorne Bonnell rose, pursuant to notice of Tuesday, March 29, 1988:

> That he will call the attention of the Senate to the problems of the aged, including the substantial increase in population of those age 65 and over as well as problems of income security, retirement, housing, transportation and social welfare in general, including abuse and health care.

He said: Honourable senators, since the Second World War the average age of the Canadian population has gradually increased to the point where, by the year 2000, it might well constitute a crisis in Canada. That crisis could arise for two reasons. First, because of the low birth rate there will be fewer young people in the work force to support the aging population; second, the baby boomers who were born after the war will then be senior citizens, together with all of those people who were born after 1910—a year of high birth rate. All of these people will then be in an age group that will need a lot of health care, hospitalization and chronic care of one kind or another.

At the same time, the youth of our nation will be, in proportion, of small numbers, too small to carry the burden of providing the necessary financial support to provide this aging group with proper care. In this respect, I have some statistics. In the year 1921 only 5 per cent of our population was over 65 years of age. In 1986 11 per cent of our population was over 65 years of age. It is estimated that by the year 2001 14 per cent of our population will be over the age of 65, and by the year 2030 27 per cent of our population will be 65 years and over.

Honourable senators, this situation represents a social problem for which plans should be made soon so that it does not get out of hand. However, it is not a problem that is liable to persist for long periods of time, and will probably gradually correct itself after the year 2030. It is very possible that we will end up with a declining seniors population and be left with a great many facilities for which we will no longer have a need. Therefore, long-term planning is necessary to take care of not only the aging population, which we will have in the next quarter century, but also the decline in the numbers of seniors in proportion to the rest of our population after that quarter century.

In the recent past we faced a somewhat similar situation when we were forced to increase the number of our schoolrooms because of the burgeoning number of younger school children. Now that the number of school age children is declining, we find in many parts of our country that we have too many classrooms to accommodate the number of children that we now have attending schools.

To make the problem worse, the birth rate in Canada in 1921 was 29.3 live births per 1,000 population. However, in 1985 that figure was down to 14.8 live births per 1,000 population—almost exactly half. Apart from the fact that the birth rate is going down and people are living longer, we also have the factor of the aging of the baby boomers coupled with the fact that most of the people arriving in Canada as immigrants are past the child-bearing age. This will add to our senior citizen population rather than to the population of young people who will help support this aging group.

Also, we find that the life expectancy of our population is growing. In other words, our senior citizens are living longer. Thanks to good medical care and good hospitalization programs, our senior citizens are living much longer than seniors did in the past. Another factor, however, is that a greater proportion of these aging seniors are women who are living alone. Consequently, certain types of housing have to be prepared for those women.

● (1520)

Then, of course, there will be men who are living alone. In such cases, meals must be provided, whether they be Meals on Wheels in their own home or, perhaps, in a senior citizens' home where meals can be brought in. Perhaps it could be the reverse of Meals on Wheels, that is to say, that the community becomes involved and takes seniors out to a central place to eat at least once a day—in other words, to make it a program of recreation and to enable the seniors to mix with other members of the community.

[Senator Bonnell.]

So, a serious program has to be looked at. I believe that the federal government has some views on this, because for the first time we have a minister responsible for the aged. I refer to the Honourable George Hees, who, I believe, is one who is concerned and who understands the aging program, because he himself is getting to be a senior citizen and perhaps has a better feeling for them than a younger minister might have.

So, I believe the time is ripe for this whole field concerning senior citizens to be studied, and we should introduce a program for the future. With regard to housing, we should consider whether it should be specific housing for senior citizens or whether it should be housing in their own home, whereby they can have some kind of nursing care such as veterans have with their VIP program. Should it be similar to the aging veterans program, where they have home nursing care, or should there be a home similar to a hostel, where senior citizens could stay and receive board? Should it be an establishment where they could receive nursing care in a chronic care facility or should it be in the form of a community chronic hospital where seniors can receive more active nursing care?

We will find that chronic hospital beds across Canada are full. There is already a waiting list. We do not have enough of such beds. There are not sufficient beds in our chronic care or acute care facilities. So, when there is a great demand in the next two or three years, we will find that we will be very short of beds. Therefore, some long-range planning should take place to take care of this matter.

I believe that we will find also that there are various costs involved in different types of hospital care. So perhaps we should consider that in some cases there should be a mix of senior citizens with younger people to supervise them. In other cases they perhaps could be grouped together where they could socialize. In others there could be so many together with one person looking after the unit. There may also be larger places where nurses are available to look after the unit.

There are also transportation problems. When people age, often their eye sight begins to go and they can no longer drive their car. In rural areas there are no taxis, and in Prince Edward Island there are no longer any trains; also, there are no subways. Therefore, we have to provide some arrangement whereby the community can become involved and support senior citizens by providing a senior citizens' bus that will pick them up and take them to a fair, a church, a hospital, or to club meetings. We should get the community involved rather than leaving it always to the taxpayers. There are many volunteers in the community who would love to help. There is great satisfaction in providing a helping hand. But some kind of organization is needed to bring the support together.

There is also a problem concerning the abuse of seniors. I can give you an example of a gentleman who thought that he was going to go into a government institution, and that perhaps the government might take away his home, which he wanted to pass on to members of his family later. So, to avoid that he signed his place over to his son.

Until that time his son and daughter-in-law had been very good to the old chap. But not long after he signed on the dotted line, the poor old fellow had to stay in his room at the back of the house. If anybody visited the house, he had to go to his room. The next thing, he had to have his meals in his room. He could not eat with the company. He was then moved off to a home, with his Old Age Pension, and he had to pay his own way the best way he could, and his property was taken over by his "honourable" son.

It reminds me of a story my father told me many years ago, of a fellow who lived on a farm with his son and daughter-in-law. The son and daughter-in-law were good to the father, who had some money. The son and daughter-in-law were so good to him that he said, "Son, let us go to the city and I will sign the papers and put the property into your name, because I am now getting old and it will save lawyers' fees later on." So they hitched up the horse and wagon and the old fellow drove the son and daughter-in-law to the big city and signed the property over to the son.

When they got into the wagon to return home, the son reached over, grabbed the reins, and said, "That's my horse"; and the son drove home and the father had to sit to the side. It wasn't too long before the father was in his bedroom, having his meals by himself, and the son and daughter-in-law had the house to themselves.

But the father was a little cuter than the son. He had a little more experience, and he slipped off to town one day and saw a lawyer and told him the problem. The lawyer said, "I will tell you what to do. I have a few $1 bills here that I am not using. I will loan them to you. I will put them in this small suitcase. Take them home and put them under the bed. Every time they come in with a meal, you start to count them. When they see all those dollar bills, they will probably be a lot nicer to you."

The next morning, when the daughter-in-law came in to give the old gentleman his breakfast, he had the dollar bills on his bed and he started stuffing them back into the suitcase. She went out and told her husband and said, "You take in his dinner and watch." Sure enough, when the son went into the bedroom, his father was stuffing the dollar bills back into the suitcase.

The next day the old gentleman was out in the kitchen with the rest of the family. He was even allowed to listen to the radio and read the newspapers. He said to them, "You know, I have some money under my bed. Perhaps we should go to see the lawyer and straighten this matter out." So the son hitched up the horse and wagon and drove him into the city. The lawyer said, "Look, the best way to handle this is for you to sign everything back to your father, and then we will see what happens." So the son signed the property back to his father, and the father said, "Thank you very much. I will think about signing it back to you later on." On the way home the father reached out and grabbed the reins, and said, "Son, that's my horse."

That is the type of thing that can happen to senior citizens. Let me say that there should be a program for all of those senior citizens, and I myself am reaching the age where I can see 65 approaching around the corner, not too far away. I think that this program is so important that I would like to move that this matter be referred to the Standing Senate Committee on Social Affairs, Science and Technology for its consideration.

The Hon. the Speaker *pro tempore:* It is moved by the Honourable Senator Bonnell, seconded by the Honourable Senator Cottreau, that this matter be referred to the Standing Senate Committee on Social Affairs, Science and Technology. Is it your pleasure, honourable senators, to adopt the motion?

Hon. Brenda M. Robertson: Honourable senators, perhaps I might be permitted to speak briefly to the motion, not on the issue.

• (1530)

It is my understanding that the Standing Senate Committee on Social Affairs, Science and Technology has already discussed this and has decided to refer the issue on aging to Senator Marshall's subcommittee. I know that Senator Marshall intends to move into that study shortly, that is, as soon as some of his work on veterans affairs has been cleared off the desk.

Senator Bonnell: As I understand it, we cannot refer a matter to a committee that is not a standing committee of the Senate. It is also my understanding that the Standing Senate Committee on Social Affairs, Science and Technology may refer the matter to the subcommittee on aging, the committee chaired by Senator Marshall.

Senator Frith: When did we form the subcommittee on aging?

Senator Bonnell: As I understand it, the matter must be referred to the Standing Senate Committee on Social Affairs, Science and Technology and then it is the committee's decision as to whether it should be referred to a subcommittee.

Senator Robertson: Perhaps the honourable senator is correct in that this has to be referred to the standing committee and then that committee can refer it to the subcommittee. I merely want to inform the Senate that this was discussed and the composition of the committee is in place. If necessary, I would second Senator Bonnell's motion that this subject be formally referred to the Standing Senate Committee on Social Affairs, Science and Technology so that that committee can then more properly refer it to Senator Marshall's subcommittee.

Hon. Orville H. Phillips: Honourable senators, I have a question concerning the procedure being followed in this case. Inquiry No. 7 is to establish the subcommittee, but here we are referring a matter to a subcommittee before it is established. I am wondering about the propriety of the motion at this time.

Senator Bonnell: Honourable senators, my motion is specifically to refer the matter to the Standing Senate Committee on Social Affairs, Science and Technology, which was set up months ago. I would also point out that Senator Phillips, the

government whip, moved the motion that that committee be established.

Senator Phillips: I am aware of that particular standing Senate committee. It is nothing new, since it has been in place for years and, as a matter of fact, even before Senator Bonnell's arrival. Believe it or not, it functioned then. Senator Bonnell, in his remarks, said that this should be referred to the subcommittee, and that is the point I am questioning, since the subcommittee has not been properly established according to the order paper.

Senator Bonnell: I said that it could be referred to a subcommittee. I would point out that the Standing Senate Committee on Social Affairs, Science and Technology was not set up before I arrived. The committee was formerly called the Standing Senate Committee on Health, Welfare and Science, but since my arrival I moved the motion to have the name of the committee changed. I made the recommendation and Senator Phillips agreed with it.

Senator Phillips: The honourable senator is trying to be very scientific, but I am not so sure he is correct.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I was not aware of the fact that a subcommittee could change its name and, in so doing, add something to its mandate by simply having the main committee say that the name of the subcommittee will be changed and that it will have a matter referred to it without the Senate being involved in any way.

The Standing Senate Committee on Social Affairs, Science and Technology's mandate covers veterans affairs—and veterans are often older persons, I suppose; Indian and Inuit affairs; cultural affairs and the arts; social and labour matters; health and welfare; pensions; housing; fitness and amateur sports; employment and immigration; consumer affairs; and youth affairs, which, of course, involves age.

Senator Marshall is not moving that the Standing Senate Committee on Social Affairs, Science and Technology have authority to establish a subcommittee with a particular name or that it establish a subcommittee to deal with a particular subject—a subject which is not clearly within the mandate of that committee, although it could be argued that it is. What he is doing is simply calling the attention of the Senate to the fact that he has done it. I would draw your attention, honourable senators, to Inquiry No. 7, where he simply says that he will call the attention of the Senate to a change in the name. He is not asking for authority.

I think this is something that the Standing Committee on Standing Rules and Orders might consider. I have nothing that I can cite directly against this procedure, but I was always of the opinion that this kind of step should have the approval of the Senate at some point and that we should not just be told of it *ex post facto*.

I suggest that we await Senator Marshall's explanation.

On motion of Senator Bonnell, subject matter of inquiry referred to Standing Senate Committee on Social Affairs, Science and Technology.

[Senator Bonnell.]

THE CONSTITUTION

CONSTITUTION AMENDMENT, 1987—MOTION FOR MESSAGE TO COMMONS—DEBATE ADJOURNED

Hon. Royce Frith (Deputy Leader of the Opposition), pursuant to notice of Tuesday, April 26, 1988, moved:

That a Message be sent to the House of Commons to inform that House that the Senate has authorized the proclamation of an amendment to the Constitution in the terms of the following schedule, to which it desires their concurrence:

SCHEDULE

CONSTITUTION AMENDMENT, 1987 *Constitution Act, 1867*

1. The *Constitution Act, 1867* is amended by adding thereto, immediately after section 1 thereof, the following section:

"**2.** (1) The Constitution of Canada shall be interpreted in a manner consistent with

(*a*) the recognition that the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec, constitutes a fundamental characteristic of Canada;

(*b*) the recognition that Quebec constitutes within Canada a distinct society;

(*c*) the recognition that aboriginal peoples constitute a distinctive and fundamental characteristic of Canada;

(*d*) the recognition of the multicultural nature of Canadian society, and in particular respect for the many origins, creeds and cultures as well as the differing regional identities that helped shape Canadian society; and

(*e*) the recognition of the advantages of developing the Canadian economic union."

(2)(a) The role of the Parliament of Canada to preserve and promote, and the role of the provincial legislatures to preserve and, subject to subparagraph (2)(*b*) to promote, the fundamental characteristic of Canada referred to in paragraph 1(*a*) is affirmed.

(*b*) The role of a province in relation to promotion applies from the time it is adopted by a resolution of the legislative assembly of that province.

(3) The role of the legislature and Government of Quebec to preserve and promote the distinct identity of Quebec referred to in paragraph (1)(*b*) is affirmed.

(4) Nothing in this section derogates from the powers, rights or privileges of Parliament or the Government of Canada, or of the legislatures or governments of the provinces, including any powers, rights or privileges relating to language."

2. The said Act is further amended by adding thereto, immediately after section 24 thereof, the following section:

"**25.** Where a vacancy occurs in the Senate, and until an amendment to the Constitution of Canada is made in relation to the Senate pursuant to section 42 of the *Constitution Act, 1982*, the government of Canada shall, within six months after the vacancy occurs, call an election in the province or territory to which the vacancy relates for the purpose of filling that vacancy, and, notwithstanding the provision of section 29 of the *Constitution Act, 1867*, for a term of nine years."

3. The said Act is further amended by adding thereto, immediately after section 95 thereof, the following heading and sections:

"Agreements on Immigration and Aliens

95A. The Government of Canada shall, at the request of the government of any province, negotiate with the government of that province for the purpose of concluding an agreement relating to immigration or the temporary admission of aliens into that province that is appropriate to the needs and circumstances of that province.

95B. (1) Any agreement concluded between Canada and a province in relation to immigration or the temporary admission of aliens into that province has the force of law from the time it is declared to do so in accordance with subsection 95C(1) and shall from that time have effect notwithstanding class 25 of section 91 or section 95.

(2) An agreement that has the force of law under subsection (1) shall have effect only so long and so far as it is not repugnant to any provision of an Act of the Parliament of Canada that sets national standards and objectives relating to immigration or aliens, including any provision that establishes general classes of immigrants or relates to levels of immigration for Canada or that prescribes classes of individuals who are inadmissible into Canada.

(3) The *Canadian Charter of Rights and Freedoms* applies in respect of any agreement that has the force of law under subsection (1) and in respect of anything done by the Parliament or Government of Canada, or the legislature or government of a province, pursuant to any such agreement.

95C. (1) A declaration that an agreement referred to in subsection 95B(1) has the force of law may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement.

(2) An amendment to an agreement referred to in subsection 95B(1) may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized

(*a*) by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement; or

(*b*) in such other manner as is set out in the agreement.

95D. Sections 46 to 48 of the *Constitution Act, 1982* apply, with such modifications as the circumstances require, in respect of any declaration made pursuant to subsection 95C(1), any amendment to an agreement made pursuant to subsection 95C(2) or any amendment made pursuant to section 95E.

95E. An amendment to sections 95A to 95D or this section may be made in accordance with the procedure set out in subsection 38(1) of the *Constitution Act, 1982*, but only if the amendment is authorized by resolutions of the legislative assemblies of all the provinces that are, at the time of the amendment, parties to an agreement that has the force of law under subsection 95B(1)."

4. The said Act is further amended by adding thereto, immediately preceding section 96 thereof, the following heading:

"General"

5. The said Act is further amended by adding thereto, immediately preceding section 101 thereof, the following heading:

"*Courts Established by the Parliament of Canada*"

6. The said Act is further amended by adding thereto, immediately after section 101 thereof, the following heading and sections:

"*Supreme Court of Canada*

101A. (1) The court existing under the name of the Supreme Court of Canada is hereby continued as the general court of appeal for Canada, and as an additional court for the better administration of the laws of Canada, and shall continue to be a superior court of record.

(2) The Supreme Court of Canada shall consist of a chief justice to be called the Chief Justice of Canada and eight other judges, who shall be appointed by the Governor General in Council by letters patent under the Great Seal.

101B. (1) Any person may be appointed a judge of the Supreme Court of Canada who, after having been

admitted to the bar of any province or territory, has, for a total of at least ten years, been a judge of any court in Canada or a member of the bar of any province or territory.

(2) At least three judges of the Supreme Court of Canada shall be appointed from among persons who, after having been admitted to the bar of Quebec, have, for a total of at least ten years, been judges of any court of Quebec or of any court established by the Parliament of Canada, or members of the bar of Quebec.

101C. (1) Where a vacancy occurs in the Supreme Court of Canada, the government of each province and the elected government of each territory may, in relation to that vacancy, submit to the Minister of Justice of Canada the names of any of the persons who have been admitted to the bar of that province or territory and are qualified under section 101B. for appointment to that court.

(2) Subject to subsection (5), where an appointment is made to the Supreme Court of Canada, the Governor General in Council shall, except where the Chief Justice is appointed from among members of the Court, appoint a person whose name has been submitted under subsection (1) and who is acceptable to the Queen's Privy Council for Canada.

(3) Where an appointment is made in accordance with subsection (2) of any of the three judges necessary to meet the requirement set out in subsection 101B(2), the Governor General in Council shall appoint a person whose name has been submitted by the Government of Quebec.

(4) Where an appointment is made in accordance with subsection (2) otherwise than as required under subsection (3), the Governor General in Council shall appoint a person whose name has been submitted by the government of a province other than Quebec.

(5) Where an appointment is made in accordance with subsection (2) and, if within a period of three months, no name which has been submitted under subsection (1) is acceptable to the Queen's Privy Council for Canada, the Chief Justice may make an interim one-year appointment from among justices of the Federal Court of Canada or provincial Superior Courts.

101D. Sections 99 and 100 apply in respect of the judges of the Supreme Court of Canada.

101E. (1) Sections 101A to 101D shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws under section 101 except to the extent that such laws are inconsistent with those sections.

(2) For greater certainty, section 101A shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws relating to the reference of questions of law or fact, or any other matters, to the Supreme Court of Canada."

7. The said Act is further amended by adding thereto, immediately after section 106 thereof, the following section:

"**106A.** (1) The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the Parliament of Canada after the coming into force of this section, in an area of exclusive provincial jurisdiction, if the province carries on a compatible program which meets minimum national standards.

(2) Nothing in this section extends the legislative powers of the Parliament of Canada or of the legislatures of the provinces."

8. The said Act is further amended by adding thereto the following heading and sections:

"XII—CONFERENCES ON THE ECONOMY AND OTHER MATTERS

148. A conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once each year to discuss the state of the Canadian economy and such other matters as may be appropriate.

XIII—REFERENCES

149. A reference to this Act shall be deemed to include a reference to any amendments thereto."

Constitution Act, 1982

9. Sections 40 to 42 of the *Constitution Act, 1982* are repealed and the following substituted therefor:

"**40.** Where an amendment is made under subsection 38(1) that transfers legislative powers from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply.

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

(*a*) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(*b*) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province was entitled to be represented on April 17, 1982;

(*c*) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;

(*d*) subject to section 43, the use of the English or the French language;

(*e*) the Supreme Court of Canada; and

(*f*) an amendment to this Part.

42. (1) An Amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with subsection 38(1):

(*a*) the powers of the Senate and the method of selecting Senators; and

(*b*) the number of members by which a province or territory is entitled to be represented in the Senate and the residence qualifications of Senators.

(2) Subsections 38(2) to (4) do not apply in respect of amendments in relation to matters referred to in subsection (1).

42A. Notwithstanding subsection 42(1) of the *Constitution Act, 1982*, the establishment of new provinces and the extension of existing provinces into territories shall be a matter exclusively for the Governor General in Council and the elected government of the territory affected."

[**10.** Deleted.]

[**11.** Deleted.]

[**12.** Deleted.]

13. Part VI of the said Act is repealed and the following substituted therefor:

"PART VI
CONSTITUTIONAL CONFERENCES

50. (1) A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once each year, commencing in 1988.

(2) The conferences convened under subsection (1) shall have included on their agenda the following matters:

(*a*) the aboriginal and treaty rights of the aboriginal peoples of Canada, including self-government;

(*b*) Senate reform, including the role and functions of the Senate, its powers, the method of selecting Senators and representation in the Senate;

(*c*) roles and responsibilities in relation to fisheries at the first meeting only; and

(*d*) such other matters as are agreed upon."

14. Subsection 52(2) of the said Act is amended by striking out the word "and" at the end of paragraph (b) thereof, by adding the word "and" at the end of paragraph (c) thereof and by adding thereto the following paragraph:

"(*d*) any other amendment to the Constitution of Canada."

15. Section 61 of the said Act is repealed and the following substituted therefor:

"**61.** A reference to the *Constitution Act 1982*, or a reference to the *Constitution Acts 1867 to 1982*, shall be deemed to include a reference to any amendments thereto."

General

16. Nothing in the *Constitution Amendment, 1987* derogates from any of the rights and freedoms guaranteed by the *Canadian Charter of Rights and Freedoms* or affects Part II of the *Constitution Act, 1982*.

CITATION

17. This amendment may be cited as the *Constitution Amendment, 1987*.

He said: Honourable senators, we are in new waters in terms of what is the exact relationship between the House of Commons and the Senate on amendments to the Constitution by resolution under the sections providing for it in the 1982 amendment.

It is clear that the amendments are affected by separate resolutions by the Senate and the House of Commons and by the necessary number of legislatures. It does not say exactly what will happen. We have to assume that at some point some of the institutions will be required to gather together all the necessary resolutions and take them to Her Excellency and ask her to proclaim an amendment.

I think that there is good reason, on constitutional amendments, for Parliament, that is, the Senate and the House of Commons, to try to speak with one voice, or, at least, to explore that possibility. I do not think that we can explore that possibility formally without advising the other place of what we have done. That is the reason for this motion. It is to send a Message to them to tell them what the Senate has done with a resolution that was tabled in the House of Commons by the government and then tabled separately here in the Senate.

I think it is reasonable, if we want to explore the possibility of speaking with one voice, that we ask them to concur in our amendments.

On motion of Senator Flynn, debate adjourned.

The Senate adjourned until tomorrow at 2 p.m.

THE SENATE

Wednesday, May 4, 1988

The Senate met at 2 p.m., the Honourable Rhéal Bélisle, Acting Speaker, in the Chair.

Prayers.

FOREIGN AFFAIRS

STUDY OF ELEMENTS OF CANADA-UNITED STATES FREE TRADE AGREEMENT AND AGREED TEXTS—FOURTEENTH REPORT OF COMMITTEE TABLED AND PRINTED AS APPENDIX—FIFTEENTH REPORT OF COMMITTEE ADOPTED

Hon. George van Roggen: Honourable senators, I have the honour to present the fourteenth and fifteenth reports of the Standing Senate Committee on Foreign Affairs, and, if it is agreed, I shall speak to both of them after tabling them simultaneously, as they relate to the same subject matter.

More formally, honourable senators, the Standing Senate Committee on Foreign Affairs has the honour to present its fourteenth report respecting constitutional jurisdiction pertaining to certain aspects of the Free Trade Agreement. I ask that the report be printed as an appendix to the *Debates of the Senate* and to the *Minutes of the Proceedings of the Senate* of this day and form part of the permanent records of this house.

The Hon. the Acting Speaker: Honourable senators, is it agreed?

Hon. Senators: Agreed.

(*For text of report, see appendix, p. 3288*)

Senator van Roggen: Honourable senators, the Standing Senate Committee on Foreign Affairs has the honour to present its fifteenth report, requesting power to travel outside of Canada for the purpose of such study.

(*Text of report follows:*)

Wednesday, May 4, 1988

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

FIFTEENTH REPORT

Your Committee, which was authorized by the Senate on November 5, 1987, to examine and report upon elements of a Free Trade Agreement between Canada and the United States, tabled in the Senate on October 6, 1987 (Sessional Paper No. 332-589), and texts subsequently agreed to, respectfully requests that it be empowered to adjourn outside Canada for the purpose of such study.

Your Committee notes that on March 22, 1988, the Senate agreed to the report of the Standing Committee on Internal Economy, Budgets and Administration recommending that it be authorized to release no more than 3/12th of those approved funds until the end of June 1988 for Committee budgets submitted to it for the financial year 1988-89.

In accordance with the *Procedural Guidelines for the Financial Operation of Senate Committees*, your Committee will therefore present to the Senate, a copy of its budget and the report thereon of the Standing Committee on Internal Economy, Budgets and Administration, once the Standing Committee on Internal Economy, Budgets and Administration has examined and reported all committee budgets.

Respectfully submitted,

GEORGE VAN ROGGEN
Chairman

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

Senator van Roggen: Honourable senators, if I may, I ask that the report be taken into consideration now, and I will have a few words to say to you at this time.

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

Hon. Senators: Agreed.

The Hon. the Acting Speaker: With leave of the Senate and notwithstanding rule 44(1)(*e*), it is moved by the Honourable Senator van Roggen, seconded by the Honourable Senator Stanbury, that this report be adopted now.

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

Senator van Roggen: Honourable senators, I am now speaking to both reports.

When the Canada-United States Free Trade Agreement was referred to the Standing Senate Committee on Foreign Affairs last November, we, of course, did not have texts of the agreement at that time. As honourable senators are aware, we are still awaiting the implementing legislation.

I said to the members of the committee, when we first met as a result of that reference, that the committee's information at that time as to the nature of the agreement made it clear to me that it would be unnecessary for the committee to rethresh old straw, if I may use that term, by re-examining the areas relative to free trade that we had examined prior to submitting the committee's report on free trade in 1982, because the current Free Trade Agreement had many major add-ons, if I

may call them that, not common to the types of free trade agreement we were considering six years earlier. Just to mention some of them, they include things such as energy, trade in services and financial services. This is the first time these have ever been attempted—

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): They are all improvements, as my friend would agree.

Senator van Roggen: They are all additions. Agriculture is now included, and it generally had not been the subject of free trade agreements in Europe, where the Common Agricultural Policy is, if anything, the antithesis of free trade. Then there are amendments to legislation relative to the Auto Pact, the dispute-settling mechanism and the constitutional question. So we had a lot of work we could do without going back over work the committee had previously done.

Of those add-ons or additional areas covered by the agreement, the committee began taking testimony relative to energy. The committee is continuing to do that, although I hope we will hear from our last witnesses relative to energy in the next week or two. If so, we will be able to prepare an interim report on that subject before proceeding to something else.

In the meantime, it was the feeling of the committee that it was timely to digress from the study of energy this spring because of the urgency of this matter and because we will soon be receiving legislation on the constitutional question and on the dispute-settling mechanism within the agreement. If I can refer to these as mini-studies within the study, the fourteenth report of the committee, which I have tabled today, examines the constitutional question. I will come back to that report in a moment, if I may.

The fifteenth report of the committee, which I have also just tabled, requests permission for the committee to travel and is relative to the dispute-settling mechanism. The committee feels that it could more adequately address this matter in Washington at less expense than it could by remaining in Ottawa. We need to hear from experts, particularly high-priced legal talent, based in Washington and elsewhere who will tell us of the present dispute-settling mechanism under American trade law and how it will be varied by the dispute-settling mechanism contained in this agreement. For that reason we are asking to go to Washington for one and a half days.

Returning to the fourteenth report, I will simply read a few paragraphs from its preamble:

> In this, the first of several reports dealing with the Free Trade Agreement, the Committee examines the fundamental question as to whether the federal government has constitutional authority to enter into the Free Trade Agreement with the United States and to enact legislation necessary for its implementation, particularly insofar as it might affect provincial authority.
>
> The Committee decided that the best way for it to approach these legal and constitutional issues was to take testimony from a panel of constitutional and international lawyers. To ensure that the issue was well aired, the Committee invited four expert witnesses from different regions of Canada and having different perspectives on the appropriate division of powers between federal and provincial levels of government to present their views jointly before the Committee, to respond to questions from Committee members and to debate differences of opinions between them . . .
>
> The Committee also retained Professor Marilyn Pilkington of Osgoode Hall Law School, York University, to prepare a working paper, based on the testimony of the panel, as well as on subsequent testimony by Mr. Murray Smith of the Institute for Research on Public Policy, on other established legal authorities and on extensive discussion within the Committee.
>
> Having received and reviewed during several sessions the working paper prepared by Professor Pilkington, the Committee decided to make it public as its Fourteenth Report . . . In a field where most legal writing is difficult for the layperson to penetrate and understand, this working paper is relatively brief and written in simple English. The Committee believes it can contribute to public awareness and understanding and that the Senate and the Canadian public would benefit from having access to it.
>
> Part I of this working paper deals with the extent of federal power to enter into and implement international agreements. Part II reviews the extent of federal jurisdiction to regulate trade and commerce. Part III examines the extent to which the Free Trade Agreement is within federal jurisdiction in relation to trade. Part IV assesses the implications of the Agreement for Canadian federalism. Part V considers whether it would be appropriate for the Federal Government to refer to the Supreme Court of Canada questions pertaining to the constitutional validity of the Free Trade Agreement and the legislation by which it is to be implemented. Part VI summarizes the paper.

These items are contained in a 25-page report prepared by Professor Pilkington.

I wish to avoid interpreting this working paper. As I have said, it is 25 pages in length, and it is, in effect, a summary. I would be in danger of taking legal nuances out of context if I attempted to summarize it. Therefore, I would recommend to you to read that comparatively short report.

I might add that at no time did the committee intend or attempt to substitute itself for the Supreme Court of Canada in delivering legal decisions or interpretations.

One item that I wish to address is the question of a reference to the Supreme Court of Canada. This was put to the panel and, as it says in the document, they were unanimous that it would be most difficult to frame a simple question that the Supreme Court could deal with. There are so many aspects to the Free Trade Agreement that there would be a number of questions based on circumstances that were not yet known, and that would be an impractical course to follow.

Apart from that comment, I do not think I should get into the document itself. The document should really be read as a whole, and not have parts of it taken out of context.

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, there is some confusion in my mind as to the procedural status of the fourteenth report to which Senator van Roggen has referred. We know that a motion has been made to have the fifteenth report adopted now. I presume that in the case of the fourteenth report it is to be placed on the orders of the day for consideration at the next sitting of the Senate.

When the opportunity is provided, I would like to say some words on the fourteenth report. In light of what Senator van Roggen has stated, it is important to underline even more forcibly that what is before us is a working paper, which has been prepared by legal counsel, based upon evidence received from a number of panel experts, and which has been enriched by reference to legal scholars and legal writings.

It is not in the normal sense a report of the committee. The committee is serving as a conduit to bring a working paper to the attention of the Senate and the Canadian public. For example, Senator van Roggen has referred to a conclusion in the working paper, which has arisen from testimony by experts, that it would be inappropriate to have a reference to the Supreme Court of Canada. I do not comment one way or the other on that observation in the working paper, as one would be obligated to do if it were a report in the normal sense.

I am not in any way attempting to belittle the value of the working paper, because it does have real value. I am attempting to establish its status, which is quite different from that of a report carrying the judgment of each committee member on each point in the report.

● (1410)

Hon. Jacques Flynn: That comment has been made before on many of the reports that we have had on bills which have carried opinions not entirely relevant to—

Senator Frith: In your judgment!

Senator Flynn: —the conclusions.

Senator van Roggen: Honourable senators, I apologize. I should have made it clear in my remarks that in preparing the tabling of documents the clerk of the committee asked me whether this report should be adopted by the Senate. I am not putting it forward as an appropriate report to be adopted; I am simply tabling it as a working paper.

Senator Frith: For consideration.

Hon. Duff Roblin: Honourable senators, I think this point should be clarified further.

I agree with those who think that we should not be called upon to adopt this piece of paper, because the committee did not adopt it. The committee considered a variety of opinions on this subject from four different academics. As one might have expected, we got four different opinions. There has been an effort made to reconcile these to some extent in this document—perhaps with a reasonable degree of success—but we should not be called upon to adopt this document. What we might be called upon to do is to give it consideration. We can talk about it—there is no reason why we should not do that, because it is an interesting overview of the topic—but to go further than to have it considered by the Senate would be wrong.

There was a substantial difference of opinion in the committee as to the thrust that this working paper should take. Some of us felt it could be more positive than it turned out to be, but, obviously, we did not constitute the majority opinion of the committee. It is quite clear that this is not the considered judgment of the committee at all; it is a working paper.

I am not entirely sure what the status of a working paper is for the Senate, but I suppose there is nothing to prevent us from considering anything that we want to. I would not oppose this document's being placed before us for consideration, but I would oppose its being placed before us for adoption.

Senator Murray: Honourable senators, I am not sure that the confusion which the Leader of the Opposition spoke of has been cleared up—at least, not in my own mind. I have not followed the affairs of this committee as closely as I should have done, but I want to be clear as to what it is we are dealing with here.

Am I correct in stating that this is a paper prepared for the committee by a Professor Pilkington? It is not a narrative, a commentary or a summary by the committee. In fact, the committee has had nothing to do with this. This is something that has been prepared for the committee by Professor Pilkington, who was engaged by the committee for this purpose. Is that what the chairman is placing before the Senate?

Senator van Roggen: If the Leader of the Government in the Senate looks at the fourteenth report, on the second page it states:

> Having received and reviewed during several sessions the working paper prepared by Professor Pilkington, the Committee decided to make it public as its Fourteenth Report.

It is clear there that what I am putting before you is not simply an unamended first draft that she came to the committee with.

Senator Murray: She has brought in her report and you, members of the committee, have worked on the report or have "amended it," to use your phrase, is that correct? You have amended her report or edited it in some way.

Senator van Roggen: Any staff member of any committee comes forward with draft material and takes views from the members of the committee; in other words, their recollection of the testimony and the questions put to the witness. As we also say, Professor Pilkington, in preparing this report, relied on the testimony of the panel and also of the other witness that we had and, as we also say somewhere, she took into consideration other established legal authorities. Therefore, it is obviously much more than simply the first rough draft that she placed before the committee.

• (1450)

Senator Murray: It is more than a staff document but less than a committee report. So who stands behind this document? Does Professor Pilkington stand behind it; does the committee stand behind it; or does anyone stand behind it? I do not want to be sticky about this—

Senator Frith: You are doing pretty well—

Senator Murray: —but I think the record should show just whose work this is.

Senator van Roggen: I think this document is a most useful work for senators and Canadians to be able to read. It deals with a difficult legal subject in comparatively simple language. The question of whether or not the committee stands behind it was dealt with in my remarks when I said that the committee does not wish to put itself in the position of giving a series of difficult constitutional legal opinions, which we are not qualified to give.

Senator Frith: It is a ward of the Children's Aid Society, let us say.

Senator Murray: Yes, I agree.

Senator Roblin: Honourable senators, I do not know whether I can throw any further light on this matter, but perhaps I might be allowed to mention another point or two in respect of it. I am going to say that the chairman of the committee stands behind it. He is happy; he is a responsible person. I appreciate his views on the subject—

Senator Frith: Now the affiliation proceedings to find a new parent!

Senator Roblin: I appreciate his views on this subject, and, if someone has to become the father of this document, the chairman is going to be the one who takes responsibility in this respect and, knowing him, he will be quite happy to do so.

Senator van Roggen: Quite happy to do so, honourable senators.

Senator Roblin: I must say that the origin of the actual wording that we have before us is indeed strange, because it is not the unadulterated work of Professor Pilkington, working on the information that was placed before the committee or gathered from other sources. Her original document was substantially commented on by members of the committee and substantial changes were made in it which, in my opinion, in some respects altered the impact of the opinions that were set forth therein, so we must be quite careful about that.

The committee members had some input in editing this document, but they did not reach the sticking point of agreeing on what they had done. They agreed to disagree on that. Therefore, what we have before us is a document prepared by the committee staff, presided over by Professor Pilkington, extensively commented upon and amended in some important respects by the members of the committee, but not adopted by them as being their work or work for which they wish to assume any particular responsibility or on which they wish to take a position. So, it leaves the issues that are involved in these matters rather wide open.

Therefore, honourable senators, I think it would be allowable for me to say to the chairman of the committee that we would allow him to take the responsibility for what is being done.

Senator MacEachen: Honourable senators, I have no complaint with the summary that Senator Roblin has given. I think he expressed the view that there was comment by members of the committee and, indeed, changes were made by the drafter in response to those comments. Senator Roblin went on to say—and I hope I captured his utterance properly—that at an earlier stage the working paper, as it came to be described, was more to his liking than it eventually ended up.

Senator Roblin: That is the trouble with being in the minority on a committee.

Senator MacEachen: However, I must say that if I were to give my own impression, the present draft is not as much to my liking as I would like. I think that is understandable for various reasons. If we consider this report later, I would like to go into a few points in commenting on the working paper.

• (1420)

Like the chairman, I would stand behind the document, provided I could take a long distance in my stance. Having said that, I think the working paper is very useful and raises a lot of interesting questions. I think it will provide each senator with an opportunity to reach conclusions on the question.

For myself, I did not feel, as a member of the committee, that I should be called upon to reach conclusions on highly technical and legal questions. That is why I, personally, advocated that it should become a working paper. All the views would be contained in it without obligating me, for example, to make what would be equivalent to a judicial finding on certain points or to say whether or not the matter should be referred to the Supreme Court of Canada. I do not have any particular expertise in that area, nor did I find from the conclusions of the witnesses anything that would assist me to make that judgment. That is why we have filed it in this way. I do not want to leave the chairman in isolation. I stand behind this document, provided we understand what it is.

Senator Roblin: Yes, but not too close!

Senator Murray: Honourable senators, I must say that my curiosity is now piqued to the extent that I would like to obtain a copy of what Professor Pilkington submitted before the committee members got their hands on it.

Senator MacEachen: It has been shredded!

Senator Flynn: Is the motion for consideration or for adoption? I think that is the point that has been raised.

Senator van Roggen: I believe I made it clear a moment ago that I am tabling this only for consideration by the Senate and for the enlightenment of such members of the public as may wish to read it. It is not being tabled for adoption. It is the fourteenth report of the committee.

If I may, I would like to be quite clear that in respect of the fifteenth report, requesting authority to travel to Washington, I am asking, with leave, that it be adopted today.

The Hon. the Acting Speaker: Is it your wish, honourable senators, that the fourteenth report of the committee be placed on the Orders of the Day for consideration at the next sitting of the Senate?

Hon. Senators: Agreed.

Motion agreed to and fourteenth report placed on the Orders of the Day for consideration at the next sitting of the Senate.

The Hon. the Acting Speaker: Is it your wish, honourable senators, that the fifteenth report of the committee be now adopted?

Hon. Senators: Agreed.

Motion agreed to and fifteenth report adopted.

QUESTION PERIOD

FISHERIES

CANADA-FRANCE RELATIONS—DISPUTE-SETTLEMENT NEGOTIATIONS—STATUS AND POSSIBLE MEDIATION—REQUEST FOR COPY OF NEW AGREEMENT—LOCATION OF QUOTAS

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, I refer to the delayed answer on the subject matter of the Canada-France fisheries and boundaries agreement which was given to me yesterday by Senator Phillips, the first sentence of which reads:

> The agreement of January 1987 contained some time limits which have now passed.

I take it that is departmental language for a less blunt assertion that the agreement expired at the end of 1987.

The point I find difficulty with is contained in the next sentence, and I would like some clarification. The next sentence reads:

> The mediation agreement which has recently been agreed to is designed to allow discussions on the substantive issues to resume so that we can achieve a resolution of the boundary dispute, as referred to in the earlier agreement.

I am put off by the use of the expression "substantive issues," which seems to imply that the boundary dispute is not a substantive issue. Perhaps the minister could try to clear this up for me. If there is now an agreement called the mediation agreement, can we have a copy of that agreement?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, the agreement referred to here is the one which I told

[Senator van Roggen.]

the Senate—I believe, last week—had been signed *ad referendum* by our representatives. Unless I am greatly mistaken, it has since been approved by the government; and, yes, I will undertake to see whether I can bring a copy of that agreement into the Senate.

The situation is as I described it last week. We have agreed to go to mediation on the question of fishing quotas, which would take effect once there has been agreement between our two countries on terms of reference for international adjudication of the boundary dispute.

Senator MacEachen: So, when the terms of reference on the boundary arbitration are agreed, the mediation on the quotas will commence—they will go together.

Senator Murray: I think it would be more accurate to say that, assuming that mediation has succeeded and quotas are agreed, we would agree to quotas once the terms of reference for the adjudication of the boundary dispute were settled.

Hon. Roméo LeBlanc: Honourable senators, the Leader of the Government mentioned quotas. Are those quotas in the disputed zone or what is generally termed "Canadian waters," which, of course, included 2J&3KL?

I thought the answer might have been provided yesterday in the answers tabled by Senator Phillips, but I do not find that information.

Senator Murray: I recall that my honourable friend asked that question a week ago, not once but twice, and I have been trying to find an appropriate formulation for a reply. The formulation that has been suggested to me—I will give it to the honourable senator, for what it is worth—is "Canadian waters quota including the disputed zone."

Senator Frith: Do you stand behind that formulation?

Senator LeBlanc: Does the Leader of the Government want an evaluation of the value of the answer?

TRANSPORT

AIR—REPAIR CHECKS OF AIRCRAFT BY AIRLINES

Hon. L. Norbert Thériault: Honourable senators, I have a question for the Leader of the Government which arises from a by-line in the *Ottawa Citizen*, the headline of which reads:

> Airlines may get to do own repair checks.

If honourable senators are frequent flyers, as I am, to eastern Canada and the maritimes, they will have realized that they do not always get to travel on the newer planes, apart from the local Dash-7s and Dash-8s, which, I believe, are pretty safe. It worries me, and I am sure it worries many people who have to use the airlines, that the Department of Transport, according to this article, is prepared to allow airlines to conduct their own repair checks, because they need to save the revenues to operate their airlines.

● (1430)

Is the Leader of the Government in the Senate prepared to say whether this article is factual or not?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I have not seen the article to which my honourable friend refers. I do not know whether it is speculative, based on fact or whether there has been an announcement in that regard from the government. I do not know the basis of the article.

I have just been handed a copy of the article, but my friend cannot expect me to comment on it now. I will attempt to obtain a considered reply from my colleague, the Minister of Transport.

Senator Thériault: I accept that. I wish, and hope, that the Leader of the Government will try his utmost to obtain an answer as soon as possible—

Senator Flynn: Before you fly back home!

Senator Thériault: —because this has many people worried, including myself.

ABORTION

RIGHTS OF UNBORN—INTRODUCTION OF LEGISLATION—OPPORTUNITY FOR FREE VOTE—GOVERNMENT POSITION—GOVERNMENT ACCOMMODATION WITH CHURCH LEADERS

Hon. Stanley Haidasz: Honourable senators, I am sure the Leader of the Government in the Senate recalls the January 28, 1988, decision of the Supreme Court of Canada calling upon the federal government and Parliament to act with respect to the introduction of legislation to protect the rights of the unborn.

In view of the fact that at a meeting of the provincial ministers of justice and the federal Minister of Justice held in the city of Saskatoon during the month of March no consensus was reached on this matter, and in view of the fact that the government said it would act promptly to deal with this vacuum—in fact, the Leader of the Government indicated that in this chamber—and as we expected legislation to come forward to deal with this important issue before Easter—and we have not seen any legislation—would the Leader of the Government be frank and explain this delay in government action to deal with this very important matter?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I do recall the Supreme Court of Canada decision of January 1988 which held that section 251 of the Criminal Code of Canada was in contravention of the Canadian Charter of Rights and Freedoms.

As we indicated at that time, we believe that the appropriate response from the federal government is a legislative response. We are still considering what form that legislation should take.

It should not be difficult for the honourable senator, or anybody else, to divine the reasons for the delay. This is a matter involving a most complex area of public policy, touching as it does on private morality. We have the delicate task of attempting to bring in a legislative solution which, consistent with the decision of the Supreme Court of Canada and with the Canadian Charter of Rights and Freedoms, can reconcile the right to security of a woman's person with the obvious interest of the state in protecting the unborn.

Senator Haidasz: I have a supplementary question. In view of the division here on Parliament Hill among parliamentarians, and in view of the division throughout the country, and taking into account the possibility that the government may abandon legislation on its own initiative and present three different bills by three different government members covering the whole spectrum of the fetal rights issue, could the Leader of the Government tell us when these pieces of legislation will be before Parliament?

Senator Murray: Honourable senators, the government is not considering the alternative of having, as the honourable senator has put it, three different bills brought in by three different government members.

Hon. John B. Stewart: May I ask the Leader of the Government in the Senate if his answer means that the government will not seek to evade its responsibilities in this important matter by allowing a free vote?

Senator Murray: Honourable senators, the Right Honourable the Prime Minister indicated during the last election campaign that if the matter came before Parliament there would be an opportunity for a free vote by members of Parliament.

Senator Stewart: This is a question of public policy; yet, the government intends to avoid taking a definitive stand on this most important question of public policy. Is that correct?

Senator Murray: Honourable senators, that would be jumping to conclusions. My honourable friend should consider some of the precedents in this regard and he will see that it is quite possible to have an opportunity for a free vote on the part of members of Parliament so that they will have an opportunity to express themselves according to their personal convictions and consciences. At the same time, there will be an opportunity for the government, in due course, to bring in a measure that, as a government, it will stand behind.

Senator Haidasz: I have a supplementary question on this issue. In view of this intolerable, protracted delay by the government to bring in legislation to protect the rights of the unborn, causing problems to the medical profession, to provincial health plans, to provincial health ministers regarding what to do with requests for abortions—last year over 60,000 potential Canadians were killed, and such killings are going on every day—can the Leader of the Government in the Senate tell us why the government finds it so difficult to bring in legislation protecting the rights of the unborn?

Senator Murray: Honourable senators, the answer to that question must surely lie in the decision that the Supreme Court of Canada has rendered. My honourable friend and others may advocate that we go back to the situation that existed under section 251 of the Criminal Code of Canada. That has been struck down by the Supreme Court of Canada.

My honourable friend may suggest that we go back to the situation that existed prior to 1969, when the Government of Canada brought in section 251. That, too, could not be done consistent with the Charter of Rights and Freedoms.

The honourable senator says that there has been an intolerable, protracted delay. What is his evidence for such a statement?

Senator Haidasz: Three and a half months.

Senator Murray: But what has happened in that period of time to justify his assertion that the delay has been intolerable?

Senator Haidasz: Because potential Canadians are being killed every day.

Senator Barootes: Bill C-85, Bill C-84—

Senator Murray: My honourable friend talks about problems for the medical profession and provincial health plans—

Senator Haidasz: And doctors and nurses.

Senator Murray: What has happened is that the therapeutic abortion committees are no longer operating in hospitals across the land.

Senator Haidasz: All that is intolerable.

Senator Murray: That may be intolerable to my honourable friend, but I can tell him that decisions on abortions are now being taken by women in consultation with their physicians, and that he has not the slightest evidence, as far as I have seen, that the medical profession is acting in anything but a perfectly responsible way in the circumstances.

Insofar as the Canada Health Act is concerned, there has been one test case. My honourable friend is aware of it. The Province of British Columbia at one point indicated that it would not provide funding for abortions except in certain circumstances, and that decision was found by the courts to be contrary to the Canada Health Act, and the Government of British Columbia has, since that time, corrected its policy and is governing itself accordingly. I think it is some exaggeration, then, to suggest that anarchy is loose in the land or that there are grave problems for the medical profession, for health ministers or for provincial health plans. We agree that a legislative response is called for under the circumstances, but we do not agree that that legislative response should be devised in undue haste.

● (1440)

Senator Haidasz: As a supplementary, the minister has just said in his answer that certain people in Canada involved in this matter are acting responsibly. Is it responsible for those people to take the lives of innocent victims—so many every day across Canada? Is that responsible action?

Senator Murray: Honourable senators, with great respect, I have not tried to quarrel with my honourable friend's sincerely held moral and religious convictions on this matter. What I am saying is that the practice of medicine in this country is the responsibility of the profession and of the provinces, and that by all accounts, and from all of the evidence that I am aware of, the profession and the provinces are acting with a complete sense of responsibility and in accordance with their standards and ethics.

Senator Haidasz: Honourable senators, I have another supplementary question. Has the federal government or its representatives met with a delegation of the Canadian Conference of Catholic Bishops to discuss the matter of the protection of the rights of the unborn?

Senator Murray: Honourable senators, the answer to that question is in the affirmative. A delegation of the Canadian Conference of Catholic Bishops, headed by Archbishop Hayes of Halifax, has met with a group of ministers, consisting of the Deputy Prime Minister, the Minister of National Health and Welfare, the Minister of Justice, the Minister Responsible for the Status of Women and the Minister of State for Federal-Provincial Relations. We have heard their representations and have discussed the situation with them. On no account would they wish me or anyone in the government to say that they are thereby associated, necessarily, with whatever legislative solution we bring in.

Senator Haidasz: Could the Leader of the Government tell us whether the federal government has arrived at an accommodation with the representatives of the Catholic bishops and other church leaders on this matter?

Senator Murray: Honourable senators, the purpose of our meeting with their excellencies was not to seek an accommodation. It was to give them an opportunity to express their views on this and related subjects.

Senator Stewart: Honourable senators, if I heard the Leader of the Government in the Senate correctly, he said that this is an appropriate issue for a free vote. He mentioned that there are precedents for deciding such a matter in this way. My question to the Leader of the Government in the Senate is this: What matter decided by a free vote involved an issue of sufficiently great importance as to constitute a relevant precedent for a free vote in this instance?

Senator Murray: I think my honourable friend knows the answer to that question as well as I do. One precedent that I could put forward is capital punishment. I make the point simply to inform the honourable senator that one of the options we can consider is that of bringing a resolution to the house in order to get the sense of the house, and to proceed from there to present a bill to Parliament. No decision has been made in this respect, but that is one of the options under consideration.

Senator Stewart: Would the Leader of the Government in the Senate even think of comparing the capital punishment question with the abortion question? I submit that on careful consideration he will be driven to the conclusion that these are not truly comparable.

Senator Flynn: Give notice of an inquiry!

Senator Roblin: Debate it!

Senator Stewart: I suggest to him that the abortion question is one on which a responsible government has to make up its collective mind and make its recommendation to the two houses of Parliament.

Senator Murray: Honourable senators, it must be obvious to my honourable friend, if only from the discussion we have had today, that it would be quite an imposition, in terms of party discipline, to ask members of Parliament to answer to the party whips on a matter of this kind. We must give the members some opportunity to express their personal preferences in this regard.

Senator Stewart: Is that pragmatic approach to be the basis on which the government is going to approach all important and divisive questions in the future?

Some Hon. Senators: Oh! Oh!

Senator Murray: The honourable senator will surely acknowledge that this is a matter that touches on people's innermost religious and moral convictions. My honourable friend shrugs his shoulders at that statement—so be it.

Senator Stewart: Certainly—that truth is so obvious that it doesn't need to be stated. The government in the election sought the responsibility of taking decisions on leading national questions. Now it is proposing to duck its responsibility.

Senator Murray: The government is proposing to give individual members of Parliament an opportunity to reflect their sincerely held personal views on a matter that touches very deeply on personal morality as well as public policy. In due course, as I have said, the government will have to bring in a bill and take its chances on it.

RIGHTS OF UNBORN—ROLE OF SENATE IN CONSIDERATION OF QUESTION

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, on the same issue, if I may, when the Leader of the Government says that members of Parliament will be given an opportunity to express their personally held religious, moral and ethical views, as a first step, will that same opportunity be provided to senators?

Senator Phillips: Have you talked to Senator Olson lately?

Senator MacEachen: I am asking whether in the exploration which apparently will take place in giving the members of the House of Commons an opportunity to express their preferences prior to the government's taking a formal decision, will that exploration be undertaken in the Senate as well? Ultimately, it will be necessary for the Senate to pronounce upon this question, and, presumably, it will do so with precisely the same expression of personally held religious and ethical convictions.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, as I have indicated, this is an option that the government has under consideration. We have not yet decided whether to proceed in precisely that way. I must say that no consideration has been given to what the role of the Senate might be in this matter, other than to deal with the bill when it passes the House of Commons. There is more than adequate opportunity for senators on either side of the house to bring in a motion, a notice of inquiry, or whatever, that will enable all honourable senators to state their opinions if they wish to do so. A similar situation arose in the case of capital punishment, but there did not seem to be any disposition here to deal with the matter until it came to us by way of legislation.

● (1450)

RIGHTS OF UNBORN—INTRODUCTION OF LEGISLATION—GOVERNMENT INCONSISTENCY—FORM OF PROTECTION

Hon. Stanley Haidasz: Honourable senators, I have another supplementary question, if I may. In congratulating the government on bringing forward legislation quickly to deal with the refugee problem and in response to the public demand to review capital punishment, could the Leader of the Government be frank with us and answer this question: Why is the government not consistent in acting with equal dispatch for the protection of fetal rights as they did with the matters of the refugee problem and capital punishment?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I have already answered that question.

Senator Haidasz: I would like to ask a supplementary question. A few moments ago the minister intimated there may be legislation forthcoming. Are we to believe that this matter—the protection of the unborn—will be dealt with by an amendment to the Criminial Code or by a resolution to make explicit the protection-of-life principles in the Canadian Charter of Rights and Freedoms?

Senator Murray: Honourable senators, section 251 of the Criminal Code was struck down by the Supreme Court of Canada. We have made no commitment as to whether our legislative response will be through the Criminal Code or in some other way.

I must say that the advice we are receiving is that it is very difficult to find a basis other than the criminal law for federal legislation in this field.

RIGHTS OF UNBORN—INTRODUCTION OF LEGISLATION—REPORT AND DRAFT LEGISLATION PREPARED FOR CANADIAN CONFERENCE OF CATHOLIC BISHOPS—REQUEST FOR TABLING

Hon. Stanley Haidasz: Could the Leader of the Government tell us whether the government or the Minister of Justice or the officials of his department are in possession of a report prepared by a Ms. Leddy for the Canadian Conference of Catholic Bishops dealing with the rights of the unborn?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I have met Ms. Leddy. She was present with their excellencies when they came to call on us. I have various documents in my files, and I am sure my colleagues have

various documents in their files. I cannot say for certain whether I have one signed by Ms. Leddy.

There are documents, including a draft bill, that have been prepared by a group called the Coalition for Life.

Senator Haidasz: Would the Leader of the Government table in the Senate this draft legislation proposed by Ms. Leddy or the Canadian Conference of Bishops, as well as a copy of her report?

Senator Murray: Honourable senators, I do not know what report the honourable senator is talking about. I can see if I have a copy of the draft bill in question that I can send to my friend. I suggest that he might get in touch with this organization and obtain copies from them so he can be sure of having all the appropriate and relevant documentation.

AGRICULTURE

GRAIN—INITIAL PAYMENT FOR 1988-89 CROP YEAR—REQUEST FOR ADDITIONAL INFORMATION

Hon. H.A. Olson: Honourable senators, I would like to complain about how an answer was given last week. I am not sure who is responsible, but perhaps it can be corrected for the future.

For several weeks I had been asking for the initial prices for wheat, oats and other cereal grains in western Canada. On April 27, 1988, the Honourable Orville H. Phillips answered the question by way of a delayed answer. I would like to quote from *Hansard*:

> (*The answer follows:*)
>
> These are the press releases to be tabled today, as requested by the honourable senator.
>
> Documents tabled.

Of course, copies of the press releases were sent to my office. However, anyone reading the record of this house does not know the prices that have been set.

For regular bread wheat, for example, the price has been increased from $110 per tonne f.o.b. Thunder Bay and Vancouver to $120 per tonne. The price of durum wheat has been increased from $110 per tonne f.o.b. Vancouver and Thunder Bay to $125 per tonne. I do not have the rest of the figures in my memory at this moment. I can bring the press release down and read it into the record so that people looking at *Hansard* will know what the figures are. However, perhaps Senator Phillips could undertake to read the rest of the figures into the record so that people reading it will know the prices.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): This might be an appropriate time for me to do so. I shall simply have the table inserted in *Hansard* at this time.

> The following are the initial payments per bushel and per tonne for wheat, oats, and barley, basis in-store Thunder Bay or Vancouver:

[Senator Murray.]

	$ per bushel	$ per tonne
No. 1 Canada Western Red Spring wheat	3.27	120
No. 1 Canada Western Amber Durum wheat	3.40	125
No. 1 Canada Western oats (designated)	1.93	125
No. 3 Canada Western oats	1.39	90
No. 1 Canada Western barley	1.42	65
Special Select Canada Western Six Row barley	2.72	125

Senator Olson: Thank you. I am sure there are many people who will appreciate that information.

THE ENVIRONMENT

ACID RAIN—REQUEST FOR COPY OF CANADIAN EIGHT-POINT PROPOSAL

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, I would like to ask a question of the Leader of the Government regarding the matter of acid rain. However, before I put my question I would like to draw to the attention of senators the section on acid rain in the document prepared in connection with the visit of the Prime Minister to Washington on April 27-28, 1988. I must commend the writers of the document for their frank and realistic appraisal of the situation which exists and the total lack of progress which has been made with the United States in dealing with the question of acid rain.

I would like to read a sentence from page 19 of the document:

> Unfortunately, during the course of detailed discussions over the past 12 months, it has become evident that the United States is not prepared to negotiate an effective agreement with binding emission reduction targets and schedules.

I believe that that frank acknowledgement is a necessary step in attempting to get progress from, up to the present, a totally reluctant President of the United States.

I understand that flowing from the meeting of the President and the Prime Minister there was a decision that Secretary Shultz and the Secretary of State for External Affairs, Mr. Clark, would meet to discuss an eight-point Canadian proposal. I welcome the fact that a further effort will be made, but I would like to know whether or not the eight-point proposal has been made public. If not, would the government consider letting us have a copy of the eight points that will become the subject of discussion between Secretary Shultz and Mr. Clark?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, what is being referred to here is a summary of the Canadian position on acid rain which Prime Minister Mulroney placed before President Reagan in the course of their discussions in Washington. It appears that the summary of Canada's position contains eight points. I do not think it would be accurate to state—and I understand that the Leader of the

Opposition did not state—that it is a new eight-point program. It is a summary of the Canadian position which contains eight major points.

President Reagan has instructed his Secretary of State to undertake discussions with Mr. Clark on the basis of those eight points.

Senator Frith: Are there also some minor points?

Senator MacEachen: I thank the Leader of the Government for that information. It would be convenient to have the summary of the Canadian position, if it can be made available.

Senator Murray: I will see if I can obtain that, honourable senators.

CRIMINAL CODE

BILL TO AMEND—FIRST READING

The Hon. the Acting Speaker informed the Senate that a message had been received from the House of Commons with Bill C-89, to amend the Criminal Code (victims of crime).

Bill read first time.

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

On motion of Senator Phillips, bill placed on the orders of the day for second reading on Tuesday next, May 10, 1988.

● (1500)

BUSINESS OF THE SENATE

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, before the motion to adjourn is put I would like to ask the Acting Deputy Leader of the Government whether there is any point in sitting tomorrow, because the government business has been completed. All that is scheduled has been designated to come forward on Tuesday. The Leader of the Government will not be here tomorrow. So, I put the question as to whether it is necessary for the Senate to sit. However, perhaps I have not seen the full vision of the work for tomorrow.

Hon. Orville H. Phillips: Honourable senators, it is true that we have a lengthy scroll, but I find myself busy saying "stand" this afternoon.

The main reason for meeting tomorrow is the fact that we hope to receive two pieces of legislation which I would like to have introduced so that we can proceed with second reading on Tuesday.

The Senate adjourned until tomorrow at 2 p.m.

APPENDIX

(*See p. 3278*)

FOREIGN AFFAIRS

STUDY OF ELEMENTS OF CANADA-UNITED STATES FREE TRADE AGREEMENT AND AGREED TEXTS—FOURTEENTH REPORT OF COMMITTEE

Wednesday, May 4, 1988

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

FOURTEENTH REPORT

Your Committee, which was authorized by the Senate on November 5, 1987 to examine and report upon elements of a Free Trade Agreement between Canada and the United States, tabled in the Senate on October 6, 1987 (Sessional Paper No. 332-589), and texts subsequently agreed to, proceeded to that examination and now presents an interim report on Constitutional Jurisdiction pertaining to the Free Trade Agreement.

The decision of the federal government to negotiate and sign a Free Trade Agreement with the United States has generated a national debate both as to the advisability for Canada of entering a bilateral free trade agreement and the merits of the specific agreement that has been reached.

Until the enabling legislation has been submitted to Parliament for consideration making evident the changes in existing legislation proposed by the Government, the Committee decided that its time would be best spent examining certain basic issues as well as considering substantive provisions of the Agreement in some areas.

In this, the first of several reports dealing with the Free Trade Agreement, the Committee examines the fundamental question as to whether the federal government has constitutional authority to enter into the Free Trade Agreement with the United States and to enact legislation necessary for its implementation, particularly insofar as it might affect provincial authority.

The Committee decided that the best way for it to approach these legal and constitutional issues was to take testimony from a panel of constitutional and international lawyers. To ensure that the issue was well aired, the Committee invited four expert witnesses from different regions of Canada and having different perspectives on the appropriate division of powers between federal and provincial levels of government to present their views jointly before the Committee, to respond to questions from Committee members and to debate differences of opinions between them.

The four constitutional and international lawyers who appeared before the Committee on February 23, 1988, were:

Ivan Bernier, Professor, Faculty of Law, Director General
Quebec Center on International Relations, Laval University, Quebec

Scott Fairley, Gowling & Henderson, Barristers & Solicitors,
Adjunct Professor of Law, University of Ottawa

Gerald Morris, Professor Emeritus, Faculty of Law,
University of Toronto

Andrew Petter, Associate Professor, Faculty of Law,
University of Victoria

Although the panelists disagreed on a number of points, there was a substantial measure of consensus concerning the respective powers of the federal and provincial levels of government as they relate to the Free Trade Agreement.

The Committee also retained Professor Marilyn Pilkington of Osgoode Hall Law School, York University, to prepare a working paper, based on the testimony of the panel, as well as on subsequent testimony by Mr. Murray Smith of the Institute for Research on Public Policy, on other established legal authorities and on extensive discussion within the Committee.

Having received and reviewed during several sessions the working paper prepared by Professor Pilkington, the Committee decided to make it public as its Fourteenth Report. While the Committee is hesitant to pronounce on the legal opinions expressed in the working paper and thereby anticipate possible judgments by the Supreme Court of Canada, it considers that the issue of the competence of the federal government to sign and implement the Free Trade Agreement is of central importance. In a field where most legal writing is difficult for the layperson to penetrate and understand, this working paper is relatively brief and written in simple English. The Committee believes it can contribute to

public awareness and understanding and that the Senate and the Canadian public would benefit from having access to it.

Part I of this working paper deals with the extent of federal power to enter into and implement international agreements. Part II reviews the extent of federal jurisdiction to regulate trade and commerce. Part III examines the extent to which the Free Trade Agreement is within federal jurisdiction in relation to trade. Part IV assesses the implications of the Agreement for Canadian federalism. Part V considers whether it would be appropriate for the Federal Government to refer to the Supreme Court of Canada questions pertaining to the constitutional validity of the Free Trade Agreement and the legislation by which it is to be implemented. Part VI summarizes the paper.

WORKING PAPER

CONSTITUTIONAL JURISDICTION PERTAINING TO CERTAIN ASPECTS OF THE FREE TRADE AGREEMENT

I. Jurisdiction to enter into and implement international agreements

Entering into international agreements

The federal government's authority to enter into agreements with foreign states is not explicitly provided for in the Constitution Act, 1867, since the drafters apparently did not contemplate a Canadian role in foreign affairs independent of the British Empire. Canada's power to enter into international agreements derives, as Mr. Fairley and Professor Bernier stated, from the imperial Crown's delegation of prerogative powers over foreign affairs to the Governor General of Canada. Since the Governor General acts on the advice of the government of Canada, the authority to enter into international agreements rests with the executive branch of the federal government.

As Professor P.W. Hogg asserts in Constitutional Law of Canada, even without the delegation of powers to the Governor General, Canada's status as an independent nation implicitly carries with it the authority to enter into agreements with foreign states, and it is appropriate that this authority be exercised by the federal government, representing the national interest.

It was the unanimous view of the four witnesses who appeared before the Committee that the federal government's legal authority to enter into agreements* with foreign states extends to agreements that affect matters within provincial jurisdiction.

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* The witnesses used the terms "treaty" and "international agreement" interchangeably. A.E. Gotlieb, in Canadian Treaty Making (1968) stated (at p. 12) that, in international law, "treaty" is the "broad generic term which describes all binding international agreements beween states", but it may also be used in a particular sense to indicate a "solemn type of commitment relating to important aspects of international affairs". He noted that "in whichever sense the term is used, treaties of all varieties or whatever name are always the same in one essential respect: to be a treaty, the instrument . . . must create legal obligations, binding under international law".

Mr. Gotlieb further noted (at p. 13) that the term "treaty" may have special significance within the constitutional law of a particular state. Thus, as explained in Treaties and Other International Agreements: the Role of the United States Senate (a Study Prepared for the Committee on Foreign Relations, United States Senate, by the Congressional Research Service, Library of Congress, 1984 at pp. 71-77), under the United States Constitution, treaties must be ratified by a two-thirds majority of the Senate, whereas other international agreements are generally authorized by congressional legislation. Nonetheless, as this study states, U.S. treaties and congressional executive agreements have equal status under both international and domestic law.

In Canada, ratification is a prerogative act of the Governor General in Council: (Gotlieb at pp. 14-17) "There is no legal requirement for the legislature, the Parliament of Canada, to 'ratify' (in the internal sense) or approve any international agreement, whether it is termed a 'treaty' or called by any other title or name. . . . When a treaty comes into force, an international obligation to comply with the specific terms of the treaty is imposed upon Canada, but this does not, in itself, change the internal law of the country . . . . [As] a matter of principle and practice the Government of Canada does seek the approval of Parliament for certain types of important treaties before ratification is authorized by the Governor-in-Council . . . . Where an agreement requires new legislation to put it into effect, the approval of Parliament is, of course, contained in the legislation adopted".

Mr. Gotlieb concludes, at p. 34, that "The solemnity of the form of an international agreement is not an invariable guide to the importance of the agreement. . . . In terms of Canadian practice, it is certainly the case that, in respect of any individual treaty, the nomenclature is not a guide to the significance of the treaty".

Professor Hogg arrives at the same conclusion: "The various names are of no legal significance; all agreements between states which are intended to be binding in international law, by whatever name they are called, are treaties which bind the states which are parties to them" (Constitutional Law of Canada, p. 241).

However, Professor Petter argued that, notwithstanding this legal power, the federal government is constrained by constitutional principle from unilaterally entering into international agreements which would unduly limit the exercise of provincial powers or subject provinces to retaliatory action. Unless all the provinces consent to an international agreement affecting provincial jurisdiction, he maintained, the federal government is obliged to negotiate inclusion of a "federal state clause", under which it agrees to perform those obligations of the agreement within federal jurisdiction but reserves to the provinces those matters within provincial jurisdiction.

Whether or not such a convention exists, there are de facto constraints on the federal government's authority to enter into international agreements. The power to enter into an agreement does not necessarily carry with it authority to implement that agreement. Since the federal government could be in breach of international obligations and subject to sanctions if it enters into an international agreement which it subsequently cannot implement, there are practical limits on its power to enter into international agreements.

Implementing international agreements

Some obligations undertaken in an international agreement can be implemented by federal executive action, but where an agreement involves a change in domestic law in Canada, legislation is required in order to give effect to it. Because legislative power is distributed between Parliament and the provincial legislatures, the issue to be determined is which level of government has authority to enact the necessary legislation.

The Constitution Act, 1867 recognized that it was appropriate for the federal government to implement Canadian obligations under imperial treaties and accordingly conferred on Parliament and the federal government authority to perform such obligations regardless of whether they were within federal or provincial jurisdiction:

> section 132. The Parliament and Government of Canada shall have all Powers necessary or proper for performing the Obligations of Canada or of any Province thereof, as Part of the British Empire, towards Foreign Countries, arising under Treaties between the Empire and such Foreign Countries.

The Constitution Act did not, however, provide for the implementation of international agreements entered into by Canada as an independent state, nor did the delegation of prerogative powers to the Governor General carry with it legislative authority to enact changes to domestic law which are required in order to implement the terms of an international agreement.

In the Labour Conventions case (1937), the Judicial Committee of the Privy Council (U.K.) held that section 132 did not authorize federal implementation of treaties other than imperial treaties. The Judicial Committee concluded that authority to legislate so as to implement treaties is divided between Parliament and the provincial legislatures in accordance with their respective jurisdictions.

Although, in Professor Petter's view, this approach is a sound reflection of the federalism principle, both Mr. Fairley and Professor Morris criticized the Judicial Committee's decision as unduly constraining Canada's authority to implement international obligations. Mr. Fairley stated that:

> Essentially the approach of the Privy Council, which is maligned but still good law as we speak today, is that the Constitution is simply blind to the presence or absence of a treaty for purposes of saying whether one level of government or another had jurisdiction. That is a manifest constitutional deficiency for Canada.
>
> If we are going to be a nation in any respect, we should be a nation in respect of other nations (15:13).

It has been argued that Canada's authority to implement international agreements could have been supported under the federal authority over peace, order and good government. As Professor P.W. Hogg explains in Constitutional Law of Canada Parliament's jurisdiction in relation to peace, order and good government may be invoked on three bases. First, it can be invoked on a permanent basis to deal with distinct and limited subject areas of national concern which can be regulated effectively only on a national basis. For instance, federal legislation in relation to aeronautics and, most recently, marine pollution has been upheld on this basis, but federal legislation in relation to inflation has not, on the grounds that it is a broad subject matter which, if conferred on Parliament, could interfere significantly with areas of provincial jurisdiction.

Second, the peace, order and good government power can be invoked on a temporary basis to justify federal interference with provincial jurisdiction as necessary to

meet a situation of national emergency. The Anti-Inflation Act which regulated wages and prices within provincial jurisdiction was upheld on this basis.

Third, the peace, order and good government power may be invoked on a permanent basis to fill a gap in constitutional authority in those few cases where the Constitution deals with a subject matter but only in a partial way. In the Radio Reference (1932), the Judicial Committee of the Privy Council held that such a gap was left by section 132 which provided for the implementation of imperial treaties but not Canada's own treaties, and that accordingly Parliament had jurisdiction pursuant to the peace, order and good government power to legislate the implementation of Canada's international agreements. This analysis was subsequently disapproved by the Judicial Committee in the Labour Conventions case.

As Professor Morris noted, there are now several dicta in the Supreme Court of Canada indicating a willingness to reconsider the Judicial Committee's reasoning in the Labour Conventions case. However, none of the witnesses before the Committee considered it likely that the Supreme Court of Canada would hold that Parliament has authority to legislate the implementation of all international agreements. Professor Petter commented that such agreements now extend to a full range of domestic policy matters such as education, health, labour and human rights. Accordingly, recognition of an unqualified federal power to implement international agreements would authorize unacceptable interference with matters within provincial jurisdiction. Nonetheless, as Professor Morris and Mr. Fairley asserted, there may be scope for a qualified federal power in relation to the implementation of agreements. The task is to develop a test which provides Parliament with appropriate scope to enter into and implement international agreements in the national interest without authorizing unwarranted interference with provincial jurisdiction.

Mr. Fairley, in a paper presented to the Canadian Council on International Law, has recommended that federal jurisdiction to implement international agreements should be recognized but only where international interests are paramount. Professor W.N. Lederman recommended in Continuing Canadian Constitutional Dilemmas that Parliament should have jurisdiction to legislate for the implementation of international obligations in areas within provincial jurisdiction but only where those areas have achieved national dimensions and national importance. He suggested that the existence of a treaty might be evidence that the matter had attained a national dimension. Professor Petter disagreed:

> I do not share the view of some that, because there is a treaty, that somehow gives the presumption, or strongly influences the conclusion, that this is a matter that falls under, say, the general trade power or under peace, order and good government. It seems to me that would, in a sense, "end-run" the very principle that the Labour Conventions case was intended to protect (15:9).

G.V. LaForest in an article written before he was appointed to the Supreme Court of Canada, expressed concern about the vagueness of the test proposed by Professor Lederman (a concern which is shared by Professor Hogg), but agreed that it is likely that "the law will move in the general direction of affording the federal parliament more scope to implement international action". He concluded that the Court is more likely to expand specific heads of federal power which have international aspects, and rely on the residuary peace, order and good government clause to support federal regulation of matters within provincial jurisdiction which are necessarily incidental to an international agreement. In a paper recently delivered to the National Conference on Free Trade, Professor Dale Gibson concluded that:

> Although the Supreme Court of Canada has not yet made a conclusive pronouncement on the matter, it would be reasonably safe to predict that when it does so it will opt for an approach, along the lines of those advocated by Lederman and LaForest, that will permit a pragmatic sharing of responsibilities between federal and provincial authorities on questions that straddle international boundaries. In my view, the test ultimately adopted will probably permit federal authorities to both enter and implement treaties having intra-provincial ramifications if the matter has a genuine and signficant international dimension.

Accordingly, it is clear that Parliament can enact legislation to implement an international agreement where the legislation is within federal jurisdiction. Further, it is open to the Supreme Court of Canada to recognize a federal power to implement international agreements, even when they deal with matters within provincial jurisdiction; in light of comments by members of the Court expressing willingness to reconsider the Labour Convention case, it is possible that the Court will do so. At the least, as Professor Petter acknowledged, where the federal government has bona fide entered into an international agreement pertaining to the regulation of matters which are primarily within federal jurisdiction, this power to implement international agreements would provide additional support for ancillary provisions of the agreement which deal with matters within provincial jurisdiction.

Further, even where an international agreement deals substantially with matters ordinarily within provincial jurisdiction, the Court might recognize federal

jurisdiction to legislate so as to implement the agreement where the pursuit of national objectives requires co-operative action with a foreign state and the importance of the national objectives outweighs any necessary impact on provincial powers. Such a test would preclude Parliament from legislating on matters within provincial jurisdiction merely because it had entered into an international agreement to do so, but it would enable Parliament to implement international agreements which are important to the national interest. In his testimony before the Committee, Professor Morris cautioned that, without the recognition of some federal power in relation to foreign affairs, Canada's federal system could become an instrument of weakness:

> the argument that "Now we routinely deal with so many matters that are really within the provincial heads of jurisdiction, in terms of the conduct of foreign relations, that we have to be even more careful to sustain the provincial jurisdiction" is not the only argument that can be made. There is another way of viewing that situation --- and perhaps it is an indication to which we should give some attention --- which is that the world in general, including a good number of federal states, routinely seizes these topics as suitable for coordination at an international level. It is seen as essential that national states be able to deal with these matters and deal with them effectively, which means that they be brought into effect in internal law. . . . It is well known that it was clearly understood that the constitution of West Germany was drafted in 1949 with the specific purpose of hamstringing that country so that it could never again be an effective power internationally. That is not a very happy category for Canada to fall into (15:20).

Nonetheless, Professor Morris was not confident that the Supreme Court of Canada would be prepared to recognize a federal power in relation to foreign affairs. Professor Bernier was clearly of the view that, with respect to the Free Trade Agreement:

> it is not the general treaty-making power that is at stake, but the competence of Parliament to implement a treaty in a specific field, and [the courts] would judge on the basis of the field they are dealing with and will stick to that field (15:43).

II. Jurisdiction to regulate trade and commerce

International versus intraprovincial trade

Section 91(2) of the Constitution Act, 1867 confers on Parliament exclusive legislative authority in relation to the regulation of trade and commerce. Together with

Parliament's authority in relation to taxation, public borrowing, banking, currency and interest, Parliament was evidently intended to have extensive powers to regulate trade, commerce and the economy generally. On the other hand, the provinces were given jurisdiction over property and civil rights, which included the regulation of contracts, through which trade is conducted. In order to provide scope for both the federal and the provincial jurisdiction, the Judicial Committee of the Privy Council modified the federal powers. It upheld provincial jurisdiction in relation to intraprovincial trade and limited Parliament's jurisdiction to: (1) international trade; (2) interprovincial trade; and (3) general regulation of trade affecting the whole Dominion (Citizens' Insurance Co. v. Parsons, 1891).

The federal jurisdiction over trade and commerce operates not only as a source of federal power but also as a limit on provincial power. Thus, provincial legislation must regulate intraprovincial transactions only. To the extent that it regulates transactions in out-of-province products, even for the purpose of maintaining an intraprovincial marketing scheme, it is invalid. Even if the provincial legislation regulates only intraprovincial transactions, it may be invalid if it "aims at" interfering with interprovincial or international trade. (Manitoba Egg Reference, 1971; Central Canada Potash Co. v. Saskatchewan, 1978.)

By the same token, federal trade legislation must fasten only on interprovincial or international transactions, although in cases involving marketing of grain or oil, courts have upheld federal regulation of intraprovincial transactions, the regulation of which was necessarily incidental to an otherwise valid federal marketing plan. (Natural Products Marketing Reference, 1937; Murphy v. C.P.R., 1958; R. v. Klassen, 1959.)

Focusing on the nature of the transactions regulated and the purpose of the regulation, rather than its impact on trade, has not proved to be a satisfactory means of distinguishing between federal and provincial powers. Frequently, some of a regulated product is consumed locally, and some of it enters interprovincial or international trade. As a result, the jurisdiction to regulate the product is divided. At the stage of production, where the product is undifferentiated, it is frequently impossible to determine which level of government has regulatory power. Since conflicting regulations pertaining to a single product would be chaotic, the two levels of government have been compelled to enter into cooperative marketing schemes. In this way the dysfunctional distribution of authority can be circumvented. It remains to be seen whether the Supreme Court of Canada, which is becoming accustomed to applying a "purposive analysis" to the Canadian Charter of Rights

and Freedoms, will now take a more purposive or functional approach to the division of powers in relation to trade and commerce.

The federal trade and commerce power continues to be defined in accordance with the three categories delineated by the Judicial Committee. Accordingly, Parliament has jurisdiction to regulate international trade, exports and imports, as well as interprovincial trade. In addition, it appears that, in the service of a national regulatory policy, Parliament may regulate intraprovincial transactions which are necessarily incidental to the effectiveness of an international trade plan.

General regulation of trade

Mr. Fairley argued that in support of its power to implement the Free Trade Agreement, Parliament may also be able to rely on a newly-defined authority in relation to the third category of federal jurisdiction recognized by the Judicial Committee: "general regulation of trade affecting the whole Dominion". This category has until recently been ill-defined. Now, however, a member of the Supreme Court of Canada has suggested a series of tests for determining when the general power can appropriately be utilized, without unduly interfering with provincial jurisdiction over intraprovincial trade. Building on suggestions previously made by then Chief Justice Laskin, Mr. Justice Dickson (now Chief Justice) proposed that general federal trade regulation might be upheld where: (1) it is aimed at the economy as a single integrated national unit; (2) it could not be accomplished by the provinces acting separately or in combination; (3) it could not be effective unless all provinces were included; and (4) it is a regulatory scheme requiring administration by a regulatory agency.

Professor Bernier expressed some doubt as to whether Chief Justice Dickson's suggested tests would apply to an Agreement like the Free Trade Agreement, and preferred to consider the implementation of the Agreement pursuant to Parliament's international trade jurisdiction. Mr. Fairley, on the other hand, considered that the tests are both applicable to and satisfied by the Free Trade Agreement:

> What happens if we apply these criteria to the leading features of the agreement which eventually will be before you, or at least the implementing legislation? The first instance is for Parliament to come up with a comprehensive regulatory and statutory framework. If that framework is tied together in a unified whole, as is the agreement, there must be a national regulatory scheme for free trade with the United States. Pursuant to that, there is also ongoing supervision

> pursuant to the institutional provisions built into the Free Trade Agreement. I refer to the chapters on the commission and the special panels for resolving countervailing and anti-dumping disputes. For the Free Trade Agreement to work, you are going to have a new bi-national bureaucracy between Canada and the United States to make that agreement a functional reality.
>
> Dealing with the third item, we can certainly say that the focus of the agreement is trade in general. We are talking about a comprehensive free trade area, notwithstanding particular exceptions to the coverage of the agreement, such as the exemption for beer and certain other market sectors.
>
> No one is going to suggest that the provinces jointly or severally could implement anything like the Free Trade Agreement --- nothing close.
>
> There exists a very real danger that one or more recalcitrant province could jeopardize the entire scheme, as well as its successful operation in other parts of the country.
>
> I suggest to you that there is an extremely persuasive fit between what is required for purposes of implementing the Free Trade Agreement and what the Chief Justice of Canada says is a reasonable approach to the general trade and commerce power (15:14-15).

Although two other members of the Court concurred with Chief Justice Dickson, the Court as such has not yet indicated its approval or disapproval of the tests he proposed. Should Chief Justice Dickson's formulation of the third category of federal jurisdiction over trade be approved by a majority of the Court, it could provide significant support for Parliament's jurisdiction to regulate the national economy as an integrated unit.

III. The Free Trade Agreement as Regulation of International Trade

The Free Trade Agreement relates primarily to international trade, in that it is intended to establish a "free-trade area" within the meaning of Article XXIV of the GATT in goods, services and investment between Canada and the United States (ch. 1). It provides for the removal of most direct barriers to trade, such as tariffs, export taxes, quotas and other restrictive border measures (ch. 4). It also prohibits discriminatory treatment of imported products (ch. 5), and, to a lesser extent, services (ch. 14) and investment (ch. 16); it prohibits the use of federal technical standards to create unnecessary obstacles to trade (ch. 6); and it prohibits the creation or use of a monopoly or state enterprise for the purposes of evading obligations under the Agreement (ch. 12).

The Free Trade Agreement does take into account some provincial and regional interests which would be affected by free trade and specifically excludes or preserves them:

- chapter 6, with respect to technical standards, exempts provinces from the obligation to alter technical standards and procedures which create unnecessary obstacles to trade;

- chapter 7, with respect to agriculture, preserves marketing plans, farm income stabilization and price support programs in some areas;

- chapter 12 incorporates the provisions of Article XX of the General Agreement on Tariffs and Trade (GATT), which preserve import and export controls as necessary to protect public morals or health and to ensure compliance with domestic laws not aimed at trade;

- chapter 12 also preserves controls on the export of logs, the export of unprocessed East Coast fish, and the internal sale and distribution of beer, while preserving the parties' rights pursuant to the GATT;

- chapter 13 excludes provincial governments from the provisions regulating government procurement;

- chapter 14, which provides for free trade in services, excludes transportation, basic telecommunications, doctors, dentists, lawyers, childcare and government-provided services (health, education and social services); this is, however, subject to chapter 15 which provides that professionals who are engaged in the trade of goods or services or in investment activities shall be temporarily granted entry to and issued an employment authorization by the other Party to the Agreement;

- chapter 16, which provides for free trade in investment, applies only to future changes in laws, and although it precludes requirements that investors use local goods or services, or achieve certain levels of domestic content, or export certain levels of product, it does not prohibit "negotiation of performance requirements attached to subsidies or government procurement";

- chapter 17, which covers financial services, does not apply to any provincial measure.

These qualifications preserve to the provinces much of the regulatory scope that would be affected by free trade. Nonetheless, concerns have been raised by some provincial authorities about the impact of the Free Trade Agreement on the scope of provincial regulatory authority, including the following specific concerns:

- provincial laws which require upgrading or processing of a natural resource in Canada prior to export may be subject to challenge as improper export restrictions;
- attempts to cut back production of a resource so as to raise the export price in the United States may be subject to challenge;
- consumer protection measures which restrict the right of non-residents to carry on some businesses in the province may be challenged unless it can be shown that the restrictions are no greater than necessary in order to protect consumers;
- the establishment of new public insurance schemes will be subject to compensation of privately owned companies which might be affected;
- public insurance plans may also be subject to challenge under the monopolies provisions;
- tax breaks, grants and other incentives for which only Canadian-owned businesses are eligible may be subject to challenge on the grounds that they constitute unjustifiable discrimination; and
- the United States may challenge and retaliate against any provincial measure that causes nullification or impairment of any benefit it reasonably expected to receive under the Agreement.

In assessing these concerns, it is important to note that the effect of international trade obligations on the exercise of provincial jurisdiction is not a new matter. Murray Smith, Director of the International Economics Program of the Institute for Research on Public Policy, told the Committee that the General Agreement on Tariffs and Trade (GATT) and its associated codes contain a number of general provisions that affect matters within provincial jurisdiction, for example, provisions relating to national treatment, standards, and import and export controls. In the mid-1970s, for example, a tax levied by the Ontario government on the sale of non-North American automobiles was

withdrawn after protests by the European Community and Japan that the tax violated GATT obligations. Similarly, in the early 1980s, a handling charge imposed by Ontario on foreign wines was withdrawn after protests from the European Community and the United States. Since wines, spirits and beer are subject to regulation by the GATT, and in light of the recent finding by a panel of GATT that Canada is in breach of its obligations because of the failure of provinces to observe the GATT requirements, it appears that, with respect to wines and spirits, the Free Trade Agreement may do little more than is already possible under the GATT,* and with respect to beer, which is specifically excluded from the Free Trade Agreement, the GATT provisions govern.

Accordingly, although the Free Trade Agreement goes beyond the GATT in some areas, both international trade agreements affect provincial interests. The establishment of a free trade area clearly has an impact on the provinces because it changes the context within which they may exercise their jurisdiction, but that does not necessarily amount to a reduction in the provinces' jurisdiction. Professor Petter argued that:

> it would violate the autonomy and sovereignty of provincial governments to allow the federal government to expand its jurisdiction by unilaterally entering into a treaty. Federalism cannot allow a situation where one level of government, through unilateral action, can effectively displace the powers of another level of government (15:8).

While it is true that the federal government does not have the power to reduce unilaterally the jurisdiction of the provinces, it is not clear that the implementation of the Free Trade Agreement would have that effect. Professor Bernier and Mr. Fairley argued that the Free Trade Agreement asserts the jurisdiction of the federal government in relation to international trade. Since a valid federal law will prevail over a conflicting provincial law,

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* In any event, as Mr. Fairley noted, the monopoly of the provinces in the sale of imported liquor is currently dependent upon the federal Importation of Intoxicating Liquors Act, which makes it an offence to import any liquor deemed by a province to be intoxicating except through a provincial government or its designated agency. Accordingly, it appears that there is a basis for asserting federal jurisdiction to regulate the importation of wine and distilled spirits and to prohibit discriminatory treatment of imported products.

the scope available for provincial action may be reduced. This effect, far from being unconstitutional, is provided for by sections 91 and 92 of the Constitution Act, 1867. In the words of Professor Bernier:

> the primary focus of the Free Trade Agreement is international trade.
>
> This being the case, the issue is the regulation of international trade, and whether it has an incidental and minor, or major and direct impact on provincial jurisdiction, the doctrine of federal paramountcy comes into play.
>
> By virtue of the double aspect doctrine, provincial measures will be able to co-exist with federal measures, to the extent that the activities targeted by such legislative measures are also the focus of provincial activities, and provided they are not functionally incompatible with them. Should the opposite be true, federal measures take precedence (15:22).

Professor Petter questioned the applicability of the paramountcy doctrine as a basis for excluding the exercise of provincial jurisdiction:

> It is one thing for the federal government to enact positive measures and for the doctrine of paramountcy then to prevent contradictory positive measures. It is a very different thing for the federal government to create an area of exclusive jurisdiction or no jurisdiction by saying to the provinces. "You cannot enact measures in this jurisdiction" (15:39).

Mr. Fairley disagreed with Professor Petter that implementation of the Free Trade Agreement would preclude the exercise of provincial jurisdiction:

> I do not read the law in the way Professor Petter does .... There are lots of cases which talk about the province being able to positively regulate, absent federal prohibition, but if there is a conflict between the federal prohibition and the provincial regulation the provincial regulation then falls. ...
>
> In this case all that is necessary is for the federal government to occupy the field in the sense of setting up a minimum standard. For example, in relation to national treatment the federal legislation could simply say that anywhere in Canada the treatment of an important product governed by the agreement will be an MFN standard --- most favoured nation; I am using the GATT language which appears throughout the agreement. The result of that would be not necessarily uniformity and not necessarily a holus-bolus standard imposed on the provinces; all it would say is that the best deal accorded a particular product in any jurisdiction, be it federal or provincial, must be the deal you give to the

> commodity being regulated by the agreement --- in this case, any import from the United States. That would be a minimum standard which the federal legislation could implement, and any conflict(ing) . . . provincial legislation would be . . . inoperative . . . (15:40-41).

In Professor Bernier's view, since Parliament has the right to legislate in relation to international trade, there is compelling support for Parliament's jurisdiction to implement the Free Trade Agreement:

> What it really comes down to is this: "What is the true nature of the legislative measures adopted?" A free trade agreement such as the one proposed or currently under consideration seeks to impose restrictions or prohibit certain treatments. More specifically, I would say that the provisions concerning national treatment seek to eliminate all forms of discrimination against products, manufacturers or even Americans themselves. Thus, it is an essentially negative approach designed to do away with discrimination. I believe that such an approach would be viewed broadly by the courts as flowing from international trade (15:22-3).

Professor Bernier cautioned that a trade agreement could infringe provincial jurisdiction if it went beyond eliminating barriers to trade and specified how provincial jurisdiction is to be exercised:

> If the agreement in question went further and sought to harmonize or develop joint policies in different sectors, which is not really the case or for that matter the objective, we could then ask ourselves if this constitutes in fact a more serious infringement of provincial jurisdiction (15:23).

> . . . This is not to say that the federal government can take the place of the provincial government and regulate certain areas of activity or make executive decisions in its place. If we take, for example, provincial monopolies in the case of liquor and distilled spirits, the federal government could not decide how all of these liquor boards would operate without casting into question the very right of provinces to establish monopolies, despite the inevitable impact these have on trade, as shown in the Supreme Court ruling in the case of "Canadian Indemnity vs the Attorney General of British Columbia." At best, we can foresee that in the case of the federal Parliament exercising jurisdiction over international trade, guidelines will be put in place to identify the margin of manoeuverability of provincial liquor board monopolies insofar as Canada's international obligations are concerned (15:24).

Much depends on the actual implementing legislation and the extent to which it assigns responsibility for the burdens of the Free Trade Agreement to the provinces or the federal government. For example, as Professor Petter argued, article 1605 requires that no American investment shall be nationalized or expropriated in Canada (and vice versa) except for a public purpose, in accordance with due process of law, on a non-discriminatory basis and upon payment of prompt, adequate and effective compensation at fair market value. If the effect of this provision is to require that a new public insurance scheme, such as no-fault automobile insurance, can be established only if compensation is provided to American insurers for the loss of their investment in the province, then it appears that the Agreement imposes a limit on provincial jurisdiction. The limit is not simply that Americans must be given equal treatment. Rather, a particular type of treatment, namely compensation, is prescribed. This could prove to be a formidable obstacle to the exercise of provincial jurisdiction, unless the federal government is prepared to assume the burden. Until the implementation legislation is introduced, it is not possible to assess whether this and other issues will be addressed in a manner which satisfactorily protects provincial jurisdiction.

Professor Bernier noted that in the past means have been found to adjust the exercise of constitutional powers to the reality of Canadian federalism:

> International competition requires adjustments that are sometimes difficult to make in virtually all countries. For the provinces to sidestep this adjustment process would be surprising, to say the least. But this in no way means that the essential division of powers in Canada must be altered. Much in the same way the unexpected increase in the provinces' authority over social matters was compensated for beginning in the fifties by federal activities carried out pursuant to a new or rediscovered spending authority, it is conceivable that the increase in federal responsibilities with regard to international trade will eventually be compensated for by a more active, ongoing participation by the provinces in the formulation of Canadian policy in this area (15:22).

He further suggested that this adjustment would be facilitated by federal-provincial cooperation and consultation:

> Experience in the United States and the European Economic Community would seem to indicate that when regional concerns are given a real place in the formulation of central policies, the overall results are better. If that is the case, then any expansion of federal jurisdiction over foreign trade linked to the implementation of the Free-Trade Agreement with the United States should be accompanied by the

> introduction of a real mechanism for federal-provincial cooperation on implementation of the agreement (15:25).

The general conclusion of Professor Bernier and Mr. Fairley that legislation to implement the Free Trade Agreement would likely be within federal authority over international trade is broadly supported by other constitutional lawyers writing on this topic, namely Dean John Whyte, Professor R.E. Sullivan, and Professor Dale C. Gibson.

IV. Implications for Federalism

Professor Petter argued that the impact of the Free Trade Agreement on the jurisdiction of the provinces is so substantial that Parliament should not be able to use its jurisdiction in relation to treaties and international trade to implement it unilaterally:

> . . . one level of government cannot operate in this country as a matter of constitutional principle and convention in a way that would have the effect of limiting the powers of other orders of government (15:26).
>
> . . . I do not think that the problem with this agreement is that the federal government cannot enact treaty legislation or international trade legislation. I agree that that is very much what this agreement is about. The problem with this agreement is that it places upon the provinces an obligation not to take actions which have the effect of interfering with those obligations, and matters that fall well within provincial jurisdiction will have that effect (15:28).

In a paper presented to the National Conference on Free Trade, he elaborated on the argument he had put to the Committee:

> The Agreement deals with important matters of provincial jurisdiction; it will subject provinces to an enforcement mechanism that is even more stringent than the one applying to the federal government; and it will produce significant changes in the nature of federal-provincial relations.
>
> These changes will compromise the ability of provinces to pursue independent policies and thus to act as "laboratories" for political innovation and regulatory reform. Once the Agreement is in place, any provincial initiative that could be construed as violating its terms will attract scrutiny, pressure and possibly retaliation from both American and federal authorities.
>
> Given this reality, it may seem surprising that the Agreement has generated only limited opposition from the provinces . . .

> Why is this so? The answer seems to be that the premiers who support the Agreement are prepared to suppress their passion for provincial rights to pursue their love of laissez-faire economics.

It is conceivable that, to the extent it can be established that the legislation implementing the Free Trade Agreement would have very signficant impact on the scope of provincial jurisdiction, a court could hold that the legislation violates basic federalism principles. In other constitutional contexts, courts have put limits on broad federal powers which had the potential to curtail provincial jurisdiction. The federal trade and commerce power itself was limited by the Judicial Committee of the Privy Council for this reason. Accordingly, in assessing the Free Trade legislation, a court may be faced with balancing the need for federal capacity to regulate international trade in the national interest against the need to protect provincial jurisdiction. In making this assessment, the court would presumably take into account the degree to which provincial powers are already, and are likely to continue to be, limited by various other international trading agreements, primarily the GATT.

Professor Petter expressed particular concern about the effect of Article 103 of the Free Trade Agreement, which requires that:

> The parties to this Agreement shall ensure that all necessary measures are taken in order to give effect to its provisions, including their observance, except as otherwise provided in the Agreement, by state, provincial and local governments.

He argued before the Committee that this clause could oblige Parliament and the federal government to take action against provinces and their legislation, including using the spending power, the taxing power, the power to declare works and undertakings for the general advantage of Canada and the power to reserve and disallow provincial legislation.

> I am sure that I do not have to tell those around this table that when you live in a federal state, in order for that federal state to function, you do not, as either a federal or a provincial government, take all necessary measures; indeed, I think the principle of federalism would cave in if the federal government were, at all times, to assert the the full extent of its authority. In some situations there is legal authority in the federal arena which is considered to be obsolete. For example, there is the disallowance power, even though it is still on the books. However, even within powers that are used --- and here I am thinking of the spending power; of taxing powers; of the declaratory power, which is the power to declare works and undertakings to be of national import --- the federal government does not, as a matter of course, use the full extent of those legal powers, nor should it. If it did, it would

> seriously jeopardize the ability of federalism to function and of the federal and provincial governments to get along in a cooperative situation. It is the principle of cooperative federalism, of give and take, which allows those powers to exist on the books, but which nevertheless allows federalism to function effectively by having the parties restrain themselves.
>
> What this treaty does, it seems to me is to put a great deal of pressure on the federal government to play upon powers that it now has, but which heretofore it has --- and rightly in my view --- been very restrained in exercising. There is nothing in this agreement --- as there are in some other agreements, I understand --- concerning policy and the propriety of using powers. There is nothing here to say that the federal government must only use powers where it is proper in a policy sense. In fact, the federal government is obliged to ensure that all necessary measures are taken.
>
> The other state with which we are involved in respect of this treaty, the United States, has a far more centralist view of federalism and a far less sympathetic view of the restrained use of central powers. It is very common in the United States for spending powers to be used to a much greater extent than in Canada to coerce states to pursue federal objectives; there is a far greater expectation that the federal government can generally involve itself in provincial matters. What I would argue that the treaty does, and the impact that it has on federal-provincial relations, is that it effectively brings to the federal-provincial bargaining table a third party in the form of the United States, a very powerful party with a lot of power to enforce the obligations in this agreement. That party is given the power to ensure, or to bring action against Ottawa if Ottawa fails to ensure, that all necessary measures are taken.
>
> I do not wish to mislead the committee. The treaty does not require Ottawa to use those powers. It says that if Ottawa does not use all of its necessary powers, then Canada becomes subject to retaliatory action. What I am arguing is that the pressure that it puts upon Canada is a pressure that will move Canada in a far more centralistic direction; in a direction that is likely to result in far more federal intervention in provincial matters than we have seen to date (15:10-11).

Professor Bernier acknowledged that Article 103

> . . . is, to all intents and purposes, the very opposite of a traditional federal clause. Rather than qualify the extent of the federal authority's obligations on the international level so as to take into account the division of powers, which constitutes an obligation of means, article 103 denies the impact of this division and imposes on the federal government the strict liability to perform (15:21).

By agreeing to Article 103, both the Canadian and American governments have undertaken to ensure that the Free Trade Agreement is observed or, alternatively, pay compensation or suffer retaliatory measures as provided in Chapter 18 of the Agreement.

The comparable obligation in the General Agreement on Tariffs and Trade (GATT), Article XXIV:12, provides that:

> Each contracting party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the regional and local governments and authorities within its territory.

Although GATT Article XXIV:12 is worded less strongly than Article 103, Mr. Smith argued before the Committee that the findings of two recent GATT panels suggest that the GATT clause is being interpreted as requiring the federal government to pay compensation if it is unable to secure compliance with GATT obligations by provincial governments. Admittedly, there has been no authoritative interpretation of GATT Article XXIV:12. Mr. Frank Stone, of the Institute for Research on Public Policy, in a report prepared for the Committee, noted that prior to the mid-1970s member states infrequently turned to GATT's dispute settling mechanisms, preferring to resolve differences through bilateral negotiations; thus, only two GATT panels have considered federal responsibility for the actions of regional governments. Both complaints involved Canada.

The first panel examined a complaint in 1984 from South Africa about a differential sales tax levied by Ontario on South African gold coins. The panel found that the tax was discriminatory and thus in breach of the GATT rules on national treatment under Article III:2. According to Mr. Stone, the panel recommended that the Canadian government take such measures as were available to it to secure the necessary changes in the Ontario tax and further recommended that Canada compensate South Africa for loss of sales opportunities. Ontario removed the discriminatory tax, the two countries settled the issue, and the panel report was accordingly not presented for formal adoption by the GATT Council.

The second GATT panel considered a complaint by the European Economic Community about distribution and sale of alcoholic beverages by provincial agencies. As both Mr. Smith and Mr. Stone noted, the panel recently found that Canada is in breach of its obligations under the GATT because of the failure of provinces to comply with provisions governing the non-discriminatory sale of wine, beer and spirits. The panel apparently rejected arguments that the federal government had met its obligations under Article

XXIV:12 of the GATT and could not be held responsible for provincial non-compliance. Mr. Smith also noted that no other federal state intervened in support of the federal government's position.

Although GATT Article XXIV:12 has not yet been interpreted by the GATT Council, the reports of the two panels suggest that it may be interpreted as imposing obligations on the federal government much like those imposed by Article 103.

On the basis of these findings Mr. Smith concluded that the difference in wording between Article 103 of the Free Trade Agreement and Article XXIV of the GATT may be more a difference of form than of substance.

The commitment in Article 103 provides additional assurance that trade obligations will be honoured or their breach will be compensated. Neither side's non-compliance will be excused, as it possibly could be under the GATT, on the basis that it has taken "such reasonable measures as may be available to it". Mr. Fairley noted that "Parliament . . . will have to look at the prospect of (playing) hard ball when it comes to meeting the commitments that have been made" (15:16).

The significance of Article 103 will depend upon the extent to which implementation of the Free Trade Agreement is within federal jurisdiction. If implementation of any aspects of the Agreement is beyond the jurisdiction of Parliament, Article 103 still obliges the federal government to take all necessary measures to enforce provincial compliance, or expose Canada to retaliatory consequences. Faced with such a choice, the government would have to weigh the cost to federal-provincial relations of using extraordinary measures to enforce the Agreement against the cost of retaliatory measures by the United States pursuant to the Agreement. This is not a new choice: it has always been open to the federal government to exercise its extraordinary powers to force provincial compliance with trade agreements in the face of retaliatory measures. The actual danger, according to Professor Petter, is that there may now be more pressure on the federal government to do so.

On the other hand, if the necessary implementing legislation is within federal jurisdiction, then, since valid federal legislation is paramount over valid but conflicting provincial legislation, and since federal legislation applies to provincial governments, it would not be necessary to rely on extraordinary powers to enforce compliance with the terms of the Agreement.

Accordingly, the extent to which Article 103 poses a threat to provincial jurisdiction depends, first, on the constitutional validity of federal implementing legislation, second on the extent to which the federalism principle will continue to provide countervailing pressure against the exercise of federal extraordinary powers, third, on the extent to which provinces fail to comply with terms of the Agreement, and fourth, on the extent to which the federal government is prepared to bear the burden of provincial non-compliance by providing compensation or acquiescing in retaliation.

V. Referring the Constitutional Issue to the Supreme Court of Canada

Each of the witnesses before the Committee was asked whether the federal government should make a reference to the Supreme Court of Canada concerning the Free Trade Agreement. The main advantage of a reference is that it may provide a means of settling constitutional jurisdiction to enact legislation before action is taken in reliance on it. If the constitutionality of legislation implementing the Free Trade Agreement were upheld, people could with greater confidence reorder their affairs in compliance with it. This could, in turn, enhance the effectiveness of the new arrangements. However, all four witnesses agreed that, when the Court is asked to make a ruling on the validity of legislation in the abstract, rather than in the context of disputes arising in specific fact situations, it may be hampered in reaching a sound decision. In Professor Bernier's view, the Court should avoid deciding the constitutional validity of the Free Trade Agreement in the abstract. Mr. Fairley added that

> . . . once you have the legislation, and once it is in place, you do have concrete factual circumstances in which to resolve the constitutional question; whereas if you simply submit the question . . . it is that much less predictable . . . (15:47).

The Supreme Court of Canada itself has cautioned against referring abstract constitutional questions to the Court without adequate factual information, particularly in the area of trade (Manitoba Egg Reference, 1971).

Professor Petter noted other potential problems with using the reference procedure:

> . . . you are likely to get a question that is framed in a way that is self-serving and an answer that is framed in a way that, to the judiciary, is self-serving in the sense that they will not want to go out on these limbs . . . (15:47).

On the other hand, Professor Petter favoured a reference to the Court on the basis that it would force the federal Government to account for what he saw as its contradictory position of maintaining that the Agreement does not affect provincial powers, while also assuring the American government that it can bring the provinces into line.

In deciding whether to refer the constitutionality of the implementing legislation to the Supreme Court of Canada, the federal Government would have to consider whether questions can be appropriately framed to raise precise issues for the Court's consideration and also whether the reference could be supported by sufficient factual material to enable the Court to assess the likely impact of the legislation in the many areas in which it would operate. This would be a formidably complex task, since so many issues would have to be addressed. Moreover, if the Court considered that it did not have a sufficient basis on which to respond to any particular question, it might decline to do so (Ref. BNA Act and the Federal Senate, 1980).

Mr. Fairley made the point, that, since the federal government is confident that it has the jurisdiction to enter into and implement the Agreement, it should simply proceed with the implementing legislation and leave it to others to bring the constitutional issues before the courts if they choose to do so. It is, of course, open to provincial governments to refer the Agreement or its implementing legislation to Courts of Appeal, from which appeals could be taken to the Supreme Court of Canada. It is also conceivable that private parties could commence actions in the superior courts of the provinces or in the Federal Court challenging the constitutionality of the Agreement or its implementing legislation. If such a reference is made or action commenced, the federal Government could then decide whether to expedite the process by referring the Agreement directly to the Supreme Court.

VI. Summary

No definitive conclusion concerning Parliament's jurisdiction to enact legislation to implement the Free Trade Agreement can be reached in the absence of the actual implementing legislation and detailed examination of it to determine its specific impacts on provincial policies.

Nonetheless, as a matter of preliminary assessment, there does appear to be support for federal jurisdiction to implement the Free Trade Agreement. Parliament has authority to legislate in relation to international trade --- and the Agreement is primarily concerned with international trade. It takes into account some provincial and regional interests which would be affected by free trade and specifically excludes or preserves them. The fact that the Agreement will have an impact on matters within provincial jurisdiction does not necessarily limit federal jurisdiction to implement the Agreement: the exercise of federal jurisdiction in relation to international trade may validly circumscribe the scope of provincial authority since a valid federal law will prevail over a conflicting provincial law. Federal legislation to implement the Free Trade Agreement would infringe provincial jurisdiction if it went beyond eliminating barriers to trade and specified how provincial jurisdiction is to be exercised.

If Chief Justice Dickson's formulation of federal jurisdiction in relation to "general regulation of trade throughout the Dominion" is adopted by a majority of the Supreme Court of Canada, it could provide additional support for Parliament's jurisdiction to regulate the national economy as an integrated unit.

Further, there are indications in the case law and other authorities that the Supreme Court of Canada might recognize a federal power to implement international agreements which could operate either as an ancillary power, to provide additional support for implementing those provisions of an international agreement which incidentally affect matters within provincial jurisdiction, or, as an independent source of federal authority,

where, for instance, the pursuit of national objectives requires co-operative action with a foreign state and the importance of the national objectives outweighs any necessary impact on provincial powers.

Concerns have been raised that Article 103 of the Free Trade Agreement, which requires the Parties "to ensure that all necessary measures are taken in order to give effect to its provisions, including their observance . . . by . . . state, provincial and local governments" goes beyond Article XXIV:12 of the GATT and may compel the federal government to use its extraordinary powers against the provinces. However, it has been argued that in practice the difference in the nature of the obligations under Article 103 and Article XXIV:12 may be slight. The Free Trade Agreement does not require that the federal government exercise its extraordinary powers, such as disallowance, to assure provincial compliance. Rather, as under GATT, non-compliance at the sub-national level may be remedied by compensation or met by retaliation. Article 103 poses a threat to provincial jurisdiction only to the extent, if any, to which implementation of the Agreement exceeds federal authority, and then only if the federalism principle will no longer provide sufficient countervailing pressure against Parliament's exercise of its extraordinary powers.

Even if a strong case can be made in support of Parliament's jurisdiction to enact legislation to implement the Free Trade Agreement, it must be recognized that, in other constitutional contexts, courts have put limits on broad federal powers which threaten to curtail substantially provincial jurisdiction. Accordingly, in assessing the Free Trade legislation, courts may be faced with balancing the need for federal capacity to regulate international trade in the national interest against the need to provide considerable scope to provincial jurisdiction. In making this assessment, the courts would presumably take into account the degree to which provincial powers are already, and are likely to continue to be, limited by various other international trading agreements, primarily the GATT.

At first glance it might seem useful to make a reference to the Supreme Court of Canada for an advisory opinion on the constitutional validity of the Free Trade Agreement (and the legislation which will be introduced to implement it) in the hope of settling its constitutional validity before action is taken in reliance on it. However, in deciding whether to refer the constitutionality of the implementing legislation to the Court,

the federal Government would have to consider whether questions can be appropriately framed to raise precise issues for the Court's consideration and also whether the reference could be supported by sufficient factual material to enable the Court to assess the likely impact of the legislation in the many areas in which it would operate. This would be a formidably complex task, since so many issues would have to be addressed. Moreover, if the Court considered that it did not have a sufficient basis on which to respond to any particular question, it might decline to do so. Accordingly, a reference would not necessarily result in a definitive court ruling.

Respectfully submitted

GEORGE C. van ROGGEN
Chairman

THE SENATE

Thursday, May 5, 1988

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

Prayers.

REGULATORY SCRUTINY

NINTH REPORT OF COMMITTEE PRESENTED AND PRINTED AS APPENDIX

Hon. Nathan Nurgitz: Honourable senators, I have the honour to present the ninth report of the Joint Committee for Regulatory Scrutiny. I ask that this report be printed as an appendix to the *Debates of the Senate* and to the *Minutes of the Proceedings of the Senate* of this day and that it form part of the permanent records of this house.

The Hon. the Speaker: Honourable senators, is it agreed?

Hon. Senators: Agreed.

(*For text of report, see Appendix "A", p. 3322*).

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

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

[*Translation*]

WESTERN ARCTIC (INUVIALUIT) CLAIMS SETTLEMENT ACT

BILL TO AMEND—REPORT OF COMMITTEE PRESENTED

Hon. Arthur Tremblay, Chairman of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Thursday, May 5, 1988

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

THIRTEENTH REPORT

Your Committee, to which was referred the Bill C-102, An Act to amend the Western Arctic (Inuvialuit) Claims Settlement Act, has, in obedience to the Order of Reference of Tuesday, April 26, 1988, examined the said Bill and now reports the same with the following amendment:

Page 2, clause 1: Strike out line 13 and substitute the following:

"dated May 11, 1987, tabled in the"

Respectfully submitted,

ARTHUR TREMBLAY
Chairman

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

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

[*English*]

ANIMAL PEDIGREE BILL

REPORT OF COMMITTEE

Hon. Len Marchand, for Hon. Dan Hays, presented the following report:

Thursday, May 5, 1988

The Standing Senate Committee on Agriculture and Forestry has the honour to present its

SEVENTH REPORT

Your Committee, to which was referred the Bill C-67, An Act respecting animal pedigree associations, has, in obedience to the Order of Reference of Tuesday, April 26, 1988, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

DANIEL HAYS
Chairman.

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

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

ADJOURNMENT

Hon. Orville H. Phillips, with leave of the Senate and notwithstanding rule 45(1)(*g*), moved:

That when the Senate adjourns today, it do stand adjourned until Tuesday next, May 10, 1988, at two o'clock in the afternoon.

Motion agreed to.

QUESTION PERIOD

THE SENATE

ABSENCE OF GOVERNMENT LEADER FROM CHAMBER

Hon. Orville H. Phillips: Honourable senators, Senator Murray is absent on government business today.

EMERGENCIES BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming the debate on the motion of the Honourable Senator Kelly, seconded by the Honourable Senator Bielish, for the second reading of the Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof.—(*Honourable Senator Hicks*).

Hon. William M. Kelly: Honourable senators, I wonder if I may have leave to respond a little more fully than I felt I did the other day to Senator Stewart's questions after I moved the second reading of Bill C-77.

Hon. William J. Petten: Honourable senators, I will agree to that if the order remains standing in Senator Hicks' name. He is travelling with a committee this week, but will be back next Tuesday.

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

Hon. Senators: Agreed.

Senator Kelly: Honourable senators, my remarks will be very brief. Senator Stewart's questions are recorded at pages 3258 and 3259 of the *Hansard* of April 28 and relate to the situation in the United Kingdom with respect to emergency legislation.

I tried to make two points in my remarks on emergency legislation in other countries, including the U.K. The first point was that, as a practical matter, because of past experience with our own War Measures Act, we do not really have access to federal emergency legislation to respond to anything less than a wartime situation or to an insurrection akin to a coup d'etat. As such, we are at a distinct disadvantage compared to every other western industrialized country, including the U.K.

The second point I tried to make was that the substantive and procedural civil rights safeguards proposed in Bill C-77 are as good as or better than those in analogous emergencies legislation in the U.K., Germany, the United States or Australia.

In direct response to Senator Stewart's questions, let me turn briefly to my understanding of the current situation in the U.K.

Senator Stewart is correct in his assertion that the U.K. does not have on its statute books emergencies legislation analogous to the War Measures Act, and has not had any since the Second World War. Britain does have, however, on the shelf, as it were, a bill entitled Defence of the Realm Act, first passed in 1914, and the Emergency Powers Defence Act of 1939. Both acts were allowed to lapse at the end of hostilities after the Second World War. The government would have to bring forward these bills in response to a wartime situation or a pending declaration of war, and Parliament would have to approve them at that time. The Defence of the Realm Act and the Emergency Powers Defence Act, when in force, are analogous to our War Measures Act.

In addition, the British have in place emergencies legislation to allow a response to other types or "lesser" types of emergencies.

The principal statute dealing with peacetime emergencies is the Emergencies Powers Act, enacted in 1920 and substantially amended in 1964. Under this act, successive governments have drafted and revised comprehensive codes of regulations to deal with various types of emergencies under the act. Since 1964 the act has been invoked 12 times, each time in response to an industrial dispute.

• (1410)

The United Kingdom has had an unfortunate experience relating to domestic terrorism arising largely out of the Northern Ireland problem. In response, the British government revised and re-enacted in 1984 the Prevention of Terrorism (Temporary Provisions) Act and approved in 1978 the Northern Ireland (Emergency Provisions) Act.

In addition, there are on the statute books what I would refer to as subsidiary acts giving the government power to respond to public order and, perhaps, other types of emergencies. These statutes include the Public Order Act of 1936 and the Reserve Forces Act of 1966.

Obviously, being a unitary state, the United Kingdom's approach to emergencies does not have to deal to the same extent as ours with the role and function of other levels of government. Furthermore, the problems faced by the U.K. in scope and nature, particularly the terrorist threat, are also quantitatively and qualitatively different from those of Canada in many respects.

Honourable senators, I did not want to get involved in a discourse about the British emergencies situation. I have sent to Senator Stewart some papers that I have accumulated on the subject and would be happy to provide copies to any other senator who is interested.

Having done so, I think I have said enough. I thank Senator Stewart for his question and his interest, and I hope he finds my response satisfactory.

Hon. John B. Stewart: Honourable senators, the statement that Senator Kelly has made conforms to my understanding of the situation in the United Kingdom. As I indicated, the Defence of the Realm Act expired at the end of World War I and the Emergency Powers Defence Act, enacted in 1939,

expired at the end of World War II. So they have nothing on their statute books that is comparable to the Canadian War Measures Act, which has been on our books since 1914, when it was passed in approximately ten minutes in the House of Commons.

There is one point in what Senator Kelly has said that is a little hazy. I am sure he can clear it up in one or two sentences. Senator Kelly says that the United Kingdom has the Defence of the Realm Act and the Emergency Powers Defence Act "on the shelf." What does that mean? Does it mean that they can be brought back simply by an Order in Council, or does it in fact mean that their copies of the old statute have expired and the matter would have to be brought back into Parliament as a bill and enacted *de novo*?

Senator Kelly: Honourable senators, the last part of Senator Stewart's statement is quite correct, they would have to be enacted anew. Perhaps the use of the words "on the shelf" was careless. What I meant to say was that the statutes are drafted. The time normally needed for drafting would in this case be saved. They could be brought forward in that form and passed, but they would have to be passed anew.

On motion of Senator Petten, for Senator Hicks, debate adjourned.

WAR VETERANS ALLOWANCE

AMENDMENT OF ACT—DEBATE CONTINUED

On the Order:

> Resuming the debate on the inquiry of the Honourable Senator Marshall calling the attention of the Senate to the urgency of amending the *War Veterans Allowance Act* in order to remove the restriction that requires a Canadian veteran who served overseas in World War II and who chose to take up residence outside Canada to return to Canada for 365 days in order to become eligible to receive the allowances payable under the Act and any other benefits available thereunder.—(*Honourable Senator Bonnell*).

Hon. M. Lorne Bonnell: Honourable senators, I rise in support of what Senator Marshall has said concerning the War Veterans Allowance Act. I am hoping that these war veterans who failed to return to Canada will be considered for War Veterans Allowance, although they have not spent 365 days on Canadian soil since the war.

Many of these veterans met a beautiful bride in England, Scotland or the Netherlands and decided to remain in her particular country of origin. It has been said, "If you meet a girl from hell, she'll take you back there again!" I think that is, more or less, what happened to some of our war veterans. They met their wives in those countries and decided to stay there. It seems a shame that having dedicated their lives to the cause of peace in the world so that the rest of us might live in freedom, now, simply because they have not returned to Canada, they have been penalized by not receiving the same benefits as those other Canadians who also served for the preservation of freedom in a democratic world.

I understand that there has been some easing of the restrictions imposed by this policy over the past several years, and it has now been provided that veterans must return to Canada from their country of residence for at least three months, but that they must be living in Canada on the 365th day in order to qualify for the War Veterans Allowance.

I also understand the problems that have arisen in the Department of Veterans Affairs and which have led to the decision not to make such people eligible. There could be veterans who are living just across the border in the United States, who would come here for one day, apply for the War Veterans Allowance, and then return to the United States. They put nothing into our economy, yet, they can take a lot out of our economy by being paid a pension from Canada for the remainder of their lives. Nevertheless, those people were prepared to give their lives to save our country and to preserve our freedom and democracy. Therefore, I think they should be given every consideration.

Hon. Senators: Hear, hear!

Senator Bonnell: I would like to tell honourable senators that last week I had the privilege of going to Korea with the Korean veterans. Many Canadian volunteers served in what I call the Korean War, but which many people have called, in the past, a United Nations action, a policing action, or a peacekeeping action.

After seeing the area, the mountains, rivers, rice paddies, the geography and topography of the terrain on which our Canadian veterans served, let me tell honourable senators that it was not a policing or peacekeeping force in which they served; they served in a war. At that time our Canadian veterans were at war, and they were war heroes.

Together with the Honourable George Hees, I was honoured and pleased to represent the Senate of Canada in commemorating 35 years since the end of that conflict. I was even more pleased on that occasion, for the first time in the history of Canada, to present to those Korean veterans a pin commemorating the fact that they had served, as Canadians, in the Korean War. Those veterans have now received a Korean War pin from the Department of Veterans Affairs.

Since the Korean conflict we have been trying to have the Department of National Defence present a medal to those Korean heroes, many of whom laid down their lives. In fact, 26,791 Canadians served in the Korean conflict, and another 7,000 Canadians served between the cease-fire and the end of 1955. The names of 516 Canadians are inscribed in the Canadian Book of Remembrance, which is displayed in the Memorial Chapel of these Parliament Buildings. The same 516 names appear in the official United Nations Book of Remembrance for Canada, and that book is enshrined in the National Monument for the United Nations Forces at the United Nations Memorial Cemetery in Pusan, Korea. There are, in fact, 378 Canadians buried in that cemetery, and a further 16 Canadians are commemorated on the Common-

wealth Memorial to those who fell in war and have no known grave.

● (1420)

In Yokohama, in the British Commonwealth War Cemetery in Japan, there are 44 more Canadians buried. There are 93 Canadians buried in Canada from that same war, and there are five Canadians who are missing and presumed drowned: three lost overboard from HMCS Nootka, HMCS Cayuga and HMCS Athabasca, and two lost in the Gulf of Alaska when a Canadian Pacific Airlines flight from Vancouver to Tokyo crashed on July 21, 1951.

Honourable senators, there were veterans of the Korean War with us on that pilgrimage to commemorate this event, and there were tears in their eyes when they saw the markers for their comrades who were lost in that war. As I have said, that was, in fact, a war. It was no peacekeeping action. And we in Canada can be proud of our Canadian boys and girls who were there, whether in the Red Cross, in the nursing field, or in other forces.

Honourable senators, I was proud to be there in Korea representing the Senate and the Government of Canada, and proud that I was present when the first pins were presented to these veterans. These pins are now available to all veterans of the Korean War upon application to the Minister of Veterans Affairs. For the first time since that war, its veterans will have a lapel pin to show that they were prepared to lay down their lives in support of their country and in support of freedom in the world.

Hon. Senators: Hear, hear!

Hon. Daniel A. Lang: Honourable senators, I wonder if I might ask a question. How many Canadian veterans are experiencing a financial problem because they are living abroad in the countries of their war brides?

Senator Bonnell: Honourable senators, I cannot give you an exact number. However, because of the age of the veterans from the First World War and the Second World War, and because their numbers are declining through death, the numbers would be in the hundreds rather than in the thousands. The cost will certainly amount to a few thousand dollars, or perhaps even $1 million. However, I certainly think our Canadian veterans are worth this financial support, because some of them are living in poverty in England today.

Hon. Joseph-Philippe Guay: Honourable senators, I would also like to ask a question. I appreciate the report that Senator Bonnell has given us pertaining to his visit to Korea with the Honourable Senator Hays. I think it is a wonderful thing that we recognize the importance of what Canadian veterans have done at various places on the international scene, and in particular in Korea, which I have visited on a couple of occasions.

Have the widows of those who were killed in Korea been given any recognition? If a veteran dies, the widow is allowed to keep his medal, but what about the widows of those who were killed while serving in Korea?

[Senator Bonnell.]

Senator Bonnell: I do not know the answer to that question. I am sure that the Minister of Veterans Affairs has a strong and warm feeling in his heart for all veterans and their widows. He will look at that with a warm heart. I think that is a worthwhile question to put to him.

Hon. Finlay MacDonald: Honourable senators, I regret that illness prevented my accompanying Senator Bonnell on his trip to Korea. I, too, have been there before. I have gone up to the DMZ. Senator Bonnell mentioned something that I did not quite understand.

As all honourable senators are aware, Canada sent a brigade to Korea and it became involved in hostilities. Are those who served in that brigade not entitled to wear a medal? Senator Bonnell mentioned that they will receive, or have received, pins. Do I understand that because this was not a war but a "peacekeeping mission," Canada's combatants cannot wear a medal indicating that they served in Korea?

Senator Bonnell: Honourable senators, as I understand it, those brave soldiers who fought so courageously for Canada during the Korean War were never discharged. They were released. There was never any armistice signed. There was just an agreement between the officers of the North Korean and South Korean forces. Consequently, no medal was ever presented by the Department of National Defence.

The Korean War Veterans of Canada have asked for many years for a medal or some recognition that they fought on behalf of Canada in a war abroad, but no medal has ever been presented by this government or any other government.

Those veterans said that if no medal could be presented, some recognition should be made. As I understand it, a previous Minister of Veterans Affairs and a previous Minister of National Defence agreed that the Minister of Veterans Affairs would issue a pin. The current Minister of Veterans Affairs carried this to fruition and issued a pin. There is no medal available, but there is this pin.

I suggest to all veterans of that war that they make an application, either to the Korean War Veterans Association or to the Department of Veterans Affairs, for their pin. The pin contains a number, and that number will be registered.

Hon. Rhéal Bélisle: Do I understand that, along with this pin, they will be entitled to wear a ribbon?

Senator Bonnell: They are not entitled to wear a ribbon or a medal; they are only entitled to wear a pin issued by the Department of Veterans Affairs, not the Department of National Defence.

Hon. Gildas L. Molgat: Honourable senators, I apologize for not being here at the beginning of Senator Bonnell's comments, so I do not know whether he mentioned the point I am about to raise.

I was very interested in what he had to say about the difficult battles that were fought in Korea in which Canadians were involved. I do not think there are any members of the Senate who were involved in those battles, but it should be noted that there is a gentleman in this chamber who was a

member of the Canadian Armed Forces and who served in Korea, our distinguished Gentleman Usher of the Black Rod. I am sure that the comments made by Senator Bonnell were listened to with particular interest by that distinguished gentleman, who now serves us in this chamber.

• (1430)

Hon. Senators: Hear, hear!

Senator Bonnell: Honourable senators, if no other senator wishes to speak on this inquiry—

Hon. Eymard G. Corbin: Could I ask a question of the honourable senator? I find myself in the same situation as that of Senator Molgat. I regret that I missed the beginning of this discussion, but I think I got the gist of your comments. Is it the intention, as well, that this pin, as you call it, in recognition for service in Korea, would also serve as a souvenir token to families of deceased veterans of the Korean conflict? I ask this because I have a personal, family interest in the matter.

Senator Bonnell: Honourable senators, I answered that question earlier for Senator Guay. I have no knowledge based on fact, but I am quite sure that the Minister of Veterans Affairs, who has a warm heart for veterans, will certainly look on that suggestion favourably. I will bring it to his attention. For that reason I want to move that this matter be referred to the Standing Senate Committee on Social Affairs, Science and Technology for further consideration.

Hon. Robert Muir: Honourable senators, before we decide on that motion, I want to thank Senator Bonnell for his remarks and to pay tribute to Senator Marshall, who fought long and hard on this question. I wonder whether Senator Bonnell had an opportunity to meet with the representative from the U.K. when he testified before the Veterans Affairs Subcommittee some weeks ago. I had an opportunity to sit in on that committee meeting. This gentleman is a staunch and true Newfoundlander, who decided to live in England. The information we heard in committee was that it would cost approximately $2 million per year to provide benefits to those veterans who live under similar circumstances. Some of our older veterans are suffering terribly, living on paltry allowances from the government of the U.K.

I wonder whether Senator Bonnell would agree with me that in all of the years we have been here every Minister of Veterans Affairs has always been very conscientious, thoughtful, considerate and kind and has always planned to do something for these men and women who are now residing in the United Kingdom. But, despite the efforts of many people—and I do not include myself among them—nothing has ever been done. I remember that C.D. Howe got into trouble many years ago for asking, "What's a million?". Talking about $2 million today is really talking about a paltry sum, and that is all we need to look after good Canadian soldiers who, by their own wishes, decided to stay in the U.K. I do not understand why they should have to return to Canada and reside here all of the required time just to receive their allowances.

I just want to ask Senator Bonnell why it is that previous governments and the present government seem to find this such a difficult matter to handle. Don't get me wrong—I am not against foreign aid, and I think we should do everything we can in that regard, but I certainly do think we should look after our veterans, as well. I would like Senator Bonnell's views in that regard.

Senator Bonnell: To answer the first part of the question, honourable senators, no, I was not here for the committee meeting attended by that great Newfoundlander. I did, however, read the transcript of the proceedings of the committee. At that time I was in Korea with about 45 or 46 veterans of the Korean conflict. I can tell honourable senators that many of those veterans had tears in their eyes when they placed wreaths on the tombstones in Pusan and other places in commemoration of what took place 35 years ago.

As I said, I did read the evidence that was given at the committee meeting and I agree with the points made there. I can tell honourable senators, as well, that all of the Ministers of Veterans Affairs that I can remember had feeling and a soft spot in their hearts for the veterans. All of them have been pushing veterans legislation, and have done so since the Great War of 1914-18. But there has been one problem, honourable senators, and that is Treasury Board. Until we can persuade Treasury Board of the importance of this issue it will be difficult for the Minister of Veterans Affairs to do anything. That is why I think that if we bring this matter before the Social Affairs, Science and Technology Committee we can give the minister some support. Then, perhaps, we can persuade Treasury Board that there is a great need here for action.

The Hon. the Speaker: Honourable senators, it was moved by the Honourable Senator Bonnell, seconded by the Honourable Senator Cottreau, that this inquiry be referred to the Standing Senate Committee on Social Affairs, Science and Technology. Is it your pleasure, honourable senators, to adopt the motion?

Hon. Orville H. Phillips: Honourable senators, before the motion is put, may I point out that Senator Marshall has two similar items on the order paper and that he has a plan of action mapped out. I am not aware whether that plan includes the referral of this inquiry to the Social Affairs Committee. I suggest that this be delayed until Senator Marshall returns. We can then find out what his wishes are.

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

Hon. Senators: Agreed.

On motion of Senator Phillips, debate adjourned.

The Senate adjourned until Tuesday, May 10, 1988, at 2 p.m.

APPENDIX "A"

(*See p. 3317*)

REGULATORY SCRUTINY

NINTH REPORT OF COMMITTEE

THURSDAY, May 5, 1988

The Standing Joint Committee for Regulatory Scrutiny has the honour to present its

NINTH REPORT
(Report No. 43 - *Public Service Employment*)

1. Pursuant to its permanent order of reference, section 26 of the *Statutory Instruments Act*, S.C. 1970-71-72, c. 38, and the general order of reference adopted by the Senate on November 27, 1986 and by the House of Commons on December 17, 1986, the Joint Committee draws the attention of both Houses to the *Public Service Employment Regulations*, C.R.C. 1978, c. 1337, as amended.

2. The provisions of these Regulations relating to appeals taken pursuant to the *Public Service Employment Act*, R.S.C. 1970, c. P-32, have been under consideration by your Committee since 1981. In the course of its examination, the Committee has corresponded extensively with the Public Service Commission and heard testimony from its representatives. Other interested parties have appeared before the Committee or made submissions, including the Public Service Alliance of Canada and the Director General of the Appeals Directorate of the Commission.

Its examination of the *Public Service Employment Regulations* (the Regulations) and the evidence it has received lead the Committee to conclude that the appeal rights conferred on public service employees by the *Public Service Employment Act* (the Act) are compromised by the failure of the Public Service Commission (the Commission) to adopt appropriate regulations in relation to the matters dealt with in this Report.

3. Section 21 of the Act confers on public service employees the right to appeal against an appointment made, or which is proposed to be made, by closed competition (i.e. a competition restricted to public service employees) or without the holding of a competition. Under section 31 of the Act, a public service employee may also appeal against a recommendation made by the deputy head of a department to the Commission that the employee be released or demoted on the grounds that the employee is incompetent in performing the duties of his position or is incapable of performing those duties.

Appeals are heard by appeal boards appointed by the Commission to conduct an inquiry at which the person appealing and the deputy head concerned, or their representatives, are given an opportunity to be heard. On an appeal against a personnel selection process, a board may decide that the appointment under appeal be confirmed or revoked, or that a proposed appointment be made or not be made. In the case of appeals made pursuant to section 31 of the Act, the board may accept or reject the recommendation for release or demotion. While the legislation characterizes the function of an appeal board as being the conducting of an "inquiry", the Act requires the Public Service Commission to act in accordance with the decision of such a board.

Pursuant to the power granted by section 33 of the Act to make "such regulations as it considers necessary to carry out and give effect to [the] Act", the Commission has established the *Public Service Employment Regulations*. Sections 39 to 48 of the Regulations deal with the procedure for appeals brought under the Act; these provisions are appended to this Report. For the reasons which follow, your Committee has concluded that these Regulations lack the necessary procedural safeguards to ensure that the appeal process is consistent with the basic requirements of fairness and equity.

4. <u>Disclosure of Information</u>

The Regulations fail to provide for mandatory and full disclosure, to any unsuccessful candidate or his authorized representative, of all particulars relevant to the decision appealed against, including the selection board report on the candidate, the reasons for the decision and information on the

successful candidate. At present, it is difficult for an appellant to properly prepare his case prior to his appearance before the appeal board. Moreover, unsuccessful candidates are often unable even to know whether or not an appeal should be made.

Full disclosure, for the most part, does take place at the appeal board inquiry. It is evident, however, that this approach fails to provide a sensible mechanism which will make the appellate system established in the Act truly workable. Not only is the information on which to base the appeal not always available to appellants prior to the appeal inquiry but, as a result, appellants often cannot adequately specify in an appeal notice the precise reasons for the appeal. In addition to allowing the appellant to properly prepare his case, full disclosure prior to the appeal inquiry would help define the issues to be dealt with by the appeal board, thereby making the process more efficient. Full disclosure may also reduce the number of appeals, since potential appellants, upon being fully informed of the case they must make, may conclude that they do not have grounds for appeal and proceed no further.

The Committee has on numerous occasions requested the Public Service Commission to remedy this situation by adopting additional regulations so as to better define the rights and duties of the parties to appeals taken under the Act. The evidence submitted to the Committee discloses a preference on the part of the Commission to manage this aspect of the appeal process through policy documents rather than through the adoption of regulations. In this respect, the Committee was referred to initiatives such as the policy document entitled "Disclosure of Information Following a Selection Action" (the Policy). This document, which was issued by the Commission on November 7, 1986, replaced Policy Bulletin 81-11 of September 1981. The Commission' s decision to proceed by way of administrative guidelines rather than by regulation was explained as follows:

> "... the Public Service Commission is concerned with ensuring procedural fairness in the appeals process while attempting to preserve an element of flexibility in the system. This is done to promote the interests of the various parties while at the same time preventing undue delays owing to the need to follow hard and fast procedures. It is for this reason, among others, that the Commission has chosen to avoid establishing elaborate procedural safeguards in the Regulations, preferring rather to provide such guarantees in policy guidelines which are by their nature more flexible."

Your Committee sees merit in the Public Service Commission's desire to maintain the efficiency and flexibility of the appeal process. Flexibility, however, should not be mistaken for administrative convenience. It is one thing for directives or policy documents to be used so as to explain or complete the application of regulations, but quite another for these to be used in substitution for regulations. Moreover, administrative guidelines such as are expressed in the Policy are not binding on staffing authorities or the Commission.

The Joint Committee recognizes that it is in the interest of the Public Service to retain an appeal procedure that is relatively informal and expeditious. On the other hand, these considerations must be balanced against the rights of participants in the appeal process. The decisions which the Act subjects to an appeal procedure are decisions that may have important economic and professional consequences for public employees, who have a right to expect that the essential elements of fairness will be respected and the merit principle upheld. The view of the Joint Committee is that the present regulations do not establish the minimum procedural safeguards necessary in the appeal process. To say that many of these matters are dealt with as part and parcel of a general policy fails to recognize the value of regulations. A policy directive may be changed at a moment's notice or it may be entirely ignored. A regulation must be adhered to. The Committee feels it is necessary that a number of rules governing the appeal process be secured in law so that all parties to the process are aware of their rights and duties.

The Policy expresses the Commission's position on the disclosure of information to candidates in a competition. It is complemented by a letter of July 10, 1984 from the Chairman of the Public Service Commission to all deputy ministers. In that letter, the Chairman noted that a pilot project on disclosure in appeals had shown "that when the parties to an appeal have participated in the disclosure process, there is a twenty per cent reduction in both the time taken for the hearing itself and for the handing down of a decision. Appeal board chairpersons also found that the parties come to a hearing with a more positive approach, thereby reducing the antagonism that may have been prevalent under the old procedure." Attached to the Chairman's letter was a summary of recommended disclosure procedures. It should be noted that the procedures suggested by the Chairman of the Commission apply where an appeal has been filed, whereas the procedures outlined in the Commission's Policy of November 7, 1986 apply prior to the filing of an appeal.

While the Committee recognizes the efforts made by the Commission to encourage disclosure, it feels that those efforts might better have been directed towards the establishment of a comprehensive set of legally binding rules. By their very nature,

administrative documents such as those referred to above may be disregarded. For example, it appears that the procedures set out in the Chairman's letter of July 10, 1984 have sometimes been ignored by departments exercising delegated staffing authority. As explained by the Director General of the Appeals Directorate:

> "Not all of the deputy ministers agreed that disclosure take place in that fashion, and ultimately the chairman had to agree that the procedure was merely a suggestion and not one that was mandatory or obligatory. The departments then decided not to abide by the suggestion, for their own reasons."

The Appeals Directorate has also taken what steps it could to ensure disclosure. Letters of convocation sent to the parties to an appeal now contain the following statement:

> "The disclosure of selection process documents prior to the hearing date is strongly suggested. Should any dispute arise on this matter, the registrar can be contacted with a view to having the appeal board convene a hearing in order to resolve it".

Again, while the Joint Committee considers these initiatives as worthwhile, they are not and can not be a substitute for the adoption by the Commission of regulations spelling out the rules by which staffing authorities and public service employees are to govern themselves in this area. The adoption of clear and binding rules is necessary to increase the efficiency of the appeal process, to protect the rights of appellants and to insure that the merit principle is respected. Full disclosure of the information relevant to the selection process must also be available at an early stage. Subsection 45(1) provides that every appeal brought under section 21 of the Act "shall state the grounds on which the appeal is based". Unless unsuccessful candidates are given a legal right of access to the pertinent information, they can not be expected to meet this requirement. As was noted in the Report of the Special Committee on the Review of Personnel Management and the Merit Principle (the D'Avignon Report):

> "This information is essential if the employee is to make a rational decision on whether to file an appeal... Our examination has revealed numerous examples of appeals lodged out of the candidate's sheer frustration over inability to obtain the information on which the selection board's decision was based."

It is the recommendation of the Joint Committee that the Regulations be amended so as to provide for mandatory disclosure to any unsuccessful candidate, upon request, of all particulars relevant to the decision. In our view any such amendments should expressly provide for the disclosure of:

- the screening board report and the selection board report on the unsuccessful candidate;
- information as to the candidate's status in the competition;
- reasons for which the candidate was not successful;
- such information on the successful candidate as may be relevant;
- personal files.

The Committee also wishes to underscore the fact that the Regulations contain no disclosure provisions in relation to section 31 appeals. (By virtue of subsection 45(1) of the Regulations, appeals brought under section 31 must also state the grounds on which the appeal is based.) Section 31 provides that a deputy head may recommend the demotion or release of a public service employee for incompetence or incapacity. Such an employee has a right of appeal to an appeal board established by the Public Service Commission. There is no requirement that the employee be given the reasons for the recommendation or access to the evidence on which it is based prior to the appeal hearing. While the problem is the same as that discussed in the context of appeals under section 21 of the Act, the consequences for an employee faced with demotion or release are particularly grave. Thus, it is further recommended that the Regulations provide for full and mandatory disclosure of the grounds upon which such a recommendation is based prior to the appeal process. Amendments to this effect were supported by both the Public Service Alliance of Canada and the Director General of the Appeals Directorate of the Public Service Commission.

Finally, in order to ensure that the disclosure requirements are respected, it is recommended that the Regulations preclude the use, in an appeal under either section 21 or 31 of the Act, of any document or information of which the appellant has no knowledge or that has not been communicated to him.

5. Public Service Commission Opinions as a Prerequisite to Section 21(b) Appeals

Representations were also made to the Joint Committee specifically with respect to appeals under paragraph 21(b) of the Act. Pursuant to this provision, any public service employee may appeal against the appointment without competition of another person, but only after obtaining an opinion from the Commission that the unsuccessful candidate's "opportunity for advancement has been prejudicially

affected". An appeal board cannot consider an appeal under paragraph 21(b) until such an opinion has been given by the Commission.

In testimony before the Committee, the Public Service Alliance of Canada noted that the Regulations do not prescribe a period of time within which the Commission must render its opinion, that they do not require the person challenging the appointment to be given an opportunity to be heard before the Commission reaches its opinion and that they do not require the Commission to give reasons for its opinion. For its part, the Commission stated that "in practice, the Commission always seeks the opinion or input of the person who wishes to have an opinion from the Commission and, in practice, the Commission always gives reasons for rendering their decision". As regards the failure of the present Regulations to require the Commission to render its opinion within a prescribed period of time, the Commission argues that:

> "To establish a fixed time by which opinions must be rendered could work counter to a proper determination of the facts and the rendering of a just opinion. It should be pointed out that some cases involve multiple requesters who are in some instances in remote locations or outside the country."

In considering this matter, the Joint Committee is fully aware that it was Parliament which saw fit to make paragraph 21(b) appeals subject to the obtaining of the opinion of the Commission. It is also clear, however, that Parliament intended a public service employee whose opportunity to advance has been prejudicially affected by an appointment to have the right to an independent inquiry by an appeal board. In light of this, the Committee considers that the procedures followed by the Commission in reaching its opinion for the purposes of paragraph 21(b) must be such as to allow for the full exercise of the right conferred on unsuccessful applicants by that provision.

The Committee considers that the desirable course lies somewhere between the imposition of a strict time limit for the rendering of an opinion and the present situation, in which there is a total absence of any requirement of timeliness. It is recommended that the Regulations be amended to provide that the Commission must render its opinion within a fixed period of time. The Regulations could also provide that where the Commission will not be in a position to give its opinion within the prescribed time, it must notify the employee who requested the opinion of its inability to do so and set out, in a written notice, the time by which the Commission will give its opinion.

The Committee notes that it is the practice of the Commission to give employees, as well as management, an opportunity to be heard before giving an opinion , as well as to give reasons for its opinion. Indeed, it is difficult to see how this judgment could be made without the participation of those immediately concerned with the staffing decision. It is desirable that the practice followed by the Commission in this regard be entrenched in the Regulations. The Committee considers it inadvisable that the participation of the parties at this stage be overly formalized, and certainly does not envisage that any sort of formal hearing be required in this connection. The Regulations should, however, guarantee the right of employees to make representations to the Commission in relation to their claims.

As for the furnishing of reasons by the Commission for opinions given pursuant to paragraph 21(b) of the Act, the Joint Committee recommends that the existing practice of the Commission in this regard be reflected in the Regulations.

6. Notice of Hearing of Appeals

Section 47 of the Regulations was also criticized on the ground that it does not provide for adequate notice of an appeal hearing. An appeal board is required to give "at least 3 days notice" to the appellant and the department concerned "of the time and place fixed by [the appeal board] to conduct the inquiry". The Director General of the Appeals Directorate assured the Committee that, in practice, the notice period is never less than two and a half weeks. The Joint Committee recommends that a two week notice period be entrenched in the Regulations. It is noted that the Public Service Commission has indicated its agreement that "the notice period should be extended from the three days currently provided for", and has stated that this issue will be addressed in a review of the *Public Service Employment Regulations*.

7. Compelling the Attendance of Witnesses and the Furnishing of Documents.

As a result of its initial examination of the Regulations, the Joint Committee criticized the fact that they did not provide any means by which an appeal board may compel the attendance of witnesses and the furnishing of information and documents. The Commission subsequently pointed out that the regulation-making powers conferred by section 33 of the *Public Service Employment Act* did not permit it to adopt such regulations. Upon further consideration, the Committee agrees that the adoption of such provisions would require amendments to the Act. The Committee considers that it is not within its mandate to recommend such statutory changes but, short of doing so, it wishes to draw the issue to the attention of the Houses.

In this connection, the Joint Committee notes the testimony of the Director General of the Appeals Directorate:

> "Obviously, a tribunal that is charged by Parliament to conduct inquiries, with a view to making decisions that are binding on the Commission, but is not in a position to compel the attendance of witnesses or documents, has part of its arm cut off. It seems to me that the statute should provide for the compellability of witnesses as opposed to the regulations."

The inadequacy of existing appeal board powers in this area is illustrated by an example brought to the Committee's attention concerning an appeal taken following a selection process. The Commission in this instance took the position that the appointment in question was not subject to the appeal rights granted by section 21 of the Act, and thus an appeal board should not have been established. The Commission refused to send a representative having knowledge of the facts and who could be cross-examined by the appellant's representative to the appeal hearing and, as a result, the appellant was forced to accept the evidence of the concerned department without that evidence ever having been formally submitted to the appeal board. The appeal was finally withdrawn. In his written decision, the Chairman of the Appeal Board noted that:

> "The refusal by the Commission to appear at the hearing ... is inexcusable. In effect, it is a deliberate attempt to impede the conduct of an inquiry which is imposed by law. This kind of conduct can only serve to create suspicion and discredit the Public Service Commission in the eyes of those who resort to the appeals system for relief."

8. The principle of selection according to merit is a cornerstone of the legislation governing the Public Service of Canada. The merit principle is explicitly recognized in section 10 of the Act, which provides that:

> "10. Appointments to or from within the Public Service shall be based on selection according to merit, as determined by the Commission, and shall be made by the Commission, at the request of the deputy head concerned, by competition or by such other process of personnel selection designed to establish the merit of candidates as the Commission considers is in the best interests of the Public Service."

The appeal process set out in section 21 of the Act is designed to ensure the observance of this principle. This is not to say, however, that an appellant has no personal interest in the outcome of an appeal. The recognition of the appellant's personal interest is reflected in the fact that the right to appeal against an appointment made without competition is only granted to those whose opportunity for advancement has been prejudicially affected by the appointment. The merit principle can thus be seen to serve both the general public interest and the interest of public service employees. Appeals made under section 31 of the Act against a recommendation for release or demotion can even more clearly be seen as a protection of the individual interest of employees.

The Commission has expressed the belief that its guidelines and policies, while not having the force of law, do uphold the merit principle, and has stated that "the Commission will not infringe the rights of employees in most processes where these are essential." It is the view of the Joint Committee, however, that the rights of appeal granted pursuant to section 21 and 31 of the Act are undermined by the failure of the Public Service Commission to adopt appropriate regulations providing the procedural safeguards discussed in this Report. The Committee would also emphasize that administrative simplicity and flexibility should not be allowed to override the protection of the interests of the individual by legally entrenched and legally enforceable means.

9. The Committee informs the Senate that it has requested the Government to table a comprehensive response to this Report in the House of Commons pursuant to the Standing Orders of that House.

APPENDIX

39. Where a person is appointed or is about to be appointed under the Act and the selection of the person for appointment was made from within the Public Service by closed competition, every unsuccessful candidate shall be notified by notice in writing or by public notice of

(*a*) the candidate's right to appeal under section 21 of the Act;

(*b*) the appeal period set out in section 42;

(*c*) the name of the person appointed or about to be appointed; and

(*d*) the name and ranking of those candidates on the eligible list.

40. Where a person is appointed or is about to be appointed under the Act and the selection of the person for appointment was made from within the

Public Service without competition, public notice shall be given of

(*a*) the name of the person appointed or about to be appointed; and

(*b*) the fact that any person may, within fourteen days after the date the notice is given, request the opinion of the Commission referred to in paragraph 21(*b*) of the Act with respect to whether in its opinion that person's opportunity for advancement has been prejudicially affected.

41. (1) The person who requested the opinion of the Commission under paragraph 40 (*b*) shall be given written notice of that opinion.

(2) Where, in the opinion of the Commission, the person referred to in subsection (1) is a person whose opportunity for advancement has been prejudicially affected, the notice referred to in that subsection shall mention

(*a*) the person's right to appeal under section 21 of the Act; and

(*b*) the appeal period set out in section 42.

42. For the purpose of section 21 of the Act, the prescribed period within which an appeal may be brought is fourteen days after the date the notice referred to in section 39 or 41 is given.

43. For the purposes of sections 39 to 42, the date the notice is given is the earliest of

(*a*) the date of the postmark, where the notice is sent by mail;

(*b*) the date the notice is delivered, where the notice is delivered by hand; and

(*c*) the date indicated on the notice, where a public notice is posted.

44. (1) Every notice in writing given to an employee pursuant to subsection 31(2) of the Act shall

(*a*) be given to the employee by personal service; and

(*b*) contain a statement showing that the employee may appeal, under section 31 of the Act, against the recommendation of the deputy head and the time, as prescribed by subsection (2), within which the appeal must be brought.

(2) Every appeal under section 31 of the Act shall be brought within 14 days from the day on which the notice mentioned in subsection (1) is received by the employee.

45. (1) Every appeal brought under section 21 or 31 of the Act shall be in writing addressed to the Commission and shall state the grounds on which the appeal is based, such writing being hereinafter referred to as the "appeal document".

(2) Every appeal document shall state whether the appeal is to be presented in the English language or in the French language.

46. (1) Upon receipt by the Commission of an appeal document referred to in section 45, the Commission shall

(*a*) establish a board, consisting of one or more persons, to conduct an inquiry into the matter and give to the board the appeal document; and

(*b*) send a copy of the appeal document to the deputy head concerned.

(2) Subject to sections 47 and 48, such further steps in relation to the inquiry shall be taken as the Commission determines.

47. The board established to conduct the inquiry mentioned in section 46 shall give at least 3 days notice to the person appealing and to the deputy head concerned, or their representatives, of the time and place fixed by it to conduct the inquiry.

48. As soon as practicable after the completion of the inquiry, the board shall render its decision on the inquiry and shall send a copy thereof, together with the reasons therefor to the Commission, to the deputy head concerned and to the person who appealed."

Respectfully submitted,

NATHAN NURGITZ

Joint Chairman

THE SENATE

Tuesday, May 10, 1988

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

Prayers.

HER MAJESTY QUEEN BEATRIX OF THE NETHERLANDS

ADDRESS TO MEMBERS OF BOTH HOUSES PRINTED AS APPENDIX

Hon. Orville H. Phillips: Honourable senators, I ask that the address of Her Majesty Queen Beatrix of the Netherlands, which was delivered earlier today before the members of the Senate and of the House of Commons, together with all introductory and related speeches, be printed as an appendix to the *Debates of the Senate* of this day.

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

Hon. Senators: Agreed.

(*For text of speeches see appendix, p. 3343.*)

[*Translation*]

CANADIAN ENVIRONMENTAL PROTECTION BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-74, respecting the protection of the environment and of human life and health.

Bill read first time.

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

[*English*]

Hon. Orville H. Phillips: Honourable senators, with leave of the Senate and notwithstanding rule 44(1)(*f*), I move that Bill C-74 be placed on the Orders of the Day for second reading at the next sitting of the Senate.

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

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I apolgize to Senator Phillips for not speaking to him when we first came into the chamber. If I had, I would have told him that we prefer to have that matter stand until Thursday.

On motion of Senator Phillips, bill placed on the Orders of the Day for second reading on Thursday next, May 12, 1988.

QUESTION PERIOD

ABORTION

RIGHTS OF UNBORN—GOVERNMENT POLICY

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, I should like to ask the Leader of the Government a question bearing on an answer he gave on Wednesday, May 4, in reply to a question asked by Senator Haidasz. I quote the following sentence:

> We have the delicate task of attempting to bring in a legislative solution which, consistent with the decision of the Supreme Court of Canada and with the Canadian Charter of Rights and Freedoms, can reconcile the right to security of a woman's person with the obvious interest of the state in protecting the unborn.

The answer provided assigns no rights to the unborn. I ask the Leader of the Government whether that is the established position of the government.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): No, honourable senators. I was trying, without having the Supreme Court judgment in front of me, to hew as closely as possible to the wording of the judgment. The wording seemed to me to constitute not an instruction but an admonition to legislators as to the factors that needed to be balanced in this matter.

Senator MacEachen: I understand that, honourable senators, but the Leader of the Government was enunciating government policy, and in that statement he clearly assigned rights to the security of the woman, with which we all agree, but assigned no rights whatsoever to the unborn.

I really raise the question to give the Leader of the Government an opportunity to remove an inference which can be drawn that the unborn are of relevance only because of the interest of the state—in other words, possibly a demographic interest—but innately the unborn do not possess rights which must be recognized.

I doubt whether the Leader of the Government wished to leave that impression, but I think it important that it be clarified so that it will be understood that the government does, indeed, attach rights to the unborn.

Senator Murray: The honourable senator is raising not only a political issue but a constitutional issue here that has been, I believe, argued in the courts from time to time. The government has not addressed the kind of question that the honourable senator raises, except in the context of the judgment of the Supreme Court.

I remind honourable senators that their lordships, if I read them correctly, did not assert that a fetus has rights. All their lordships suggested in their decision is that there is a balance legislators must take into account between the woman's right to security of the person and the interest of society in protecting the unborn.

The court, unless I am very much mistaken, did not speak of the rights of the fetus, although some of the judgment spoke in terms of gestational development and the point at which the fetus becomes a person—

Senator Frith: And could have Charter protection.

Senator Murray: —and, I suppose, implicitly could have Charter rights, but the policy of the government is to bring in legislation that is consistent with the decision of the Supreme Court of Canada in the Morgentaler judgment and which is consistent with the Canadian Charter of Rights and Freedoms.

Senator MacEachen: I understand that the Leader of the Government is shielding himself behind the judgment of the Supreme Court of Canada. Unfortunately, I cannot ask the court; nor, for that matter, is their answer relevant at the moment. What is now at issue is the attitude of the Government of Canada. It is quite clear that the Leader of the Government cannot bring himself to say that the unborn have rights.

• (1410)

Senator Flynn: How do you define "unborn"?

Senator Murray: Honourable senators, the Leader of the Opposition and other senators will have to be patient for a while longer. The government has undertaken to bring in a legislative response to the situation created by the Supreme Court of Canada in the Morgentaler decision. He will then be able to draw his own inferences or conclusions from that response. I think it is premature of him to do so, or to ask me to outline in any definitive way the policy of the government in advance of that legislative response.

Senator MacEachen: Honourable senators, I must say that the Leader of the Government entered the terrain himself by telling us that it was the government's task "to bring in a legislative solution which . . . can reconcile the right to security of the woman's person with the obvious interest of the state in protecting the unborn." That is a statement of government policy which was made last Wednesday by the Leader of the Government. Today he has refused again to say that the unborn have any rights whatsoever.

It was not I who used the expression "unborn", it was the Leader of the Government, so it must mean something to him. In his view, the unborn are relevant in this context because of the interest of the state, not because of any human potential which they may have.

Senator Flynn: That would make an interesting speech.

Senator MacEachen: We don't need your help!

Senator Murray: The honourable senator heard me say earlier today, but it appears necessary that I repeat it, that the statement I made hewed as closely as I could, without having the document in front of me, to the language used by the Supreme Court of Canada in the majority decision of, I believe, January 28. He should ascribe no other significance to what I said. I indicated the other day, as my colleague, the Minister of Justice, indicated earlier, that the legislative response that we bring in will be consistent with that judgment and with the Canadian Charter of Rights and Freedoms.

ENERGY

HEAVY OILS—CONSTRUCTION OF UPGRADER AT LLOYDMINSTER, SASKATCHEWAN—GOVERNMENT FUNDING

Hon. H.A. Olson: Honourable senators, I have a question on a different matter.

Senator Argue: Hear, hear! When's it going to rain?

Senator Olson: That is a good question, too. However, I would like to ask the Leader of the Government if he now has a reply to a question I asked some time ago. That question is: Is the federal government committed to underwriting a loan of more than $600 million to the Husky Oil Company to build an upgrader at Lloydminster, Saskatchewan? The Premier of Alberta seems to think that such is the case, that the Government of Alberta, the Government of Saskatchewan and the federal government are now firmly committed to providing this amount of money. The federal share is some $600 million plus. The only thing standing in the way of making all the arrangements for the project to go ahead is that Husky must find another private company that will assist with the approximately $300 million it would have to put up to move things ahead, announce the date of construction, and, as they say, turn the sod and get on with building it.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I can confirm that the federal government, together with the Governments of Alberta and Saskatchewan, reached an agreement with Husky Oil Limited two weeks ago on the construction of the upgrader at Lloydminster.

The governments will provide low-interest loans for half the total project costs. Husky will seek new private equity for the balance. The project can proceed once private-sector participation is secured.

Senator Olson: Does the minister have those numbers with him to put them on the record?

Senator Murray: My information is that the total involved in the construction of the upgrader project will be $1.3 billion.

Senator Olson: I thank the leader for that information.

Hon. George van Roggen: The Leader of the Government in the Senate has just referred to the assistance taking the form of low-interest loans. That could mean 1 per cent below prime or no interest at all. Could he give us any idea of what was agreed to between the governments and the company as to what degree of interest assistance there will be?

Senator Murray: Honourable senators, I do not have the information on those details at the moment. I will see what further information can be obtained.

Senator van Roggen: These "details" could run into hundreds of millions of dollars.

Hon. Hazen Argue: Honourable senators, I was going to ask the same supplementary question as was just asked.

When the minister is obtaining that answer, perhaps he will come across a particular reference to a press report which says that the interest rate has been struck at 5 per cent.

Senator Murray: Thank you.

Senator Argue: When did the farmers ever get 5 per cent money? The answer is: Never.

TAR SANDS PROCESSING PLANT, FORT McMURRAY, ALBERTA—GOVERNMENT FUNDING

Hon. H.A. Olson: Would the Leader of the Government in the Senate tell us whether or not the federal government is now committed to providing the same kind of financial underwriting for the proposed new tar sands processing plant at Fort McMurray?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I do not have a report on that matter today.

SENATE REFORM

PRINCIPLE OF EQUALITY OF PROVINCIAL REPRESENTATION

Hon. John B. Stewart: Honourable senators, my question is on a different subject.

Last week the Leader of the Government in the Senate gave an address at the inauguration of the Centre for Constitutional Studies and the National Conference on Senate Reform at the University of Alberta. In the course of his address he made some comments relative to Senate reform. He said:

> For its part, the Government of Canada is convinced that the health and effectiveness of our national institutions, acting on behalf of all Canadians, require that the Senate become elected.

Further on in that speech, he said:

> If the vitality of our democratic institutions is to be strengthened, the Senate should be elected. A second thing is also clear: We should ensure the Senate has the means to act effectively while preserving the accountability of the Government to the House of Commons within our system.

Honourable senators, the government has adopted the view that the Senate should be elected and effective.

At another point in his speech, he referred to the third E, when he said:

> Alberta has long been a champion of the equality of the provinces.

[Senator Roggen.]

He, himself, stated that if the Senate is to become a vital national institution, we have to go about reforming it in the right way. Being more specific, he said:

> we must respect the principle of the equality of the provinces—

My question to the Leader of the Government in the Senate is this: Is it now the view of the government that the Constitution should be amended to provide that each of the provinces will be represented equally in the Senate of Canada?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): No, honourable senators, the government has no final or definitive view to express at the moment on the question of provincial representation in the Senate.

• (1420)

In discussing the principle of the equality of the provinces I was defending the change in the amending formula proposed by Meech Lake, under which it would not be possible to impose a version of a reformed Senate upon a province that disagreed.

Senator Stewart: Perhaps the Leader of the Government would explain why it is important to respect the principle of the equality of the provinces when constitutional amendments are being made if it is proper to forget that principle when allotting representation in this body. If it is a good principle in one case, surely it can be defended as a good principle in the other case.

Senator Murray: I shall certainly pass on my friend's name to Premier Getty as a new convert to the concept of a three-E Senate. Senator Stewart is leaping to a number of conclusions, chief among which is that the federal government has precluded the possibility or, as he put it, forgotten about the proposition that each province should have the same number of senators. All I have told the Senate is that the federal government has not come to any definitive view on this matter. This is a matter that will have to be discussed in the coming months with the provinces.

Senator Stewart: I am not at all sure, honourable senators, that Premier Getty would be interested in my views. He would be interested in the views of the Government of Canada, stated as a matter of principle. It is stated as a matter of principle by a spokesman of the Government of Canada that we must respect the principle of the equality of the provinces. Surely that is the proposition which will encourage Premier Getty.

I ask the Leader of the Government if he did not make that assertion, together with his applause for Alberta's insistence on the equality of the provinces to imply support for equal provincial representation. Did he not put that statement together quite deliberately, intending to convey the impression—and indeed to mean—that there should be equality of the provinces in the Senate of Canada?

Senator Murray: There was also a reference in the same speech to increased or improved regional representation, and

that is as far as I went in addressing the question of representation.

Speaking of applause, I should tell the honourable senator that two of our colleagues—Senator Frith and Senator Fairbairn—were present for my speech, and I distinctly saw them applaud.

Senator Stewart: I am sure, honourable senators, that any of us who attended would have felt obliged to applaud out of courtesy.

Senator Frith: You would be surprised how often I applaud out of politeness, but I will remember this lesson.

Senator Buckwold: Somebody had to applaud.

PROCESS TO BE ADOPTED—PUBLIC REPRESENTATION AND MEETINGS

Hon. Lorna Marsden: Honourable senators, it is quite clear that the process of reform of the Senate is now under way. The Leader of the Government in the Senate will be aware of how unhappy many Canadians are about the process that led up to the Meech Lake Accord, a process that took place largely behind closed doors and without consultation from the people of Canada.

Could the Leader of the Government in the Senate describe to us the process the government proposes to follow on this matter, especially in light of the comments attributed to him in the newspaper this weekend that Mr. Horsman from Alberta is to have the lead and that he will be following closely behind?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I reject the characterization that the honourable senator has made of the Meech Lake process. As I have said on many occasions here and elsewhere, the issues that were dealt with in the Meech Lake process were matters of public knowledge and public discussion for many years—some of them for decades—in this country. The five conditions that Quebec had set for its return to the constitutional fold were contained in no less a document than the Election Manifesto of the provincial Liberal Party of Quebec and were the source of considerable discussion and speculation. The only surprising thing in the minds of many people was that we succeeded in the process.

The question asked by the honourable senator concerns the process of Senate reform. First, it is true that Alberta, which has been the province most interested in a public way in the reform of the Senate, and the province which has a developed an official position on this matter, sanctioned by its Legislative Assembly, has been invited by the federal government to take the lead, to canvass the other provinces, to obtain reactions from the other provinces as to the Alberta proposal.

I would propose, on behalf of the federal government, to visit with the provinces a short time after Mr. Horsman has done so, and we would then compare notes and see whether there was a basis for understanding as between the federal government and the ten provinces. The culmination of this would be a First Ministers' conference on the Constitution, after Meech Lake had been ratified.

Senator Marsden: Honourable senators, it has not escaped anyone's notice that native people, members of what are referred to as multicultural communities, and women do not feel as if they were well represented in any of the previous rounds of constitutional talks, never mind the most immediate one. So, the process that the Leader of the Government has just outlined is one that continues to exclude people who this time have made very serious and lengthy representations in this chamber, to the provincial governments who would listen, and elsewhere about the problems of the process.

He will also recall Professor Al Johnson's proposal for a more satisfactory process, made in testimony in this chamber. Are we to understand from what the Leader of the Government has just told us that we are back to the exclusion of people's voices from constitutional reform?

Senator Murray: Honourable senators, the Senate, in the past, has had a committee which held public hearings on the question of Senate reform. There is nothing to stop Parliament from holding hearings and obtaining the views on this matter of the various groups to which the honourable senator has referred. There is also nothing to stop provincial legislatures from doing the same thing. The parliamentary forum is surely the best forum for those kinds of representations to be made publicly.

Senator Marsden: The Leader of the Government says there is nothing to stop people. In his speech the other day he said:

> The Government of Canada will actively encourage Parliament to assist in fostering public debate and understanding on Senate reform.

Do we take from that statement that the Leader of the Government believes that this chamber, for example, should open up another committee on Senate reform?

Senator Flynn: You could try it. Why not?

Senator Murray: I think it is a matter that should be considered, both by the members of this chamber and by the other place. It was because I did not want to define precisely what the Senate or the other chamber should do in this respect that I avoided any reference to a committee; but it would seem to me that parallel to the discussions that will be taking place among governments—the informal discussions for the present—it would be useful for the Parliament of Canada—and perhaps for provincial legislatures, if they wish—to receive representations from the public on this matter.

Hon. Peter A. Stollery: Honourable senators, the Leader of the Government referred to the hearings that have taken place here in the Senate and in the provincial legislatures. The point is that it seems clear that they took place after the agreement was reached, having been told that any amendments that they would make could not be considered, because the agreement would then not be an agreement. Is the Leader of the Government suggesting that under any new constitutional reform that would take place, in the unlikely event that the Meech Lake

agreement is passed by the provincial legislatures, in the future the same process would take place? In other words, will the legislative committees and the committees of the Senate discuss what they have received after the premiers and Prime Minister meet in secret, or would the public involvement take place before that?

● (1430)

Senator Murray: Honourable senators, my friend was a member of either this place or the other place when the amending formula of 1982 was passed, so he knows what the parliamentary procedure is as well as I do.

As I say, my friend knows what the amending formula is that was passed in 1982. The committee hearings that I was referring to earlier were the committee hearings held by the Senate and by the House of Commons, and I believe at one point there was a joint committee on the question of Senate reform. I believe that those committees had public hearings. In any case, there are a whole series of reports from this Parliament, going back at least ten years, on the subject of Senate reform, and I made the point that it might be a good idea for this house or the other house to consider a similar exercise now while discussions are proceeding informally amongst governments.

Hon. Dan Hays: Honourable senators, I have a question for the Leader of the Government in the Senate. He referred to a basis for understanding as something that should develop; that the Attorney General of Alberta will take an initiative in this respect, and that in due course the Honourable Leader of the Government in the Senate, as the Minister of State for Federal-Provincial Relations, will be involved in the development of that basis for understanding.

I would be very interested in knowing whether or not the Leader of the Government in the Senate, in his capacity as Minister of State for Federal-Provincial Relations, sees that basis of understanding becoming public as it evolves. I hark back to Senator Marsden's first question, because I agree that this is something about which we have received a lot of complaints, and I share the view that it would be helpful to know the government's position with respect to this matter.

Senator Murray: Honourable senators, the discussions that are about to take place are informal, exploratory and private. I do not expect that they will be held in front of the television cameras, although, as the honourable senator knows, the parties to them are free to—and often do—speak publicly prior to and following those discussions.

Once the Meech Lake constitutional amendments are proclaimed, there will be a First Ministers' conference. It would be unconstitutional to hold that conference prior to the proclamation of Meech Lake. The first item on the agenda for that conference is the reform of the Senate. The purpose of these private, exploratory and informal talks is to ensure, insofar as it is possible, that that First Ministers' conference will succeed.

[Senator Stollery.]

Senator Marsden: Honourable senators, can the Leader of the Government in the Senate tell us why the government would not hold those talks in public? As Senator Hays has reiterated, the basis of the majority of the complaints that we have received from Canadian citizens is the informal, off-the-record, secret nature of the discussions that were held previously. To most Canadian citizens that is the unsatisfactory part.

I am confident that what the Government of Canada is proposing is reasonable, both as a matter of public interest and public debate. It is not as though this is a matter of great economic consequence. Since it is a matter of constitutional reform, why not hold it in public?

Senator Murray: Honourable senators, my friends opposite have celebrated—perhaps even elevated to mythology—the great kitchen compromise in which the 1982 constitutional arrangement was fashioned by the Attorneys General of Ontario and Saskatchewan and the Attorney General of Canada. I simply tell Senator Marsden that the Government of Canada is not taking any hard and fast proposal to the provinces at this time. We are approaching the provinces with a view to seeing whether or not there is a basis for agreement on this very important matter. However, the important discussions will take place—no doubt in front of the television cameras—at a meeting of First Ministers to be held once the Meech Lake constitutional amendments have been proclaimed.

THE CONSTITUTION

CONSTITUTIONAL ACCORD, 1987—TABLING OF RESOLUTION—POSITION OF GOVERNMENTS OF NEW BRUNSWICK AND MANITOBA—"REUNIFICATION OF CONSTITUTIONAL FAMILY"

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, I do not wish to ask a question with respect to the Senate, except to say how pleased I am that the Leader of the Government is now on the side of an elected Senate. The sooner that can happen the better, as far as I am concerned, and we can all go to the hustings—

Senator Flynn: You certainly helped!

Senator MacEachen: If I have helped, as Senator Flynn has said, I think it is tremendous to have helped in creating an elected Senate.

However, my point in rising is to ask a question or two of the Leader of the Government in the Senate about the speech he made recently in Edmonton, which, unfortunately, I missed, but which I read with considerable interest, not only the portions relating to the Senate but also those portions dealing with Meech Lake. It is about that subject that I want to ask a few questions.

In that speech the minister stated that the Meech Lake Accord committed all First Ministers to tabling the Constitutional Resolution in their respective legislative bodies as soon as possible. When I read that sentence, I wondered whether the Government of Canada felt that any commitment now existed with respect to the Province of New Brunswick. In

other words, I am wondering whether the Government of Canada feels that the Government of New Brunswick is committed in any way to tabling a resolution in the legislature.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, the question is academic. The Premier of New Brunswick intends to table it and to refer it to a committee of his legislature.

Senator MacEachen: I thank the Leader of the Government for that answer, but I wondered why, in the report on the progress of the Constitutional Resolution that he made in his Edmonton speech, he mentioned all the provinces except Manitoba and New Brunswick. I am wondering whether he left those two provinces out because they are the "bad boys" of Confederation—they have displeased the minister and he has therefore dropped them. Surely that is not part of the new, reunified constitutional family.

Senator Murray: Honourable senators, I have information on the other eight provinces which, in this uncertain world, is as certain as it can be. That information is that it is the intention of the other governments to move to ratify the accord within the next little while. I have no such assurance from the Government of New Brunswick, as my honourable friend is aware.

Senator MacEachen: And also, I assume, no assurance from the Government of Manitoba that it will ratify the accord. The conspicuous absence of those two provinces was a notable element in the minister's speech, because it represents his own acknowledgement that there are two provinces that are not yet ready to move forward with the Meech Lake Accord.

● (1440)

The minister said that the Province of New Brunswick has made no commitment—and I would agree with that—and that the present premier was not party to the Meech Lake agreement and is, therefore, not bound by any commitment given by a former premier, particularly in the electoral circumstances which developed in New Brunswick subsequent to the Meech Lake Accord.

The minister made another curious statement in this speech which bothered me, and it is as follows:

> Much of the present discussion overlooks the critical importance of what was achieved, the reunification of the constitutional family.

How can the Leader of the Government refer to "the reunification of the constitutional family" in view of the absence of one of the founding members of Confederation? It is not the reunification of the constitutional family, because we know one province has stood outside that process. I would urge the minister not to use these inaccurate expressions, even in an academic environment which permits loose statements.

Senator Murray: The honourable senator would know more about that than I, coming, as he does, from an academic environment.

Senator MacEachen: That was many years ago.

Senator Murray: Honourable senators, it is accurate to speak of the reunification of the constitutional family. The 1982 constitutional exercise derogated from the powers of the National Assembly of the Province of Quebec without the consent of that province or that Assembly. At Meech Lake, ten provinces and the federal government agreed to rectify that historic and historically dangerous error.

I hope that the honourable senator will not rejoice prematurely in the undoing of Meech Lake. Meech Lake is alive and well and, as I have said on previous occasions, I expect a vast majority of the provinces will have ratified the Meech Lake Accord by summertime.

In any case, I commend to the honourable senator the example of the Right Honourable John Turner and the Honourable David Peterson who, on the weekend, took the broader Canadian view.

Some Hon. Senators: Hear, hear!

Senator MacEachen: I have observed that the minister, when he finds himself upon very thin ice, will resort to a form of political rhetoric which is identifiable to anyone like myself who has spent many years in the House of Commons and who has occasionally been obliged to do that, although not as frequently as the Leader of the Government.

The Leader of the Government quite rightly has referred to the reunification process involving the Province of Quebec, and that is accurate and acceptable, but I am insisting that the minister keep his terminology relevant and contemporaneous. The speech given on May 5 used the expression "the reunification of the constitutional family". When one province, the Province of New Brunswick, stands outside, it is not a reunified constitutional family.

Senator Flynn: It is not a final decision. You are using loose words yourself!

Senator MacEachen: The consent given by Premier Hatfield was withdrawn by the new Premier of New Brunswick—

Senator Flynn: No, it was not!

Senator MacEachen: —when he said that he would seek amendments to the present constitutional resolution.

Senator Flynn: That is something else!

Senator MacEachen: The Government of Canada has refused to even consider any amendments that the Premier of New Brunswick or the premiers of the other provinces might put forth. To talk about a reunified constitutional family in those circumstances is nothing but rhetoric.

Senator Flynn: You don't like it!

Senator Murray: Honourable senators, I think it is important to place the facts on the record. It is not a matter of the present Government of New Brunswick having withdrawn its consent; the present Government of New Brunswick is going to do exactly what the previous Government of New Brunswick committed to do, which is to refer the constitutional accord to a committee of the legislature.

It is true that the present premier has expressed concerns that his predecessor did not have with regard to this accord. Nowhere has he said, as far as I am aware, that he is opposed to the accord. The accord will go to a committee of that legislature and we shall see what happens.

Again, the honourable the Leader of the Opposition is unfair in attributing to the Premier and Government of New Brunswick a hostility which I suggest is not there, but I can understand that it must have been very galling for him to have seen the commonality of purpose and the agreement between the Prime Minister of Canada and the Premier of New Brunswick the other day on so many other important matters.

Senator MacEachen: What is galling is the inaccurate use of the English language by the Leader of the Government in the Senate.

Senator Flynn: You have also done that!

Senator MacEachen: That is what is galling, and inflicting this inaccurate rhetoric on an audience is almost cruel and inhuman punishment, which, fortunately, I escaped.

Senator Flynn: You did that yourself!

Senator MacEachen: But the minister has said it is inaccurate to say that the present Government of New Brunswick has withdrawn its consent to the Meech Lake Accord. Let me ask him this question: Has the present Government of New Brunswick given its consent to the present Meech Lake Accord? Can he say it has? If he can, then I will stop asking the question.

Senator Murray: The honourable senator knows the answer as well as I do.

Senator MacEachen: No, I don't!

Senator Murray: The Premier of New Brunswick has expressed certain concerns. They may turn out to be, in time, insuperable, so far as he is concerned, but his commitment is, as his predecessor's was, to refer that accord to a committee of the legislature. I understand that is about to be done. That committee will likely hear from witnesses and, after doing so, no doubt it will prepare a report and submit it. Then we shall see where we are.

Senator MacEachen: Of course, and we shall see, as we see now, that the Government of New Brunswick has not given any consent—

Senator Flynn: That is different!

Senator MacEachen: The Premier of New Brunswick has stated on television more than once that he opposes the present Meech Lake resolution and will not accept it unless it is amended.

Senator Flynn: You used the word "withdrawn" falsely.

Senator MacEachen: To use the expression "the reunification of the constitutional family" in those circumstances is to engage in the sheerest form of fantasy.

Senator Murray: Tell that to your leader!

[Senator Murray.]

ABORIGINAL PEOPLES

CONTENTS OF LEAKED DOCUMENT—GOVERNMENT POSITION

Hon. Joyce Fairbairn: Honourable senators, I should like to shift topics and draw to the attention of honourable senators a story made public this morning based on a leaked document dealing with native issues. I will not go through all of the items mentioned in the proposals or recommendations that are of extreme concern to native peoples, other than to indicate that they touch on the idea of fewer schools for native people, leaving day care, when it comes to Canada, off the reserves, curtailing funding for new native services, not renewing funding for the constitutional process which failed last March, and, also, the rather preposterous notion that legislation dealing with native issues should not be proceeded with in Parliament unless the native people can get agreement from opposition parties to a minimal use of parliamentary time.

These documents, as I said, have caused enormous concern in the native community. I would like to ask the Leader of the Government in the Senate if he would assure us that these documents do not represent government policy or, indeed, government philosophy on this issue that is so very important to Canadians.

● (1450)

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, no doubt the leaked documents have caused the kind of concern the honourable senator has described. I know, therefore, that she will take this opportunity to assure those groups, as I do, that government policy is made by cabinet, not by discussion papers prepared for officials. The best proof of the seriousness of the government's attitude toward native peoples is the fact that, far from cutting back on our expenditures, we have increased them by some 40 per cent in the past four years.

Senator Fairbairn: Honourable senators, I welcome the comments of the Leader of the Government in the Senate. However, one would reflect that similar assurances were made a couple of years ago when the Nielsen task force documents, now referred to as the "buffalo jump," were made public. I am wondering if the Leader of the Government in the Senate can indicate whether the Prime Minister himself will be expressing to the native leadership of this country that the trend suggested in these documents is not part of his government's policy. I hope that he will make it completely clear, given the fact that tomorrow discussions, in which the leader himself may be involved, begin on the whole question of constitutional change and aboriginal self-government.

Senator Murray: Honourable senators, the report that was made to the then Deputy Prime Minister four years ago did recommend budget cutbacks. As I have pointed out to the honourable senator, since that time expenditures by the Department of Indian Affairs and Northern Development have increased by some $900 million, more than 40 per cent. The budget for this year alone is up by some 10 per cent. I do not know what more needs to be said or done to assure people

that the kind of speculative musings in the document to which the honourable senator refers form no basis at all for government policy. I am confident that the Prime Minister would say what I have just said on this matter insofar as the intentions of the government are concerned.

THE CONSTITUTION

CONSTITUTIONAL ACCORD, 1987—TABLING OF RESOLUTION—POSITION OF GOVERNMENT OF NEW BRUNSWICK

Hon. Charles McElman: Honourable senators, I would like to return to the discussion between the Honourable Leader of the Opposition and the Honourable Leader of the Government in the Senate concerning New Brunswick. Is the Honourable Leader of the Government not aware of the speech made a couple of weeks ago in Toronto by the Honourable Frank McKenna in which he repeated what he has said in New Brunswick on numerous occasions, that, yes, he will present a resolution to the legislature, as Mr. Hatfield had agreed to do? However, at the same time he said that unless amendments are made to cover some of the deep concerns of New Brunswickers and others in the country, the Government of New Brunswick will not support the accord. Is the Leader of the Government not aware of this statement?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I have seen press reports quoting the Premier of New Brunswick on this matter. I have not seen the precise statement to which the honourable senator refers. Again, I say that it is the premier's intention, as I understand it, to refer the accord to a committee of his legislature. Once that is done, and the hearings have been held and the report completed, I presume we will have a definitive statement as to where New Brunswick stands on this matter.

Senator McElman: Honourable senators, I simply give the Leader of the Government the absolute assurance that Premier McKenna has stated that unless amendments are made to the accord, it will not be approved by his government.

Senator Balfour: Regardless of what the committee says?

Senator McElman: I said that his government would not give support.

Senator Frith: The opposition might win the day.

Senator McElman: I said his government would not give support unless amendments were made.

Senator Flynn: If the government has prejudged it, why send it to committee?

Senator Frith: Good point! Why did you send yours to a committee and refuse amendments in advance?

Senator Flynn: Then why are you criticizing when you know in advance what you are doing? I am amused by your collective mind. It does not work too well.

Senator MacEachen: We are amused by your face!

CONSTITUTIONAL ACCORD, 1987—APPOINTMENTS TO SUPREME COURT OF CANADA FROM QUEBEC—REQUEST FOR LIST OF AMENDMENTS ACCEPTABLE TO GOVERNMENT

Hon. Philippe Deane Gigantès: Honourable senators, I have been puzzled by the statement of the Honourable Leader of the Government that this accord is a "seamless web." Presumably, one would have to understand that some inadmissible deals were struck, and the accord cannot be touched without these deals somehow being disturbed. Leaving aside for the moment the totally unacceptable practice of ten men meeting together and making these deals—

Senator Flynn: Question!

Senator Gigantès: —in total secrecy—

Senator MacEachen: Yes, "Mr. Speaker"?

Senator Flynn: You might speak to him. He will listen to you.

Senator Gigantès: —why is it that one particular amendment we suggested to break a possible deadlock in naming Supreme Court justices from Quebec would in any way disturb the other premiers? And why would Quebec not want to have a deadlock-breaking mechanism, unless it was thinking of having a deadlock at some time or another?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, the short answer to the question is that the honourable senator and his colleagues did not suggest one amendment; they suggested amendments to virtually every aspect of the Meech Lake Accord. This is what leads us to say that opening the accord for one will, of course, reopen it for all kinds of alleged improvements, some of which were considered and rejected by the First Ministers at the time and others of which can be considered with much more likelihood of success in a second round, when the unanimity rule will not always prevail. Again, I commend to the honourable senator the statement of his own leader—I presume that he is his leader—the Right Honourable John Turner—to the effect that the Meech Lake Accord is closed.

Senator Gigantès: One of the things that does not come under the seven-provinces-50-per-cent-of-the-population rule, presumably, would be anything to do with the Supreme Court and, presumably also, this deadlock-breaking mechanism. The Leader of the Government says that if you open the accord up to one amendment there will be other suggestions for amendments, some more acceptable and others less so. Would he be prepared to give us a list of some acceptable amendments on which we could be working?

Senator Flynn: Come on!

Senator Gigantès: Why not, Senator Flynn?

Senator Flynn: You are extremely naive.

Senator Murray: I can give the honourable senator a short list of one amendment that is unacceptable, and that is the kind of deadlock-breaking mechanism to which the honourable senator referred. That matter was considered and rejected.

Reference was made to the deadlock-breaking mechanism proposed in the Victoria formula of 1971, which was rejected by the vast majority of First Ministers during this exercise. They believe that the judiciary should not be put in the position of reproducing themselves, as the saying goes, and, further, that non-elected people should not be brought into this process of breaking a deadlock to appoint judges to the Supreme Court of Canada.

Senator Gigantès: So, according to the Leader of the Government, we may find a situation in which a separatist government has been elected in Quebec.

Senator Flynn: Come on!

Senator Gigantès: One was elected before; it is now the Official Opposition. As many people know, oppositions do occasionally tend eventually to form a government. The Conservative Party did in 1984, after spending many years in the wilderness.

● (1500)

Senator Guay: They still are!

Senator Gigantès: A separatist government may come into power and propose that if two vacancies occur on the Supreme Court they be filled by Robert Lemieux, the lawyer who defended the FLQ terrorists, and, perhaps, Maître Yves Fortier, who did not defend any FLQ terrorists but whose views seem to be not very federalist. That is the list.

Senator Murray: Mr. Fortier?

Senator Flynn: They would not be as stupid as you would be yourself.

Senator Gigantès: What would we do in those circumstances?

Senator Murray: The honourable senator clearly has a very low opinion of people in public life in Quebec and of public opinion in Quebec. That is to be deplored.

Senator Gigantès: I am delighted to hear the very high opinion the Leader of the Government has of people in public life in Quebec. I would assure him that mine is not second to his.

The point is that there is an opposition in the National Assembly of Quebec which says that its purpose is to get out of a Canadian Confederation by any legal means at its disposal. They are not proposing armed insurrection, but this would be a legal means of making the work of the Confederation of Canada harder. This is not taking a poor view of the people of Quebec; this is following to its logical conclusion what the opposition in Quebec says it wants to do. Why should we not have a deadlock-breaking mechanism then?

Senator Murray: The honourable senator is seeking to cover ground that we covered many times in committee and in the debate. The kind of course that he hypothesizes would be so manifestly against and contrary to the interests of the people of Quebec that no democratic government in Quebec could try it or get away with it.

[Senator Murray.]

Senator Gigantès: Is the Leader of the Government saying that the separatist opposition in Quebec would consider separation to be against the interests of Quebec? Is that what he is implying?

Senator Murray: The honourable senator knows what I have said. He can read it tomorrow or the next day, if he finds the time. He is attempting to cover the same ground that we covered many times in committee and in debate here.

There is really nothing I can usefully add with any hope of enlightening him on this matter.

Senator Gigantès: I thank the Leader of the Government for confessing that there is not anything he can add to enlighten anybody, in effect, because this was a secret process, a seamless web which nobody must touch or look inside.

Senator Flynn: Blah, blah, blah!

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Orville H. Phillips: Honourable senators, I have four delayed answers to questions.

ECONOMIC SUMMIT, 1988

DEBT AS GLOBAL PROBLEM—AGENDA ITEM

Hon. Orville H. Phillips: Honourable senators, the first delayed answer I have is in response to a question raised in the Senate on May 3, 1988, by the Honourable Allan J. MacEachen, regarding the Economic Summit, 1988—Debt as Global Problem—Agenda Item.

(*The answer follows:*)

> There are not formal agenda items for the Summit, but rather matters that will be discussed. The subject of developing countries' debt will be discussed by the Leaders and finance ministers, with particular emphasis on "middle-income" and "poorest" nations. Naturally, the report of the Senate Foreign Affairs Committee has been taken into consideration by the government as the Canadian position is being formulated leading up to the Summit.

RE-ENERGIZING OF DEBT STRATEGY—POSSIBLE CANADIAN PROPOSAL

Hon. Orville H. Phillips: Honourable senators, the second delayed answer I have is in response to a question raised on that same date by the Honourable Allan J. MacEachen regarding Re-energizing of Debt Strategy—Possible Canadian Proposal.

(*The answer follows:*)

> Since the onset of the debt crisis in 1982, the Canadian government has supported a cooperative international strategy for managing the financial problems of heavily indebted developing countries. The strategy has been applied on a case by case basis to a wide variety of countries, and has succeeded in gradually reducing the

threat to the international financial system and in bringing needed economic reforms and a resumption of economic growth to some of the indebted countries. The strategy has evolved more or less continuously throughout this period, with the most recent development being the introduction of new financial innovations which succeed in reducing the absolute amount of a country's debt. Two such schemes have been implemented already—by Mexico and Bolivia—and more are apparently being studied by these and other countries. Canada supports such new and imaginative innovations, which are designed and implemented on a case by case, voluntary basis, and whose essential financial aspects are determined by market forces. We reject, as do other creditor and indeed debtor countries, the notion that some "magic wand" financial scheme can be devised which will rapidly eliminate the international debt problem, and we expect that this point of view will be endorsed at the Toronto Economic Summit.

BRAZIL—ROLE OF WORLD BANK—CANADIAN GOVERNMENT POSITION

Hon. Orville H. Phillips: Honourable senators, the third delayed answer I have is again in response to a question raised by the Honourable Allan J. MacEachen, on May 3, regarding Economic Summit, 1988—Brazil—Role of World Bank—Canadian Government Position.

(*The answer follows:*)

World Bank guarantees of commercial bank loans to developing countries have been used on a few exceptionally rare occasions in the past. Canada has supported these actions, as they covered only a small part of the financing packages in question, but were nevertheless instrumental in completing the packages. Completing these financing deals in turn allowed the international community to proceed with its support for good economic reform programs by the debtor countries. While Canada would not favour widespread and indiscriminate use of these guarantees—which would involve transferring an unacceptable amount of risk from the banks to the governments—we are willing to contemplate their use on a highly selective, case by case basis when necessary to allow complex and ambitious economic adjustment and financing arrangements to proceed. It is in this light that the government would evaluate any proposed World Bank guarantee for a portion of the Brazilian package currently being negotiated, were it to be presented to the World Bank's Executive Board for a decision.

AGRICULTURE

WESTERN CANADA—DROUGHT CONDITIONS—GOVERNMENT ASSISTANCE

Hon. Orville H. Phillips: Honourable senators, the fourth and final answer I have today is in response to a question asked on May 3, 1988, by the Honourable Joyce Fairbairn, regarding Agriculture—Western Canada—Drought Conditions—Government Assistance.

(*The answer follows:*)

The federal government has had a federal working group on drought monitoring the situation in cooperation with the provinces since late February. In addition, there are federal-provincial drought committees established in each western province. A special Agriculture Canada task force has been working for several weeks now to assess conditions and look at the adequacy of our present programs. On Sunday, May 8, the Deputy Ministers of Agriculture met in Ottawa to discuss the extent and impact of low runoff and reduced rainfall. As a result, an Assistant Deputy Ministers' committee is being formed to work with the Agriculture Canada task force and provincial drought committees. They will advise ministers—both federal and provincial—on a daily basis.

The Prairie Farm Rehabilitation Administration (PFRA) has programs in place to mitigate against water supply shortages. The PFRA will spend $7.2 million on its rural water development program this year. This will assist farmers by providing grants for the construction of dams, dugouts, wells and pipelines. In addition, grants are available for small communities and groups of farmers providing up to 50 per cent of the cost of water supplies. Provincial governments operate programs that supplement and enhance the PFRA program according to their specific needs.

Fortunately, there are other on-going programs, such as the federal-provincial crop insurance program, to provide farmers with financial protection in the event of serious crop losses. Federal contributions of $145 million to crop insurance programs in Western Canada allow producers to purchase insurance protection at less than 50 per cent of the total program cost. In 1987, in Western Canada, some 96,000 farmers purchased $2.2 billion of protection on 38 million acres and it is expected that more farmers will participate this year.

NATIONAL DEFENCE

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF SENATE

Leave having been given to revert to Notices of Motions:

Hon. Henry D. Hicks: Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*a*), I move:

That the Special Committee of the Senate on National Defence have power to sit at three thirty o'clock in the afternoon on Wednesday, May 18, 1988, even though the Senate may then be sitting, and that rule 76(4) be suspended in relation thereto.

Honourable senators, if leave is given, I am prepared to give a brief explanation.

Hon. Orville H. Phillips: Honourable senators, I was going to ask the honourable senator to give the Senate an indication of why the committee must meet at 3:30 p.m. rather than at its scheduled time.

Senator Hicks: The answer, honourable senators, is that we have had great difficulty in arranging a time suitable to the Minister of National Defence to meet with the committee. We are now approaching the end of our hearings of the evidence of witnesses before the committee and, obviously, we feel it very important to hear the views of the Minister of National Defence. While we have tried to make other arrangements, it seems that this is the only time, unless we leave it until much later in June, that we can hear the Minister of National Defence. That is the reason I am asking for permission for the committee to meet at 3:30 p.m., a time at which the minister has indicated he can be with us on Wednesday, May 18, 1988.

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

Hon. Senators: Agreed.

Motion agreed to.

ANIMAL PEDIGREE BILL

THIRD READING—DEBATE ADJOURNED

Hon. Martha P. Bielish moved the third reading of Bill C-67, respecting animal pedigree associations.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I move the adjournment of the debate on third reading in the name of Senator Marchand.

Senator Bielish: Perhaps I can convey some information to Senator Frith. The bill was referred to the Standing Senate Committee on Agriculture and Forestry, where Senator Marchand was in attendance. His questions were answered, and he was the senator who moved that the bill be reported without amendment.

Senator Frith: I appreciate that information. I will check with Senator Marchand that he is satisfied that third reading should go ahead. If he is, then the bill can be given third reading tomorrow.

Hon. Orville H. Phillips: Honourable senators, we seem to be introducing a new technique into the Senate. We cannot have third reading now unless a certain Liberal senator is present.

I draw your attention to the attendance in the Senate at the moment and suggest that this procedure may be rather restrictive in making legislative progress.

If Senator Marchand is interested in this bill, I point out that he knew it was coming up for third reading today. He attended the committee meeting and he should have been here today.

Senator Frith: Honourable senators, I am aware of the system that the government uses in having spokesmen for their bills, and I will certainly not lecture them on how they operate.

[Senator Hicks.]

We, however, also have spokesmen on our side, and if I have not checked with a particular senator and do not know what his position is when the matter comes up for second or third reading, then I stand the order in his name. That is the system. If other senators, including senators on our side, find that an undesirable practice, then they may want to lecture me, but, in the meantime, I would adjourn the debate in the name of Senator Marchand. In case this is considered to be a surprise, I point out that we intend to continue this system.

Senator Phillips: When is Senator Marchand expected to be in attendance? Did Senator Frith make every attempt to contact him?

Senator Frith: Perhaps Senator Phillips was busy talking to someone else when I explained the situation to Senator Bielish.

Senator Walker: Don't be too much of a smart aleck.

Senator Frith: Why did he ask the question if he was listening? I think we had better not get into a competition about smart aleckry.

I said to Senator Bielish that I would check with Senator Marchand. If he has no objection to proceeding with third reading, then we can deal with the matter tomorrow.

On motion of Senator Frith, for Senator Marchand, debate adjourned.

● (1510)

CRIMINAL CODE

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Rhéal Bélisle moved the second reading of Bill C-89, to amend the Criminal Code (victims of crime).

He said: Honourable senators, the bill before us today, Bill C-89, is part of the comprehensive proposal of this government to address the concerns of those Canadians who are often the forgotten persons in our criminal justice system—the victims of crime.

Victims of crime have become a focal point of concern and priority for the criminal justice system. The legislative proposals presented in Bill C-89, which are now before this house, represent concrete measures sought by and on behalf of victims of crime.

The major effect of the proposed legislation, which will amend the Criminal Code, is to enhance the capacity of the criminal justice system to respond to the special circumstances of crime victims in a fair and sensitive manner. This bill introduces procedures which will cause less inconvenience to victims at all stages of the criminal justice process while protecting and safeguarding the rights of the accused. In addition, the proposed amendments recognize the entitlement of the victim to reparation by requiring the offender to make amends for the wrong suffered by the victim.

The proposals introduced in Bill C-89 respond to the long-standing concern of this government with respect to the ability of the criminal justice system to meet the special needs of crime victims in our society. First, this bill will create a victim

fine surcharge to be imposed on those convicted or discharged of offences under the Criminal Code, Part III or Part IV of the Food and Drug Act and the Narcotic Control Act. Second, this bill will allow input by the victim through the use of victim impact statements at the time of sentencing. Third, this bill will allow the use of photographs and affidavit evidence to provide for the early and prompt return of recovered property to the victim and remove the need for the victim to testify as to ownership and value of property. Fourth, this bill will require the courts to consider restitution in all cases involving damage, loss or destruction of property and bodily harm, thereby removing the need for the victim to apply for restitution. Fifth, this bill will extend the discretionary and mandatory ban on the publication of the identity of victims and witnesses of sexual and extortion offences.

As I have said, honourable senators, one of the more important features of Bill C-89 is the creation of a victim fine surcharge scheme. This proposal further recognizes the entitlement of victims of crime to reparation and the need for offenders to make amends for the wrongs suffered by their victims.

The proposed amendment would require the court to impose a victim fine surcharge on those offenders convicted or discharged of offences under the Criminal Code, Part III or Part IV of the Food and Drug Act and the Narcotic Control Act. The surcharge would be ordered in addition to any other punishment imposed. The only time where a victim fine surcharge would not be imposed is where the offender could establish, to the satisfaction of the court, that undue hardship to the offender or the offender's dependants would result.

The purpose of the victim fine surcharge is to require the offender to provide redress not only for the harm done to the victim but to the community at large. The surcharge will assist offenders in the process of accepting responsibility for their crimes by requiring them to contribute to victim services within each province as part of the debt they owe society.

The victim fine surcharge will generate revenue to be applied by the provinces exclusively for the purpose of providing assistance to victims of crime. The work of the Task Force and the Working Group on Justice for Victims of Crime, the federal-provincial consultation process and various research projects have all highlighted the need for a stable source of funding for victim services.

Concerning victim impact statements, the legislative proposal in this bill, which will enable the court to consider a victim impact statement, will provide the victim an increased opportunity to have input at the time of sentencing to bring the impact of the crime to the attention of the court.

Victims have long expressed the view that there has been little opportunity for their views to be made known. The proposed amendment will satisfy the victim's desire to be heard.

The purpose of the victim impact statement is to provide a factual account of the impact of the crime on the victim. It summarizes in writing what the victim might otherwise have said at the sentencing hearing concerning the harm done or loss suffered as a result of the commission of the offence.

If there is any dispute as to the facts, the ordinary legal principles governing criminal proceedings apply. Any facts relied upon by the Crown and challenged by the accused must be established in accordance with the criminal standard of proof beyond a reasonable doubt. As the veracity of the statements made by the victim may be challenged, the victim may be subject to cross-examination under oath by defence counsel or questioning by the sentencing judge.

The victim impact statement is one of several factors to be considered by the sentencing judge at the time of hearing to arrive at an appropriate sentence. The judge should be entitled to the opportunity to hear all relevant information before imposing sentence, including the financial, social, psychological or physical harm suffered by the victim.

I would like now to deal with photographic evidence and proof of ownership. Honourable senators, which one of us has not been the victim or known the victim of a property offence? Victims of these offences, such as theft or breaking and entering, have often complained of further victimization by the criminal justice system. They have been required to bear a financial or emotional burden while their property remains under police control.

Consider, for example, the case of a senior citizen of limited income whose television, which serves as the sole source of household entertainment, has been stolen.

Under the present law, recovered stolen property is usually retained by police until no longer required. In limited cases, photographs have been used where it would be impractical to retain the exhibit—for example, where goods are perishable or cannot be stored. Otherwise, if the prosecutor satisfies the court that the property is required for the purposes of any investigation or trial or other proceedings, the property is detained.

● (1520)

In a case where there may be several adjournments, it could be months before the victim recovers his property. In the circumstances of the senior citizen, not only would that create a financial burden—for example, where a television must be rented as a temporary replacement—but the emotional burden suffered as a result of this secondary victimization would also be considerable.

The proposed amendment providing for the use of photographic evidence in lieu of the property itself will facilitate the prompt return of recovered property to the victim. In addition, by filing a certified photograph and an affidavit or solemn declaration establishing the continuity of the exhibit the photographer does not have to appear as a witness, nor does the person or peace officer who signed the affidavit, unless evidence to the contrary is presented.

Similarly, the proposed use of an affidavit or solemn declaration as proof of ownership and value of property may obviate the need to call the victim as a witness to the proceedings. At present the prosecutor has been required to call the victim to

testify as to the ownership and value of the property of which the person has been deprived as a result of the particular offence. Attendance in court may also result in considerable financial and personal cost to the victim or witness.

I believe that these procedural changes will be of great benefit to those who have the misfortune to become victims of those property offences by avoiding any further victimization by the criminal justice system.

Regarding restitution, in its 1983 report the Federal-Provincial Task Force on Justice for Victims of Crime recommended that the restitution provisions of the Criminal Code be amended to require judges to consider restitution in all appropriate cases and to provide the opportunity for victims to make representation to the court regarding their ascertainable losses.

More recently, in its report released in February 1987, the Canadian Sentencing Commission recommended that an order of restitution should include consideration of the following: first, property damages incurred as a result of the crime, based on actual cost of repair or replacement value; second, medical and hospital costs incurred by the victim as a result of the crime; and, third, earnings lost by the victim before the date of sentencing as a result of the crime, including earnings lost while the victim was hospitalized or participating in the investigation or trial of the crime.

I am sure that honourable senators will agree that the enhanced restitution provisions proposed in Bill C-89 respond well to those recommendations.

By requiring the court to consider ordering restitution in all cases where such an order might be appropriate the proposed amendments remove the onus on the victim to apply for an order at the time of sentencing. In appropriate cases, the court may order restitution not only for loss of or damage to property but also for pecuniary damages incurred as a result of bodily injury, provided the losses are readily ascertainable.

The proposals also expand the concept of victim to include those who assist in the arrest or attempted arrest of the offender, thereby enabling the court to make the offender accountable for all harm caused during the commission of the offence.

In addition, the proposals now address cases where the offender may have offered stolen property as security for financial transactions, thereby providing restitution to persons who innocently lend money on the security of such property.

Bill C-89 has not only provided for the greater opportunity to consider restitution orders but it has also introduced a series of measures to ensure that such orders will be satisfied. They include: enabling the court to conduct an inquiry for the purpose of determining the amount of restitution and the ability of the offender to pay; providing that any moneys found on the offender at the time of arrest may be used to satisfy the restitution order; directing the court to give priority to orders of restitution over orders of forfeiture and fines; and presenting two methods of enforcement of restitution orders in default, one civil in nature and the other by way of criminal proceedings.

[Senator Bélisle.]

I believe that the restitution provisions in Bill C-89 will increase the possibility that a victim will receive financial reparation for the harm and losses suffered as a result of the commission of a criminal offence.

[*Translation*]

Honourable senators, you will recall that Bill C-15, which came into force on January 1, 1988, enhanced the protection granted victims of sexual offences by allowing them to testify in the absence of the accused. This bill also extended the ban on disclosure of the identity of all witnesses under the age of eighteen years.

Bill C-89 will extend the scope of this ban. The provisions set forth in this bill will not only apply to victims of sexual offences but also to victims of extortion. It is clear that by the very nature of the crime of extortion, disclosure of the victim's identity constitutes the essence of the threat made by the accused. By extending the protection offered under the Criminal Code to these victims as well, it is less likely that they will suffer public embarrassment or be exposed to additional physical danger. Furthermore, it would also be an incentive for victims of extortion to report such offences to the police.

The ban on disclosure of identity in connection with these offences will also apply to all witnesses, irrespective of age. In the case of witnesses who have reached the age of majority, the ban on disclosure of identity is discretionary. However, it is compulsory when the victim or the witness who requests this protection is under the age of eighteen years.

These victims are vulnerable. Protecting their identity when necessary will encourage them to testify and will result in a larger number of offences being reported.

[*English*]

Honourable senators, the proposals outlined in Bill C-89 represent the commitment of the government to respond sensitively to the circumstances of victims of crime. It is a major step forward in recognizing the needs of crime victims and ensuring their fair treatment throughout the criminal justice process. I believe that victims are entitled to be shown that, indeed, they have not been forgotten.

I therefore urge you, honourable senators, to support this bill and allow for its timely passage.

Hon. Joan Neiman: Honourable senators, I move the adjournment of this debate until Tuesday next, May 17. However, if any other honourable senator would like to speak to the bill in the meantime, I would be happy to defer to that honourable senator.

On motion of Senator Neiman, debate adjourned.

[*Translation*]

WESTERN ARCTIC (INUVIALUIT) CLAIMS SETTLEMENT ACT

BILL TO AMEND—CONSIDERATION OF REPORT OF COMMITTEE—DEBATE ADJOURNED

The Senate proceeded to consideration of the Thirteenth Report of the Standing Senate Committee on Social Affairs, Science and Technology (Bill C-102, an Act to amend the

Western Arctic (Inuvialuit) Claims Settlement Act, with amendment), presented on Thursday, May 5, 1988.

Hon. Arthur Tremblay: Honourable senators, I have the honour of moving the adoption of this report and I am ready to provide some clarification.

Honourable senators, the report concerns Bill C-102, a bill intended to clarify and simplify a number of procedures, as Senator Macquarrie explained on second reading, so that Parliament would not always be asked to intervene in order to adopt a number of amendments, often of an entirely secondary or technical nature, to the agreements in effect. That was the purpose of this bill.

The bill was referred to the Standing Committee on Social Affairs, Science and Technology. In committee, where Senator Adams showed a particular interest in this bill, we were informed of a technical error, a straightforward printing error, in the bill as it now stands. We therefore adopted the report to which I referred earlier, suggesting that the Senate approve the bill with an amendment that would consist of substituting the date of May 11 for the date of April 11 which now appears in paragraph 1(*c*) on line 5 of page 2 of the bill. That is the extent of the proposed amendment.

I imagine that for once the other place will be grateful to the Senate for returning a bill with amendments.

On motion of Senator Frith, debate adjourned.

[*English*]

REGULATORY SCRUTINY

NINTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the ninth report of the Standing Joint Committee for Regulatory Scrutiny (Report No. 43—Public Service Employment), presented on Thursday, May 5, 1988.

Hon. Nathan Nurgitz moved the adoption of the report.

He said: Honourable senators, I wish to speak briefly about the ninth report of the Standing Joint Committee for Regulatory Scrutiny. The report is a lengthy one. However, I would like to bring to the attention of the Senate what I think are some of the highlights. This report discusses and examines the Public Service Employment Regulations. Because of the evidence received on this matter the committee concluded that the appeal rights conferred on public service employees by the Public Service Employment Act are compromised by the failure on the part of the Public Service Commission to adopt appropriate regulations in relation to various matters, some of which I will touch upon this afternoon.

For example, the regulations fail to provide for a mandatory and full disclosure to any unsuccessful candidate, or his or her representative, of all of the particulars relevant to the decision appealed from.

Hon. Royce Frith (Deputy Leader of the Opposition): I am sorry, I was making some notes. What statute are we talking about here?

Senator Nurgitz: We are talking about the Public Service Employment Regulations, which come under the Public Service Employment Act.

Senator Frith: Thank you.

Senator Nurgitz: I was commenting on the fact that there was no requirement, for example, to disclose to an unsuccessful candidate who might wish to appeal the reasons why a decision was made, or information with respect to the successful candidate, et cetera. At the present time it is difficult for an appellant to properly prepare his or her case prior to an appeal, because there are no such requirements to provide an appellant with this kind of information.

I might say to honourable senators that, for the most part, quite a bit of disclosure does take place. However, none of it is mandatory, and it is evident that such an approach fails to provide a sensible mechanism which will make the appellate system very workable. That is, anyone reviewing the system would say that it really is, in a written sense, quite inadequate.

The committee has, on numerous occasions, requested the Public Service Commission to remedy this situation, and before I conclude my remarks I will give a chronology of events going back to December 10, 1981, when this matter was first raised before the committee as it was then, the Standing Joint Committee on Regulations and other Statutory Instruments, and the various steps that have been taken over these last eight years in an attempt to get some movement on this matter.

I want to mention several other shortfalls for which the regulations do not provide.

● (1540)

The fact is that the committee said that good intentions—and no one is imputing bad motives—are not good enough. The committee said that they cannot be a substitute for the adoption by the commission of proper regulations spelling out the rights of people in the system who strive to improve themselves.

Senator Frith: And the good intentions of the drafters are not grounds for appeal?

Senator Nurgitz: That is right.

Senator Tremblay: There are no bad ones!

Senator Nurgitz: And bad ones, indeed, not!

The committee emphasized the fact that the screening board report and the selection board report on the unsuccessful candidate is not disclosed. We got into the question of an unsuccessful candidate, for example, having the right to information that was used if something was said about that candidate that may not have been accurate. The information that is relied upon in the determination is never given to the candidate when that candidate becomes an appellant, and the reasons for which the candidate was not successful are not disclosed. Other information in the ordinary court process—where all facts are examined and are on the record—is, indeed, missing, if one looks at these regulations.

There are other aspects, such as the failure of the right to hear both sides. There have been situations where an appellant appeals with this inadequate information and the other side does not even respond. There is no requirement in that regard.

Honourable senators, I meant only to touch upon some of these matters to show the kinds of inadequate regulations that we have been seeking to get the Public Service Commission to act on.

In the defence of the commission—because this sounds as if this is all one-sided—it has come forward and it has discussed the guidelines and policies. While the commission says they do not have the force of law, its members believe they uphold certain principles. The commission makes the bold assertion—and I am quoting—"that the commission will not infringe the rights of employees in most processes where these are essential."

I think honourable senators would agree that that is not good enough in 1988. The committee wanted to emphasize that administrative simplicity and flexibility—which is what they are aiming for—should not be allowed to override the protection or the interest of the individual by legally entrenched and legally enforceable means.

That, honourable senators, is the report in a nutshell. I commend it to all honourable senators. It is a matter of urging the Public Service Commission to enact regulations to correct this situation.

Senator Frith: Honourable senators, can the Honourable Senator Nurgitz confirm that all of these shortcomings relate to individual rights? This is not a matter of some regulation about tags on a crate of strawberries. In each case he mentioned, as I followed it, it involved rights of individuals, in particular the rights of public servants.

Senator Nurgitz: It involves the rights only of public servants or people wishing to become public servants.

I consider it to be a serious right. It is, in each instance, a right involving his or her employment, or lack thereof—

Senator Frith: And therefore their careers.

Senator Nurgitz: —and therefore their careers in many instances.

I indicated earlier, honourable senators, that I would give a short chronology of the events of this examination to demonstrate that this was not a hasty decision made after a quick examination of the existing guidelines.

On December 10, 1981, the committee first considered the Public Service Employment Regulations in connection with the appeal procedure. Let me be clear that that is all I am concerned with and all I have attempted to raise.

In March of 1982 witnesses appeared before the committee.

In May of 1983 the committee attempted, by writing to counsel for the Public Service Commission, to raise various concerns it had. As honourable senators are aware, we attempt to sort things out by correspondence between the committee's counsel and the Public Service Commission's counsel.

In March of 1985 an invitation was extended to the Public Service Commission and the Public Service Alliance of Canada to appear, and on May 16, 1985, officers of the commission and of the Public Service Alliance of Canada testified before the committee and each tabled briefs.

Approximately two years ago the committee became more serious, realizing there was an impasse between accepting what the Public Service Commission told the committee were satisfactory guidelines and policies that were very efficient in the handling of appeals and what the committee's view was of protecting people's rights, which brings us to the tabling of the report.

Motion agreed to and report adopted.

[*Translation*]

FEDERAL GOVERNMENT AND CROWN CORPORATIONS

SELECTION PROCESS FOR PROCUREMENT OF SERVICES AND TENDERING OF CONTRACTS—INQUIRY WITHDRAWN

On Inquiry No. 1:

By the Honourable Senator De Bané, P.C.:

5th November, 1986—That he will call the attention of the Senate to the need for the Federal Government and Crown Corporations to establish a system of procurement of goods and professional services and the tendering of contracts based not only on efficiency, but also on fairness, in order to enhance the economic development of all regions of Canada.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, Senator De Bané has asked me to request leave of the Senate to withdraw this inquiry.

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

Hon. Senators: Agreed.

Inquiry withdrawn.

The Senate adjourned until tomorrow at 2 p.m.

APPENDIX

(*See p. 3328*)

ADDRESS

OF

HER MAJESTY QUEEN BEATRIX

OF THE NETHERLANDS

TO

BOTH HOUSES OF PARLIAMENT

IN THE

HOUSE OF COMMONS CHAMBER, OTTAWA

ON

TUESDAY, MAY 10, 1988

Her Majesty was welcomed by the Right Honourable Brian Mulroney, Prime Minister of Canada, and thanked by the Honourable Guy Charbonneau, Speaker of the Senate and the Honourable John A. Fraser, Speaker of the House of Commons.

Hon. John A. Fraser (Speaker of the House of Commons): Order, please. The Right Honourable the Prime Minister.

Right Hon. Brian Mulroney (Prime Minister): Your Majesty, Your Royal Highness, *chers collègues*, Honourable Senators:

It is a great honour for me to welcome you here today. On behalf of the Canadian Government, please allow me again to extend, Your Majesty and Your Royal Highness, our warmest welcome to Canada and especially to Ottawa. May I say it in a special way. When you are here in the House of Commons, Your Majesty, and in Ottawa, you are back home.

Some Hon. Members: Hear, hear!

Mr. Mulroney: In a special sense I say, "Welcome home, *bienvenue chez vous*".

The relationships that exist between our two nations are in many ways unique. They are based first on immigration, which binds us together with family ties. Nearly a million Canadians pride themselves on their Dutch ancestry, and their contribution to Canada has been absolutely magnificent. There is the legacy of valour of the Second World War, during which our soldiers, our young men and women, fought for the freedom of your country.

I must pay special homage to the Members of Parliament, both past and present, who participated in the liberation of the Netherlands, including our very distinguished Minister of Veterans Affairs, the Honourable George Hees, who is with us here, Your Majesty, today.

Some Hon. Members: Hear, hear!

• (1110)

Mr. Mulroney: He says, Your Majesty, that he entered the Canadian Forces as a boy of nine!

This afternoon, Your Majesty and Your Royal Highness will be inaugurating "The Sweetest Spring", an exhibition of art and artifacts at the Canadian War Museum. This exhibit, jointly mounted by the Canadian War Museum and the Royal Netherlands Army Museum, underlines our close ties and reinforces our common values.

[*Translation*]

Our nations cherish the same important ideals of peace, justice and freedom. The presence of your family in Ottawa during the dark days of World War II formed the basis for a direct affinity between members of your family and Canada, and for a deep affection between Canadians and you yourself.

[*English*]

I know, Your Majesty, that you have fond memories of Stornoway, where you resided temporarily in Ottawa. I also have fond memories of Stornoway, where I resided temporarily in Ottawa. In fact, Your Majesty, all Leaders of the Opposition in Canada have come to regard this gracious home as essentially a temporary residence.

The splendid Dutch tulips, now in bloom on Parliament Hill and throughout our capital, are an enduring legacy of your family's wartime stay in Canada. This generous gift from Queen Juliana to the people of Canada is a unique tribute and one which all Canadians value, particularly at this time of year. When Princess Margriet was born here, the colours of the Netherlands were raised above these Parliament Buildings, celebrating the unprecedented event of a member of a reigning European Royal Family being born on North American soil.

Today this rich heritage has produced a wealth of political, economic, social, and trade relationships.

[*Translation*]

Your visit to Canada reaffirms the importance of our relations with the European Economic Community, with Western Europe and especially with the Netherlands. The history and the future of Western Europe are closely linked with our history and our future. Together we have formed an association as fruitful as it is diversified, based on political, economic and cultural ties, an unshakeable faith in democracy and an ardent desire to preserve our freedom.

The Netherlands have played a fundamental role in the development of Western civilization. To Canadians, Your Majesty, your country has always been synonymous with social justice and respect for human rights.

[*English*]

I am pleased to note that our dialogue in this area has been active and fruitful. I would like to underline, Your Majesty, the fact that we share similar views on major international issues should come as a surprise to no one. Our countries are committed members of the international community with similar political, economic, and trade objectives. Most of all, Your Majesty, our countries and our peoples are friends—friends who share values and traditions, friends who espouse the same principles, and whose children dream the same dreams.

On behalf of the Government of the people of Canada, I welcome you to Canada and, through you, extend our warmest greetings to the people of the Netherlands.

Your Majesty, may I ask you at this special and affectionate moment of home-coming to speak now to the Parliament and to all of the people of Canada.

Some Hon. Members: Hear, hear!

Her Majesty Queen Beatrix of the Netherlands: Mr. Speaker, ladies and gentlemen, our meeting with the Canadian Parliament is taking place in the year in which we are commemorating the Glorious Revolution of 1688, which placed Dutch Stadholder William III together with his wife, Mary Stuart II on the throne of England.

The Glorious Revolution stands as a landmark in the development of British parliamentary democracy. By virtue of the Bill of Rights then presented to William of Orange and his wife before they ascended the throne, Britain's Parliament regained its traditional significance. The Bill of Rights re-asserted that the Sovereign could only rule with the consent of the representatives of his subjects. To many peoples in the seventeenth century that was a revolutionary principle; the people of the Netherlands, however, had adopted the principle a century earlier. The subsequent political development of both the United Kingdom and the British Commonwealth was conditioned by the principle of consent. In a few weeks, on the twentieth of July, the British House of Commons, the mother of all parliaments, will commemorate the events of 1688. It is pleasing to know that delegations from the Canadian and Netherlands parliaments will attend the ceremony.

In Canada in 1839 Lord Durham laid the foundations for a democratic form of government in his "Report on the Affairs of British North America". On the basis of the "responsible government" principle he entrusted the government of the colony to the colonists themselves. The policy of placing the responsibility for government with the people was thereby extended to Canada.

To our countries this form of responsibility has long ceased to be a matter of doubt or debate. In fact, we should now attach to the term "responsible government", the essence of the Durham report, a different, far deeper significance. Since then our dealings have become more international, our present more linked to the future. Besides to their own citizens, to whom governments are quite naturally answerable, they are therefore feeling increasingly answerable to those with whom we share the world and to generations as yet unborn. This is the new signification of "responsible government".

The peoples of countries such as Canada and the Netherlands are particularly conscious of their common destiny with the other inhabitants of our globe. National decisions are increasingly making themselves felt far beyond frontiers. Governments are also increasingly being confronted with tasks they can no longer perform alone.

An international task for Canada was implicit in the three basic principles, namely, Peace, order and Good Government, of the Constitution Act, 1867. The maintenance of "Order" is a function that a government could perform alone, but not the maintenance of "Peace". By definition, therefore, "Good Government" can imply nothing but to govern in collaboration with other countries.

Canadians have long been aware of the fact that their country is a member of a global community. It was this realization that led to Canada's willingness to make sacrifices in the great conflicts of this century. Canada made an impressive contribution to the victory of the Allies in World War I. She then played a prominent role as an active member of the League of Nations. Canadian participation in World War II was further evidence of her sense of international solidarity, which was of incalculable moment, particularly to the Netherlands. Much of Holland was liberated by Canadian soldiers, all of whom, exactly like their fathers, had crossed the Atlantic Ocean as volunteers to destroy a power and an ideology that posed a mortal threat to our common civilization. A few days ago, on the 4th and 5th of May, Holland gratefully commemorated the 1945 liberation and, as in every year, flowers were laid on the graves of members of the Canadian Forces who found their last resting place in our country.

• (1120)

After our common struggle in that war, our equally common conviction that democratic states should together safeguard their security found expression in new forms of co-operation among allies. Canada and the Netherlands have already been members of the North Atlantic Treaty Organization for 40 years. Both countries have from the outset regarded NATO as an organization that embraces more than mere common military defence. Article II of the treaty by which NATO was established speaks of the parties strengthening their free institutions, their democratic institutions, encouraging economic collaboration and creating a true Atlantic community. It is significant that this section was called "the Canadian Article".

A feeling of responsibility for the destiny of the world in general is also evident from the two countries' active participation in the work of the United Nations. An appeal to Canada for peace-keeping operations has never been in vain. Canada

and the Netherlands are also co-members of many other international institutions. Not only do their representatives meet each other there, they often defend the same points of view. A noteworthy unanimity between two countries here bridges the difference that separates them. Countries like Canada and Holland can make a valuable contribution, especially internationally, in the form of ideas, initiatives and mediation. Backed by the confidence they have gradually managed to inspire in the world, the very countries that are not among the superpowers may thus play a sometimes disproportionately important role.

One of the main aims of our two countries is the global promotion of the international rule of law. This is where we touch the heart of our responsibility for relations in today's world, a world teeming with problems. I will name only one of them: the lagging behind of what we call the Third World, that extensive area in which equitable relations leave a great deal to be desired and where the international rule of law is least in evidence. The duty not to acquiesce in that lag in development is implicit in "responsible government". Canada and the Netherlands give high priority to aid for the Third World and to economic co-operation with Third World countries. Our two nations have for years done much in this area, both to alleviate poverty directly and to render assistance in the longer term, to help people to help themselves. It was no mere chance that the first compendious United Nations report on Third World problems was drawn up by a commission chaired by Lester Pearson.

But "responsible government" in the field of development co-operation may not stop at emergency aid and charity. Neither is the transfer of capital and know-how sufficient. The opening of our markets is, economically and psychologically, just as important. That is the only way in which we can make a real contribution toward growth in the countries themselves. Indeed, it is disturbing that some developed countries are again considering protectionist measures. Protectionism is ultimately bad for everyone, but the poor countries are the victims; they are the first and the worst affected. By giving in to the inclination to protect ourselves we cause multiple damage, we hamper economic growth and increase injustice in the world. An open economy is both a Canadian and a Dutch tradition. It is pre-eminently a tradition we may not abandon.

[*Translation*]

Mr. Speaker, Lord Durham's compelling plea for "responsible government" alluded to responsibility towards citizens. The passage of time and social developments have given the term a new signification. As distances shrank and the interdependence of countries severally increased, we became ever more conscious of our responsibility towards all those who with us populate the world. This realization goes very deep in Canada and the Netherlands.

Moreover, the recent past has given the term "responsible government" a new dimension, our answerability for the future, the obligation to leave behind for our children a world fit to live in.

Fifteen years ago the Club of Rome in its first report gave an urgent warning. As we see it now, the warning was perhaps not urgent enough. Not only is our highly developed society threatened by a future shortage of raw materials, but the very level of development we have already reached holds treats to our well-being, to say nothing of the hazards that loom if the creation of further opulence goes on at the same hectic pace.

It is essential that environmental research conducive to the adoption of rational measures be stepped up and that the efficacy of such research be increased through international co-operation. Preventive intervention is imperative in view of the irreversibility of certain processes that harm the environment. It is true that the very technical knowledge that threatens our future will often enable us to redress the damage done, but we only really control technology if we employ it to prevent damage. Only the courage to take unpopular measures now will safeguard the future for coming generations. The requirement that the quality of the heritage we have received and that we in turn shall have to hand on to posterity may not be impaired is not yet universally realized. Essential, fundamental alterations in our pattern of behaviour are overdue. The close attention of parliament and environment-conscious citizens is a requisite, a stimulus and a guarantee of an effective policy in this area. Politicians and industrialists must join forces and find the answers.

Illustrative of Canada's attitude is that the major United Nations conference on the ozone layer was held in Montreal last year, and that now Canada is again busy preparing a conference on "controlled development" as a follow-up of the Brundtland report.

There have been a number of successes in environmental protection, both national and international. A bolder approach at global level that takes the interconnection of matters concerning food supplies, the generation of power, development aid and the environment into account, is however required. The parallel Canadian and Dutch views on these problems and the approach to them invite a greater common advance in international planning.

In a bilateral context, environmental technology is one of the important fields in which Canada and Holland exchange know-how and experience. A Memorandum of Understanding between our governments on the subject was signed yesterday; similar memoranda with the governments of Ontario and Quebec are to be concluded shortly.

• (1130)

[*English*]

Mr. Speaker, Members of the House and the Senate, since the first parliament was set up, the elected representatives have fulfilled the mandate entrusted to them by the people. In our times, parliamentarians have been given another, double mandate: one by those with whom we live on this globe and

one by generations as yet unborn. The commitment to "responsible government", which cabinets and parliaments must honour has thereby been made much more onerous a task, and it demands courage to commit oneself wholly to this objective.

The term we must now have in mind is moreover far longer than the life of a parliament. The sense of responsibility for others and for the future is nevertheless deeply rooted in this legislative body. It was in this parliament, where I am your guest today, that political democracy was established in Canada in the 19th century. It is heartening to note that the members of today's assembly realize that they are now the guardians of a responsible democracy. Thank you.

Some Hon. Members: Hear, hear!

Hon. Guy Charbonneau (Speaker of the Senate): Your Majesty, Your Royal Highness, on behalf of the Senate I want to thank you most heartily for your remarks, which were a vivid testimony to the quality and vigour that characterize our bilateral relations, and to the importance of those relations.

Nor can I resist commenting on how very rare it is to receive within these walls the sovereign of a friendly and allied power who can point to a childhood spent, in part, in Canada's capital. It gives us, I think, an additional reason for our pleasure in welcoming you today to the Parliament of Canada. It is one of the distinguishing features of the links that bind our two countries. Our long tradition of working together to preserve the values that are dear to us reinforces the significance of the personal link, which has been extended in the most natural way by the many other family ties between Canada and the Netherlands.

[*Translation*]

Your profound statements come as no surprise to students of the political writings of your great philosopher, Spinoza. Your reign as we have seen, continues the admirable example of your predecessors who were mindful of the role Spinoza urged governing authorities to play when he stated, and this was in the seventeenth century, that the rights of the individual took precedence over the authority of the State. Need I recall in your presence his warning that the State that denied this principle would be mere power and be vanquished by power?

It is indeed very fitting to say in this Chamber that you have evoked the great humanist tradition that brought us the principle of intellectual freedom. We understand why Descartes, attracted by the tolerance and love of freedom of your people, spent twenty years in Holland, and why Pascal admired the dialectics of your philosphers. The tradition continues today, at a time when your thinkers have spearheaded the movement for religious reform throughout the world, taking the calculated risk of bringing about a moral crisis.

[*English*]

The friendship between our two countries is consolidated by the significant commercial exchanges between us. Renowned for their technological innovations and business sense, the Dutch are valued partners for dynamic, technologically advanced, and resource rich countries like Canada. Dutch investments in this country are already quite substantial and the possibility of more joint ventures and increased trade can only fortify our commercial relations.

Our cultural ties are also especially important for Canadians of Dutch origin who want to maintain their links with the Netherlands, but all Canadians cherish the spirit of friendship and co-operation which permeates our relations with your country. Our economic contacts, official visits, and the significant flow of tourists in both directions illustrate the wish of our citizens not only to retain our special ties, but also to nurture them for our mutual benefit.

Your Majesty, your visit to Canada will give you the opportunity to witness the vitality of our young country, but I have no doubt that the warmth of our feelings toward the Dutch nation will also become evident. I trust your trip will be a pleasant one and that it will provide you with more fond memories of Canada.

Some Hon. Members: Hear, hear!

Mr. Speaker: Your Majesty, Your Royal Highness—

[*Translation*]

Speaking on behalf of my colleagues in the House of Commons and of other honoured guests present in this Chamber, I wish to thank you for your most cordial speech. Canadians of Dutch descent have played a major role in many areas of Canadian society.

[*English*]

There have been people from your country, Your Majesty, in Canada from our earliest days. Their continuing presence explains why there is a certain resemblance between our two countries. We are convinced that this visit by Your Majesty and Your Royal Highness will help to reinforce those similarities and enable us to extend our co-operation along a number of promising avenues, taking as our starting point our already thriving relationship. Your profound appreciation of the need for international co-operation, especially in regard to our environment, has been most certainly noted in this Chamber today.

• (1140)

I would like to take this opportunity, presented by your presence within these walls, to ask you to convey the best wishes of the Canadian House of Commons to the people of your country and to assure them of our friendship. To you, Your Majesty, and Your Royal Highness, you will always be home in our country. God bless you.

Some Hon. Members: Hear, hear!

Mr. Speaker: It is my duty to announce that the House will convene at two o'clock this afternoon.

THE SENATE

Wednesday, May 11, 1988

The Senate met at 2 p.m., the Honourable Rhéal Bélisle, Acting Speaker, in the Chair.

Prayers.

THE HONOURABLE JOHN M. MACDONALD

FELICITATIONS ON CONFERRING OF HONORARY DOCTORATE OF LAWS

Hon. Robert Muir: Honourable senators, this past weekend I had the privilege and honour of attending the spring convocation of St. Francis Xavier University. Many of you here have attended convocations and graduations over the years and they have always been joyous occasions.

This convocation was so important, so happy and so joyous for me personally due to the fact that our colleague, the Honourable Senator John Michael Macdonald, received an honorary degree—Doctorate of Laws *honoris causa*.

Hon. Senators: Hear, hear!

Senator Muir: Our colleague, Senator John, as he is more familiarly known, or Dr. Macdonald now, was born in North Sydney. He attended St. Joseph's School and Sydney Academy, and later attended St. Francis Xavier University. He graduated with a Bachelor of Arts degree in 1928. Two years later he received his Master's degree.

Senator Macdonald: Make it short, Bob!

Senator Muir: Because he is such a quiet, humble, mild, brilliant individual intellectually, he does not like having complimentary things said about him, but I am going to say them whether he likes it or not.

Following graduation he was principal of Morrison School in Antigonish and served as president of the local branch of the Nova Scotia Teachers' Union. Senator Macdonald graduated from Dalhousie University Law School in 1934, and then joined the law firm of his father and older brother.

Active in community affairs, he was instrumental in establishing the North Sydney Credit Union in 1937, with assistance from the St. Francis Xavier Extension Department. He served as its first president until 1943, when he enlisted in the First Canadian Army Workshop-Ordnance and RCEME and served as a private—by his own choice—in the northwest Europe campaign throughout England, France, Belgium and Holland until 1945. Since the war he has been active in the Royal Canadian Legion, serving on the executive of Branch No. 19, North Sydney, from 1945 to 1961, and has been elected annually to the position of honorary president since 1961.

Upon his return from that conflict, Senator Macdonald continued his credit union involvement and was an unpaid legal adviser for the North Sydney Credit Union and other cooperative ventures. From 1946 to 1961 he served as solicitor for the Town of North Sydney. In 1956 he was elected to the provincial legislature, and for four years he chaired the Private and Local Bills Committee of that government. In June 1960, as you know, he was summoned to the Senate of Canada.

Senator Macdonald has been an active member of the Rotary Club for over 20 years. This man was involved in crippled children's clinics. There were many times he would say, "Bob, come on, get your car! We have to pick up a child," and that was in order to send the child to Halifax to have a deformed foot or arm looked after. This is the kind of man he is; he has always had time for people and for individuals.

On a personal note, I have known Senator John Macdonald for over 50 years. I see question marks over your heads and looks of consternation, because when you look at me you say, "How can a man so young have known Senator Macdonald for over 50 years?"

Senator Frith: Actually, I was not going to ask that.

Senator Muir: I knew you would not. In any event, it was my honour and privilege, as a very young man, to work in 1937 for the election of his father, the Honourable Joseph Macdonald, who served as a cabinet minister in the provincial government of Nova Scotia.

Over the years Senator Macdonald has been so good to so many people in many walks of life. Senator Macdonald has done what many of you in this chamber who are in the legal profession have done, namely, a lot of "thank-you" jobs in the legal field.

Now, on a more personal note, Senator Macdonald has been part of my political life. I have worked on his elections. In turn, he was always my campaign manager, my treasurer, my mentor, my father confessor. He was all of those things in eight consecutive elections, and due to his assistance we won them all. As many of you in this chamber have found out, Senator Macdonald has a wise head and a very steady hand; he is a stable individual who is ready to give wise counsel and share his wisdom with anyone and everyone.

As we all know, St. Francis Xavier University has a splendid reputation, not only in this country but in the broader world. Its international concerns and its world-famous cooperative movements have made it widely known. I think it fitting that a university so highly regarded should honour one of our colleagues who is so widely identified by his care for and devotion to community work. Senator John M. Macdonald has been granted a Doctor of Laws degree, *honoris causa*, as I have

said. This is a merited honour, and in conferring such a doctorate on Senator Macdonald this prestigious university has, I think, also brought honour to itself. I am sure that we all join in congratulating my dear and good friend, Senator John M. Macdonald.

Hon. Senators: Hear, hear!

Hon. Henry D. Hicks: Honourable senators, I am the only member of this chamber who was a colleague of Senator John Macdonald in the Nova Scotia legislature. Although we sat on opposite sides of the house, we became good friends at that time. I am sure that all of you in this chamber realize that that was inevitable, because as he behaved then is exactly the way in which he has behaved in this chamber.

Senator John Macdonald made a great contribution not only to the island of Cape Breton and the province of Nova Scotia but latterly, since he has come to Ottawa, by his work in this chamber, to all the people of Canada. I congratulate him on having been made an honorary Doctor of Laws by St. Francis Xavier University and, as Senator Muir put it so well, I congratulate St. Francis Xavier University on their wisdom in choosing such a worthy recipient of the highest honour that a university can bestow on anyone. Congratulations, Senator Macdonald.

Hon. John M. Macdonald: Honourable senators, I would like to thank Senator Muir and Senator Hicks for the nice things they have said about me and I would like to thank all of you for your applause. Perhaps I should add that as I listened to all of those nice things being said, I thought to myself that I had heard all of those things being said about other people, but it was always during their obituaries. So, honourable senators, I am glad to be in the position of hearing them while I am still here to enjoy them. I do thank you.

Hon. Senators: Hear, hear!

THE HONOURABLE SIDNEY L. BUCKWOLD

TRIBUTE ON RETIREMENT AS HONORARY COLONEL OF NORTH SASKATCHEWAN REGIMENT

Hon. Efstathios William Barootes: Honourable senators, I wish to bring to your attention a very important event which occurred this past week in the great city of Saskatoon, Saskatchewan, and I bring with me today the evidence of that occasion, the Saskatoon *Star-Phoenix*. My great friend and yours, the Honourable Sidney Buckwold, was honoured once again in the city of Saskatoon upon his retirement after 16 years as Honorary Colonel of the North Saskatchewan Regiment.

Hon. Senators: Hear, hear!

Senator Barootes: On the front page of this very distinguished and important daily newspaper is a picture of the colonel himself as he is reviewing his troops for the last time before he takes the last salute and puts away his baton. I might add that Sid Buckwold, our great senator from Saskatoon, has received many honours in his day, and I hope this is not the last of them. Senator Buckwold has been a distinguished scholar, a very successful businessman and, if I may say so, a distinguished statesman and politician.

Senator Steuart: And a good Liberal!

Senator Frith: That is a redundancy; they are all good!

Senator Barootes: In addition, he has been a militarist of great renown. I take this opportunity to draw this occasion to the attention of the Senate and to salute my friend, the Honourable Sidney Buckwold, as I know you would all wish to express your good wishes to him.

Hon. Senators: Hear, hear!

Hon. Sidney L. Buckwold: Honourable senators, first, let me thank Senator Barootes. I can only say one thing: Senator Barootes, you win. I support Bill C-22!

Some Hon. Senators: Hear, hear!

Senator Frith: You are just kidding, I hope!

Senator Nurgitz: We knew it all along!

GOVERNMENT ORGANIZATION BILL, ATLANTIC CANADA, 1987

FIRST READING

The Hon. the Acting Speaker informed the Senate that a message had been received from the House of Commons with Bill C-103, to increase opportunity for economic development in Atlantic Canada, to establish the Atlantic Canada Opportunities Agency and Enterprise Cape Breton Corporation and to make consequential and related amendments to other Acts.

Bill read first time.

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

On motion of Senator Phillips, bill placed on the Orders of the Day for second reading on Tuesday next, May 17, 1988.

WESTERN ECONOMIC DIVERSIFICATION BILL

FIRST READING

The Hon. the Acting Speaker informed the Senate that a message had been received from the House of Commons with Bill C-113, to promote the development and diversification of the economy of Western Canada, to establish the Department of Western Economic Diversification and to make consequential amendments to other Acts.

Bill read first time.

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

On motion of Senator Phillips, bill placed on the Orders of the Day for second reading on Tuesday next, May 17, 1988.

• (1410)

CUSTOMS TARIFF

BILL TO AMEND—REPORT OF COMMITTEE

Hon. Ian Sinclair, Chairman of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Wednesday, May 11, 1988

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

TWENTY-FOURTH REPORT

Your Committee, to which was referred the Bill C-118, An Act to amend the Customs Tariff, has, in obedience to the Order of Reference of Tuesday, 3rd May 1988, examined the said Bill and has agreed to report the same without amendment.

Respectfully submitted,

IAN SINCLAIR
Chairman

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

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

IMMIGRATION ACT, 1976

BILL TO AMEND—REPORT OF COMMITTEE PRESENTED AND PRINTED AS APPENDIX

Hon. Joan Neiman: Honourable senators, the Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its twentieth report, on the Bill C-55, to amend the Immigration Act, 1976 and to amend other Acts in consequence thereof.

I ask that this report be printed as an appendix to the *Minutes of the Proceedings of the Senate* and the *Debates of the Senate* of this day and form part of the permanent records of this house.

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

Hon. Senators: Agreed.

(*For text of report, see appendix, p. 3361.*)

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

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

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY RELATIONSHIP BETWEEN CHILDHOOD POVERTY AND CERTAIN ADULT SOCIAL PROBLEMS

Hon. Brenda M. Robertson: Honourable senators, I give notice that on Tuesday next, May 17, 1988, I will move:

That the Standing Senate Committee on Social Affairs, Science and Technology be authorized to examine and report upon the relationship between childhood poverty and certain significant and costly social problems that manifest themselves in adult life, and on measures which might better alleviate such problems; and

That the Committee present its report no later than March 31, 1989.

QUESTION PERIOD

AGRICULTURE

WESTERN CANADA—DROUGHT CONDITIONS—GOVERNMENT ASSISTANCE

Hon. H.A. Olson: Honourable senators, I have a question for the Leader of the Government in the Senate which arises out of a very serious—and I think it has now reached the stage of being a state of emergency—drought situation in parts of western Canada. The question also arises partly because of the answer provided yesterday by Senator Phillips to a question asked by Senator Fairbairn on May 3.

I thank Senator Phillips for the answer that was given yesterday. The information given was only that the federal government was studying the situation, and there followed a list of a whole lot of programs that were all in place long before this government came to office, such as the Crop Insurance Program, and so on. Senator Phillips went on to say—and this is what is disturbing:

> . . . an Assistant Deputy Ministers' committee is being formed to . . . advise ministers—both federal and provincial—

I would like to ask the minister if the government is unaware that this is a very serious situation insofar as brood cow herds are concerned in much of western Canada. There has been some rain, of course, in Manitoba and eastern Saskatchewan—

Senator Guay: In northern Manitoba.

Senator Olson: —but a very large part of Saskatchewan and almost all of Alberta have had no rain yet. We have heard of some programs announced by the provincial governments, but to date we have not heard of any participation in any program by the federal government.

I do not know how to impress upon the government that the matter is urgent and the situation constitutes a major problem.

When is the government going to take seriously the fact that those people need some help in order to save their cattle herds?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I think it is quite unnecessary for Senator Olson to believe that he needs to draw the problem to the attention of the government, whose Deputy Prime Minister and several most senior ministers are from western Canada. The committee of senior bureaucrats, to which yesterday's response referred, is addressing some of the issues that have to be addressed, under the direction of the federal and provincial ministers. This matter has been the subject of discussions between federal and provincial ministers for some time now.

Secondly, the honourable senator seems to imply that existing programs—some of which, as he states, were brought in under a previous government—are inadequate to deal with a drought situation. That is not the point of view of either the federal government or, so far as I am aware, the provinces. We believe that a number of existing federal and provincial programs are indeed designed to address the risks of drought. They include crop insurance, assistance for rural water supplies through the PFRA, and prairie provincial programs and community pastures. Water supplies are assisted through a program called the Agri-Food Regional Development Subagreement in British Columbia. Within those programs it should be possible for the federal and provincial governments together to develop a joint response which will be equal to the situation described by Senator Olson.

Senator Olson: Honourable senators, I want to be careful not to be argumentative in this, because what I am looking for is help for those people and not to get into an argument with the Leader of the Government. But it is clear from what he has just said that he, at least—and I hope that is not true for the rest of his government—does not understand this situation.

● (1420)

The crop insurance program does absolutely nothing to save the cow herds that are now unable to graze on the range because there was no rain this spring and no snow during the winter. Another thing the government seems to fail to understand is that the emergency is now. This is not the time to start forming committees to look at the problem. Without being offensive in any way, could I ask the Leader of the Government when he believes the government is going to announce a program?

Farmers have been feeding their cattle since early last winter. They should have stopped feeding their cows during the first or second week of April, but they are still buying hay, and hay has nearly doubled in price over the past four weeks. Those cow herds are extremely important and are at risk today, not some time down the road. So when will the government make an announcement so that we do not have to have herd dispersal? Will it be on May 15 or June 1?

Senator Murray: Honourable senators, I appreciate the point the honourable senator is making. I must tell him that the record of this government—which is one of unprecedented assistance to western agriculture—is the best proof and the best indicator of the action that this government is capable of, and will indeed take in an effective way, to address the kinds of problems he has raised.

[Senator Olson.]

Senator Olson: I have acknowledged the help that this government has given to grain farmers and others because of the drought. They appreciated that and I appreciated that.

But if I am out on the Prairies in southern Alberta or in Saskatchewan—as a matter of fact, this does not only affect the southern part of the province; this affects the northern part of Alberta as well—trying to save the only livelihood those farmers have, which is the brood cow herd, and bearing in mind that this is a desperate situation, I am afraid that they will ask, "What have you done for me lately?" They need help now. I hope that the minister will relay that message to the Minister of Agriculture so that the government does not sit back at this late date, thinking it is discharging its responsibilities by forming committees. The farmers there need action now.

ECONOMIC SUMMIT, 1988

RE-ENERGIZING OF DEBT STRATEGY—POSSIBLE CANADIAN PROPOSAL

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, the Senate has been in such a laudatory mood today that I hestitate to be critical.

Senator Flynn: Really!

Senator MacEachen: I wish to refer to a delayed answer given yesterday on the subject of re-energizing the debt strategy. I am grateful to have that answer, and also the answer on the role of the World Bank, but I thought the last sentence of the answer, under the heading "Re-energizing of Debt Strategy—Possible Canadian Proposal", trivializes the Senate and trivializes the Toronto Economic Summit. It reads as follows:

> We reject, as do other creditor and indeed debtor countries, the notion that some "magic wand" financial scheme can be devised which will rapidly eliminate the international debt problem, and we expect that this point of view will be endorsed at the Toronto Economic Summit.

Senator Roblin: Whose statement is that?

Senator MacEachen: That is the last sentence in a delayed answer provided yesterday.

I want to make a point here and draw to the attention of those who prepare these answers that we do read them and that we expect them to make some sense. I do not think there is any senator who believes that there is "some "magic wand' financial scheme [that] can be devised which will rapidly eliminate the international debt problem," nor do I think that such a trivial observation should be put before the Toronto Economic Summit for endorsation. End of observation!

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable

senators, if the honourable senator could give me the names of those who drafted that answer, as perhaps he could, I would draw this to their attention personally. In any case, I shall, with pleasure, draw his observations to the attention of my colleague, the Secretary of State for External Affairs.

PARLIAMENT

CANADA-UNITED STATES FREE TRADE AGREEMENT—TIMETABLE FOR INTRODUCTION OF ENABLING LEGISLATION

Hon. Peter Bosa: Honourable senators, the Prime Minister recently stated that he wants the legislative program of the government to be adopted before he calls an election. Among the items he indicated that would have to be passed by Parliament was the Canada-United States Free Trade Agreement. Could the leader give this chamber an indication as to when the government will introduce such legislation so that we can get on with this matter?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Very soon, honourable senators.

Hon. Royce Frith (Deputy Leader of the Opposition): That certainly sounds better than "in due course."

ANIMAL PEDIGREE BILL

THIRD READING

On the Order:

Resuming the debate on the motion of the Honourable Senator Bielish, seconded by the Honourable Senator Kelly, for the third reading of the Bill C-67, An Act respecting animal pedigree associations.—(*Honourable Senator Marchand, P.C.*).

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, yesterday I adjourned this order in the name of Senator Marchand because he is our spokesman on this bill. As far as I know, his concerns were dealt with in committee and there is no reason why it should not pass.

Motion agreed to and bill read third time and passed.

WESTERN ARCTIC (INUVIALUIT) CLAIMS SETTLEMENT ACT

BILL TO AMEND—CONSIDERATION OF REPORT OF COMMITTEE—ORDER STANDS

On the Order:

Resuming the debate on the motion of the Honourable Senator Tremblay, seconded by the Honourable Senator Phillips, for the adoption of the Thirteenth Report of the Standing Senate Committee on Social Affairs, Science and Technology (Bill C-102, An Act to amend the Western Arctic (Inuvialuit) Claims Settlement Act, with one amendment), presented in the Senate on 5th May 1988.—(*Honourable Senator Frith*).

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, as I said yesterday, Senator Adams is our spokesman on this bill. He is unable to be here this week. Today he called me from Rankin Inlet and informed me that he wishes to make an intervention at third reading on this bill. Therefore, I move that it stand in his name until Tuesday next.

Order stands in name of Senator Adams.

EMERGENCIES BILL

SECOND READING—ORDER STANDS

On the Order:

Resuming the debate on the motion of the Honourable Senator Kelly, seconded by the Honourable Senator Bielish, for the second reading of the Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof.—(*Honourable Senator Hicks*).

Hon. Henry D. Hicks: Honourable senators, I move that this order stand until Tuesday, May 17, 1988.

Order stands.

AGRICULTURE AND FORESTRY

CONSIDERATION OF REPORT OF COMMITTEE ENTITLED "FINANCING THE FAMILY FARM TO THE YEAR 2000"—DEBATE ADJOURNED

The Senate proceeded to consideration of the sixth report of the Standing Senate Committee on Agriculture and Forestry, entitled: "Financing the Family Farm to the year 2000", tabled in the Senate on Thursday, April 28, 1988.

Hon. Dan Hays: Honourable senators, I would like to speak to the report tabled on April 28, 1988, by the Standing Senate Committee on Agriculture and Forestry, entitled: "Financing the Family Farm to the year 2000."

In beginning my remarks I would like to express sincere thanks to the many presenters to the committee, particularly those we were unable to thank in person, who sent written briefs to the committee in the form of letters or, in many cases, very thorough and well thought out memoranda. These were of invaluable assistance to the committee in drafting its report and in gaining a better understanding of the difficulties facing the agricultural sector. I would also like to thank all committee members for their attention and attendance at committee meetings, particularly the deputy chairman of the committee, Senator Barootes, who, in many spirited exchanges with other members of the committee—in particular, Senator Olson—helped us better understand the problems facing Canadian agriculture. Of course, the help of the researchers and other staff of the committee is much appreciated.

In speaking to the report I will comment briefly on the actual report and recommendations. The recommendations speak for themselves, as does the report. However, I would like to take a few minutes to tie some of the recommendations together. I would like to give a better picture of what the committee has in mind in terms of dealing with the crisis in agriculture as a short-term problem, but, more importantly, dealing with the general problem of the future in terms of how we should plan long term to avoid some of the problems we find ourselves faced with today and to have in place policy initiatives that will assist us in doing that.

The recommendations dealing with the immediate problem are to reinforce the government's initiative in the form of the Special Canadian Grains Program. This program is needed to deal with the immediate problem that is a result of the trade war between the European Economic Community and the United States. We are not the first to apply these payments. These are payments to farmers in the cereal grain sector and oil seed sector in order primarily to assist them with the problems they find themselves faced with. There are similar programs that have been in place in Europe and the United States which pay farmers to produce commodities. These commodities are produced in great surplus, thus these surpluses come on to international markets and distort international trade. I do not see this program being a program such as that, but, rather, a program to protect Canadian farmers who find themselves suffering as a result of those programs in other countries.

The last thing I would like to comment on is the concept of decoupling. We did not have an opportunity to spend a great amount of time on this subject, but we did hear some evidence and we do have a comment. I will elaborate on that when we come to it and revert to the Special Canadian Grains Program in that context.

The other immediate assistance we recommend is an interest-relief scheme. This consists of the funding of a program—and it is conceivable that it may cost anywhere from $200 million to $400 million per year for several years—to assist farmers through the Farm Debt Review Board process and the Farm Credit Corporation by providing assistance to farmers in the form of reduced interest, or an interest holiday, or something of that nature, in situations where the lender is prepared to participate by restructuring a loan, extending time, or perhaps even reducing principal outstanding.

The report also reinforces the Canadian Rural Transition Program, which is an initiative of this government, and points out that the committee would like to see eligibility for that program finally determined by Farm Debt Review Boards, which are now in their second year of operation and which we believe have great potential. However, we do think that the workings of both the Farm Debt Review Boards and the Canadian Rural Transition Program should come before the appropriate committees of both the Senate and the House of Commons in the form of annual reports, expressing opinions on how well they are working. In the event that a committee of either house felt further review was necessary or change was necessary, there would be an opportunity through the committees to initiate that process. Those, then, are the matters of short-term policy response on which I wished to comment.

• (1440)

I would now like to spend some time on those matters which have long-term potential; that is, the potential to assist us with better long-term planning for the agricultural sector. These programs are twofold.

First, dealing with lenders, we propose that the Farm Credit Corporation assume a role more like that of the Canadian Mortgage and Housing Corporation where they would have the power to insure loans. This is a means by which government policy could be implemented to ensure that lending institutions met minimum standards in terms of their ability to judge the quality of a farm loan. These lenders would include insurance companies, which have now essentially abandoned agricultural lending, as well as credit unions, cooperatives and government lenders such as FCC. This policy initiative would take the form of saying to those lenders: "We will make this insurance feature available to you, the lenders, if you satisfy us that you have on staff the appropriate number of people with the appropriate skills to properly assess farm loans."

Recently, what has been happening is that fewer and fewer lenders are prepared to participate in the farming market. In future this will create difficulty, because when the agricultural sector returns—and it will return as a buoyant area of our economy as surely as it became a depressed area of our economy—we will need sufficient farm lending capability to serve this sector's needs at that time. Therefore, a policy initiative designed to interest farm lenders, in the form of the existing financial intermediaries in the market, is much needed. We think it is much needed in the context of the government's being able to have a policy input which would ensure that they would be responsible farm lenders and that they would be properly staffed in terms of capacity to assess farm loans.

This initiative is prompted in part because of the many times we have heard the same complaint, namely: "I am a farmer in trouble, not simply because I borrowed money but because the bank or the lending institution was not responsible in making money available. In other words, they lent me money that I should not have had." Honourable senators, I must say that when this happens it does not excite much sympathy on my part. Nonetheless, there is some truth in that point of view. These people should, perhaps, not have been lent money, but they were. However, if we had more responsible and better farm lenders, we could avoid a lot of the problems we are experiencing today.

On the other side of the picture, many farmers who need credit are not able to assess properly how much credit they need. What is creating the difficulty in many cases is determining whether they should use credit and how much they should use. Also, this decision-making process on the part of the borrower would be greatly aided if they had the help of government programs that ensured that they had the ability to

develop appropriate management information for the kinds of operations that they have.

One of the things that causes the industrial sector to be very efficient and to drive out small producers is that on a per unit basis they can develop good management information in terms of assessing markets for the goods they are producing and in terms of assessing cost of production. This is more difficult for farmers, because farmers are a diverse group of small producers relative to the total commodity—let us say, wheat—that is produced. This committee believes that there is room for a government initiative to assist farmers to overcome the high cost of developing that information on a per-unit-of-production basis with programs to assist them in selecting the appropriate type of assistance that will support them.

Therefore, honourable senators, the two things together are necessary: a policy initiative for lenders to ensure that they are more responsible and that they make better lending decisions; and an initiative for borrowers to make sure that they have good information on which to base credit-use decisions. It may also assist them with other decisions involving the economic modelling of their farm, or aid them in determining whether they should produce this commodity or that commodity. Assistance to the borrowers in that form would, over the long term, lead to a much better relationship between borrowers and lenders and would avoid some of the problems we are experiencing today. It would also make the agricultural sector more efficient than it is today.

It might be said that these things will happen in the normal course. It is true; they would, and they do. However, we must bring to bear on this whole subject the support that Canadian politicians of all parties have stated for the family farm.

To a degree, the family farm in the current economic environment, in my opinion, is somewhat artificial. We force owner-operator situations in the agricultural sector through various programs because we believe that a certain percentage of our population should live in rural Canada. We also believe in the kind of unit that exists today producing agricultural commodities. In fact, there is an interesting political flavour to it in terms of the power of a rural vote compared to an urban vote.

In any event, we believe in the family farm, and if we want to do justice to our belief and our support for the family farm we must be prepared, in my opinion, to develop policies of the nature I have tried to describe in reference to borrowers and lenders in order to ensure the survival and the economic health of the family farm.

Honourable senators, those are all the remarks I want to make in general about the recommendations. As I say, they speak for themselves.

I would like to dwell briefly on the concept of decoupling. The crisis in agriculture, as I said earlier, is most often blamed on the trade war in the cereal grains sector, and I have also described how that came about. There are a number of organizations which are beginning to discuss this crisis, and I would like to speak briefly about them. I mention, first, the Organization for Economic Co-operation and Development, the OECD. Canada is a member country of the OECD, and that organization, as of one year ago, May 1987, made a very large report to council wherein they prepared an economic model of the agricultural economies of member countries. They also made some recommendations. I believe it is primarily this initiative on the part of the OECD that has given rise to the numerous discussions around the word "decoupling."

For purposes of explanation, in its simplest terms, "decoupling" means that policies designed to assist the agricultural sector should not be commodity-specific; they should not be a payment to produce, but, rather, they should be a payment to assist agriculture. In this respect, I am going beyond the strict definition of "decoupling," but that will give you some idea of what it is about. It is a very complex idea and not well understood by many people—including me—and is the subject of much discussion. As I say, I believe its origins lie primarily in the OECD economic model.

The OECD makes predictions that if the member countries reduced support, which reduction distorts international trade through producer and consumer subsidies, there would not be very great harm to the sector. However, the key to it is that the various countries involved in these subsidization policies must withdraw those subsidies together, because if one is out of step with the other, that one will have an advantage and the whole system will not work.

The report of the OECD is very long. In fact, its summary is 100 pages long. I am, perhaps, not doing it justice by making these brief comments, but I wanted to mention its existence and to highlight its importance. I also point out that there has been an update of that report as of this month.

Another aspect of this ongoing initiative is evidenced by a conference sponsored by Agriculture Canada and put on by the Canadian Institute for Resource Law on Decoupling in February of this year, at which many papers were presented. No final declaration of that conference has been published, because the purpose of the conference was to air the issue, and not to determine finally what should be done.

• (1450)

Another example of this ongoing discussion was the World Food Conference to which the deputy chairman and I, as chairman of the committee, were invited. Unfortunately, the deputy chairman was unable to attend, but Senator Rossiter attended in his place. The conference took place on April 7 and 8 in Brussels. This topic was one of the primary points of discussion, and the discussion was expanded to include not only the problem of the trade war but the effect that the trade war is having on developing and under-developed countries. In a few words, the mischief that is occurring there is that because of very low commodity prices in international markets the agriculture of developing and under-developed countries is suffering. There is no incentive for them to develop their own agriculture when commodity prices are so low internationally. The next example of this ongoing discussion I would draw to the attention of senators is a declaration entitled "Reforming World Agricultural Trade", which was published last week. It

represents work carried out by the Institute for Research on Public Policy, located in Canada, and the Institute for International Economics, located in the United States. This declaration or report represents a consensus statement of 29 agricultural and international trade experts drawn from 17 countries. I am sure that the work done by this particular group not only here in Canada but throughout the world will be of some considerable assistance in the ongoing debate on the difficulties we face in the agricultural sector.

The other important thing to mention in this context is the Economic Summit in Toronto next month. This forthcoming summit has and the two previous ones had on their agenda this particular topic. It is receiving attention at the Uruguay round of talks on the General Agreement on Tariffs and Trade. Canada, of course, has independent initiatives, through the Cairns Group, with other countries. We list these efforts under the heading "decoupling" in our report. Though we do not go into too much detail, we do indicate that perhaps this could be the topic of a possible future study by the Standing Senate Committee on Agriculture and Forestry, or some other committee, in terms of tying together the themes that seem to be coming out of these various policy-development type initiatives. That is, we can no longer continue to subsidize and assist agriculture in the way we have traditionally done so because we are causing too many problems internationally. So we have to revise the manner in which we help agriculture.

I leave with honourable senators a couple of comments on what is going on in Canada. For instance, I am very concerned that, under the present government, clearly decoupled assistance to help with research and development is being reduced. We have seen a drop in the moneys made available by way of operating expenditures for agricultural research. In 1986-87 the amount available in constant dollars was $58 million. In 1984-85 the amount was $69.1 million. This trend is not desirable in that if we are going to help agriculture, this is the kind of assistance we should be considering and increasing. Another thing this government is doing that concerns me is imposing user fees, which involve in almost all cases reduced income to the farm sector. There are ways of helping the farm sector in this policy-development context that are not coupled to commodity production or are not commodity specific, and we should be emphasizing them. Farm credit is another area of clearly decoupled assistance. Thus, I think the government should give the recommendations of the committee serious consideration. That concludes the general comments I wanted to make.

I would like to return to one area of the report, that being the recommendation that further assistance be given to Canadian agriculture to develop better management information. I raise this point because matters have come to my attention recently through the press which tend to reinforce what it is the committee had in mind when it suggested that the government assist with management information. One such item is an article in *The Manitoba Co-operator* dated April 28, 1988, the very day we tabled our report. The article talks about a survey done by some post-graduate students of farmers who failed in the year 1985. They surveyed 67 of 162 farmers who went out of business that year. Some interesting statistics came to light. The average age of those who went out of business was 40 years. The average debt was $279,000. One of the people involved in the study is quoted in the article as saying:

> —lenders did make mistakes but are not totally to blame for farmers going broke.

The lenders are the banks. The article goes on:

> The banks admit they made mistakes and are sharing the blame . . . But farmers made mistakes relying on the lender. Both sides lost track of the downside and how to track risk.

Further on in the article one of the authors of the survey said:

> —he was horrified by the poor financial records kept by the survey group. Thirty per cent were rated as severely limited in responding to record keeping.
>
> —only one or two had good records.

Another example of how to keep good records and of how to provide support to assist farmers in developing good records, which are the basis of good management information, is the experience under the Ontario Red Meat Plan. They now have evidence which shows that those who weighed their cattle, as part of the progam to assist farmers in developing management information, increased their productivity and efficiency by 6 to 10 per cent. There are many other examples of how good management will assist farmers. The last one I will mention is the 1986 Ontario Farm Management Analysis Project which studied hog operations. It found that the most efficient producers had annual profits $36,000 higher than the average for the group and $48,000 higher than the lower two-thirds of hog farms surveyed.

So we in the Agriculture Committee believe that this is an important initiative, and we hope that it will be pursued by the government. The government has not ignored this matter. The Government of Canada and the provinces, through their extension services, do help in this area. In fact, the Prime Minister, in his announcement last December, indicated that some $13 million would be made available to assist in this effort. We were very pleased to see that initiative, but there is much more that can be done to assist in the development of good management information.

Hon. H.A. Olson: Honourable senators, I would like to take a few minutes, first, to commend the committee, particularly the chairman and the deputy chairman, for taking the time and making the effort to put together this report. I know that a great deal of time and hard work were needed to attend all the committee meetings and to hear the witnesses. The committee travelled to various parts of Canada and to Washington to study this problem of the farm credit crisis, and the members are to be commended for their work. I think the committee has done an excellent job in many respects, and I am not sure that we could have—however long we might have studied this matter—come up with a set of recommendations that would solve all the problems inherent in this farm credit crisis.

• (1500)

Honourable senators, when we set out on this task, my main interest was to see if we could come up with an accurate reading of the magnitude of the problem. We had heard that 30 per cent or 35 per cent of farmers were in serious difficulty respecting the debt service charges they had to pay. We heard other figures from the Farm Credit Corporation. In talking to the chartered banks, yet another set of figures would be used in terms of who was near bankruptcy, who was in serious difficulty, and who only had too high a cost and could probably survive. I think the study carried out by this committee did, in fact, give us a better picture of how serious the problem was and the extent of its magnitude. The committee could have continued its study for months more, but I do not think there would be total agreement on how serious and how widespread the problem might be.

Honourable senators, one other thing came through loud and clear to me, and that is that there are a lot of good people, good farmers, out there who are caught and who got caught in the inflationary spiral from about 1977 or 1978 up until 1982 or 1983, or until the worldwide depression came along. Having made investments and having acquired capital assets, mostly in the form of land, but including equipment and other things, they are caught to the point where they simply cannot survive if they are going to be asked to pay all of the debt service charges that go with the inflated prices of the land they purchased at that time. For example, there are thousands of farmers with hundreds of thousands, or perhaps even millions, of acres that, today, are worth less than half what they paid for them. Those people have signed their names to a note and they are continuing to pay the interest charges.

Honourable senators, another thing came through—and I do not know what we can do about it, because it is terribly sad and unfair—and that is that some financial institutions have a rule that if you are behind in making payments, they do not reduce the interest rate. I know of some farmers who are still paying interest rates as high as 18 per cent because they were in arrears. Of course, 18 per cent was the rate of interest in those days, in 1981 or 1982, when they took out the loan. We should do something about that. I sincerely believe that the government ought to take some action in that respect, because not to do something guarantees that those people will go under. As I said, they are good farmers. Their husbandry and ability to look after the land and to make it produce is excellent. Surely, honourable senators, we either have the ingenuity or we can develop the capacity to deal with the credit requirements of those people, and not throw them out on the road allowance and really wreck their lives, because that is, in fact, the consequence of bankruptcy and turning a farmer off his land. What happens is that they go to town and live in poverty or on welfare, because in many cases, while they are good farmers, they do not have any skills to do anything else. I think we should really look into this and find some way of dealing with the problem.

Honourable senators, I am not suggesting that that will be easy. I know there are consequences of intervening. Some banks that would otherwise stay in the agriculture lending business may be driven off because of government restrictions which may mean that they cannot collect on certain assets. Although I was not old enough to be involved at the time, some members of my family went through that. In the late 1920s and early 1930s the banks withdrew their lending to agriculture across Canada. The old Farm Loan Board was set up about 50 years ago because nobody was making credit available to farmers. That was as a result of the experience they had had. As I say, I am only going by what I have heard from some people who were involved and from people who went before me.

Honourable senators, I predict that unless we can get this matter sorted out that situation will arise again. The banks will back off all lending to, for example, the cereal grain industry. I think they are in that situation now, in terms of the tobacco growers, because, as you know, that market has gone down and the prices are nowhere near what farmers enjoyed some time ago.

Honourable senators, I think the committee has done some good work to delineate the problem and I hope we can do something about it.

I suppose another lesson that most people indicated they had learned—unfortunately, every generation seems to have to learn that lesson—is that when you buy capital assets and you set the price or you come to an agreed price, if that is the right term, you should do it on the basis of the production and the revenue from that production so that you may be able to pay off or amortize the debt. Unfortunately, that is not what happened. What happened for several years was that people paid prices, for example, in 1978, if you like, because they figured prices were going to be higher in 1979 and still higher in 1980. They felt they should buy immediately because it would cost them more later on. Furthermore, what they did not realize, and what people in the western world could not have anticipated, was that there would be a tremendous increase in interest charges.

I believe we have to set up some kind of arrangement to save as many of those farmers as we possibly can. I think we should lean over backwards to make the effort. I also believe that we are going to be faced with further situations like this one. The grain farmers are the ones who are now in the worst difficulty, because in 1976, for example, farmers in southern Alberta received $6.40 a bushel for their durum wheat. Today the price is less than $3 a bushel. Can you tell me of any other industry that has had its revenue cut in half and its costs increased by more than 100 per cent and which has still been able to break even? I am sure you cannot.

Senator Frith: Or survive.

Senator Olson: Of course they are not going to survive unless we do something about it.

Honourable senators, I do not want to get into a discussion of the Free Trade Agreement, but there will be many more farmers in severe financial difficulty because of something over which they have absolutely no control. I could mention

the people in the horticultural industry, for example, if and when we get to the situation where we have the trading arrangements that are in the so-called Free Trade Agreement with the United States.

● (1510)

Another group is the grape growers. They really believe that they will have to go out of business and find some alternative use for their land.

I do not wish to argue the Free Trade Agreement now, but I know that the farmers who are caught in that situation really wonder what they are going to do—and they had nothing to do with depressing the market.

The tobacco growers know very well that there is no other crop that comes anywhere near providing the amount of return per acre that was received from growing tobacco six, eight or ten years ago. Yet, they still have land payments to make that were based on that kind of revenue.

That situation will apply in the horticultural industry, and it will certainly apply in connection with the vineyards, which will have to be ploughed up because there is no satisfactory market for the grapes. I know of no other crop, and neither do they, that can be put on that land and which will provide anywhere near the same return that was received from supplying grapes to the Canadian wine industry.

Senator Hays referred to the banks and quoted from an article which indicated that the banks now share some of the blame for having lent so much money in those inflationary times. But the banks are not sharing in the cost of it, except in those cases where the whole operation goes into bankruptcy, when they too bear a loss. But for those farmers who are still trying to make their payments the banks are not reducing their interest charges, nor are they writing off any of the principal that is involved. So "Thanks a lot for sharing in the blame. How about sharing in the cost, too, if you accept part of the blame?" That is what I would say to some of the bankers.

Oh, my, they would back away from any write-downs. That has something to do with the bankers' bible: You never reduce the principal in a debt, no matter who it is. They told us that over and over again. They don't want any of that. You can reschedule and do all kinds of other things, but no write-downs.

Honourable senators, on land where someone has paid $800 per acre and its productivity warrants that it should be only $400 per acre—because that is all that it can support in terms of what it can produce—then I suggest it should go down to $400 if we want those farmers to either survive or be reasonably prosperous.

There has been no volunteering that I have heard from the financial industry to go that distance. We know what it has done to the Farm Credit Corporation. It is bankrupt, I guess, by all the usual accounting procedures. I think the government should get involved in this for reasons that I explained before, because a whole lot of people are going to be hurt—and I do not think it is a responsible thing to do, to throw those people in the trash can. We need to do things that will allow them to do what they are best able to do, particularly in the situation in which they find themselves, because it is not of their doing that they have been caught in this terrible situation.

[Senator Olson.]

Hon. Efstathios William Barootes: Honourable senators, I wish to make a few comments on the excellent submissions made by the committee, and particularly on the prudent and well thought out commentaries made by my chairman and by Senator Olson, whose advice in these matters is almost like looking back to Shakespearean and Cartesian logic. Those senators are experienced in the agricultural industry. The first honourable gentleman is not only a practitioner of law but he is also a very well known farmer and cattleman in Alberta; and the other honourable gentleman, of similar nature, commands the respect of everyone in the southeast corner, at least, of Alberta.

I agree, as we all agreed, that it was demonstrated to us in committee that this is a human and industrial tragedy that we are experiencing at the present time in the farming communities, particularly in the grain area—although Senator Olson mentioned also the grape farmers and also the tobacco farmers in the Simcoe County area.

Indeed, it is a tragedy. I am rather hard-hearted about this, but as I listened to the presentation of testimony I became aware that too many good, young, well educated, technically efficient and capable farmers were in terrible trouble and would, or could, be lost to this important Canadian industry unless something was done to alleviate the present situation. That is the group to whom we should show some dedication lest they be lost to the farming industry and, as was said, be driven into the cities, perhaps to come to grief—or occasionally to become president of Imperial Oil, or some such position, although that, of course, is a rarity!

It is those young, efficient, well educated farmers, who understand the situation, upon whom the industry should be dependent for the next 20 or 30 years for technological progress.

If we do not do something to help them—and as the rest of the population, who as members of an older age group, have, perhaps, paid off their farms over the years and are able to carry on—we shall have an increasingly older group left on the farms and there will be no one to succeed them. That would be a tragedy for this great industry, which at one time sustained not only Canada, as its leading industry—and perhaps even does so to this day—but sustained the world with food for many generations.

To analyze the situation in its ultimate, there is nothing wrong with Canada's grain farming industry today that $7 wheat would not cure.

Some Hon. Senators: Hear, hear!

Senator Barootes: But we are not going to get $7 wheat; so we must look to other ways of solving this.

In the foreseeable future, from what I have seen and learned, we will not get to that wonderful day until the United States and the European Economic Community stop squabbling over who is going to subsidize their farmers the most to

sell and export their wheat—and I do not see an immediate solution to that in the next year or two. Therefore, it is incumbent upon us, as citizens, if we want this industry to survive—and it is incumbent upon governments in general, and perhaps this government in particular—to do what we can to alleviate the present crisis situation. We have to do that in the short term while we are planning for the medium and longer term. We must do something for the immediate salvation of the industry before we can talk about any long-term economic prosperity for the industry.

There is no doubt, as was pointed out by Senator Olson and others concerning the economic factors, that there has been some intemperate borrowing and some stupid lending, all of it based on the man-made characteristic of greed—greed by the purchaser in the belief that the value of his land will continue to rise, and that the price of his product will also continue to rise; and greed on the part of the lender, particularly the private lender, based on the fact that the rising price of land will justify a larger loan and better earnings.

● (1520)

Then we fell into that dreadful situation—and I do not want to blame anyone, but I look at the chairs opposite—of 22 per cent interest rates and, at the same time, a drop in the price of grain from $6.50 for soft wheat to $3.00, and from $5.80 for hard wheat to $2.70. Where does that leave the system? You have wrecked the whole system; you have wrecked the system for the farmer growing the grain, and you have also wrecked the system for the lender, because he has no way of recovering on his loan because the equity the farmer has left in the land is no longer $800 an acre —which is the amount he borrowed, hoping it would go to $1000 or $1200 an acre—it is $300 or $400, which does not even cover the cost of the original loan. In other words, the asset is gone and the farmer is wiped out. So, we must do something about that.

We cannot do very much with the private lenders because, as was pointed out, there is still such a thing as contract law in this country, and all a bank can do is take the land over, with the land not worth as much as it was when the loan was made.

I have found in the past that bankers make very poor farmers and that they are unable to work the land as well as the farmers. So bankers are reluctant to seize the land. If they do, they beg the farmer to come back to work it. They become the landlords and lease the farms to the original owners. That is one of the solutions.

But for all the reasons that my honourable friends have outlined there is no doubt in my mind that we require and deserve a shakedown in the basic economy of our farms and farmland. That is coming; we cannot avoid that. But with that shakedown I pray that those good, young and efficient farmers of whom we spoke will somehow be offered the opportunity to remain on the land to make it productive and to be able to give us another generation of efficient farmers. That, I think, is going to be one of the mainstays.

Senator Hays spoke about MIS, Management Information Systems. We did have quite a discussion about that. I suppose that if you are one of those farmers of whom I spoke, a field husbandry graduate from the University of Alberta or the University of Saskatchewan, you would understand the use of all of these highly advanced information systems, but we also have many farmers who are not yet capable of utilizing these aspects of modern technology. I suppose I am hard-hearted enough to believe that if a person is investing his own money in an enterprise he should have the luxury of being able to go bankrupt on his own and because of his own mistakes, but when a person is borrowing money from a private lender, such as a bank, I do believe, as Senator Hays has pointed out, that it is incumbent upon the lender to satisfy himself that the borrower is competent enough to utilize the mortgage or the loan in such a way that not only can he repay the interest but he can repay the principal as well. That is good business for a bank. If the bank is not doing that, it should suffer.

But there is one area where that does not apply, and that is in the area of taxpayers' money being lent by an institution such as the Farm Credit Corporation. That is an institution of the government and is a lender, perhaps at times a lender of last resort, serving not only as a bank for farmers on a long-term basis but also to fulfil, perhaps, a social obligation of the government. The Farm Credit Corporation officials did not have the obligation put on them that before they lent Farmer Brown his money they should ensure that he had a management information system and was fully competent to utilize the loan of $200,000 or $300,000 of public moneys. That is not private money, but public money, taxpayers' money.

I say there is some virtue in the future where we can lay that cudgel on the Farm Credit Corporation so that when the Farm Credit Corporation is advancing these large sums of money to farmers—public money, taxpayers' money—that the officials of that corporation will have to say, "Look here, Joe, before we go ahead with this we want to satisfy ourselves that you have a system of management, a system of information, a retrieval of that information, to satisfy us, the FCC, a government agency, that we are, indeed, utilizing this money not only to your best advantage but to the best advantage of the institution, which is a government agency, and to the best advantage of the people of Canada, who are the ones who are in fact advancing the money."

I think there is some virtue in that, and it took some persuasion to bring me around to accept that somebody should be able to tell a businessman or a farmer that this kind of information capability must be proven before any money is lent. I still believe that when a person is using his or her own money in an investment, be it in a hat shop, a flower shop, a farm, or any other business, that person should have the luxury of being able to go bankrupt because of his or her own mistakes.

We tried to touch on this new word "decoupling." Every year or two in this country new words come along. We had the "global village" brought to our attention 30 or 40 years ago by Marshall McLuhan. We do get what become zip words of the day. The new word today in agriculture is "decoupling."

Senator Frith: What is it?

Senator Barootes: Since you looked quizzically at me, Senator Frith, I will say that I thought "decoupling" might have related to divorce among farm families, but that is not the case.

Senator Frith: My mind ran more along grammatical lines. Why not "uncoupling"?

Senator Barootes: You would rather have "uncoupling."

Senator Frith: Why "decoupling"?

Senator Barootes: Because there are two parts; they want to decouple—that is, divorce, if that is the word—the benefit being given by government programs from a specific commodity-related thing, and that is why it is "decoupling."

The idea is to advance moneys to a person who is growing, for example, mustard seed, which seems to be a favourite of Senator Olson's. The idea is to help mustard seed growers. If we gave $20 a bushel extra for mustard seed nobody would grow wheat, but we do not want to skew the marketplace and the productivity and the production levels of a certain commodity by a grains program or an assistance program that levers it towards the one product. We got into this a little, but not enough for us to be able to make a definitive statement, although the chairman of the committee has attended several important conferences and supplied the members of the committee with several pounds of material on this. But we will come around to this. I think this is something we must look at.

• (1530)

In the meantime, may I say that other than specific programs—particularly in hogs, eggs and milk, which are special programs that some people support and some people do not—our Special Grains Program this year was partially decoupled, because it allowed 12 various grains to be included in the grains program. The government did not tell the farmers they had to grow soft wheat or hard wheat or oats or barley or rye, but it included 12 grains. Therefore, there was no undue influence on the production management choices being made by the farmer. I think decoupling is of some help to the farmer, although there is not total decoupling.

On the other hand, one has to be careful that the farmers are not insulted by decoupling to the extent that you are handing out grants. I think they resent that. I do not think they like handouts. I know the American farmers told us they do not accept subsidies, although about 60 per cent of their revenue comes from the government. According to them, that is not a subsidy.

So we must look for ways of doing this without insulting the farmer. Perhaps special grains programs of this nature is one way; another way is acreage payments, but that also has shortcomings, as we found out a few years ago. We should look for solutions for decoupling and for assistance in the next few years that could be a salvation for the present and allow us to build on medium to long-term survival in the farms.

Senator Olson: Honourable senators, I would like to ask Senator Barootes if he would agree with the interpretation of my attempt to have the mustard growers included in the program. The decoupling that he talks about is there, but we do not want the government to be uncoupled from the address of mustard growers when they issue the cheques for the acreage involved. While I do not agree with the conclusion of his arguments about decoupling, I think there is a validity to them.

[Senator Frith.]

On motion of Senator Fairbairn, debate adjourned.

[*Translation*]

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

CONSIDERATION OF SEVENTH REPORT OF COMMITTEE—DEBATE ADJOURNED

The Senate proceeded to consideration of the seventh report of the Standing Senate Committee on Social Affairs, Science and Technology, entitled: "Child Benefits—Proposal for a Guaranteed Family Supplement Scheme", tabled in the Senate on June 30, 1987.

Hon. Arthur Tremblay: Honourable senators, I imagine you have been very anxious to hear what I have to say about this particular item which I have stood so many times in recent months. I will now try to respond to your expectations which, so far, you have expressed very discreetly. First of all, I would like to explain why the debate on this subject was postponed so many times.

When we tabled the report in June, the committee was not planning to start the debate immediately, for two reasons. First, at the time we were all under the impression that the Senate would adjourn as usual for the summer, which, as you know, did not happen. However, we thought that would be the case and that we could continue consideration of this matter in September or October.

The second reason was that when we examined Bill C-70 on family allowances, most of the witnesses we heard at the time mentioned the problems that Bill C-70 might raise within a much broader context.

With the consent of my committee colleagues, I asked them the following question: If the committee were to pursue its study of child benefits from a broader perspective, would you be interested in expressing your views before the committee? The reaction was unanimous: they would be most interested in discussing and examining a report on child benefits prepared by the committee with a more comprehensive approach.

After the report was tabled, I wrote to forty-eight groups and private citizens who had previously appeared before the committee, sending them a copy of the report and asking them to let us know what they thought about the report's recommendations, especially the proposal for a guaranteed family supplement scheme.

I must say, quite frankly, that by early October I had received only one reply. My conclusion was that we should at least send a reminder to the people to whom we had written so far. I wrote a second letter asking them to let me know whether they intended to respond to our recommendations. The response was not exactly overwhelming and we received exactly six replies.

Considering the time factor, I will dispense with reading all the names on the list. Among those who replied were the Canadian Conference of Catholic Bishops and the Canadian Teachers Federation. I think it is not an exaggeration to say that the quality of the respondents compensated for the quantity.

Before speaking about their reactions to our report, I think that I should summarize very briefly for you the main points of the principal recommendations contained in them.

Essentially, the committee first proposed an objective that serves as a guiding principle, namely that the child benefit system be restructured so as to channel a larger share of child benefits to needier families. That was our fundamental objective or principle, if you prefer.

It then proposed that these funds be so channeled by increasing what is now called the tax credit. It proposed also that the new benefit be called the guaranteed family income supplement from now on. This term seems to us to correspond more closely to the reality of what the tax credit is: an amount of money given to families with an income below a certain level. Entitlement is determined from the tax returns of the families concerned.

In the last two years, we have even gone so far as to give advance payments in the fall, thus dividing the tax credit in two, one payment in the fall and another after the tax return is filed.

Senator Frith: Decoupling!

Senator Tremblay: It was still very important for the families involved because when they received their tax credit only in the spring, they used to go to finance or similar companies who bought tax credit from them in February, for example, at fairly high interest rates. A fall payment helped ease this problem.

All this was called a tax credit over the years because it had something to do with the income tax return, I suppose. In fact, it is a sort of supplement paid to families who need it based on their tax return, similar to the so-called old age pension supplements. Nevertheless, I point this out because many of those who wrote to us expressed concern about the way the tax credit is administered. It is all calculated based on the tax return, which adds nothing from the administrative point of view.

The expression "tax credit" does not really describe the reality of the situation. That is why we prefer to speak of a guaranteed family income supplement, along the same lines as the tax credit, that is oriented mainly to the least well-off families.

Having said that, which is mostly a matter of definition, the key point is that the guaranteed family income supplement for the neediest families will be even greater because it will combine a larger number of benefits now in place.

This is where different views were expressed in committee. Some members would have been prepared to include in the new supplement four of the current benefits corresponding to the equivalent of the tax credit, the child tax credit, the exemption for a married person—which of course applies in the case of a single-parent family—and the family allowances. Other members would have been prepared to put the total of these four benefits under what we call the guaranteed family income. Still other members would agree to the first three, meaning they would maintain the family allowance program as is.

That is the thrust of the report. Given the position taken by our committee, what was the reaction of the people who responded to the invitation I sent them and to which I referred a moment ago?

Here are two of them: that of National Council of Welfare Director Ken Battle, and that of the Canadian Teachers' Federation.

Here is Mr. Battle's reply of March this year to the letter I sent him last year. It is a very short quotation.

[*English*]

> I did, in fact, read your report soon after you sent me a copy. I found it very enlightening and helpful in my own analysis of child benefits, and I hope that my two appearances before your committee contributed to your work in this important policy area.

In fact, I think we were, at least in part, influenced by his testimony.

> Obviously a great deal of work went into the report on the part of your members and staff.

In other words, I have the feeling that, substantially, he does agree with the basic thrust of the report.

[*Translation*]

The Canadian Teachers Federation does not entirely agree with this view. Its position is summarized as follows, on the basis of a very detailed brief.

[*English*]

> 1. Universality must be ensured. All families, irrespective of income level, must continue to receive a basic level of assistance at least equal to an indexed family allowance . . . .
>
> 2. Child benefits programs should provide greater advantage to poor families through income distribution from wealthier families and, in particular, from the business and corporate sector.
>
> 3. Child benefits programs should not be construed or evaluated separately from a universally-accessible, high-quality publicly-funded child care system.
>
> 4. The total amount of money spent by the federal government on established programs to benefit families and children must not be reduced.

[*Translation*]

That was, substantially, a summary of the position taken by the Canadian Teachers Federation. In fact, the text I just read was part of the federation's brief.

To be perfectly fair, I should add that the position taken by the Canadian Teachers Federation more or less reflects the

views of the other intervenors who replied to our letter. On the whole, there is strong emphasis on the universality of family allowances, and on maintaining them in their present form. On the other hand, as indicated in the stand taken by the Canadian Teachers Federation, respondents indicated that at the same time, more should be done for poor families.

The question is, how to reconcile the two? How can we at the same time enhance child benefits so as to provide most and preferably all needy families with a basic level of assistance, while maintaining the universality of certain benefits, and do so without putting an undue burden on the community?

That is the dilemma we are facing, the fact that we have some difficult choices to make regarding the kind of society we want, a dilemma that the committee, I may point out, was unable to resolve, since opinions were divided between the two financing options available.

Despite all the uncertainty and hesitation about the financing of the proposed guaranteed family supplement scheme, I think we can say that the committee's report reflects a major concern and that is the need for restructuring child benefits with the emphasis on families whose incomes are below the poverty line. In this respect, I believe the report submitted by the committee makes a positive and worthwhile contribution.

We are particularly indebted to our colleagues, Senators Robertson and Marsden, who directed the work of the Subcommittee of the Committee on Social Affairs, Science and Technology responsible for drafting the report. My most cordial thanks!

I also wish to thank Maureen Baker and Marion Wrobel of the Research Branch at the Library of Parliament. Their co-operation, diligence and thorough research are largely responsible for the contents of the report and its recommendations, as I am sure you will realize when you read the report. In fact, the main part consists of a number of very precise analyses based on very reliable data.

In concluding, honourable senators, the document we are about to discuss is, I believe, a significant and valid contribution to the study of an issue that is important to society as a whole. However, it is only a first step, and as far as I am concerned, I hope that the Committee on Social Affairs, Science and Technology will go beyond this first step. After our dialogue in the days and weeks to come, I hope the committee will have an opportunity to continue its consideration of a subject of this particular significance and scope. There is a possibility, and it is certainly not unlikely, that it might be given this opportunity, considering the notice given by Senator Robertson this afternoon of a motion she will be presenting next Tuesday. Thank you, honourable senators.

On motion of Senator Frith, for Senator Marsden, debate adjourned.

● (1550)

[*English*]

BUSINESS OF THE SENATE

ADJOURNMENT

Leave having been given to revert to Notices of Motions:

Hon. Orville H. Phillips: Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*g*), I move:

> That when the Senate adjourns today it do stand adjourned until Tuesday next, May 17, 1988, at two o'clock in the afternoon.

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

Hon. Senators: Agreed.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, Senator Phillips and I have discussed possible business for tomorrow. There is very little government business, because we have put a good deal of it over until the first of next week, so we will have plenty to do next week on the legislative front. There are no orders standing in the names of opposition senators to be spoken to tomorrow. Therefore, we support this motion.

I should add, perhaps on behalf of Senator Phillips but certainly for myself, that, of course, those committees that have scheduled meetings should hold them, notwithstanding the fact that the Senate will not be sitting.

Motion agreed to.

The Senate adjourned until Tuesday, May 17, 1988, at 2 p.m.

APPENDIX

(*See p. 3349*)

IMMIGRATION ACT, 1976

BILL TO AMEND—REPORT OF STANDING SENATE COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

WEDNESDAY, May 11, 1988

REPORT OF THE COMMITTEE

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

TWENTIETH REPORT

Your Committee, to which was referred Bill C-55, An Act to amend the Immigration Act, 1976 and to amend other Acts in consequence thereof, has, in obedience to the Order of Reference of Tuesday, November 3, 1987, examined the said Bill and now reports the same with the following amendments and observations.

Respectfully submitted,

JOAN B. NEIMAN
Chairman

PART I

Amendments

Amendments	Explanatory Notes
1. *Page 7, clause 9*: (a) Strike out line 11 and substitute the following: "section (3), shall be given a" (b) Strike out line 21 and substitute the following: "ceed within a reasonable period of time, the person shall be represented, at"	This amendment would ensure that refugee claimants would be given a reasonable period of time in which to arrange for their own counsel to represent them at the inquiry and that counsel would have a reasonable time in which to prepare.
2. *Page 12, clause 14*: Add, immediately after line 24, the following: "(6) Notwithstanding subsection (2), a claim to be a Convention refugee may be received and considered at any time during an inquiry if, in the opinion of the adjudicator, the failure on the part of the person who is the subject of the inquiry to assert the claim, when given an opportunity to do so pursuant to subsection (1), resulted from (a) a misunderstanding of the nature of the claim to be a Convention refugee or of the consequences of the failure to assert a claim; or (b) well-founded fear on the part of the claimant for the claimant's own safety or for the safety of the claimant's family"	This amendment would provide a safety valve so that a claimant who had a valid reason for not making a claim to be a Convention refugee at the beginning of the inquiry could avoid losing all rights to ever assert that claim.
3. *Page 14, clause 14*: Strike out line 31 and substitute the following: "claimant is a member and that is willing to receive the claimant, if removed from Canada, or in which the claimant has a right to have the merits of the claim determined;"	This amendment would ensure that claimants would not be returned to a safe country unless that country were willing to receive them or unless they had the right to have their refugee claims determined on the merits in that country.

4. *Page 15, clause 14*: Strike out lines 3 to 15 and substitute the following:

"19 (1) (*j*), or

(ii) a person
(A) described in paragraph 19 (1) (*c*), or
(B) who has been convicted in Canada of an offence under any Act of Parliament for which a term of imprisonment of ten years or more may be imposed

who the Minister has certified constitutes a danger to the public in Canada, or

(iii) a person described in paragraph 19 (1) (*e*), (*f*) or (*g*) or 27 (1) (*c*) or (2) (*c*), if the Minister is of the opinion that the application of sections 45 to 48 and 70 and 71 to that person would be contrary to the public interest; or"

This amendment would provide that the decision to exclude a person from the refugee determination process would be made by the Minister personally, in view of the potential seriousness to the individual of the consequences of the exclusion. It is intended that the Minister will weigh those consequences with the degree of risk the person might pose to Canada.

5. *Page 15, clause 14*: Strike out lines 36 and 37 and substitute the following:

"for the purpose of travelling through that country shall not be"

This amendment would broaden the "transit" provision relating to safe country return and would provide that the mode of transportation used by a claimant to Canada would not be relevant to the question of whether or not the person was in transit through the country.

6. *Page 24, clause 16*:

(a) Strike out lines 11 to 14 and substitute the following:

"right to commence an application or other proceeding under section 18 of the *Federal Court Act* or to file an application for leave to commence an application or other proceeding under section 28 of the *Federal Court Act* in respect of the"

(b) Strike out line 16 and substitute the following:

"seventy-two hours have elapsed from the"

Part (a) of this amendment is consequential on amendment number 9 which would remove the requirement for leave to appeal in applications taken under section 18 of the *Federal Court Act*. Part (b) would increase the period of time that the execution of a removal order would be stayed from 24 to 72 hours. It would affect removal orders made as a result of a claim being found to be either ineligible or to lack a credible basis at the inquiry.

7. *Page 31, clause 18*: Add, immediately after line 11, the following:

"67.1 Subject to the approval of the Governor in Council, the Chairman, in consultation with the Deputy Chairman and Assistant Deputy Chairmen, (Convention Refugee Determination Division), may make regulations prescribing, for the purposes of paragraph 48.01 (1) (b), any country as a country that complies with Article 33 of the Convention either universally or with respect to persons of a specified class of persons, having regard to whether the country is a party to the Convention, the country's policies and practices with respect to Convention refugee claims, and the record of that country with regard to human rights."

This amendment would give the power to prescribe the safe country list to the Chairman of the Immigration and Refugee Board, subject to the approval of the Governor in Council.

8. *Page 35, clause 18*: Add, immediately after line 43, the following:

"(13) If the Refugee Division determines that a claimant is not a Convention refugee, the Refugee Division may make a finding that there exist humanitarian or compassionate considerations in the claimant's case and may advise the Minister of that fact."

This amendment would permit the Refugee Division to identify for the Minister any case where the Refugee Division finds the existence of humanitarian or compassionate considerations.

9. *Page 43, clause 19*:

(a) Strike out line 7 and substitute the following:

"28 of the *Federal Court Act* with"

(b) Strike out lines 11 to 13 and substitute the following:

"a judge of the Federal Court of Appeal."

(c) Strike out lines 35 to 42 and substitute the following:

"83.2 No appeal lies to the Supreme Court"

This amendment would remove the requirement that leave be obtained for applications commenced under section 18 of the *Federal Court Act*.

10. *Page 44, clause 19*: Strike out lines 17 to 19 and substitute the following:

"finding of fact or without regard to the material before it."

This amendment would broaden the jurisdiction of the Federal Court of Appeal in relation to appeals from decisions of the Refugee Division. It would ensure that the merits of the refugee claim could be considered on appeal.

11. *Page 55, clause 29*: Strike out lines 15 to 27.

This amendment would remove from the Governor in Council the power to prescribe the safe country list.

12. *Pages 59 and 60, clause 38*:

(a) Strike out lines 13 and 14 on page 59 and substitute the following:

"38.(1) The members of the former Board shall be appointed as full-time permanent members of either the Refugee Division or the Appeal Division for the unexpired portion of their term of office and the members of"

(b) Strike out lines 26 to 46 on page 59.

(c) Strike out lines 47 and 48 on page 59 and lines 1 to 9 on page 60.

This amendment would provide that members of the present Immigration Appeal Board would be appointed to the new Board for the unexpired period of their current terms. It would also recognize the principle of just compensation by removing the "no right to compensation" provision.

PART II

Observations

The purpose of Bill C-55 is to reform the system by which claims made by individuals within Canada to be Convention refugees are assessed. There is general agreement among those knowledgeable and concerned with the issues that the current system for determining refugee claims is not adequate and, indeed, has virtually broken down. Devising a system to replace it, however, has led to much controversy and heated debate between the government as the proponent of the Bill and a broad spectrum of groups opposed to the general approach and the specific measures the Bill contains.

Church groups, refugee aid organizations, immigration lawyers, human rights organizations, constitutional law experts, law associations, officials currently deciding refugee claims, and private citizens have opposed Bill C-55. In examining the Bill, the Committee has heard both sides of the debate in great detail. We received over 200 briefs, heard personal testimony from 114 witnesses from every region of Canada, and held public hearings in Winnipeg, Edmonton and Vancouver. Both the former and the current Minister addressed the Committee, as did departmental officials on several occasions.

Bill C-55 is a complex piece of legislation. Refugee determination is a complex problem and the competing views on how it should be handled are widely divergent. While a number of members of our Committee remain critical of the general approach of the Bill, we have concluded that the overall structure chosen by the government should be left intact, but that amendments are necessary to provide greater protection for claimants.

RETURN TO A SAFE COUNTRY

1. Safeguards

The major target of criticism from virtually all witnesses before the Committee was the "safe country" provision of Bill C-55. Witnesses criticized both the concept and the

mechanism on many counts and argued that it could put genuine refugees at risk. We are particularly concerned that the provisions as they stand may violate the *Canadian Charter of Rights and Freedoms*. Section 7 of the *Charter* provides that no person shall be deprived of his life, liberty or security of the person except in accordance with the principles of fundamental justice. We are concerned that the minimal safeguards presently in the Bill relating to the safe country return might be fewer than the *Charter* requires.

As noted, the Committee searched for a means of addressing this concern without changing the basic structure of the system proposed in Bill C-55. We are aware that most of the witnesses we heard would prefer to have no screening at all. The Committee understands this view and is sympathetic to it, yet has concluded that our role should be to suggest safeguards that will improve the screen, not, in effect, design a new model. We accept that where people have received protection - and will continue to receive it - in another country, they may quite properly be requested to return there. Our amendments reflect the view, however, that great speed and impersonal treatment might not always be compatible with the rights guaranteed in the *Charter*.

The Committee's most fundamental objection to these provisions is that the Bill provides no formal mechanism to examine the fate of people to be returned to the safe third country. It is one thing to decide that certain countries are "safe" in the abstract, but quite another to decide that a particular person will actually be accepted by a country and not immediately sent elsewhere. When the decision to return a person to a safe country is being made, nothing less than the life, liberty and security of that person may be at stake. When the consequences of Canada's decisions are so serious, the Committee is reluctant to accept an approach which does not explicitly address this fundamental question.

We do not feel that it is satisfactory to look only at a particular country's record of compliance with Article 33 of the *Convention*, which is all that the Bill now requires. European countries, for example, may not return claimants to their country of origin but may have a very different opinion from Canada concerning which other countries may be "safe." Our Committee received considerable evidence of the practices of other countries and of the resulting dangers to individuals. Returning people to other countries, from where they might be sent onward to still other "safe" countries (so defined by that other country), and perhaps ultimately returned to the country where they fear persecution may, in our opinion, violate their right to security of the person guaranteed by the *Charter*. Where *refoulement* does occur, of course, the very essence and purpose of the *Convention Relating to the Status of Refugees* has also been violated.

The Committee has concluded that the safe country provisions as they appeared in the first reading version of the Bill contained the minimum protections essential for compliance with the *Charter* and our international obligations under the *Convention*. That version provided for return to a safe country only if the Refugee Division member and adjudicator at the inquiry were convinced that the claimant "would be allowed to return to that country, if removed from Canada, or has a right to have the claim determined therein."

The Committee is aware that the wording of those provisions was criticized in the past by people who felt that the words "allowed to return" might be read too narrowly. The Committee thinks that the wording should be modified to indicate that merely being allowed to arrive in the country is not a sufficient safeguard for claimants. We propose that the adjudicator and Refugee Division member should be satisfied that the safe country will be willing to receive the claimant. This formulation implies a degree of commitment on the part of the safe country that may have been lacking in the original wording. The right to have a claim determined in the safe country was also controversial because critics pointed to the fact that the "safe" country might merely process the claimant on to another "safe" country, thereby "determining" the claim. The Committee has attempted to overcome this defect in the former wording by specifying that the determination must be on the merits of the claim.

The result of these changes is that Canada should be assured that claimants returned under the safe country provisions will, in fact, be safe because they will only be returned to a country that is willing to receive them or in which they will be permitted to have their refugee claims decided on the merits. The danger that they would be put into orbit or sent to yet a further country would thus be minimized. These changes are found in amendment 3.

2. Transit

Bill C-55 provides that a claimant who was in a safe country solely for the purpose of joining a connecting flight to Canada shall not be considered as coming to Canada from that country and, therefore, could not be returned there. This is a very narrow transit rule. For example, if connecting flights to Canada left every two days from the safe country in question, a stopover of three days might mean that the claimant could be returned there. If this were the case, it might be unduly stringent.

The Committee is also concerned that because travel by air is mentioned specifically, by implication other forms of transit through a country would not be covered. For example, a Central American who had travelled overland through the United States would not be able to avoid being returned there even though he or she had been merely transiting the country.

The Committee has concluded that the transit rule should be broadened to cover all modes of transportation and to recognize that whether a person has been in transit through a safe country is a question that depends on the circumstances of the individual. Amendment 5 contains this change.

3. The List

The Committee is concerned about the fact that Bill C-55 provides for the safe country list to be drawn up by Cabinet. Witnesses pointed out that having the list formulated by Cabinet might bring refugee issues into the political arena. The presence of countries on, or their absence from, the list would involve official and public judgments by Canada on the conduct of those countries. This could influence the compilation of the list, particularly if sufficient regard is not given to refugee protection issues, which should be the most important criteria. We submit that the list should be made by those most expert in refugee matters, that is, the Chairman of the proposed Immigration and Refugee Board in consultation with the Deputy Chairman and the Assistant Deputy Chairmen of the Refugee Division. The Committee would expect, and strongly recommends, that those individuals would also consult with the Departments of External Affairs and Employment and Immigration, as well as representatives of church and other humanitarian groups, legal experts and the United Nations High Commissioner for Refugees.

The Committee has also noted that the criteria for the prescription of safe countries may be unduly limited. The clause enabling the safe country list to be prescribed provides that countries may be put on the list if they comply with Article 33 of the Convention "having regard to whether the country is a party to the Convention and the country's policies and practices with respect to Convention refugee claims." These considerations are important but the Committee would be reassured if one further requirement could be added.

We note that the original Bill contained the instruction that the Cabinet should also have regard to "the record of that country with respect to human rights." We propose that this protection be reinserted into the Bill. It should serve as a check against the inclusion of any country on the list whose protection of refugees may be adequate but whose general record of human rights gives us sufficient pause to be reluctant to return people there. Amendments 7 and 11 reflect these changes.

SINGLE CHANCE TO CLAIM

Many witnesses pointed out to the Committee the potentially serious consequences to claimants of what has been called the "single chance to claim" provision. Before any substantive evidence can be taken at an inquiry, the adjudicator must give the person involved an opportunity to indicate whether or not the person claims to be a Convention refugee. If the person does not claim then, he or she cannot do so at any later point. In cases where a claim is made, the Refugee Division member joins the inquiry. The Refugee Division member listens to the immigration part of the inquiry and then participates with the adjudicator in the refugee screening decisions.

Witnesses pointed out the stringency in requiring a person to claim immediately or lose the right. At this early point, the person may be too frightened or too upset to be able to respond. The claimant could have problems understanding either the question itself, or the implications of the question. Refugee aid groups pointed out that some claimants will initially fear any representatives of the state. Some may be uncertain about making a claim for fear that their statements may not be kept from their own governments.

The Committee agrees that the foregoing would be valid and understandable reasons for claimants to remain silent about their fear of being returned to the country of origin, even when explicitly asked. We note that the Executive Committee of the United Nations High Commissioner's Programme recommends that non-fulfillment of a formal requirement such as submitting an asylum request within a certain time limit should not lead to the request being excluded from consideration. The Committee thinks that the single chance to claim provision is very similar to a time limit.

There are a number of ways that this problem with Bill C-55 could be remedied. We have chosen to recommend that a claim may be made at a later point in the

inquiry. If claimants could establish that the failure to claim resulted from a misunderstanding of the nature or consequences of the claim or from a well-founded fear for themselves or their families, then the adjudicator could allow the claim to be made. This provision would thus provide an important safety valve for claimants. Amendment 2 reflects this proposal.

COUNSEL

Bill C-55 recognizes that the opportunity to be represented by counsel is an essential ingredient of the principles of fundamental justice, yet the way in which these provisions are structured raises certain questions. Legal counsel will be provided at an inquiry for claimants, at the Minister's expense, if the person has no counsel or if, in the opinion of the adjudicator, the person's counsel is not ready or able to proceed. Witnesses argued that if inquiry dates are set virtually upon arrival in Canada, the practical effect of these provisions could be to deprive claimants of a reasonable opportunity to choose their own counsel or for the counsel that is chosen to prepare adequately for the inquiry. The Committee agrees that a reasonable period of time is necessary in order to comply with the requirements of fundamental justice. The principle that counsel must be given a reasonable opportunity to prepare a case is recognized daily in all our courts and tribunals and, in our view, proceedings relating to refugee claimants require no less. We propose this change in Amendment I.

Claimants who receive negative decisions at the screening stage should also be given a reasonable period of time in which to instruct counsel should they wish to make an application for judicial review. Bill C-55 would stay the execution of their removal orders for only 24 hours. The Committee proposes that the stay be increased to 72 hours. This recommendation is found in amendment 6.

APPEALS

Bill C-55 commendably provides for an appeal from decisions of the Refugee Division to the Federal Court of Appeal. Many witnesses argued, however, that the grounds for appeal are unduly narrow and that there should be greater scope for the court to examine the merits of a claim. They argued that strengthened appeal provisions are particularly important in view of the fact that the Refugee Division will be a decentralized body.

The Committee is aware that even with highly qualified decision-makers in the first instance, mistakes can still be made. In view of the significance of decisions relating to refugee status to the life, liberty and security of the individuals involved, the Committee recommends that the Federal Court should have the power to look more closely than the Bill presently permits at the particular facts of individual cases. Amendment 10 contains this change.

JUDICIAL REVIEW OF NON-REFUGEE MATTERS

The Committee heard from a number of witnesses who pointed out that although the purpose of Bill C-55 is to institute a new refugee process, the Bill would also affect judicial review of some non-refugee immigration matters by the Federal Court. Their concerns arise from the provision in the Bill which would require leave to be obtained for an application commenced under section 18 of the *Federal Court Act*. Leave would have to be requested within 15 days after the applicant is notified of the decision.

Under the present law, no leave is required and there is no time limit for filing the application for judicial review under section 18. Witnesses pointed out that imposing a time limit would make negotiations with visa officers abroad difficult, if not impossible, and would likely result in a great number of *pro forma* applications being made solely to preserve the right of applicants to challenge a decision. They also stated that in relation to these kinds of cases there has been no evidence of abuse of any kind and that a provision requiring that leave be sought to commence an application, the effect of which would be to impede access to the courts, was therefore unnecessary. In amendment 9 the Committee recommends removal of these requirements.

EXCLUSION FROM THE REFUGEE PROCESS

Bill C-55 contains a provision identical to that found in Bill C-84 which excluded security risks, certain criminals, and war criminals from access to the refugee process. In its amendments to Bill C-84, the Committee was willing to automatically exclude war criminals and criminals who have been certified as a danger to the public in Canada, but recommended that the Minister make the exclusion decision personally for security risks.

By virtue of clause 35 of Bill C-55, the provisions in C-55 will supersede those in Bill C-84. Because the Committee continues to believe that its former amendment was worthwhile, it is necessary to make the identical amendment to Bill C-55. This recommendation is found in amendment 4.

HUMANITARIAN AND COMPASSIONATE REVIEW

The present system of refugee determination in Canada makes it possible, and provides sufficient time, to identify those people who, although they are not refugees under the narrow definition of the *Convention*, are nevertheless permitted to stay in Canada for humanitarian or compassionate reasons. Witnesses asserted that this might not be possible under the new system in Bill C-55.

The Committee thinks that any rigidity that may occur in the proposed system could be mitigated if the Refugee Division panel hearing the claim were able to identify these cases for the Minister. Its finding would amount to a recommendation that the person identified be considered for landing on humanitarian or compassionate grounds. The recommendation would not, of course, be binding but would ensure that the case would be specifically examined by immigration authorities and landing by Order-in-Council considered. Amendment 8 contains this proposal.

APPOINTMENTS TO THE NEW BOARD

Bill C-55 creates a new structure to decide refugee claims and immigration appeals - the Immigration and Refugee Board. There is a provision that the members appointed to the present Immigration Appeal Board will cease to hold office on the day in which the Bill comes into force. The Federal Court has recently decided that this provision creates a reasonable apprehension of bias. As a result, hearings before the Immigration Appeal Board have virtually ground to a halt, further compounding the backlogs and delays already present in the current system.

The Committee believes that this problem can be easily corrected. If the terms of office of current appointees to the Immigration Appeal Board were continued, no apprehension of bias would exist. The result would be that in the interim period between

passage of Bill C-55 and its proclamation, the Board could continue to function and the problem of the ever-mounting backlog would not be needlessly exacerbated.

The Committee is aware that the Federal Court decision that has led to the current impasse at the Board has been appealed by the government. Even if that appeal should ultimately prove successful, however, the Committee feels that there is an important matter of principle at stake that would still require that this amendment be made. The principle is that the very reason for establishing quasi-judicial boards and tribunals is to vest important decisions with expert decision-makers independent of government control. In that manner, the necessary impartiality is achieved. For this reason, the Committee recommends in amendment 12(a) that the terms of current Immigration Appeal Board members continue under the new Board.

In addition to stipulating that members of the Board were to cease to hold office on the coming into force of Bill C-55, the Bill also contains a provision stating that no person appointed as a member of the Immigration Appeal Board or the Refugee Status Advisory Committee would have any right to claim or receive any compensation, damages, indemnity or other relief for the loss or abolition of his or her office. The Governor in Council would be entitled, however, to provide such relief in its discretion.

The Committee thinks that it is much to be preferred in principle to provide just compensation for individuals who, having undertaken to provide services in reliance on stated terms, find at a later date that their services are no longer required. This would seem to be the equitable way to treat incumbent members and also reflects a principle that is firmly established in our law. Amendment 12(c) recommends that the "no right to compensation" provision be removed, thus restoring whatever legal rights these individuals would ordinarily possess.

TRANSPORTATION PROVISIONS

There is one further matter which the Committee wishes to address. Representatives of tourist facilities and transportation companies in the Windsor area informed us that the provisions in Bill C-55 relating to the duty on transportation companies to ensure that their passengers arrive with the required documents could make it virtually impossible to carry on their businesses.

It sometimes happens that legislation phrased in general terms and targeted to specific problems will have unintended or unexpected effects. Sometimes an exemption can be placed in a Bill to meet the objections; in other cases, for a variety of reasons, no exemptions are possible. In the latter situation, the parties involved must rely on the reasonableness and common sense of those enforcing the law. The Committee believes that the issues raised by the witnesses from Windsor fall into this category. We have been reassured by the words of both the former and the current Ministers that a sensible approach will be taken. The former Minister gave assurances that where companies with good records continue their current practices, he foresaw no need to institute procedure for the document screening prior to embarkation envisaged in the Bill. This approach recognizes that different situations require different compliance procedures. The Committee endorses this approach.

Each of the foregoing proposed amendments has been supported by at least a majority of the Committee.

APPENDIX A

List of Witnesses

Thursday, January 28, 1988: (Issue No. 49)

The Honourable Gerry Weiner, P.C., M.P., Minister of State (Immigration).

From Canada Employment and Immigration Commission:
Mr. James Bissett, Executive Director of Immigration;
Mr. Raphael Girard, Coordinator, Refugee Task Force.

Tuesday, February 2, 1988: (Issue No. 50)

From the Coalition for a Just Refugee and Immigration Policy:
Mr. Lorne Waldman.

Thursday, February 4, 1988: (Issue No. 51)

From the Office of the United Nations High Commissioner for Refugees:
Mrs. Fiorella Badiani;
Mr. Job Van der Veen.

From the Refugee Status Advisory Committee:
Mr. Joe B. Stern;
Mr. Bill Barton;
Mrs Susan Davis;
Mr. Sergio Poggione.

Monday, February 8, 1988 (Issue No. 52)

From Legal Aid Manitoba:
Ms. Renata Krause.

From Amnesty International Group 19 (Local Chapter):
Mrs. Cornelia Johnson;
Mr. Felipe Flores.

From the University of Manitoba:
Prof. Bryan Schwartz.

From the Mennonite Central Committee (National):
Mr. Ed Wiebe.

From the Saskatoon Refugee Co-ordination Committee:
Mr. Tom Martin;
Mr. Romulo Marcenaro.

From the Winnipeg Coalition:
Father Bert Foliot;
Dr. Lawrence Whytehead;
Dr. Stuart Johnson;
Mrs. Heather Macdonald.

Private Citizen:
Mr. Kenneth Emberly.

Private Citizen:
Mr. Georges Forest.

Tuesday, February 9, 1988: (Issue No. 53)

From the Canadian Bar Association (Immigration Section):
Mr. John Gill.

From the Calgary Interfaith Coalition for Refugees:
Mrs. Anne Jayne;
Mr. Gerald Stobo;
Mr. Don Dale;
Rev. Brian Rude;
Mr. Freddy M..

Wednesday, February 10, 1988: (Issue No. 54)

From the Edmonton Branch of the National Coalition for a Just Refugee and Immigration Policy:
Mr. Eric Oddleifson;
Mrs. Margaret Third-Tsushima;
Mr. Mario Allende;
Mr. Tom Parlee;
Mr. Nabi Ahmadyar;
Mr. Ram Mudalier.

Private Citizen:
Mrs. Anne Paludan.

From the Sombrilla Refugee Support Society:
Mr. Lorne Wallace;
Prof. Gurston Dacks;
Mr. Michael Dreimanis.

From the Red Deer Coalition for Refugees:
Mrs. Rhonda Beveridge;
Mrs. Judy Lynch;
Rev. Bill Cantelon.

From the Alberta Cultural Heritage Council (Provincial Co-ordination Committee):
Mr. Lloyd Sereda.

Thursday, February 11, 1988: (Issue No. 55)

From M.O.S.A.I.C.:
Ms. Vera Radio;
Mr. Roger Barany;
Mrs. Kathryn Ferriss.

From the Canadian Bar Association, British Columbia Branch, Immigration Law Section:
Mr. Charles Groos;
Mr. Phil Rankin.

From the Intercultural Association of Greater Victoria:
Mr. William McElroy.

From the Division of Global Concerns of the United Church B.C. Conference; the Anglican Diocese of New Westminster Refugee Subcommittee; the Canadian Catholic Organization for Development and Peace:
Mrs. Simone Carrodus;
Mrs. Karen Rinehart;
Mr. Herman Mendoza;
Ms. Tricia Roche;
Brother Ron MacKenzie.

From the Vancouver Coalition for Justice for Refugees and Immigrants:
Mrs. Karuna Agrawal;
Mrs. Alicia Barsallo;
Dr. Bernardo Berdichwski;
Mr. Charan Gill;
Mrs. Tricia Joel;
Mrs. Frances McQueen.

Friday, February 12, 1988: (Issue No. 56)

From the Vancouver Refugee Council:
Dr. Stanley Knight;
Mr. Charles Groos.

From the Nanaimo Immigrant Settlement Society:
Mr. Andrew Barker;
Mr. Jacques Carpentier;
Mr. Charles Groos.

From the Manitoba Bar Association, Immigration Section:
Mr. Ken Zaifman.

From the Victoria Coalition:
Mr. Rob Boyd;
Mr. Jim Jamieson;
Mr. Domingos Adgira;
Mr. Arnaldo Campos.

Private Citizen:
Mr. Charles Campbell.

From the Affiliation of Multicultural Societies and Service Agencies of B.C.:
Mr. Ed Eduljee;
Ms. Manjit Aujla;
Ms. Diane Kage;
Ms. Marisa Tuzi;
Ms. Norma Jean McLaren.

From the Surrey Delta Immigrant Services Society:
Mrs. Andrienne Montani;
Mrs. Susan Masi.

Private Citizen:
Mr. Douglas Collins.

Tuesday, February 23, 1988: (Issue No. 58)

From the Association of Airline Representatives in Canada:
Mr. Peter van Westrener;
Mr. Gordon J. Stringer.

Wednesday, February 24, 1988: (Issue No. 59)

From the University of Toronto:
Professor David Beatty.

Thursday, February 25, 1988: (Issue No. 60)

From the Canadian Bar Association, Immigration Law Section:
Mr. Carter Hoppe;
Ms. Barbara Jackman.

Tuesday, March 1, 1988: (Issue No. 61)

From the National Action Committee on the Status of Women:
Ms. Salome Loucas.

Thursday, March 3, 1988: (Issue No. 62)

From the Canadian Council for Refugees:
Mrs. Margaret Third-Tsushima;
Mrs. Monique Proulx;
Mr. W.M. Melvin Weigel.

From the Inter-Church Committee for Refugees:
Ms. Nancy Nicholls;
Mr. Tom Clark.

Tuesday, March 8, 1988: (Issue No. 64)

From the Non-Governmental Groups Concerned with Immigration and Refugee Issues, St. John's:
Dr. Lisa Gilad;
Ms. Beverly Brown.

From the Newfoundland-Labrador Human Rights Association:
Mr. Gerry Vink.

Wednesday, March 9, 1988: (Issue No. 65)

From the Immigration Appeal Board:
Ms. Michelle Falardeau-Ramsay.

Tuesday, March 15, 1988: (Issue No. 66)

From Osgoode Hall Law School:
Professor James C. Hathaway;
Professor William H. Angus.

From the City of Windsor:
Mr. David Cassivi.

From the Convention & Visitors Bureau of Windsor Essex County & Pelee Island:
Mr. Sergio Grando.

From the Transit - Windsor:
Mr. Robert Coghill.

From the Boblo Island:
Mr. Dave Butler.

Wednesday, March 16, 1988: (Issue No. 67)

From the University of Ottawa, Faculty of Law, Common Law Section:
Professor Ed Ratushny.

Thursday, March 17, 1988: (Issue No. 68)

From the "Table de concertation des organismes au service des réfugiés de Montréal":
Ms. Rivka Augenfeld.

From the Social Center to Aid Refugees:
Ms. Mathilde Marchand.

From the Association of Lawyers of Quebec:
Mr. Denis Racicot.

From B'nai Brith Canada:
Mr. David Matas;
Ms. Rebecca Zucherbrodt.

From the Criminal Lawyers' Association:
Mr. John Rosen.

Tuesday, March 22, 1988: (Issue No. 69)

From the Toronto Refugee Affairs Council:
Ms. Ninette Kelley;
Ms. Stephanie Thomas.

From Amnesty International:
Mr. Michael Schelew;
Mr. Michael Bossin.

Thursday, March 24, 1988: (Issue No. 70)

From the Proposed Immigration and Refugee Board:
Mr. Gordon Fairweather;
Mr. Sam Laredo.

From the Immigration Appeal Board:
Ms. Elizabeth McCarten.

Tuesday, April 19, 1988: (Issue No. 71)

The Honourable Barbara McDougall, P.C., M.P., Minister of Employment and Immigration.

From Canada Employment and Immigration Commission:
Mr. Gaétan Lussier, Deputy Minister;
Mr. Raphael Girard, Coordinator, Refugee Affairs.

Tuesday, May 3, 1988: (Issue No. 72)

From the Canadian Bar Association - Administrative Law Section:
Mr. Andrew Roman;
Mr. Robert Horwood.

THE SENATE

Tuesday, May 17, 1988

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

Prayers.

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

THIRTY-SEVENTH REPORT OF COMMITTEE PRESENTED

Hon. Royce Frith, Deputy Chairman of the Standing Committee on Internal Economy, Budgets and Administration, presented the following report:

Tuesday, May 17, 1988

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

THIRTY-SEVENTH REPORT

Your Committee recommends that the Senate apply to its unrepresented employees the same level of benefits that have already been given by mandate to its represented employees, such as, but not limited to, overtime, meal allowances and family-related leave.

Respectfully submitted,

ROYCE FRITH
Chairman

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

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

THIRTY-EIGHTH TO FIFTY-SECOND REPORTS OF COMMITTEE PRESENTED AND PRINTED AS APPENDIX

Hon. Royce Frith, Deputy Chairman of the Standing Committee on Internal Economy, Budgets and Administration, presented the committee's thirty-eighth to fifty-second reports approving supplementary budgets of the following committees:

38th Agriculture and Forestry;
39th Agriculture and Forestry;
40th Banking, Trade and Commerce;
41st Banking, Trade and Commerce;
42nd Energy and Natural Resources;
43rd Energy and Natural Resources;
44th Fisheries;
45th Foreign Affairs;
46th National Defence;
47th National Finance;
48th Official Languages;
49th Regulatory Scrutiny;
50th Standing Rules and Orders;
51st Committee of the Whole on the Meech Lake Constitutional Accord;
52nd Social Affairs, Science and Technology.

(*For text of reports, see Appendix "A", p. 3411.*)

Senator Frith: Honourable senators, these are reports of the Standing Committee on Internal Economy, Budgets and Administration. They deal with the budgets of various standing and other long-standing committees and are presented in accordance with our relevant practice. Some committee budgets are considered "supplementary" budgets, because the orders of reference upon which they are based have already been passed by the Senate. Other reports are from committees for which the authority has not been given. In these cases our practice provides that where there is a special reference any order involving the spending of money must not pass before senators have an opportunity to see what is involved financially.

So, for the "supplementary" budgets, the authority has already been given and these reports constitute the approval of the Internal Economy Committee as to the amounts required. Those reports that require a new authority for the expenditure of money will be spoken to by the chairman of each particular committee, the budgets required, as approved by the Internal Economy Committee, will be tabled and senators will know the cost when asked to support the special authority.

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

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

[*Translation*]

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

FOURTEENTH REPORT OF COMMITTEE PRESENTED AND PRINTED AS APPENDIX

Hon. Arthur Tremblay: Honourable senators, I am not quite sure whether the report I am about to table was included among the reports Senator Frith just mentioned.

In any case, since he suggested that his own series of reports be considered at the next sitting, and since I intend to make a similar suggestion, I think that to avoid any misunderstanding I will simply present the fourteenth report of the Standing Senate Committee on Social Affairs, Science and Technology, respecting power to incur special expenses. I think the connec-

tion with what Senator Frith just said is obvious. I therefore present this fourteenth report.

I ask that the report be printed as an appendix to the *Debates of the Senate* and the *Minutes of the Proceedings of the Senate* of this day and form part of the permanent records of this House.

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

Hon. Senators: Agreed.

(*For text of report see Appendix "B", p. 3415.*)

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

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

[*English*]

PREVENTIVE HEALTH CARE

FIRST REPORT OF SPECIAL COMMITTEE PRESENTED AND PRINTED AS APPENDIX

Hon. Hazen Argue: Honourable senators, pursuant to section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, I have the honour to present the first report of the Special Committee of the Senate on Preventive Health Care respecting the power to incur special expenses.

I ask that the report be printed as an appendix to the *Debates of the Senate* and the *Minutes of the Proceedings of the Senate* of this day and form part of the permanent records of this house.

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

Hon. Senators: Agreed.

(*For text of report see Appendix "C", p. 3417.*)

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

[*Translation*]

STANDING RULES AND ORDERS

NINTH REPORT OF COMMITTEE PRESENTED

Hon. Gildas Molgat, Chairman of the Standing Committee on Standing Rules and Orders, presented the following report:

Tuesday, May 17, 1988

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

NINTH REPORT

Your Committee has considered the question of printing the texts of Orders of the Day, which are called and postponed from day to day, in the body of the *Minutes of the Proceedings of the Senate.*

While your Committee agrees that these texts should be printed in the Orders of the Day, it considers that it is not necessary to print them in the body of the *Minutes of the Proceedings.*

Your Committee therefore recommends that the texts of Orders of the Day that are called and postponed not be printed in the *Minutes of the Proceedings of the Senate*, but that the *Minutes* simply indicate that the Order number was called and postponed.

Your Committee also recommends that the Index to the *Journals of the Senate* record only the page number of those items that are proceeded with, and not record them when they are postponed.

Respectfully submitted,

GILDAS MOLGAT
Chairman

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

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

• (1410)

[*English*]

INTER-PARLIAMENTARY UNION

SEVENTY-NINTH CONFERENCE, GUATEMALA CITY, GUATEMALA—NOTICE OF INQUIRY

Hon. Nathan Nurgitz: Honourable senators, I give notice that on Tuesday next, May 24, 1988, I will call the attention of the Senate to the Seventy-ninth Conference of the Interparliamentary Union held at Guatemala City, Guatemala, from April 11 to 16, 1988.

NATIONAL DEFENCE

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Henry D. Hicks, with leave of the Senate and notwithstanding rule 45(1)(*a*), moved:

> That the Special Committee of the Senate on National Defence have power to sit at three-thirty o'clock in the afternoon on Wednesday, 22nd June, 1988, even though the Senate may then be sitting, and that Rule 76(4) be suspended in relation thereto.

Honourable senators, if leave is granted I will give a brief explanation.

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

Hon. Senators: Agreed.

Senator Hicks: Some honourable senators may recall that I secured similar permission for the same committee to sit tomorrow afternoon, May 18, at 3.30 o'clock. I explained then that the reason was because of the difficulty of finding a time suitable to the Minister of National Defence and the committee.

The Minister of National Defence has advised us only within the last 24 hours that he cannot meet with us tomorrow afternoon, has submitted us a number of days and has asked us to confirm one of them as early as possible. We have agreed with his office that Wednesday, June 22, 1988, at 3.30 o'clock, would be a suitable time. Hence, so that we may try "to tie the minister down," if I may use a somewhat vulgar expression, I am asking for this permission at this time.

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

Hon. Senators: Agreed.

Motion agreed to.

AGRICULTURE

WESTERN CANADA—DROUGHT CONDITIONS—NOTICE OF MOTION TO REFER SUBJECT MATTER TO AGRICULTURE AND FORESTRY COMMITTEE

Hon. H.A. Olson: Honourable senators, I give notice that on Thursday next, May 19, 1988, I will move:

That the subject matter of the potentially disastrous drought in Western Canada be referred to the Standing Senate Committee on Agriculture and Forestry

—to assess the magnitude and intensity of the damage;

—to invite witnesses to the committee hearings; and

—to report, with recommendations to the Federal Government, for assisting people adversely affected, especially farmers and ranchers.

QUESTION PERIOD

THE SENATE

ABSENCE OF GOVERNMENT LEADER FROM CHAMBER

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I regret the absence of Senator Murray from the chamber this afternoon, but I understand he will be with us tomorrow. I will take as notice any questions that honourable senators wish to ask.

AGRICULTURE

WESTERN CANADA—DROUGHT CONDITIONS—GOVERNMENT ASSISTANCE—REQUEST FOR ANSWER

Hon. H.A. Olson: Honourable senators, it is not a matter of giving notice, because notice has been given about the series of questions I had asked the Leader of the Government concerning what the federal government intends to do to be helpful in this disastrous drought situation. I simply say to the house leader today that I hope that the Leader of the Government will be here in the chamber tomorrow, prepared to give answers to my questions so that the people who are facing this disaster from drought will know what the federal government intends to do about it.

I should say that there are some things that the federal government can do, and soon, such as providing transportation assistance in moving feed, in the form of hay or fodder, into those areas where the grass has not grown enough this year to feed the livestock, which would, under normal circumstances, have been out on the range 60 days or so ago. I hope that this step can be taken very soon, because there are price movements that would quickly stabilize if the cattle producers knew that they could buy hay within a range of, say, 300 or 400 miles and that that hay would be available to them at essentially the same price as the hay that is within 40 or 50 miles of where this livestock is located.

It would therefore be very helpful to the cattle producers if we could get some answers to my questions tomorrow.

POST-SECONDARY EDUCATION

FEDERAL GOVERNMENT SCHOLARSHIPS—ALLOCATION OF FUNDS—REQUEST FOR ANSWER

Hon. John B. Stewart: Honourable senators, I believe it was four weeks ago today that I asked the Leader of the Government in the Senate for details concerning a program of scholarships for undergraduate students in Canadian universities. I understand that that information has been made available in another forum, and I am wondering if perhaps tomorrow the minister could give all of the information that is available on this subject to this house. I think we should have information as to the scholarship program, but what is perhaps of greater importance is information concerning how the constitutional delicacies of dealing with education are being dealt with. I think that would be helpful to the house.

Hon. C. William Doody (Deputy Leader of the Government): I will try to get the information for the honourable senator.

CUSTOMS TARIFF

BILL TO AMEND—THIRD READING

Hon. Eileen Rossiter moved the third reading of Bill C-118, to amend the Customs Tariff.

Motion agreed to and bill read third time and passed.

CANADIAN ENVIRONMENTAL PROTECTION BILL

SECOND READING—DEBATE ADJOURNED

Hon. Brenda M. Robertson moved the second reading of Bill C-74, respecting the protection of the environment and of human life and health.

She said: Honourable senators, today I have the privilege of moving second reading of a bill that will make legislative history. The Canadian Environmental Protection Bill is the most comprehensive environmental legislation ever to come

before the Parliament of Canada. This legislation protects the Canadian environment and the health and well-being of Canadian citizens. It offers the nation state-of-the-art environmental protection—protection for us and for our children to the year 2000 and beyond.

• (1420)

Bill C-74 is timely. The Canadian environment is no longer pristine. Arctic haze hangs over the vast tundra regions and acid rain is killing our lakes and threatening our forests. Industrial pollution has spoiled our major rivers and is impairing water quality. Unenlightened agricultural practices are depleting and eroding valuable farmlands, and wildlife is in retreat as vital habitats are destroyed.

The Canadian Environmental Protection Bill has been developed specifically to address the litany of problems now facing our nation's diverse environment. The Canadian Environmental Protection Act is the centre-piece of this government's commitment to vigorous and effective environmental protection. Around it are positioned effective legislation such as the Transportation of Dangerous Goods Act, an act designed to prevent another Mississauga rail disaster, and the Motor Vehicle Safety Act, which has already introduced world-class standards on emissions from cars, trucks and buses to reduce such pollutants as hydrocarbons and nitrogen oxides. The Canadian Environmental Protection Act makes it clear that environmental protection is not solely the prerogative of the Minister of the Environment. All members of cabinet are expected to recognize and incorporate environmental values and environmental quality considerations into their decision-making and policy development. Witness the identification by Transport Canada of environmental officers for all airports across the country. Witness as well the decision by the Canadian International Development Agency to ensure that environmental factors are recognized in funding projects. Environmental protection is a priority of this government. We have acted on this priority and we will continue to act on this priority.

Bill C-74 is landmark legislation containing over 140 clauses. Not only does it incorporate the principal environmental protection authorities currently vested in the Minister of the Enviroment but the bill also adds controls on new substances, and defines strict penalties for those who ignore them. The Environmental Contaminants Act, the Clean Air Act, the Ocean Dumping Control Act, the nutrient provisions of the Canada Water Act and section 6(2) of the Department of the Environment Act have all been integrated into Bill C-74. Existing regulations under these acts will be automatically incorporated into the new act on the day of proclamation. These range from controls on mercury emissions and phosphorous content in detergents, to PCBs and lead additives in gasoline. New regulations will be developed under the act to address toxic substances. The first of these will deal with controlling those substances now depleting the ozone layer.

Honourable senators, I am aware of four concerns raised in the House of Commons about this bill. The first relates to the need to establish and implement national, uniform environmental standards. I agree and am pleased to see that national standards are indeed at the very hub of the proposed legislation. Clauses 34 and 61 of the bill give the federal government the clear authority to make regulations, to prescribe standards—national standards that will apply from sea to sea and that will be enforced. The standards will explicitly state the time frames and effective dates for compliance. The bill includes hefty penalties for those who disregard these standards. Enforcement will be carried out across the country by the investigations offices to be set up by Environment Canada.

To maximize the enforcement of environmental regulations, the Canadian Environmental Protection Act forges a renewed federal-provincial partnership based on the concept of equivalency. This issue raised concerns in the house, concerns I do not share. Equivalency is meant to be a vehicle of cooperation to cut costs and efficiently protect the environment. The concept is basic to the existing constitutional realities of shared jurisdiction in environmental protection measures. The multiplicity of environmental problems now afflicting our nation make it imperative that governments pool their resources toward the common good—environmental protection—and avoid costly duplication of effort. It allows the federal government to capitalize on provincial effort and provincial initiative. Equivalency gives the federal government the option to recognize individual provincial standards in those cases where the standards are as strict as, or stricter than, the national standards developed under the proposed act.

Unfortunately, there exists a degree of misunderstanding about the precise nature of the equivalency agreements to be negotiated with the provinces. I would like to emphasize that equivalency agreements with the provinces are not automatic. Nor do they constitute blanket arrangements. Rather, they relate to specific regulations.

Five criteria have been spelled out by the Minister of the Environment for assessing equivalency. These criteria are as follows:

1. The provincial or territorial standards must be at least equal to the national standards under the proposed act;

2. Measurement and test procedures must be comparable;

3. Penalties, fines and prison sentences, have to be comparable;

4. Citizens must have the same rights of appeal and petition at the provincial level as they do at the federal level, and,

5. Enforcement of the regulation in question must be fair and consistent in line with the principles of the proposed act's enforcement and compliance policy.

Only when these criteria are met will a federal-provincial equivalency agreement be established. I might add that there will be one agreement per province per regulation. If that is not enough, the proposed act has some built-in safeguards. First, equivalency agreements are not fixed in stone. If an individual jurisdiction fails to adhere to the letter and the spirit of the agreement, the agreement will be cancelled with six months' notice. Federal inspectors will then be on the job to

ensure full compliance with all regulations under the federal act.

To ensure this the government has doubled the enforcement staff at Environment Canada investigating pollution controls. Some 50 person-years and over $5 million will be devoted exclusively to enforcing regulations under Bill C-74 when it is passed.

A second built-in safeguard is offered in clause 35. The federal government will be able to enact regulations, if required, to address emergency situations or instances where the six-month notice period for cancelling an equivalency agreement could cause harm to the environment or to human health.

Perhaps concerns about equivalency agreements are rooted in past practices, when previous governments gave environmental protection measures low priority. That is no longer the case. For the Canadian public, and this government, a safe and healthy environment is one of our most pressing concerns. The public will not tolerate disregard for the law, nor will it tolerate non-enforcement. The public expects governments to act, and to act decisively, to stop polluters. This government has responded and will continue to respond to that expectation. Bill C-74 provides all Canadians with a mechanism to judge the government's performance. Bill C-74 requires the government to report annually both in terms of its own activities in enforcing the act and with repect to provincial activities under the equivalency agreements.

The third concern raised in the House of Commons suggested that the bill did not go far enough. Here again, I disagree. Bill C-74 provides a comprehensive regulatory regime to control toxic contamination. The Canadian Environmental Protection Bill adopts, for the first time at the federal level, an ecosystem approach to environmental protection—an approach that tackles pollution problems on land, in water, and through all layers of the atmosphere. Organic and inorganic substances, emissions, effluents, wastes and the products of biotechnology are dealt with effectively. Under the proposed act, toxic substances are managed throughout their life cycle—from manufacturing, to transport, distribution, storage and use, through to their ultimate safe disposal as wastes. Regulations to control a substance can be issued for any or all of the stages in its life cycle. Canadians will now have the protection they have been demanding—protection from toxic contamination and protection from incidents like leaks, spills or explosions.

To come to terms with the thousands of chemical substances already in the marketplace, the federal government has assembled a blue ribbon panel of experts to identify the 50 substances which most need to be assessed for their impact on water, wildlife, soil and air, as well as on human health. Each assessment will provide the government with the data necessary to determine the best means for controlling the substance in question.

The legislative tools for control are varied—from an outright ban, through regulatory restrictions, to guidelines and codes of practice on handling and disposal. The assessments will allow for an effective tailor-made environmental protection response on a substance-by-substance basis. The panel is scheduled to present this priority substances list to the minister at the end of this month. This list, and government assessments of the substances included on it, will be made public. Canadians—individuals and corporations—will be made aware of government decisions on regulatory action and will be invited to comment on those decisions.

• (1430)

For the first time, new substances not in use in Canada at the time the act is proclaimed will be assessed prior to their introduction or use. In other words, this government will be preventive in its approach rather than remedial. This government is committed to acting before tragedies occur rather than after, when often it is too late. The notification system prescribed under the bill requires industry to submit vital data on the substance proposed for introduction to the Canadian marketplace. With this information, the government can evaluate the health and environmental impacts of the substance and then define any necessary controls.

Under the Canadian Environmental Protection Bill, for the first time federal government operations are subject to the same rules as the private sector for controlling toxic substances. In addition, the bill gives Environment Canada the authority to regulate emissions and effluents, as well as waste handling and disposal practices of all federal departments, boards, agencies and crown corporations. New regulations controlling laboratory wastes from federal establishments will be finalized as early as this summer. The federal government can, must and will be exemplary in its actions.

Finally, there has been much discussion about an environmental bill of rights. Increased citizens' rights are built into the very fabric of the new legislation. Citizens are being encouraged to exercise their rights to participate in the administration and enforcement of the legislation. For example, once it is proclaimed, citizens can request that a substance be added to the Priority Substances List for assessment and possible control, found in clause 12. They can object to regulatory decisions by requesting that a board of review be established and they can make presentations before such boards, which are defined in clause 49. Any two Canadians can petition the Minister of the Environment to investigate an alleged infraction, which is found in clause 108. This unprecedented vigilance by the citizenry of Canada in the ongoing administration of the legislation is the direct outgrowth of this government's willingness to consult broadly in the development of this new legislation.

Bill C-74 is, itself, the product of extensive public consultations involving the three levels of government, industry, labour, the university community and citizens' groups. This bill represents a truly national effort—an effort that gives all Canadians the right to an equal level of protection from the threats posed by toxic substances.

A law is only as good as the will to enforce it, and the Canadian Environmental Protection Bill will be enforced rig-

orously. An Enforcement and Compliance Policy is being finalized in consultation with industry and public interest groups. The policy clearly spells out this government's intention to ensure compliance with the Canadian Environmental Protection Bill and all of its regulations.

The government will promote compliance through information, education and training, technology development and technology transfer programs. This government will continue to develop environmental quality guidelines and objectives and codes of practice to help commercial enterprises and government agencies attain nationally regulated standards. A program of inspections, complemented by spot checks, will be put in place to verify compliance with the new act and its regulations.

Warnings, tickets and injunctions can be issued and prosecution in the courts pursued. Those found guilty could be subject to heavy fines and jail sentences of up to five years. Corporate officers will be personally liable to ensure that actions of their company respect the requirements of the legislation. That is found in clause 122.

Canada's international environmental commitments are fulfilled under the Canadian Environmental Protection Bill. Sustainable development, as outlined by the World Commission on Environment and Development—the Brundtland commission—is woven right into the fabric of this bill. This concept of sustainable development recognizes that economic development and environmental protection must go hand in hand, that our natural resources must be farmed and not mined, that our economy, present and future, is dependent on continued availability of clean water, healthy forests and unpolluted air.

The Priority Substances List is Canada's contribution to an international program being developed by the Organization for Economic Cooperation and Development. The program will coordinate the analysis of existing chemicals by the different countries of the world with the results being shared internationally. The first regulations under the bill, controls on chlorofluorocarbons, or CFCs, fulfil Canada's commitment under the 1987 Montreal protocol on ozone depletion in the upper atmosphere. Honourable senators will know that Canada's leadership was instrumental in the conclusion of this unprecedented integrational accord.

In conclusion, honourable senators, I believe that the Canadian Environmental Protection Bill is worth our serious consideration and approval. Rarely has there been a piece of legislation with as many authors as Bill C-74. Consultation on the bill was extensive—the review of toxics legislation in Canada began over five years ago. The Canadian Environmental Protection Bill was preceded by the draft Environmental Protection Act put out in December 1986 for public comment. Substantial changes were made to that draft before its release as Bill C-74 in June 1987. In the legislative committee in the House of Commons over 144 amendments were accepted. In report stage in the House a further five amendments were incorporated. Everyone who has claimed a stake in environmental protection has helped in the formulation of this bill. As a result, I urge this chamber to review the Canadian Environmental Protection Bill with speed and to pass it accordingly.

I should advise honourable senators that once this motion has been debated I shall move that the bill be referred to the Standing Senate Committee on Social Affairs, Science and Technology.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I wish to ask Senator Robertson whether she has settled with anyone the reference of the bill to the Standing Senate Committee on Social Affairs, Science and Technology, since environmental affairs are under the mandate of, I believe, the Standing Senate Committee on Energy and Natural Resources.

Senator Robertson: I had checked with the whip—who is not present this afternoon—and that is the answer I was given. It does not make any difference to me which committee the bill is referred to. I suggest that it be referred to the appropriate committee, but it certainly should be referred to a committee for further discussion.

On motion of Senator Frith, for Senator Kenny, debate adjourned.

WESTERN ECONOMIC DIVERSIFICATION BILL

SECOND READING

Hon. Nathan Nurgitz moved the second reading of Bill C-113, to promote the development and diversification of the economy of Western Canada, to establish the Department of Western Economic Diversification and to make consequential amendments to other Acts.

He said: Honourable senators, the legislation before us today for second reading, Bill C-113, establishes in law the Department of Western Economic Diversification and consitutes a new approach to western economic development.

The fundamental purpose of this bill is to promote development and diversification and to advance the interests of western Canada in national economic policy and program development and implementation.

In essence, the bill is about how the federal government can better serve western Canadians and promote their interests. Through this legislation the cornerstone is laid for an innovative approach to regional economic development, a regionally-based organization, not an Ottawa-based organization.

The new department and deputy minister will be located in the city of Edmonton, with regional offices located in Vancouver, Saskatoon and Winnipeg. Each regional office will be headed by an assistant deputy minister. The department's senior officials will, accordingly, work in the west and be exposed to the pulse of the west daily. Western Canadians will be able to turn to the Department of Western Economic Diversification for assistance and, at the same time, have direct input into government from within their own provinces on a day-to-day basis.

The offices will assist western businesses and western businessmen by pathfinding and problem solving so that westerners

can benefit from federal services and assistance with a minimum of red tape.

● (1440)

Pathfinding is a priority. So often businesses do not have the time to investigate thoroughly all the avenues of federal financial support for which they might qualify. The Department of Western Economic Diversification will help businesses do just this. Westerners with ideas will be brought together with the most appropriate federal means of assistance to help reach their goals. Hand in hand with pathfinding is the advocacy role performed by the Ottawa liaison office. The west has long needed such an advocate in Ottawa. Bill C-113 empowers the minister and the Department of Western Economic Diversification with the authority to play a leading and guiding role in creating federal policies and programs for the west and in making existing policies and programs more beneficial in their impact on the west.

The department will also have the mandate to consult and cooperate on an on-going basis with the provinces, business, labour, and other public and private organizations concerned with the west's economic future. The bill gives the department the power to formulate plans and integrate strategies and, where appropriate, to oversee or implement them. The advocacy powers outlined in the bill will do much to counter the centralizing inclination of federal departments and ensure that they are aware of western concerns.

This government recognizes that small and medium-sized enterprises offer great potential for achieving economic diversification. The new department, as set out in the bill, will be giving special attention to how best to achieve that potential. The legislation does not limit the department to such enterprises. If larger firms or associations can further diversification, the department will have the authority to support their initiatives as well.

The legislation makes provision for the department to offer different types of financial assistance. Assistance packages can be tailor-made to suit a project. The Western Diversification Fund is a flexible and innovative financial tool. To further ensure the fund's flexibility and impact several operating principles have been adopted.

First, assistance will be directed at projects that expand or diversify the western economy; by this I mean projects leading to new products, new markets, new technologies, import substitution and new long-term jobs, not routine business activities such as take-overs and relocations.

Second, assistance provided by western diversification will be in the form of "top up" or "last dollar." As I mentioned before, all other forms of assistance will be thoroughly investigated beforehand, including a company's own share of the dollars.

Third, there will be different types of assistance. Bill C-113 extends the types of financial assistance that can be offered from contributions and grants to include loan guarantees, credit and loan insurance. A most important guiding principle is the elibigility of all economic sectors, including the service and resource sectors.

Finally, projects like research and development and marketing will be encouraged because of their potential to develop the business infrastructure of the west, thereby enhancing the competitiveness of many western companies.

I would like to turn now to some of the initial responses and successes achieved by western diversification in its short history. Following the announcement of the western diversification initiative last August, the public in the west proved more than eager to participate. To date western diversification has responded to more than 54,000 telephone inquiries, about 4,200 visits to its offices, and over 2,800 written proposals. In addition, 313 projects worth more than $300 million have been approved for funding.

Examples of these include: $5 million to the Potash Institute of Canada to diversify its market opportunities in Asia and to strengthen its research and education capabilities; $7.5 million towards the setting up of an $18 million world class cold climate engineering research facility in Edmonton—about 35 small and medium-sized firms belonging to the institute and dozens of other companies will benefit from this project; and $9.45 million to the B.C. shake and shingle industry towards the establishment of a market development program. More than 120 small and medium-size producers will benefit from this initiative.

Additionally, western diversification is assisting individual businesses which offer potential for achieving economic diversification. A Moose Jaw stitchery company will acquire computerized embroidery equipment, which is the first of its kind in Canada. The company will thus be able to triple its production. A Manitoba company is developing an aquaculture facility to raise pan-sized Arctic char and rainbow trout. An Alberta company will now be able to take advantage of a change in building codes to develop a national marketing strategy for an energy-saving furnace damper.

What the concept of diversification is proving is that men and women in western Canada have an abundance of ideas and the talent and dedication to ensure that the diversification of their economy becomes a reality. Bill C-113 ensures a new approach to western regional development on the part of the federal government. Westerners now have greater control over their economic destiny through a new department designed by and created for western Canadians. As a western Canadian, I am proud of this historic bill, and I encourage honourable senators to give it their support.

Hon. H.A. Olson: Honourable senators, I want to say a word or two about this bill. I agree with Senator Nurgitz that its provisions for the diversification of the western Canada economy are needed very badly. Having said that, and having read the minister's speech in the House the other day—which was essentially the same as Senator Nurgitz' speech here, and we expect that—I have to say that it is the most unabashed audacity that I have ever seen that this government can plagiarize, without blushing, the programs that were in place

before, and can do so as if these programs were unique—a term Senator Nurgitz used a number of times—as if they were something new. I suppose we are going to call this Conservative policy now. If that helps to bring about things that have been at a standstill for the past three years, then I want to applaud it. These things certainly need to be done. But I will return to that in a moment.

Honourable senators, diversification of the economy in western Canada is extremely important for at least two or three reasons. First, we know that some segments of agriculture, particularly the cereals and grain production sector, are in the midst of a serious depression at the moment. I suppose the reason most often cited for this is the subsidy war between the United States and the European Economic Community. I think, however, that we must look behind that and ask ourselves this question: Why are they engaged in this war? It is because both sides seem to believe they have a few extra tonnes of cereal grain, or more than can be absorbed in the world market at a reasonable price, so they are cutting each other's prices by increasing the subsidy over and over again. But, honourable senators, I think we need to understand what is happening in agriculture, especially in cereal grain production, and that is what might be the greatest revolution in modern history in terms of this production. I say that because there are areas of the world that are now producing large quantities of cereal grains, especially wheat, which did not produce it only a few years ago. In that period Canada had a large and stable market for wheat. We sold great quantities of it to Europe and to other parts of the world. More recently we have sold wheat to Asia, especially Japan. That market appears to be reducing year after year because other areas of the world are able to be competitive.

● (1450)

I know that technology for producing wheat in Canada, the United States and, in particular, Europe, has improved a great deal in the last 20 years or more. It has also been applied in other parts of the world, and the production from those parts of the world is coming on to the market, although some areas are slower than others.

The one area that I would like to mention is that vast part of Africa between the tropical forests and the southern fringes of the Sahara Desert. There has been a great deal of talk about the problems that are being encountered in Ethiopia, the Sudan and two or three other countries in Africa because of drought. Honourable senators, in 1962 I spent quite a few weeks there with the Commonwealth Parliamentary Association. It was clear to me, and to a number of other Canadians who were on that tour, that there was a vast area between the desert and the tropical forest where great quantities of wheat could be produced if technology that was already known to farmers in North America—both Canada and the United States—were applied. We speculated on how long it might take for that technology to be applied in that part of the world. Of course, political difficulties between countries, tribes and people of different views who were trying to take over governments were preventing the farmers from growing much greater quantities of cereal grains. That is also the major problem today in attempting to feed the people in that area who are starving. It is not because of the inability of the land to produce, if technology that is already known were applied.

There is a civil war in progress in the northern part of Ethiopia that makes it impossible to move supplies in, and makes it even more difficult to produce the grains and other food that they need.

The main reason I am mentioning this is because this revolution in agriculture may affect western Canada for a very long time. We may be in a situation where our costs are higher than in Africa or Asia or other parts of the world, and the fairly stable international market for the grain produced in western Canada may not come back as soon as we think it will. Therefore, the need for diversification of the economy of western Canada becomes even more important.

If we look around Canada today we see other crops for which, in the past, there has been a long and stable market, which has now disappeared. I suppose the tobacco industry is the most outstanding example. Those farmers are having a very difficult time adjusting to the cultivation of other crops that produce anywhere near the amount of dollars per acre, what with the debt and other costs involved to maintain that land.

The southern half of Alberta, Saskatchewan and Manitoba is primarily involved in the production of cereal grains, mostly wheat, but there is some barley, corn and oats. If our capability to grow cereals for export is matched by growers in other parts of the world, then we will have to find other crops to grow in order for our farmers to make use of that land. If the Free Trade Agreement is ratified, it may be that some of the horticultural producers who are farming in the northern part of the North American continent will have to give way to production in the United States, where, because it is farther south, it is less costly to produce horticultural crops such as tomatoes, cucumbers, lettuce, celery, and whatever.

So I think this gives a great deal of validity to the contention by the government that there needs to be diversification in western Canada's economy because of the potential shift in the market for our traditional crops.

Let us now look at what is probably the next largest sector in the western economy, and that is energy: gas and oil. We can hope that there will be a demand for oil at around $20 U.S. per barrel. That price seems to be what most oil companies believe is necessary for them to run a viable industry. They do not claim that they need $30 or $35 per barrel, where it was at the peak. They have demonstrated that they shut down their operation if it goes below $15 U.S. per barrel. I think it is generally agreed that $20 U.S. per barrel would be considered as representing stable marketing conditions. If you remember that there are perhaps 10 million or 12 million barrels per day of production that is shut-in in the Middle East, mostly among the OPEC countries—production that was, in fact, on stream not very long ago—then you begin to wonder whether or not there will be any stability. Some

international oil companies believe we are in for at least ten years of depressed oil prices simply because of that potential to produce 10 million or 12 million barrels per day more than is now being produced. Remember, that is approximately 25 per cent of what is in the international market at the present time.

So I suggest to you that we need diversification in that sector also. We hope that there will be an ongoing expansion in gas and oil—in hydrocarbons generally. A few years ago no one would have believed that the production in the North Sea carried on by Norway and the United Kingdom, or the production in Indochina, was possible. There was a time, of course, when we had high hopes that there would be significantly increased production from the Beaufort Sea, off the east coast and other places.

If, for any reason, some of this potential production—this shut-in production—is turned on to depress the price below what is a reasonable return to keep people employed in western Canada, we should prepare the economy in western Canada for diversification so we would not be so heavily dependent upon it.

Honourable senators, there are other areas such as timber and potash. I have mentioned these two sectors because they are by far the most important to Alberta. Perhaps it is fair to say they are also the most important to Saskatchewan and Manitoba, if you look at agriculture and energy together. So there is no doubt in my mind that we should be doing a great deal in this respect.

● (1500)

Up to this point I do not think that Senator Nurgitz is in any way in disagreement. I can see by his shaking his head in the right direction that he agrees that we do not have a disagreement. But then we get to the bill.

Honourable senators, the bill is fairly straightforward. It says that we will set up a new department of the government. If you read only the bill you could be fairly satisfied that that is what they were going to do. But then we read the speech made by the minister explaining what is in the bill, and that is where we have difficulty.

First, it is inaccurate, because it says in two or three places that this bill demonstrates the commitment to the regional development in the west, and it demonstrates the government's approach that is unique for these purposes.

A federal coordinating officer was set up in each one of the provinces. The government was not setting up another department, so they put in another layer. Other than that, its objectives were exactly the same as what was stated as the preamble, and so on, to the bill.

The minister goes on to say—and I am reading from page 13274 of the *Debates* of the other place—that:

> It is not an Ottawa-imposed approach to the economic development of the West.

I think Senator Nurgitz mentioned that again today.

Senator Nurgitz: Yes.

Senator Olson: Good; I am glad.

[Senator Olson.]

That is exactly what we had to say about the federal coordinating officers, namely, that they should be out in places like Winnipeg, Edmonton and Halifax, or wherever, so that there would be some input from the region and they would be influenced by the people they were around, and to coordinate the efforts of all of the federal departments that were there. Every one of them has branch offices there—especially in these major centres.

I have another quotation. He states:

> When we look at the areas that are important, to mention some, agriculture, forestry, transport, science and technology . . . and departments together and to examine the programs and the policies in relation to the economic development potential in western Canada.

That is a nice description of what the purpose is all about. I do not think one word is different, but I will have to check to see if that wording is exactly the way we described the function and activity of the federal coordinating officers when they were sent out in early 1981.

I guess we have agreed that it is not unique or new, then. Senator Nurgitz indicates that that does not matter.

Senator Nurgitz: No.

Senator Olson: Why couldn't you give us a line for having done this? There is no acknowledgement at all that it was there before.

We then get to what I think is a difficult part. On page 13275, the minister, in his speech, says this:

> This is not an entitlement program. If we take a look at previous experiences, entitlement was part of it. This program is not entitlement; it is managed with flexibility and creativity.

An Hon. Senator: Ho, ho!

Senator Olson: Yes; I hear someone say, "Ho, ho!" That is what I say, too. This opens the door for the kind of political patronage where the minister has—

An Hon. Senator: Flexibility!

Senator Olson: —flexibility to accept and reject.

Senator Corbin: They call it "discretion"!

Senator Olson: Oh, they call it "discretion."

As Senator Nurgitz pointed out, 262 have already been approved. We have to look at these carefully, but I think this "flexibility" and "creativity" will do it.

Why isn't there some entitlement? When we make a law and a rule on a program, are Canadians not entitled to know whether they qualify or not, if they meet the conditions? Why does he make the point that it is not an entitlement program? If it is a program paid for by the people of Canada and authorized by the Parliament of Canada, why is there no entitlement? Is not everyone entitled to apply? Are they not entitled to have their application considered favourably as well as anyone else?

Senator Nurgitz: Considered.

Senator Olson: But he says, "This is not an entitlement program." There is no qualification that it will be "managed with flexibility." No one needs to expect that they have it coming as a citizen of Canada. They can apply for a program; they will get it if the minister approves. That is all.

Honourable senators, that is not a good way to start up a program. I hope that Canadians would have an entitlement to it, and I hope that it does not deteriorate into a political pork barrel under this government. The only hope that we would have then is to change governments so that the other guys could clean up the mess. There is the potential that that could happen.

I should say at this point that I have a great deal of respect for the deputy minister who has been nominated—I think he is in place now—Bruce Rawson. I know about that, because we hired him to be the federal coordinating officer in Edmonton in 1981 when we set up those offices to do exactly what Bill C-113 is seeking to do.

Honourable senators, there is a great deal—I have at least three or four more pages—of the minister's speech marked here where I could make some pertinent comments.

If you are going to heckle, I wish you would speak loudly enough so that I can hear you.

Senator Nurgitz: Sorry, I just thought that we could read it ourselves.

Senator Olson: But I am not sure that you have read it yourself, that is the problem.

Senator Nurgitz: I have not.

Senator Olson: You admit that you have not read it. It is a fairly good speech, but you have to read it with a kind of jaundiced eye and with some experience of what has gone on before, before you can really understand it. Perhaps you would like me to explain that to you.

Senator Frith: Unjaundiced eyes, that is your problem!

Senator Doody: They have to be jaundiced!

Senator Olson: That will come at another time, and perhaps it will happen in committee. I think we should get on with it.

The western Canadian economy needs diversification, and I hope that it will achieve all of the things that are said in there. I am glad to see this government committed to it. We started down that road some time ago, but have had a three and one-half year interruption while they halted the programs that were under way and redesigned them—I suppose they waited long enough to make people think that it was on a Conservative instead of a Liberal initiative. However, I wish them well. I hope that the benefits to western Canadians come out at least as well as has been indicated in some of the explanatory remarks.

Some Hon. Senators: Hear, hear!

Hon. Michael Pitfield: Honourable senators, I had not intended to participate in this debate, and I apologize if I cause things to go awry for a moment. I want to take one or two minutes to address this bill. It shows that in these matters we have not learned anything in 20 years.

• (1510)

Twenty years ago we had an organization of government based on a series of line departments such as Agriculture or Energy or Industry. We also had a few infrastructure departments such as Transport or Canada Post or Public Works, and we had a very few coordinating departments such as the Department of Finance or the Department of External Affairs.

Then we discovered regional development. That was born out of a great necessity. Confederation was not as sensitive to those things as people felt it should be. Therefore, the obvious solution was to create a department to deal with it. If there is one lesson that comes out of the creation of a department for regional development, it is that regional development is not a line function but a staff function, and that when regional development is cast as a line department—as this pretends to be—it gets into the hair of Agriculture or Energy or Industry or whatever other line departments there may be. The example that we had in spades occurred about five or six years ago when Volkswagen, as I recall, or one of the other foreign automobile companies, was negotiating with two or three federal government departments at the same time, without any of the government departments concerned coming clean with one another about what was going on. It was from that kind of experience that the ministries of state were born and that we began to move to establishing these FEDC officers my friend opposite was referring to. For a while under that system it seemed as though we were making progress, but now we come back to this monstrosity.

Honourable senators, this is a most peculiar piece of departmental legislation. Usually departmental legislation sets out the minister's duties, objectives and powers in terms of the management of public servants and of the resources of the department. However, there is none of that here. What this department does essentially is to throw money at problems. I suppose that is also a well-worn tradition. However, I think we must now be very careful, because the warnings we have heard about waste and about patronage are very well founded indeed. When a department exists for the purpose of throwing money at problems, these are the sorts of things that can develop very quickly.

This department fairly reeks of that sort of function. If you look at its powers, duties and functions you will see: "The Minister shall guide and promote . . . the Minister shall lead and co-ordinate . . . the Minister shall formulate plans and integrate strategies . . . the Minister shall oversee . . . the Minister shall plan, direct, manage . . . the Minister shall plan, direct and manage [again] . . . the Minister shall initiate, implement, sponsor, promote and co-ordinate . . ." That is what the minister is going to do.

The real purpose of this kind of legislation is to package propaganda. You have a group of words such as "western diversification" which suggests thoroughly desirable, laudable ends, and one tends to assume that by throwing money at these problems, and by putting in the name "western diversification"

here, there and everywhere, people in the west will get the message, even though they do not get the benefits.

Then, in order to accommodate to something of an anti-Ottawa bias, you locate this federal head office, ministerial function somewhere in the region to be served. Therefore, Edmonton becomes the headquarters for Alberta, but it also becomes the headquarters for the western diversification interests of British Columbia, Saskatchewan or Manitoba. In the fullness of time, this will develop into something resembling a third level of government. We now have the federal level of government, we have the provincial level of government, and then we have institutions such as this one which sort of fit in between.

I suggest to you, honourable senators, that this sort of proposal is founded on sloppy thinking. Moreover, I do not believe that it will work.

Some Hon. Senators: Hear, hear!

Hon. Finlay MacDonald: Honourable senators, I would like to offer Senator Pitfield some encouragement. We are lighting candles, and I can understand his depression. He has probably presided over more programs that have not worked than anyone else in this chamber. It would take a legion of acronyms to mention the number of programs that we have seen that have not worked. I suppose, tomorrow, when we get to the ACOA, there will be a number of people who will have some legitimate concerns about its effectiveness or whether it will be just another program.

However, I would like to ask Senator Pitfield a question. I heard a reference to coordinating departments, which, I assume, were central agencies. Then I heard him say something about a line department versus a staff department. I wonder if Senator Pitfield could give me an example of what he meant when he used the word "staff." It puzzled me.

Senator Pitfield: Yes. Essentially, the staff departments would be the Department of External Affairs, the Department of Finance, the old Department of Trade and Commerce in its commercial-policy role. Those were essentially staff departments, and the same can be said of the Privy Council Office, insofar as the cabinet was concerned—and I could go on. Their job was to coordinate other departments such as the line departments, the infrastructure departments, and so forth.

Senator MacDonald: How would you define the MSERDs and that type of department?

Senator Pitfield: I would define them as an effort to cope with the failures that you have alluded to and that I am sure you intend to build further upon. The MSERDs, or the Ministries of State, were coordinating departments that were set up to try to build some consistency and to develop some program measures—which are missing from this legislation—with regard to the plethora of programs that had been developed by line departments, coordinating departments, and so on and so forth. It was a step forward; perhaps not much of a step, but it was certainly better than what existed previously. For one reason or another the MSERDs and others were abandoned as departments, although their functions were all transferred to the Department of Finance, the Treasury Board and the Privy Council Office. What we are doing here is not going back to MSERD; what we are doing here is going back to the very earliest days of the Department of Regional Economic Expansion.

● (1520)

Senator Murray: Yes.

Senator Pitfield: We shall see if it works.

Senator MacDonald: I suppose my question should be addressed to Senator Olson, because he brought the matter up. Great though our respect might be for the public servant to whom the honourable senator referred, Mr. Bruce Rawson, is the honourable senator suggesting that the "FEDCs," as they are called, were capable enough, and that it was not necessary to enact an agency such as this, that experience has shown that the FEDCs alone could sufficiently coordinate all these activities?

Senator Olson: No, I did not at all. I do not know if "objecting" is the right word, but someone was using words such as "unique" and phrases such as "it is the first time it has been tried." The minister's speech is laced with this kind of talk. In fact, what we are talking about here is not unique, and it is not the first time it has been tried. Almost all the objectives in this bill, although the new agency will become a department, were stated before.

As to Bruce Rawson, I think I said that we hired him. However, he was in the federal government long before I came along. He was one of the FEDC officers.

Senator MacDonald: I am looking for the examples or the names of the things tried before. The honourable senator used such terms as "this is old hat" and "this is old stuff," as Senator MacEachen would say. What are these things that worked so well that we are now emulating?

Senator Olson: Honourable senators, that is another speech entirely. I would be very happy to give it, if you want me to.

Senator Doody: No.

Senator Olson: It would take a full speech to list these things, if the honourable senator wants me to answer what has already been said by Mr. McKnight and by Senator Nurgitz, who introduced the bill in the Senate. It will take me a couple of minutes to go through my files, but I can find all the objectives we set out and all the great things we were going to do for, for example, Nova Scotia industries. We carried out a great deal of what we intended to do, not only in Nova Scotia but throughout the country.

Hon. Philippe Deane Gigantès: Honourable senators, for the sake of general amity, might I suggest to Senator Olson that he not take away from our poor friend, Senator Finlay MacDonald, the illusion that they have had some original thinking?

Senator Nurgitz: Honourable senators—

The Hon. the Speaker *pro tempore:* Honourable senators, I must inform the Senate that if Senator Nurgitz speaks now his

speech will have the effect of closing the debate on the motion for second reading.

Senator Nurgitz: Honourable senators, I have a few brief comments. I want to mention to Senator Olson that the Western Diversification Department is not just about money, as he has indicated. Actually, I was all set to muster all the sincerity and emotion I could to thank him for so many of these ideas and for his approval of this program, until I heard Senator Pitfield's intervention and the concerns he expressed. What I suggest, so that we can determine whether there is a great deal of light or a great deal of darkness, as Senator Pitfield has said, is that we refer the bill to the National Finance Committee. Therefore, I move second reading of this bill.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Nurgitz, bill referred to the Standing Senate Committee on National Finance.

IMMIGRATION ACT, 1976

BILL TO AMEND—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the twentieth report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill C-55, An Act to amend the Immigration Act, 1976 and to amend other Acts in consequence thereof, with certain amendments), presented in the Senate on May 11, 1988.

Hon. Joan Neiman moved the adoption of the report.

She said: Honourable senators, as you are aware, I presented Bill C-55 on behalf of the members of the Standing Senate Committee on Legal and Constitutional Affairs on Wednesday last. As chairman of that committee, I should like to express my gratitude to the hardworking and sometimes long-suffering members of that committee from both sides of the chamber. Examining this long, complex and often controversial bill in a comprehensive manner required dedication and a significant commitment of time and energy from the members of the committee. The committee heard over 114 witnesses. It travelled to Winnipeg, Edmonton and Vancouver. We did our homework in lengthy, private sessions and we emerged relatively unscathed with a report that achieved, I believe, a high degree of consensus.

Before getting into the details of the report, I should first like to explain the general approach taken by the committee. Many of the witnesses who appeared before the committee urged the committee to perform a radical restructuring of the bill. For example, they argued for the complete elimination of the screening stage, which is the primary stage in the procedure being proposed. To support their proposals they presented legal and humanitarian reasons which a number of us on the committee felt were compelling. Personally, I am sympathetic to those views, and I regret the obvious disappointment with certain aspects of our report as expressed by very conscientious witnesses who appeared before us. The committee, however, felt that it was not our role to perform major surgery that would have the effect of changing fundamentally the very basis of the new procedures for refugee determination. To do that would have meant rewriting this very complex piece of legislation with its many interdependent parts, or, if we really felt strongly about it, simply rejecting the bill. I do not think that any of us felt that strongly, because we were assured that, in spite of the many perceived flaws in the bill, there were some very good aspects to it.

We did not feel, in spite of our considerable misgivings regarding the screening process contemplated, that we should try to substitute our views for declared government policy.

All members of the committee did agree, however, on the necessity for amendments to key areas of the bill. We concluded that the principles of fundamental justice required certain changes, and we hope you will find those both constructive and restrained. At the same time, I sincerely believe that our proposed amendments will lead to an appreciably fairer law and one that will better withstand the legal challenges that may follow the passage of Bill C-55.

As to the contents of our report, we tackled first that area which we, and virtually all our witnesses, thought most needed amendment: the "safe country" provisions of the bill. The "safe country" concept is part of the screening mechanism designed to control access to the refugee process. We saw the need for safeguards so that claimants would not be put at risk if they were removed to these so-called "safe countries." We also saw the need for clarification regarding claimants who had been merely transiting through a country.

While accepting the need for a "safe country" list, we agreed that cabinet was not the best body to be in charge of it. We concluded, instead, that the chairman of the proposed Immigration and Refugee Board, with the advice and assistance of experts in refugee matters, both governmental and non-governmental, would be in a better position to devise the list. Newspaper reports of yesterday and today, whether totally accurate or not, remind us that there may be a potential danger to individual refugee claimants if foreign policy considerations are allowed to affect the refugee determination process. For that reason I would argue that cabinet should not be the body to formulate the list, although obviously Canada's foreign policy and international commitments must have some significance and influence. Refugees are not immigrants, and decisions regarding their rights to claim status should not be determined by anything other than the well defined refugee criteria of which the committee was made aware.

• (1530)

Senator Hébert will be addressing the "safe country" amendments in detail, so there is no reason for me to say more on this point. However, I do want to stress that I believe these amendments are at the heart of our report and represent the minimum requirements of the Charter of Rights and Freedoms.

The committee was also concerned about a provision in the bill that, to us, seemed unduly stringent. This was the part of the bill that required that refugee claimants be asked right at the beginning of their immigration inquiry whether or not they wished to make a claim. If they did not speak up then, they lost their chance. We were convinced by our witnesses, who had had actual experience with refugees, that there could be a number of very understandable reasons why genuine refugees might not make a claim at that first opportunity. Fear might make them silent. Because of their experiences with governments and military officials in their homelands they might not yet feel able to trust Canadian authorities. Whatever their individual reasons, we felt that the people who might lose their right to claim at this early point would likely be those in most need of Canada's protection.

Our solution was to recommend a safety valve so that claimants, who could later satisfy the presiding officer that the reasons for not speaking up initially were valid, could still have their claims heard. We feel that this procedure will be fairer to refugee claimants, yet will not impede the process in the vast majority of cases.

The committee was also concerned about some aspects of the provisions of the bill that provide for duty counsel to be made available for claimaints in certain circumstances. Naturally, we approve the general principle and we recognize that Canada's approach is unique in this regard. However, some of the details of the provisions seemed open to the interpretation that claimants might have little opportunity to choose their own counsel, or, having chosen someone, their counsel might be deprived of a reasonable opportunity to prepare for the hearing. Members of the committee were concerned that this was unfair to claimants and their counsel and was quite possibly a violation of the charter.

Our solution was to require simply that a reasonable time be given for a claimant to choose and instruct his or her own counsel before duty counsel could be appointed on his or her behalf. I believe that the test of reasonableness is in itself most reasonable.

The committee also agreed with those witnesses who suggested that there should be a wider jurisdiction for the Federal Court on appeals of decisions of the Refugee Division. Our proposed amendments give the court more scope to look at factual aspects of refugee cases. Moreover, on the subject of courts, we agreed with practising lawyers that there appears to be no reason to restrict judicial review in non-refugee immigration matters; so we recommended that this provision be removed.

Two further matters in the report merit brief mention. We are aware that the international definition of "refugee" is quite narrow, and that under the present system consideration is often given to other humanitarian or compassionate aspects that may be present in some cases. We wish this identification of deserving cases to continue and have therefore recommended that the Refugee Division of the proposed board be given the jurisdiction to recommend to the minister that, on these grounds, a person be considered for landing.

[Senator Neiman.]

Finally, as honourable senators may know, the work of the present Immigration Appeal Board has been adversely affected by the fact that Bill C-55 contains a provision causing all members of the board to cease to hold office when the bill becomes law. We have recommended that the apprehension of bias caused by this provision be remedied by continuing the terms of the present members.

If I may be allowed a personal comment, if the rumours that are surfacing again prove accurate—rumours of the government's declaring a general amnesty or some new fast-track procedures for dealing with the thousands of refugee claims now pending, then, in order to deal with those claims fairly and expeditiously, the government will need all the experienced personnel available to it as well as the new people it will be adding.

We have also recommended removal of a provision that would have denied just compensation to anyone losing his or her position because of the passage of Bill C-55. We believe the government should set an example of fairness and equity in this regard.

I hope the committee's recommendations with regard to Bill C-55 will commend themselves to you all.

Hon. Senators: Hear, hear!

[*Translation*]

Hon. Jacques Hébert: Honourable senators, to participate in serious deliberations on bills like C-84 and, more recently, C-55, was no ordinary experience. I am sure that at some time every member of the Standing Senate Committee on Legal and Constitutional Affairs was moved by the testimony we heard. We all tried to work together in a spirit of co-operation and conciliation, which did not prevent the occasional emotional remark or statement that came straight from the heart.

What was so special about the deliberations of this committee? Certainly not the enormous complexity of the legal problems raised by C-55, which were the delight of our lawyer colleagues and the dispair of the rest! Not the economic aspects of this legislation, which are nevertheless very substantial.

• (1540)

We soon realized that we were not talking about law, economics or politics, but about human beings whose life or liberty was at risk, and that our country had the power to admit (read: to save) or to turn back (in other words, sentence to poverty, torture and even death).

For instance, when we discussed the right of every individual to choose a lawyer when claiming refugee status in Canada, we could not help seeing in our mind's eye the unfortunate Salvadoran who just managed to escape the violence in his own country and without money, papers or help, travelled through Guatemala, Mexico and the United States, illegally. Imagine the terror of this human being, as he walks thousands of kilometers through the back streets of cities. Finally he arrives exhausted and desperate at the border of this vast cold country, *El Canadá*, whose reputation for hospitality and compas-

sion had reached his far-off village, harassed by guerilla warfare.

When we discussed the clauses of Bill C-55 that created the controversial concept of "safe countries" to which Canada would have to return a bona fide refugee, if that is where he came from, or even if he had just been there in transit, we still saw our Salvadoran. We knew that coming from the United States, a democratic country, a friendly country, we would be hard-pressed not to qualify as a safe country, we knew he would probably be sent back to the terrors of El Salvador. Because this tiny totalitarian country, where violence is the order of the day, is an ally of the United States, our beloved neighbours admit less than 3 per cent of Salvadoran refugees. But if the United States cannot be considered a safe country, what other country on this planet would deserve a place on the list drawn up by cabinet according to C-55? France? The defender of human rights that just re-elected a socialist president? Not so, explained a witness, an eminent lawyer whose client, an Iranian refugee, was in danger of being deported to Iran by *la Doulce France*, whose negotiations with that terrible regime were an excuse for every kind of concession. But Denmark, at least, would be a safe country, full of compassion for the persecuted of this earth. Recently, however, Denmark, which has the excuse of being a small and over-populated country, has become one of the least hospitable democracies. It has almost closed its borders to refugees.

Canada doesn't have the same excuses as Denmark. We have a vast country that grew and prospered thanks to its traditional open-door policy, a country that would not exist otherwise, since all Canadians are descended from immigrants or refugees, including our native brothers who probably came from Asia. Our demographic experts agree that without a substantial increase in immigration this country will not be able to maintain its standard of living, let alone raise it; nor will it be able to sustain our aging population.

Restricting the entry of bona fide or even economic refugees while attracting rich or highly qualified immigrants would be shortsighted. The men and women who built this country were neither rich nor skilled. Recently, I was reading a biography of my great-great-grand-uncle, Curé Nicolas de Tolentin Hébert, a pioneer who opened the Lac-Saint-Jean area to colonization in the 1830s. For some time he was vicar of the Cathedral in Quebec City, and he described the warm welcome Irish immigrants were given by the French-Canadians we now call Quebecers, which I interpret to include my colleagues Rizzuto, Cogger, de Bané, Watt and the rest! My great-great-grand-uncle described the extreme poverty of these immigrants who fled a miserable life in Ireland, the Bangladesh of the time. These refugees had to be clothed and cared for and fed, and they paid us back in kind by founding families named Doyle, Graham, Flynn, Kirby and so many others—

Thank God, the French Canadians of the 1830s were neither selfish nor racist and, although they were politically subject to an English colonial regime of a good sort, they opened their homes and their hearts to these poor Irish people whom today, no doubt, we would call "false refugees."

In a world that is about to become a global village, where everyone will be responsible for his neighbour, unless the world resigns itself to going down in chaos, I wonder what my country would have become if Bill C-55 had been enacted unamended in the last century. And many Quebecers and Canadians are also wondering.

The other day, at a Quebec Liberal caucus meeting in Room 307, a small room in the West Block, I had fun counting the members present according to their ethnic origin. There were then seven "pure dyed-in-the-wool" French Canadians—although I am sure that several must have had some Indian or Irish or Scottish or English blood, you never know! I also counted three Jews, two Italians, one Irishman, one Inuit and one Greek; that is, the majority of the Quebec caucus was not ethnically "pure." That would make the former Minister of Immigration, who boasted one day on the French CBC that he represented an "ethnically pure" Quebec riding that had not been "disturbed by immigration", shudder.

Although pestered by the ultra-nationalist factions that are still active, Quebecers well know that their future, like the future of other Canadians, no longer depends on the "revenge of the cradle," despite the bonuses the Quebec government has just announced for "good breeders." They well know that Parisians (who speak such elegant French!) have no desire to come and settle what is left to us of Voltaire's "acres of snow" and that the Quebecers of tomorrow will have dark skin and slanted eyes, that they will speak French with a Cambodian accent or that they will learn it with an energy born of despair, like the unfortunate Turks whom the government continues to expel to Turkey, the Ireland of our day, in a haphazard way, one by one, to prolong the pleasure.

That being said, honourable senators, I admit, as does everyone, that our Immigration Act has not been working for a long time, I would even say for over four years; that is, serious deficiencies were already obvious at the end of the previous administration. Like everyone, I note that unscrupulous people have abused the system and taken advantage of these shortcomings to mock the spirit of our Immigration Act and that some false refugees, from Portugal and Brazil, for example, were in reality only over-zealous immigrants.

It thus became necessary for the government to submit legislation to put an end to the abuses, while still respecting the Charter of Rights and our international commitments and without endangering our reputation as an open and generous country. Alas, Bills C-84 and C-55 respect none of these. That is why the Standing Senate Committee on Legal and Constitutional Affairs had to conduct a thorough study, hear more than a hundred witnesses and propose amendments to soften the many harsh aspects of these two bad bills, while still respecting the objectives they claimed to serve.

To complete the statement by the chairperson of the committee, the Honourable Senator Neiman, my colleague and friend the Honourable Senator Grafstein will explain to you how and why the committee decided to propose twelve amendments to Bill C-55. For my part, I shall only speak to you about one of them, namely the one on the curious notion of

"safe country" to which we could with a clear conscience send back genuine refugees.

● (1540)

[*English*]

The "safe country" provisions provoked the most concern and comment from the witnesses who appeared before our committee. Indeed, I am hard pressed to remember an issue that has aroused such feelings of consternation among people knowledgeable on the issues. Not only did I find the critics of Bill C-55 knowledgeable, but they were the people directly involved in, and dedicated to, the cause of helping refugees. When they spoke, we listened carefully.

For the benefit of fellow senators who did not have the privilege of studying Bill C-55 in committee I will describe briefly the "safe country" provisions and the rationale behind them.

As most people are aware, in recent years Canada has seen a fairly significant number of people arrive claiming to be refugees. Many of these people were genuine refugees; their claims were accepted and they are now part of the fabric of Canadian life. Of course, quite a few who came here were not genuine refugees, but that is another problem and has to do with another part of the bill entirely.

● (1550)

If the number of claimants coming to Canada had remained small, the government might have been willing to continue the policy of accepting all claimants whose claims proved genuine. I personally strongly favour such a course. I would like everyone to be able to come to Canada. But the government made a policy decision that if people who feared persecution in their own country had been in another country that was already protecting them before they came to Canada, we could quite legitimately ask them to return there. After all, to ask for refugee status is to ask for protection. Those claimants who do not require protection, the reasoning went, need not be given the right to make a refugee claim.

Bill C-55 attempted to translate that policy decision into law by means of a list—the "safe country" list. Cabinet was to decide which countries were "safe," and if claimants came from one of those countries they would automatically be returned there. Like many policies that may look reasonable on paper, this "safe country" approach seemed to the members of the committee to give rise to significant problems when we started to examine it closely. I almost said, "when we started to read the fine print," but one of our problems with this bill was that there was little "fine print" on this particular topic. There was nothing in the bill to answer our questions: How will we know that the person will be permitted to return to the safe country? How will we know whether or not the person will be allowed to stay there? Could it happen that the person could be unceremoniously sent on to yet another country, which might, in turn, accept the person or might not?

Too many questions; too few answers—that was the dilemma faced by the committee. If senators have had an opportunity to read our report they will know that we decided, after much discussion, to amend the bill to try to overcome these deficiencies. I believe we have succeeded, and I shall explain our reasoning.

The starting point for the committee was the original wording of the bill as first tabled over a year ago. That version stated that a claimant could not be returned to a safe country unless he or she "would be allowed to return to that country, if removed from Canada, or has a right to have the claim determined therein." That was the government's own view of what protections were necessary, yet those words were removed before the bill reached this place. We, as a committee, took that original wording, improved upon it or clarified it in two respects, and re-inserted it in the bill.

Our first modification was to the words "allowed to return." Did that mean that the person might only be allowed to step off the plane? Did it imply any commitment on the part of the safe country to deal with the person in a manner that Canadians would consider to be fair? We on the committee were not sure. We wondered why the test found elsewhere in the Immigration Act was not used here, too. That other test refers to a country to which a person is to be removed as being "willing to receive that person." That wording seemed to us to imply the degree of commitment that we were looking for. Should refugee claimants—people who claim to fear persecution—receive less protection than others who have no such fear? We thought not, so we inserted a requirement in the bill that claimants would not be returned to a safe country unless that country were willing to receive them.

Our second modification to the original wording was to the original requirement that claimants be allowed to return or have the claim determined in the safe country. We wondered if "determining" a claim might amount to as little as the other country's deciding that the person was not eligible to enter its refugee determination process and sending the person elsewhere. We were sure that the government could not have intended this result, so we clarified the bill so that the determination must be on the merits of the claim.

Those two changes, I feel, should reassure those people who were rightly concerned that the bill as it stood had the potential to send refugee claimants to an uncertain destination or an uncertain fate. We were urged by most of our witnesses to go much further than that. I, myself, as I said earlier, would have preferred more substantial amendments. But some compromises were necessary, and I am convinced that the amendments we have devised are eminently sensible and should be acceptable to the government. After all, they are based on the government's own original approach.

The committee made another amendment to the bill that will affect how the "safe country" process will actually work. The bill provided that a claimant who was in a country solely for the purpose of joining a connecting flight could not be returned there. This, of course, is only fair to countries with international airports that serve as transfer points. But surely this provision is much too narrow. What about our Salvadoran who travels through the United States over land in order to reach Canada? What about a claimant who stays a few days

in a country? That is longer than the time needed to make a connecting flight, but surely not enough time to justify sending the person back there on the grounds that the person had actually received protection there.

When he appeared before the committee, the former minister responsible for this bill told us, in effect, that our concerns were justified. He stated:

> It is our intention to not penalize or to not hold responsible a country where an individual was in transit.

The minister continued:

> ... obviously, a transit period in an airport could last a couple of hours but ... a bus trip from the Mexican or Guatemalan border could take three days. This might be something that the committee may want to take a further look at.

We decided to follow the minister's suggestion. Our solution was to modify the transit provision so that, by implication, it refers to all modes of transportation and will be applied according to the individual's particular circumstances. We did this by requiring that a claimant who was in a safe country for the purpose of travelling through it would not be considered as coming to Canada from that country. Here again, our committee feels that we have clarified the intent of the bill in a way that the government can accept.

Our final amendment to these provisions is perhaps more controversial, but we hope that the government will understand and accept our reasoning. At issue is the question of who should draw up the list of safe countries. Bill C-55 would have cabinet responsible for this task. Why cabinet would want to add this onerous task to the multitude of things it already has to attend to is something that I, personally, never understood, but that is what it chose to do.

The committee disagreed with this choice. We felt that cabinet should not be involved in or identified with a list which, in effect, involves judgments on the conduct of nations in their treatment of refugees. Far better, we thought, to entrust this task to those both expert in refugee matters and removed from political pressures. We chose the chairman of the proposed Immigration and Refugee Board in consultation with the top officials of the Refugee Division. I think we made a good choice.

In conclusion, I wish to repeat how reasonable I feel the committee has been in its approach to the "safe country" policy. To those who urged the committee to take a much more radical approach I can only say that compromise is the way of the world, although I may not like it personally. Of course, compromise that would endanger human lives is never acceptable. But I am convinced that our amendments will protect lives, not endanger them, and I hope that all honourable senators will agree.

[*Translation*]

I trust that my honourable friends will vote as one for the twelve amendments proposed by their committee. Personally, I feel they are rather weak. They are far from meeting all the concerns expressed by the most serious and credible witnesses we have heard. At least, they make a little more acceptable a bill which the Interchurch Committee on Refugees felt was totally unacceptable. These representatives of almost every church denomination in Canada concluded their brief by quoting the uncompromising verdict by Dean William Angus, of Osgoode Hall Law School:

● (1600)

[*English*]

> It seems to me that there are so many deficiencies, as I see them, in the present legislation, that rather than try to amend this bill in bits and pieces, it would be preferable to have another quick run at it!

[*Translation*]

Several committee members, including myself, share this opinion and have made an honest effort to reach the incredible compromise which each of these amendments represents. We can only hope that most of the members in the other place will appreciate this effort and accept the few amendments we have made both to Bill C-84 and Bill C-55, so that these measures which were considered most urgent a year ago may finally become law.

[*English*]

Hon. Jerahmiel S. Grafstein: Honourable senators, Bill C-55 is a bill to amend the Immigration Act of 1976. As other senators have pointed out, this is no ordinary bill. The idea and the policy set forth in this bill connect to the very heart of the Canadian idea. People are our nation's heartbeat. Canada is a nation of minorities. I am proud to represent Metropolitan Toronto, which has been made rich by the diversity of its citizens who come from every walk of life and every nation in the world. One-third of every household in Metropolitan Toronto speaks a first language other than French and English. Precisely because of the diversity of our national population Canada has become an uncommon commonwealth with unlimited possibilities. This bill addresses directly the path towards those possibilities.

Government is for people. In government resides the power that the peoples' representatives possess to guide our nation's growth, civility and prosperity. If one studies closely the indexes of great biographies and histories, the decisive role of immigration trends, population patterns, refugee flows, while playing an overwhelming part in the growth of civilizations, is rarely measured or taken into the calculus of the rise and fall of civilizations.

Yet, Toynbee, that great student of civilizations, has demonstrated, and has reminded us, that the progress of civilization depends precisely on these particular immigration trends—on alien flows. So today we have an opportunity—a unique opportunity—to address these profound issues within Bill C-55, which, as I have said, is an act to amend the Immigration Act, 1976.

We are not dealing with abstract policies. We are not dealing with abstractions. We are dealing with reality. The difference between people and power is the difference between reality and abstraction. Refugees are not abstractions. They

live in a "no-man's land," ripped from their roots, displaced from their language, disconnected from their culture, seeking only to explore the human potential for themselves and their families.

Honourable senators, is this not the basis of St. Augustine's dialectical text, entitled *The City of God*, when he preached that man has the freedom to choose between man's needs and man's desires? Is it not incumbent upon us, as senators, to focus on man's needs and only to fulfill genuine human desires? This is not a Utopian dream; this is not kismet; this is not Valhalla. This is a realistic goal of politics.

We have been admonished by the biblical prophets and saints—in both the Old and New Testaments—that our treatment of strangers is the test of our own civility. However, it is just not on a moral plane alone that one should examine Bill C-55. We should examine this bill on a practical plane of economic reality. Theories of economic growth have clearly demonstrated that technological progress most often occurs at the point where diverse cultures converge, where diverse cultures clash. So, in a strange way, by absorbing refugees from different cultures into this land of limitless opportunity we have a unique opportunity to accelerate in a humane and efficient fashion the explosive growth of our technological innovations, which can only modernize our society and improve the economic prospects for everyone who resides in our land.

This bill deals not with the dregs of society; it deals with the dreams of our future.

Honourable senators, may I dwell briefly on the duties placed upon the Senate, suspended, as we are, in our current state between reform, on the one hand, and public credibility, on the other? To me, our duties remain clear. While we remain guardians of our past, we have a duty to be vanguards of our future. How can we more manifestly justify our role as legislators than to examine carefully the door to our nation's future, the open-door policy to the growth of our population? Some say, "Let's slam that door." Others say, "Let's put up a screen door that allows only the wealthy to filter through." Still others say, "Let's open the door only a crack, be super selective. Let's discriminate on questions of race or religion or colour of skin."

Again, the great Toynbee demonstrated in his works on civilizations, in his *Study of History*, that each civilization, no matter how grand or how great, was only able to achieve its potential because of a liberal and generous policy towards aliens, based on an open-door policy towards strangers. Honourable senators, in this bill we find another important principle deeply embedded in this very complex legislation.

How, we ask ourselves, should we determine our global future? Are we to be arbitrary or, rather, are we to live under the rule of law? If Canada enters into an international convention as a small non-militaristic peace-loving nation, we demonstrate our national belief and our national commitment to the rule of law. We fulfill the spirit and letter of that law, because Canada believes in the rule of law. And we believe, as Canadians, that the best way for peace and harmony to be injected into the globe is by the rule of law.

[Senator Grafstein.]

Therefore, having passed the Charter of Rights and Freedoms, is it not our duty as legislators to ensure that all legislation meets the contours of the Charter? Is this not the best way to foster the rule of law in Canada? When we pass legislation, we must also ensure that it meets our international obligations, which are also based on the rule of law. Only then can we expect our strong global voice to be respected. Only then can we avoid the trap of hypocrisy by preaching to others about the rule of law, while failing to fulfill the rule when it comes to our own domestic legislation.

Hence, honourable senators, our Committee on Legal and Constitutional Affairs, in its very careful report—and, as Senator Hébert pointed out, with very modest amendments—spent over half a year doing what we were supposed to be doing—giving this bill careful, sober second thought. We read over 200 briefs. Over 114 witnesses gave evidence from every stratum of society and from every region of the nation. The overwhelming evidence supports our proposed amendments. Perhaps some will say we did not go far enough, but Canadians will support our amendments. I recommend to all honourable senators to support our amendments, because they conform to Canadian values and to the Canadian rule of law that we have fought for and which all senators, I think, believe in. So we are modest in our amendments, but we have a profound belief in the philosophy we are trying to project in these amendments.

● (1610)

Bill C-55, as we found it, is a complex piece of legislation. Refugee determination is complex. There are competing administrative models about how best to ensure fairness and effectiveness in the refugee determination process. While many of us remain critical of the general structure of the bill, we concluded that the structure chosen by the government should, as the report suggests, be left intact. But our amendments must be added to provide greater protection for refugee claimants. These amendments meet our commitment to uphold the Charter in its respect for the safety of the individual and to uphold Canada's commitment to the rule of law at home and abroad.

The major amendment, as Senator Hébert so brilliantly set out, deals with the concept of "safe country return." Senators are concerned that genuine refugees coming from a safe country, that we reject, should not be put at risk. We have a responsibility to those people who come to our shores. Thus, we would violate the Canadian Charter of Rights and Freedoms, since, under section 7, you will recall that no person should be deprived of "his life, liberty or security, except in accordance with the principles of fundamental justice."

So, honourable senators, we on the committee remain concerned that the minimum safeguards in Bill C-55 relating to safe country return are fewer and lower than the minimum standards required by the Charter. Hence, we propose mechanisms to ensure that claimants who are rejected are returned to a safe haven that is not safe in the abstract but is safe in

reality. This, we believe, is our duty under the Charter and under article 33 of the International Convention Relating to the Status of Refugees.

Other amendments, honourable senators, are equally modest, yet vital. These will give the minister and his officials the opportunity to correct processes and errors in the complex procedures under the bill where a genuine refugee might miss his only chance to claim. Therefore, we have inserted a safety valve. We have amended the bill to guarantee that refugees have the reasonable right to be represented by counsel on a reasonable basis. This is already well established Canadian law. We have amended the appeal procedure, because we are dealing with the security, life and liberty of the individual, so as to give a reasonable opportunity to appeal. This is also good, standard, existing Canadian law—no changes there. We have amended the provision to afford the minister an opportunity to identify those cases that require humanitarian or compassionate review. This is another safety valve that we have placed in the hands of the minister.

Finally, there is an important and vital issue camouflaged in this bill, and that deals with the role of quasi-judicial officers. We have amended the bill to maintain the impartiality of quasi-judicial appointees by protecting their security of tenure. Only when our judicial officers are secure can they be perceived by the public to have true independence. Canadians can only be satisfied with an independent refugee process if there is impartiality displayed by the judicial officers—both in reality and in appearance.

Honourable senators, I commend all of our colleagues who worked so assiduously on the Legal and Constitutional Affairs Committee with respect to these amendments—the chair, the deputy chair and the staff—they worked long and hard. Senators from all sides developed a wide consensus on these amendments. As Senator Hébert pointed out, this was done in a non-partisan, creative, optimistic and helpful fashion. All senators share the values in this bill, although some may disagree on some particular points.

Honourable senators, I believe that it was St. Francis of Assissi who said that there is no such thing as love of the human race, there is only love of a person. There are profound moral, theological, natural laws and legal principles hidden in the womb of this bill. The questions we must ask ourselves are these: Should we be mean spirited or generous? Are we as a nation to be compassionate or closed-minded? Are we to treat people as people or as abstractions? If these choices were to be put to the Canadian people, I believe—and I believe most senators would agree—that they would answer with the highest of spirits rather than the lowest of impulses.

History can be our guide. There are two models of civilization that we can examine briefly. The treatment of aliens in these two societies went to the very heartbeat of these two civilizations. One was the city of Athens; the other the city of Sparta. Athens was an open city; Sparta was a closed city. Athens freely absorbed refugees and aliens who came to its gates. Sparta swept aliens away from its gates and locked its doors. Athens developed a diverse, blossoming and flourishing culture; Sparta developed a singular culture. Athens became a society of ideas and freedom; Sparta became a society of regimentation and conformity. Athens' values flourished and survive to the present day. These values and ideas formed the roots of our own liberal democracy. Athens exists today, after 2000 years. Sparta degenerated and withered away. Sparta died. Unfortunately, the ideas of Sparta, the ideas of totalitarianism, survived. The seeds of the master race developed from the ideas of Sparta, while the ideas of Athens elevated the human race, and allowed successive generations to aspire to the highest aspirations of mankind.

Yevgeny Yevtuschenko, the greatest of modern Russian poets, burst on the scene over a decade ago and wrote a magnificient poem about the choices that each generation must make between the "City of Yes" and the "City of No." This choice is now ours in this bill.

Honourable senators, I commend to you and to the minister these modest amendments in the hope that she will understand that they represent a modest attempt to deal with major issues in a fair, open-minded fashion. The choice is now hers; the choice is now ours.

If I might return for a moment to Arnold Toynbee, in his work *The Study of History* he described the rise and fall of civilizations. He pointed out that civilizations do not depend on fixed cycles, statistics, determinism or fate. Rather, he wrote, "civilizations' rise depends on the spirit, the spark of creative power alive within us . . . if we have the grace to kindle the flame . . . then the stars in their courses cannot defeat our efforts . . ."

Canada's future depends on a grand flow of refugees. We can keep our rendez-vous with history. We can achieve our destiny. The twentieth century, as Laurier once said, can belong to Canada. I respectfully submit that we should support the amendments and reach our destiny.

Some Hon. Senators: Hear, hear!

Hon. Nathan Nurgitz: Honourable senators, I trust no one else will be speaking with respect to the committee report.

In concluding, I, too, wish to join my colleagues in congratulating the chairman of the committee on her very judicious and fair handling of a difficult and, I might say, sometimes touchy subject matter. I also commend all other members of the committee for their dedication and hard work over a long period of time. I might say that everyone showed great patience.

● (1620)

I would like to point out that the report itself indicates that each and every one of the recommendations and amendments had the support of the majority of the members of the committee. In fact, in many instances there was unanimity on points, but, rather than getting into discussions about that, Senator Murray has asked me to indicate that he would be most anxious to have the matter go forward as quickly as possible by the adoption of the report and third reading of the bill in order that the minister can receive this report and give as

careful consideration as she can to the matter so that we might hear back without delay.

The Hon. the Speaker: Honourable senators, it is moved by Honourable Senator Neiman, seconded by Honourable Senator Petten, that this report be now adopted. Is it your pleasure, honourable senators, to adopt the motion?

Hon. Jacques Flynn: On division.

Motion agreed to and report adopted, on division.

THIRD READING

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

Hon. Nathan Nurgitz: Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*b*), I move that the bill be read the third time now.

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

Some Hon. Senators: Agreed.

Hon. Peter Bosa: Honourable senators, I rise to make a few brief remarks on Bill C-55 relating to the preamble to the Immigration Act. This is a matter that goes back a number of years. For instance, on page 7883 of the *House of Commons Debates* of July 21, 1977, Mr. Brewin (Greenwood) proposed an amendment to the preamble of the Immigration Act of 1976 to have the word "multicultural" inserted.

The preamble reads:

> (*b*) . . . to enrich and strengthen the cultural and social fabric of Canada, taking into account the federal and bilingual character of Canada;

Mr. Brewin proposed the following amendment which would have amended the preamble to read:

> . . . to enrich and strengthen the cultural and social fabric of Canada, taking into account the federal, bilingual *and multicultural* character of Canada.

This amendment was supported by both the NDP and the Conservative official opposition. However, it was not adopted.

When the predecessor to the present bill, which, coincidentally, was also numbered Bill C-55, came before the Senate in March 1986, I reminded honourable senators of this particular amendment. Senator Barootes, who sponsored that bill at that time, gave an undertaking to speak to the minister of the day, the Honourable Walter McLean. Mr. McLean subsequently wrote a letter to Senator Barootes giving a commitment that, when a new set of amendments was made to the Immigration Act, it would include an amendment to the preamble to the act.

Unfortunately, the present Bill C-55 does not contain that amendment. I therefore propose that an amendment be made to the preamble to the Immigration Act, 1976. I have copies here in both English and French. That amendment would read as follows:

> That clause 2 be amended by striking out line 38 and substituting therefor the following:

[Senator Nurgitz.]

> 2.(1) Paragraph 3(*b*) of the said Act is repealed and the following substituted therefor:
>
> (*b*) to enrich and strengthen the cultural and social fabric of Canada, taking into account the federal, bilingual and multicultural character of Canada;
>
> (2) Paragraph 3(*f*) of the said Act is—

Senator Nurgitz: Honourable senators, if I may say so, and I say this most specifically to the Speaker with respect to a ruling, what Senator Bosa is proposing to do is to amend paragraph 3(*b*) of the Immigration Act, and it is not as though Bill C-55 deals with the preamble. The preamble has been untouched by the amendments proposed in Bill C-55, and I am suggesting, with respect, that this amendment is out of order in that it is not within our jurisdiction to deal with something that is not before us.

Senator Bosa: Does the honourable senator at least support the spirit of the amendment, since it is in harmony with section 27 of the Charter of Rights and Freedoms?

Senator Nurgitz: I am all in favour of all kinds of spirits, honourable senators, but, as someone just remarked, the spirit is not moving me now; nor is there the jurisdiction in this chamber to deal under Bill C-55 with that matter now.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, speaking for myself, I am very willing to support the spirit of the amendment put forward by Senator Bosa. However, I am compelled to agree with Senator Nurgitz that it is beyond the scope of this bill and is therefore out of order.

The Hon. the Speaker: Is it agreed, honourable senators, that this proposed amendment is out of order?

Hon. Senators: Agreed.

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

WESTERN ARCTIC (INUVIALUIT) CLAIMS SETTLEMENT ACT

BILL TO AMEND—CONSIDERATION OF REPORT OF COMMITTEE—ORDER STANDS

On the Order:

> Resuming the debate on the motion of the Honourable Senator Tremblay, seconded by the Honourable Senator Phillips, for the adoption of the Thirteenth Report of the Standing Senate Committee on Social Affairs, Science and Technology (Bill C-102, An Act to amend the Western Arctic (Inuvialuit) Claims Settlement Act, with one amendment), presented in the Senate on 5th May, 1988.—(*Honourable Senator Adams*).

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I ask that this order stand in the name of Senator Steuart of Saskatchewan.

Order stands in name of Senator Steuart.

EMERGENCIES BILL

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming the debate on the motion of the Honourable Senator Kelly, seconded by the Honourable Senator Bielish, for the second reading of the Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof.—(*Honourable Senator Hicks*).

Hon. Henry D. Hicks: Honourable senators, I apologize to Senator Kelly for having been unavoidably absent from this chamber on other Senate business when he moved his motion for second reading of this bill and spoke to it on April 28 and again on May 5 of this year. Senator Kelly gave a very full description of the bill and laid its rationale before this chamber in an excellent and expert manner.

I have read Senator Kelly's speeches carefully. I have also read the bill carefully, both in the form in which it was passed in the other place and in the form of the bill when it was introduced in the other place on June 26, 1987. The first observation that one would make, of course, is that the some 50 amendments the other place accepted to the original bill have considerably improved it and made it, in my view, a much more acceptable piece of legislation than it would have been had it come to us unamended or as it was introduced into the other chamber in June 1987.

● (1630)

For example, amendments were made to subclause 12(2)—and similar amendments were made to other similar clauses—which had the effect of changing the wording of the discretion of the Governor in Council. "If in the opinion of the Governor in Council" was changed throughout the bill, but first in clause 12(2) to "if the Governor in Council believes, on reasonable grounds". That amendment puts the Governor in Council's discretion on a sounder basis, and makes it easier for me, at least, to accept the wording.

Also, I can accept the amendments with regard to the penalties imposed throughout the bill. As honourable senators know, the bill deals with four kinds of emergency. The first four parts of the bill deal with these four emergencies almost as a separate and self-sustaining piece of legislation. For example, let us look at paragraph 8(1)(*j*), which has to do with emergencies relating to public welfare. The other emergencies are public order, penultimately, international emergencies and, finally, war emergencies. Originally the penalty was set at a maximum of $5,000 with regard to these emergencies. The pertinent clauses have been changed to $500 for a summary conviction and $5,000 on indictment. I think these amendments improve the bill.

Part V of the bill deals with compensation. The compensation provided for in this bill is much better than, if it existed at all, that under the previous War Measures Act, and it has been further improved by the amendments to the bill.

Finally, Part VI of the bill deals with parliamentary supervision. The bill as it was in its original form has been substantially improved in this area. Even so, they have not dealt with the situation which might arise if any of these categories of emergency were declared when Parliament was not sitting or if Parliament happened to be dissolved at the critical moment when an emergency was declared. This is something that the committee of this house to which the bill, I presume, will be referred should inquire into as witnesses and the minister appear before it.

Nevertheless, I have to say in general terms that I wonder whether such absolute delegation of the authority of Parliament to the Governor in Council is necessary. It seems to me that the extent of the delegation is very great and virtually unlimited under Part IV, though perhaps one can make a better case for war emergencies than one could do for some of the other categories of emergencies I have just enumerated. Also, I am sure that some honourable senators will have observed that the delegation to the Governor in Council comes awfully close to enabling the authorities to effect changes in the legislative power of the provinces. I suppose the attempt to justify this provision will be supported by the emergency clause and the "peace, order and good government" section of our Constitution. I think that this provision needs to be looked at a little more carefully as well. I wonder whether the so-called parliamentary supervision is really sufficient.

It also appears to me that paragraph 30(2)(*b*), which deals with censorship, is rather peculiar. This paragraph enunciates a certain restriction on censorship in the case of international emergencies only. There is no mention of any restriction on the power of the Governor in Council in relation to censorship in the other parts of the bill which deal with public welfare emergencies, public order emergencies and war emergencies. I can see why, perhaps, we should not interfere at all with the discretion of the Governor in Council in relation to war emergencies, but why mention a restriction in relation to international emergencies, and make no mention of a restriction in relation to public welfare and public order emergencies? Again, perhaps the committee to which the bill is referred might give some attention to this point.

Also, had I been in the chamber when Senator Kelly made his speech I would have asked him for an explanation of the rather different periods of time after which a declaration of emergency expires. In the case of public welfare emergencies, subclause 7(2) fixes the period at 90 days, which remained unchanged from the original version of the bill. In respect to public order emergencies, which is dealt with in subclause 18(2), the limit on the duration of the emergency in the original legislation was 60 days. Mind you, there are provisions in the act which allow for these periods to be extended by going through the appropriate formalities. In the original bill, public order emergencies could last for 60 days, unless extended, but it was reduced to 30 days in the bill that was given final reading in the other place. The original period of time with regard to international emergencies, dealt with in subclause 29(2), was 120 days, but it was reduced to 60 days in

this bill. Finally, with regard to war emergency declarations, the emergency can last for 120 days, as stipulated in subclause 39(2), and remained unchanged. I would like to hear Senator Kelly, in closing the debate, give us some explanation of the rationale behind those different periods of time. It seems to me that they make the legislation unnecessarily complicated, and that perhaps it might not have been necessary to combine what almost amounts to four different pieces of legislation in one bill if we could have dealt with these and some other matters on bases that were more or less similar.

The next point I would like to make observations about is the question of consultation with the provinces. Indeed, it may be that I have dealt in too much detail with matters that could be better taken up when the bill goes to committee, but on the general point of the consultation with provincial authorities required by several clauses of the bill in relation to each category of emergency, it seems to me to be very cumbersome. I acknowledge that Senator Kelly made reference to this point and indicated his reservations about it in the speech he made on the occasion of second reading, but I guess I am even more concerned than he is. It seems to me that the kind of consultation with the provinces required under this bill might render the declaration of an emergency so cumbersome as to delay it beyond the time when emergency action might really be required. This is particularly so with respect to the war emergency provisions, where consultation with all provincial authorities has to take place. I do not think that the federal government ought to give up its powers in this respect to the provinces. Granted, the federal authorities can declare war, but unless every province agrees, after consultation, the question of bringing the war emergency powers into action would, in my view, be doubtful or could easily be the subject of litigation and controversy.

● (1640)

There are other portions of this bill that also need to be carefully examined. On the whole, however, I acknowledge that it is an improvement on the War Measures Act and that, when taken in conjunction with Bill C-76, which we have already passed and which has received Royal Assent, it will improve the situation somewhat in relation to war emergencies.

I wish the bill could have been a little more simple and straightforward, but perhaps it could not be. I, for one, will be most interested to hear what the Minister of National Defence has to say when he comes before a committee of this chamber—which, I understand, he is willing to do—and speaks about this bill.

With these remarks, I commend the bill to the attention of honourable senators on the clear understanding, of course, that we shall examine it in relation to the points I have raised, and I am sure some others which honourable senators will want to raise, in the committee to which the bill may be referred.

Hon. Senators: Hear, hear!

[Senator Hicks.]

[*Translation*]

Hon. Jacques Flynn: Honourable senators, I shall not take up too much of your time. There is just one point I should like to discuss right now although I agree with Senator Hicks that this bill raises a number of questions.

I speak from my experience during the second world war, as a lawyer for the Prices and Trade Commission, when I was responsible for enforcing numerous regulations issued under the War Measures Act. The scope of these regulations was very broad indeed.

Senator Hicks referred to censorship. As soon as war had been declared, censorship was introduced. Speeches could not be broadcast on radio without prior censorship. I remember one experience I had during the provincial election campaign in 1939. We had used a small transmitter in a remote riding to broadcast speeches within a radius of several miles. The RCMP intervened, but finally dropped the charges.

We remember the internment camps. We have talked about the Japanese, but we also had Camilien Houde who was interned and spent three and half years in prison. I remember the rationing of sugar, meat, liquor and gasoline. If you bought gasoline without coupons, you were liable to a fine which, under this legislation, would be a maximum of five years' imprisonment or a maximum fine of $5,000.

I remember the terms of the Order in Council under which the government and administrators delegated by the government issued orders of all kinds on every possible subject.

I wonder whether under clause 40, the Governor in Council could adopt exactly the same regulations and impose the same restrictions we had during the second world war. It reads as follows:

> 40. (1) While a declaration of a war emergency is in effect, the Governor in Council may make such orders or regulations as the Governor in Council believes, on reasonable grounds, are necessary or advisable for dealing with the emergency.

These terms are very general indeed. I don't see any restrictions here, except that the Governor in Council must believe there are reasonable grounds and that the decision is necessary or advisable for dealing with the emergency.

Subsection 2 deals with the penalties I mentioned earlier.

> (*a*) on summary conviction, of a fine not exceeding five hundred dollars or imprisonment not exceeding six months or both that fine and imprisonment, or
>
> (*b*) on indictment, of a fine not exceeding five thousand dollars or imprisonment not exceeding five years or both that fine and imprisonment

I wonder to what extent these powers, which to me seem absolutely unrestricted and are the same as those conferred under the War Measures Act, are limited, first of all, by the existence of the Canadian Charter of Rights and Freedoms and, second, by the provisions we find in the preamble to the bill, especially where it mentions "special temporary measures that may not be appropriate in normal times".

Is it suggested that the Charter does or does not apply in any case? It says that it does, but why the reference to "measures that may not be appropriate in normal times"?

The preamble goes on to say:

> AND WHEREAS the Governor in Council, in taking such special temporary measures, would be subject to the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights* and must have regard to the *International Covenant on Civil and Political Rights*, particularly with respect to those fundamental rights that are not to be limited or abridged even in a national emergency;

So to what extent do this preamble and the existence of the Charter restrict the powers conferred under clause 40? I am not referring to other instances for the time being because they tend to be more specific.

In the case of the existing War Measures Act, I had the same questions, and I would appreciate it if Senator Kelly could get a response to my queries.

Section 1 of the Constitution Act, 1982, might apply when interpreting the radical measures provided under clause 40 of the bill. Section 1 of the Constitution Act, 1982, says:

> 1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Does the meaning of these words change in wartime? Does this section no longer apply to the same extent, once the Governor in Council has declared a state of war?

I think this is a very interesting question. Considering the experience we had during the last world war I wonder whether the government would really have the same powers under this legislation as it did before, or whether those powers would be restricted by the provisions I have just mentioned.

On motion of Senator Cottreau, for Senator Stewart (Antigonish—Guysborough), debate adjourned.

• (1650)

[*English*]

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

CONSIDERATION OF SEVENTH REPORT OF COMMITTEE—DEBATE CONCLUDED

On the Order:

> Resuming the debate on the consideration of the Seventh Report of the Standing Senate Committee on Social Affairs, Science and Technology, entitled: "Child Benefits—Proposal for a Guaranteed Family Supplement Scheme", tabled in the Senate on 30th June, 1987.—(*Honourable Senator Marsden*).

Hon. Lorna Marsden: Honourable senators, on Wednesday last Senator Tremblay, the chairman of the Standing Senate Committee on Social Affairs, Science and Technology, described the committee's report entitled: "Child Benefits—Proposal for a Guaranteed Family Supplement Scheme". He also described in some detail the reaction to the report. The response, as honourable senators have heard, was not abundant. There was little enthusiasm for our proposal for a guaranteed family income supplement. That is, on the one hand, not surprising, because, among other complications, there is a great attachment in this country to universal benefits with tax-back plans, which are at least in question in the committee's report. On the other hand, the problem of child poverty in Canada remains, and the committee does not propose to drop it.

As the National Council of Welfare, in its recent report "Poverty Profile 1988", has demonstrated in even more definitive detail than we were able to demonstrate in our report, the scale of the problem of children living in poverty in Canada is great indeed.

In this country we have tended to think of ourselves as living without the extremes of the rich and the poor. If this were ever true, it is certainly not true now. Too many Canadian children are being raised in poverty. Poverty, of course, does not mean dying of hunger, as it does in Ethiopia; it does not mean living in rags, as in the barrios of the cities of South America; it does not mean begging with a deliberately mutilated body, as one sees outside the Red Fort of New Delhi. In Canada it does mean going to school without food, not being able to learn properly, dropping out, often functionally illiterate, and being under-employed or unemployed in adult life. It means not having children's teeth fixed; it means not getting, in general, into the opportunity structure of Canadian life.

Poverty is not what parents seek, nor is poverty necessarily the result of alcoholism, incompetence or neglect, although it may be. We are not talking about children who have been abandoned by their parents or who live lives of crime or streetlife, although both circumstances make poverty likely and make those livelihoods more likely. We are talking about many families with both parents working hard, but who work for low wages or who work without any security of employment, either because of their training, or lack of training, or because in some parts of this country it is difficult to find steady work.

But we are talking, above all, about families with one parent who is on low wages. Single parent families now comprise the largest group of families living in poverty in this country. So the subcommittee took as its problem the question: If you wanted to solve the problem of children living in poverty in Canada, how would you do so? The proposals which honourable senators have seen in the report emerged precisely from that question.

Senator Robertson led in this investigation, and later this afternoon will propose further study on this matter. She gave notice of such a motion last week.

I urge all honourable senators to support this motion and to encourage the subcommittee and the committee in its further investigation of what remains one of the central problems in Canadian society today.

[*Translation*]

Hon. Arthur Tremblay: Honourable senators, I would not wish to prevent any of our colleagues from taking part in the debate on this report. Personally, I would be prepared to end it now, in view of what Senator Marsden has just told us and of what I alluded to last week—namely, the motion that Senator Robertson is to present to us shortly. Indeed, this motion continues in the same vein as Senator Marsden on the main focus of the report we submitted—that is, dealing with the problems of children living in poverty.

If everyone agrees, I would simply conclude the debate on the report at this point, presuming that the discussion will now deal rather with the motion presented by Senator Robertson, who wishes to pursue the discussion but to focus it on one of the report's main conclusions.

The Hon. the Speaker: Honourable senators, if no other senator wishes to speak, this debate is considered closed.

[*English*]

CHILDHOOD POVERTY AND ADULT SOCIAL PROBLEMS

MOTION TO AUTHORIZE SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE TO STUDY RELATIONSHIP—DEBATE ADJOURNED

Hon. Brenda M. Robertson, pursuant to notice of Wednesday, May 11, 1988, moved:

> That the Standing Senate Committee on Social Affairs, Science and Technology be authorized to examine and report upon the relationship between childhood poverty and certain significant and costly social problems that manifest themselves in adult life, and on measures which might better alleviate such problems; and
>
> That the Committee present its report no later than March 31, 1989.

She said:

Honourable senators, in the time I have this afternoon I want to mention briefly the report on child benefits that my colleagues, Senator Tremblay and Senator Marsden, have spoken on already today. Senator Tremblay spent considerable time explaining some of the details of that report, and Senator Marsden this afternoon referred to one of our major concerns.

● (1700)

The report was a most interesting document to prepare. As senators may or may not know, it took some 18 months to prepare it. It was rather a long study and at times it was frustrating. However, the end result, I believe, reflected quite accurately the feelings of the committee. Some of us are concerned that this committee report, like so many others, will sit around on a shelf and collect dust. The primary concern with which the committee members were continually seized as we studied these issues revolved around children living in poverty. We were nervous that our concern about such children would be swept aside, as so often happens to reports that have been presented from various bodies to governments over the years. So I would like to spend my time this afternoon speaking to that concern and what some of us would like to do about it.

The problem has been identified by our committee members as a national disgrace. It has existed for a very long time. We find it hard to accept that poverty is always with us. Surely, in a country with all of the riches of Canada, we could come up with better solutions. The research analysts identified for the committee that 20 per cent of our children are living in poverty. I notice that since that report was tabled Statistics Canada has come up with a revised figure of 17.5 per cent. Regardless of whether our statistics are correct or whether the Statistics Canada people are correct, either 20 per cent or 17.5 per cent represents many children.

I am sure honourable senators are aware of some of the risks facing children who live in poverty. In 1980 the Standing Senate Committee on Health, Welfare and Science published a much acclaimed report entitled "Child at Risk". However, despite the efforts of this chamber and other governments, the problem really has not changed substantially. We have hardly made a dent in the armour that keeps so many of our young children in poverty, generation after generation. Some members of the Standing Senate Committee on Social Affairs, Science and Technology felt strongly that more work was required to develop fully the recommendations of the "Child at Risk" report, because techniques in research have changed considerably. We believe that we can relate child poverty in a definitive manner to adult behaviour. It is a challenge about which the research staff is enthusiastic as, certainly, are the members of our committee. I believe it is essential that we as a governing body continue to examine the research that is presented to us.

Research in the social sciences is much different from other scientific research, and that is true for many reasons. Unlike banking or finance, it is inexact in its measurements. Changes in society are not as easy to spot as changes in technological fields. The bits and pieces of research done on a single problem often do not come together as easily as do parts of research in other fields. Most importantly, the work done becomes outdated very quickly. That is so because social change happens so fast and is difficult to see. The excellent report of 1980 is now somewhat outdated and the recommendations have to be taken farther along the pathway of research as it has developed since that time. The recommendations were excellent, but methodologies are determining other conclusions now, and these are some of the areas that your committee wants to get at. Until recently, we could not say with any scientific certainty, for example, that a link existed between child poverty and adverse social behaviour in adults. Some have suspected that a linkage existed between the two. The most recent research conducted by the Ontario Ministry of Community and Social Services has developed a model that, when combined with other pieces of research, will enable us to establish the following: First, it will determine the extent to which child poverty is the common denominator for a variety of adverse social behaviour patterns in adults. Second, it will give us an estimate of the amount it costs society in today's dollars, and in future

dollars, to continue to live with the present state of poverty. Third, it will help us fill in the gaps where research has not yet been done so that we can determine the linkages between child poverty and adverse social behaviour in adults. Progress in social services research makes it possible for us to do this. These linkages can now be established and measured. With a refined model we can see what is the true cost of living in poverty as a child expressly as it relates to adverse social behaviour in adults. We shall be able to say with some certainty what will be the cost in the 1990s of mental disorders, poor physical health, criminal behaviour or a myriad other adverse behavioural problems. We can relate that figure to the money we spend now to try to alleviate the problem of children in poverty. We shall be able to determine the percentage of adults with certain behavioural problems and trace them back to their origins to see what the determinant factor is. That is rather exciting in terms of social research these days.

I think it is important to examine what it means to be poor and to discuss the possible linkages I have been referring to. Statistics Canada will tell us that families spending 58.5 per cent of their income on food, clothing and shelter are poor, or, more euphemistically put, are "low income families." David Ross, in his research for the Ontario government, has suggested that a more accurate picture is gained when money spent on health care, household furnishings and operations is added to that list. If we make that addition, that leaves the family with about 9 per cent of its gross income to spend on items for personal care, recreation, support systems and education.

Perhaps it would be easier to understand if I were to break it down. A family of four that earns $21,663 before taxes per year is on the poverty line. In real terms, this means the family has about $37 per week before taxes to spend on non-essentials for day-to-day life. This is the cut-off for low income earners. Indeed, most situations are much, much worse than this. The yearly income of $21,000 is relatively high for many parts of the country. If we think of those families dependent upon food banks or the number of our Canadian citizens who have difficulty in putting a roof over their heads, then it is a serious problem, indeed. Sixty-eight per cent of all children are being raised by single mothers—68 per cent—and as many as one-fifth of our children are living or have lived in poverty.

There is sufficient research to prove that being poor as a child means that one will have a higher incidence of poor physical and mental health, behavioural disorders and poor educational performance. Chances are higher that such a child will be judged delinquent, and, if so judged, then there is a greater likelihood that he will spend some time in a correctional institution.

• (1710)

Further to this, there is evidence to suggest that you have a greater than average chance of suffering from unemployment, child abuse, family violence, suicide, prostitution, adult crime, school dropouts—you name it. There has been enough initial research done in these areas now to provide us with direct linkages, although the measurements of relationships of percentages have not been made. I know that is something the committee wants to get its teeth into.

Health and Welfare Canada statistics are the most accurate of all the research. They found that being poor means you have a lower life expectancy than most other Canadians. In real terms, this means that poor men can expect to have their lives cut short by 6.3 years. Low-income people have fewer years of disability-free life. On average, men with low incomes enjoy 14.3 fewer years of healthy, active life than their higher-income counterparts.

Lower-income groups have a higher risk of dying from all major causes than their upper-income neighbours. Dr. Irving Rootman of Health and Welfare Canada found that there is a 50 per cent greater chance of dying from all major causes in any given year if you are poor. This means that children living in poverty have a 50 per cent greater chance of having a parent who is disabled, sick or dead, a factor found by the study "Child at Risk" to be very detrimental to the development of children.

Low-income status for a child's family was found to have a relationship with psychiatric disorders and poor school performance. Again, we shall have to delve into and develop the exact relationship. If a child is from a poor family, chances are 1.7 times higher that he will have a psychiatric disorder. If a child has some type of conduct disorder—stealing, destroying things, being mean to others—chances are 2.1 times higher that he is from a poor family, and poor school performance is 1.8 times more likely from children living in poverty.

Putting the personal suffering aside, in monetary terms, these negative consequences of child poverty are all tremendous burdens on our social programs and on our society in general. If people are sick longer and more frequently, then it becomes a burden not only on our Medicare system but also on disability payments, on unemployment insurance payments, and a host of other government-assistance programs. In other words, honourable senators, it becomes expensive for society not to deal with the problem of poverty at its roots. Many indicators seem to point to the conclusion that the roots of so many problems lie in child poverty.

As a caring society, we must be truly alarmed at the latest evidence to suggest that there is a difference in the effects of poverty on the working poor and those who find themselves on social welfare support systems. This is probably one of the more interesting results of Dave Ross' recent findings. If you take the children of parents on social welfare and children of the working poor whose income is the same, the ability of the children from social welfare families to perform well in life is considerably lessened compared with the same children from a home at the same income level of the working poor. That is quite a startling correlation that Mr. Ross has made. I am sure that the committee will be most anxious to delve farther into this rather startling revelation.

The school dropout rate for welfare poor as compared with the working poor is 6.4 per cent higher. It is clear that being poor is a strong determinant for dropping out of school, and

now we see that being on welfare only serves to compound the problem. Given that education is directly linked to employment status, we create a self-fulfilling prophecy for the child in poverty.

The Senate, in its document entitled "Child at Risk", concluded that low-rental complexes of subsidized housing lead to a concentration of multi-problem families. These ghettos for the poor create an atmosphere which can easily involve children with a peer group on the streets that indulges in anti-social behaviour and criminal acts.

We must stop and ask ourselves, as legislators: What have we done to a whole class of people? What additional cost in suffering in the early childhood years do we add to adult life as a result of those very difficult formative years?

Having said all this, I recognize that it is not exciting or very high profile for governments to spend large sums of money on a problem when the results will not be measured for at least another generation. However, some of us feel very strongly that it is imperative that the measurements be made. Once we are able—and I am positive that we will be able—to make these measurements, then it will be much easier for governments to respond, because they will have a whole picture. Governments, at any level, have never had that whole picture before.

I believe that as our economy continues to grow and expand and we move closer to creating full employment in our society, we will have a very positive method to help reduce poverty.

I know, and I agree, that employment is one of the leverages for reducing poverty. However, full employment does not recognize that there are a large number of unemployable citizens, who, for a variety of reasons, will never find work. The structurally unemployed is what we are talking about, and they will continue to present us with problems of poverty and the homeless despite the level of growth achieved in the economy.

The project proposed is ambitious, because social sciences and social policy are inexact fields. As I mentioned before, we cannot see the changes as easily as we can in the technological area. As an example, I give you the home telephone of 1988. It can call forward, put people on hold, give you instant access to two lines, give you touch-of-the-button speedcall convenience, and, indeed, probably make coffee in the morning if you play with it long enough. We can see and touch the changes in technology over the past five years, and we keep up with them. Bell Canada adds microwires to your phone in the expectation that scientific technology will advance, and they want to be ready. They never place themselves in a position of playing catch-up.

Again, social changes are hard to identify, and it is not easy to see minute changes in the numbers of working poor or the homeless until the problem reaches very difficult proportions. Perhaps some of the blame for this lies in the decreasing amounts of money available for social research at all levels of government, but I shall save that debate for another day.

[Senator Robertson,]

Social sciences and social services research becomes outdated quickly, as I have already mentioned. I am in agreement with our researchers at the Library of Parliament when I say that information that is more than 12 years old is outdated.

I believe it is important to examine the situation in non-clinical terms, to examine what we have done in real terms and what realities the situation holds. Programs such as those that provide low-income children with a healthy breakfast at school help with the immediate problem, but do not erase the stigma associated with being poor or the higher incidences of brutal family violence or the lack of a stimulant for academic achievement from home. Children who find themselves in poor families are denied simple educational tools such as the morning paper. However, when the choice is milk or the paper, the outcome is obvious.

How can we expect to keep poor children in, and interested in, school with no immediate role model and improper resources to deal with the stress associated with public education? As they reach their teens, when the gap between the poor and the middle class becomes more obvious, the outside trappings of clothes and good grooming are not the only dividers. I suppose in our day—and I relate my age to very many of you in this chamber—the average middle-class family had a set of home encyclopedias. Today it is a home computer. How can two grade 8 students be expected to perform at the same level when one has all the resources of this decade at his or her disposal and the other is trying to manage on a single decent meal a day?

Honourable senators, all governments in society have always been interested in the elimination of poverty. The tools that we have to deal with the problem have been inadequate. Without the proper research, without the proper information, our efforts will continue to be a catch-up effort that most often addresses the systems of poverty, and not the root causes. There are a multiplicity of problems that children of low-income families suffer from.

My good friend, Senator Marsden, referred to some of those: overcrowding, parental delinquency, poor schooling, lack of a proper emotional support system, and all too often physical and mental abuse. If we can help to eliminate just part of these, the effects for the child and for society will be far reaching.

• (1720)

Research in the past has been reluctant to identify poverty as a stand-alone reason for social abnormalities in adults. What we hope to achieve, honourable senators, through an intensive and cautious study, is some bottom-line answers such as: How many school dropouts spent their formative years in poverty? Or, how many adults who have emotional disorders were poor as children? How many prostitutes? How many dropouts, unemployed or those with criminal behaviour? How many of those spent their early and formative years—the very early years—in poverty? What type of poverty tree has emerged? How hard is it to break the bonds of poverty?

It is interesting, an informal study done recently by the Moncton Headstart Program showed an example of two parents on social welfare. From those two parents they created 32 additional people who are now dependent on social assistance. That is a story that we know is repeated over and over in many areas of our country.

As children, many of us grew up in environments that now might be described as poor. However, we overcame the poverty of the 1930s and of rural Canada. We did not have the same type of social pressures on us that we find on the children today. We did not have the television to point out in minute detail exactly what we were missing in a have-not environment.

The findings in "Child at Risk" show that children learn their values from the television, as it is such an efficient teaching tool. What they learn is material success, and crime tends to result when children learn values but not clear means to achieve them. The distinction between the lower and middle classes were not as obvious as they are now. The opportunities that existed in the 1950s are no longer available, as resource-based industries continue to close at an alarming rate. As the problems continue to escalate, then the magnitude of the escapes we use continues to grow as well.

Drugs and alcohol certainly are not new problems, but their widespread use borders on a national crisis. How does this impact on the poor children? We cannot turn back the clock on society, and, indeed, we would not want to. We must instead address our energies to solving the problems that now exist and to coping as best we can with an ever-changing world.

I urge all senators to support the committee as we seek your assistance in the beginning of our work. With today's research facilities we can more clearly show the cost to society of a variety of factors. It will become easier then for governments to fully recognize and appreciate the financial drain that we inflict upon ourselves by allowing children to live in poverty.

The cost of maintaining children in poverty is small compared with the dollars that we must spend to mop up the effects of living in poverty as a child. It is the intent of the Social Affairs, Science and Technology Committee to develop accurately these relationships and cost them out in future dollars.

I am most encouraged by the enthusiasm of our research staff and the Library of Parliament. Their conviction that this can be done is contagious. This is not a project that can be done quickly, honourable senators. What I propose is a long-term project that is essential if governments are to be able to address the problem adequately.

I look forward to your support for this important initiative.

Hon. Senators: Hear, hear!

[*Translation*]

Hon. Paul David: Honourable senators, Senator Robertson's arguments in support of her motion convinced me that it was urgent to get down to work as soon as possible. In view of Senator Marsden's support for this proposal, if no other senators wish to speak and add to all of Senator Robertson's so well structured arguments, I propose that we act on her motion and refer it immediately to the committee concerned.

[*English*]

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I wish to ask Senator Robertson a procedural question.

I notice that your motion does not ask for any power to travel, or anything like that. I know that that is quite consistent with our practices—so I am not suggesting that there is anything faulty in it in any way—but is it your feeling that the committee can do a good deal of its work without travel or expenditure of much in way of funds?

Senator Robertson: I am glad you asked that question. I seem to have overlooked that because of the hour, and I probably should not have done that.

It is the general feeling in talking with our researchers that the usual kind of travel that a committee would do will not be important in this particular work, because we know about the problems, and there is enough done on the problems of poverty. The work is intended to piece together the research that exists now—the research that is recent enough and is still valid—to fill in the blanks. Most of the work will be done by the research staff, with the supervision of the committee.

At some time, if we find that we need additional funds, the chairman of the committee will come to Internal Economy, or whatever the process is there, to identify that requirement. But, in the beginning, I do not see any immediate expenses for travelling and that sort of thing.

In fact, two or three of us have stated that if the research staff suggests to us that we need additional research staff, we would be willing to go to Internal Economy and use the $40,000 that has been identified to transfer that for engaging support staff for this research.

The work is mostly research oriented. The research people will have to find out what is accurate in that which has been done; what is just emerging research; and what has to be drawn up where more work has to be done to fill in the pieces in between. We also intend to work closely with leaders in the social sciences field, the David Rosses of the world, and people who work on a regular basis with the development of social research.

Those of us who have been the instigators of this discussed it. It will depend on how much our own research people can do. But for travelling and those sorts of attendant expenses we feel that we have enough money in our budget to accommodate it. If we do go outside, then we shall make a determination as to whether we go to the $40,000 that we each have or come to the Internal Economy Committee, or whatever the routine is. I am not quite familiar with the path of proper procedure, but we would follow whatever the appropriate path is. I hope that answers your question.

Senator Frith: Thank you.

Hon. Charles McElman: Honourable senators, I have a question for Senator Robertson. First, may I commend her for this initiative and say that I am sure this follow-up study to "Child at Risk" will gladden the heart of our former colleague, Senator McGrand.

Senator Frith: Hear, hear!

Senator McElman: You will have one person who will be following with close attention.

As we all know, child abuse and its effect in later adult life is not restricted to those who live in poverty. Is it the intention that the study will be restricted to poverty, without reference to the other aspects of deprivation that affect children—abuse and other undesirable factors?

Senator Robertson: Thank you for your question.

First, let me say that there are a number of us—Senator David and Senator Marsden—in the committee who are equally responsible for trying to put this study forward. I am just the lead-off spokesman. I know that Senator David will be speaking to this matter, as will Senator Marsden.

• (1730)

Specifically in response to your question, senator, let me try to explain it this way: Abused children are found living not only in poverty. I think we are all aware of that. The intention of this study is to determine accurately what percentage of abused children either live in poverty or have parents who lived in poverty. We do not know whether that percentage will be 40 per cent or 60 per cent. However, nowadays there are methodologies available whereby we can actually determine those percentages, and those methodologies were not available to researchers ten years ago.

Therefore, in every category we shall be looking at the percentages. For instance, with respect to prostitutes, what percentage of those women now involved in prostitution lived in extreme poverty as children; what percentage of those other groups I have mentioned of people suffering from other forms of abnormal social behaviour had their roots in poverty?

In all of those areas we have been discussing, we know that there is a broader spectrum that we want to target with respect to the impact of living in poverty. Then the next step is to put a dollar sign on each of those percentages. I might explain it in a very simple way. At the end of this work we shall illustrate our findings by using the wheel, the simplest form of graphic expression. In the centre of the wheel we shall put the percentage of children living in poverty—whether it be 17.5 per cent or 20 per cent. Then, on the circumference of the wheel we shall put all of these different types of abnormal social behaviour, such as dropping out of school, unemployment, prostitution, unhealthy mental attitudes, criminal behaviour, and a number of other items. Then, by relating the centre of the wheel—namely, the percentage of children living in poverty—to the subjects on the circumference of the wheel, we shall be able to identify the percentage of children who lived in poverty who later suffered from these various social disorders.

Then comes the task of costing out, because, as all governments have discovered when they struggled with this problem, what we spend on children living in poverty is a small percentage of the whole. What we spend on all of these other abnormal disorders and behaviour are costs that must also be factored in. I hope that helps the honourable senator somewhat.

On motion of Senator Bonnell, debate adjourned.

The Senate adjourned until tomorrow at 2 p.m.

APPENDIX "A"

(*See p. 3384*)

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

THIRTY-EIGHTH TO FIFTY-SECOND REPORTS OF COMMITTEE

TUESDAY, May 17, 1988

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

THIRTY-EIGHTH REPORT

Your Committee has examined and approved the supplementary budget presented to it by the Chairman of the Standing Senate Committee on Agriculture and Forestry for the proposed expenditures of the said Committee with respect to its examination and consideration of such legislation and other matters as may be referred to it, as authorized by the Senate on March 24, 1987. The said supplementary budget is as follows:

Professional and Other Services	$ 9,000
Transportation and Communications	29,142
All Other Expenditures	3,500
	$ 41,642

Respectfully submitted,

ROYCE FRITH
Deputy Chairman

TUESDAY, May 17, 1988

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

THIRTY-NINTH REPORT

Your Committee has examined and approved the supplementary budget presented to it by the Chairman of the Standing Senate Committee on Agriculture and Forestry for the proposed expenditures of the said Committee with respect to its examination of Farm Finance, as authorized by the Senate on May 6, 1987, December 15, 1987 and March 22, 1988. The said supplementary budget is as follows:

Professional and Other Services	$ 3,600
Transportation and Communications	6,200
All Other Expenditures	500
	$ 10,300

Respectfully submitted,

ROYCE FRITH
Deputy Chairman

TUESDAY, May 17, 1988

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

FORTIETH REPORT

Your Committee has examined and approved the supplementary budget presented to it by the Chairman of the Standing Senate Committee on Banking, Trade and Commerce for the proposed expenditures of the said Committee with respect to its examination and consideration of such legislation and other matters as may be referred to it, as authorized by the Senate on October 28, 1986. The said supplementary budget is as follows:

Professional and Other Services	$ 46,000
Transportation and Communications	2,000
All Other Expenditures	2,000
	$ 50,000

Respectfully submitted,

ROYCE FRITH
Deputy Chairman

TUESDAY, May 17, 1988

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

FORTY-FIRST REPORT

Your Committee has examined and approved the supplementary budget presented to it by the Chairman of the Standing Senate Committee on Banking, Trade and Commerce for the proposed expenditures of the said Committee with respect to its examination of tax reform in Canada, as authorized by the Senate on May 26, 1987 and March 15, 1988. The said supplementary budget is as follows:

Professional and Other Services	$ 38,000
Transportation and Communications	3,000
All Other Expenditures	2,600
	$ 43,600

Respectfully submitted,

ROYCE FRITH
Deputy Chairman

TUESDAY, May 17, 1988

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

FORTY-SECOND REPORT

Your Committee has examined and approved the supplementary budget presented to it by the Chairman of the Standing Senate Committee on Energy and Natural Resources for the proposed expenditures of the said Committee with respect to its examination and consideration of such legislation and other matters as may be referred to it, as authorized by the Senate on October 28, 1986. The said supplementary budget is as follows:

Professional and Other Services	$ 33,000
Transportation and Communications	1,000
All Other Expenditures	2,500
	$ 36,500

Respectfully submitted,

ROYCE FRITH
Deputy Chairman

TUESDAY, May 17, 1988

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

FORTY-THIRD REPORT

Your Committee has examined and approved the supplementary budget presented to it by the Chairman of the Standing Senate Committee on Energy and Natural Resources for the proposed expenditures of the said Committee with respect to its examination of the production and use of natural gas in Canada, as authorized by the Senate on April 1st, 1987. The said supplementary budget is as follows:

Professional and Other Services	$ 32,000
Transportation and Communications	21,500
All Other Expenditures	1,500
	$ 55,000

Respectfully submitted,

ROYCE FRITH
Deputy Chairman

TUESDAY, May 17, 1988

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

FORTY-FOURTH REPORT

Your Committee has examined and approved the supplementary budget presented to it by the Chairman of the Standing Senate Committee on Fisheries for the proposed expenditures of the said Committee with respect to its examination of all aspect of the marketing of fish in Canada, and all implications thereof, as authorized by the Senate on October 28, 1986, March 31, 1987 and March 15, 1988. The said supplementary budget is as follows:

Professional and Other Services	$ 168,748
Transportation and Communications	106,500
All Other Expenditures	3,500
	$ 278,748

Respectfully submitted,

ROYCE FRITH
Deputy Chairman

TUESDAY, May 17, 1988

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

FORTY-FIFTH REPORT

Your Committee has examined and approved the supplementary budget presented to it by the Chairman of the Standing Senate Committee on Foreign Affairs for the proposed expenditures of the said Committee with respect to its examination of elements of a Free Trade Agreement between Canada and the United States, as authorized by the Senate on November 5, 1987 and March 29, 1988. The said supplementary budget is as follows:

Professional and Other Services	$ 178,597
Transportation and Communications	23,381
All Other Expenditures	1,250
	$ 203,228

Respectfully submitted,

ROYCE FRITH
Deputy Chairman

TUESDAY, May 17, 1988

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

FORTY-SIXTH REPORT

Your Committee has examined and approved the supplementary budget presented to it by the Chairman of the Special Committee of the Senate on National Defence for the proposed expenditures of the said Committee with respect to its examination of Canada's land forces including mobile command, and such other matters as may from time to time be referred to it by the Senate, as authorized by the Senate on April 7, 1987 and December 8, 1987. The said supplementary budget is as follows:

Professional and Other Services	$ 78,200
Transportation and Communications	8,200
All Other Expenditures	4,250
	$ 90,650

Respectfully submitted,

ROYCE FRITH
Deputy Chairman

TUESDAY, May 17, 1988

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

FORTY-SEVENTH REPORT

Your Committee has examined and approved the supplementary budget presented to it by the Chairman of the Standing Senate Committee on National Finance for the proposed expenditures of the said Committee with respect to its examination and consideration of such legislation and other matters as may be referred to it, as authorized by the Senate on October 28, 1986. The said supplementary budget is as follows:

Professional and Other Services	$ 106,380
Transportation and Communications	750
All Other Expenditures	1,500
	$ 108,630

Respectfully submitted,

ROYCE FRITH
Deputy Chairman

TUESDAY, May 17, 1988

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

FORTY-EIGHTH REPORT

Your Committee has examined and approved the supplementary budget presented to it by the Joint Chairman of the Standing Joint Committee on Official Languages for the proposed expenditures of the said Committee with respect to its examination of the Report of the Commissioner of Official Languages for the calendar year 1987, as authorized by the Senate on March 23, 1988. The said supplementary budget is as follows:

Professional and Other Services	$ 7,200
Transportation and Communications	150
All Other Expenditures	1,080
	$ 8,430

Respectfully submitted,

ROYCE FRITH
Deputy Chairman

TUESDAY, May 17, 1988

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

FOURTY-NINTH REPORT

Your Committee has examined and approved the supplementary budget presented to it by the Joint Chairman of the Standing Joint Committee for Regulatory Scrutiny for the proposed expenditures of the said Committee with respect to its review of statutory instruments, as authorized by section 26 of the *Statutory Instruments Act*, S.C. 1970-71-72, c. 38. The said supplementary budget is as follows:

Professional and Other Services	$ 40,548
Transportation and Communications	300
All Other Expenditures	3,030
	$ 43,878

Respectfully submitted,

ROYCE FRITH
Deputy Chairman

TUESDAY, May 17, 1988

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

FIFTIETH REPORT

Your Committee has examined and approved the supplementary budget presented to it by the Joint Chairman of the Standing Committee on Standing Rules and Orders for the proposed expenditures of the said Committee with respect to its examination and consideration of amendments to the *Rules of the Senate*, as authorized by Rule 67(1)(*f*). The said supplementary budget is as follows:

All Other Expenditures	$ 2,000

Respectfully submitted,

ROYCE FRITH
Deputy Chairman

TUESDAY, May 17, 1988

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

FIFTY-FIRST REPORT

Your Committee has examined and approved the supplementary budget presented to it by the Chairman of the Committee of the Whole on the Meech Lake Constitutional Accord for the proposed expenditures of the said Committee to hear witnesses and make a report on the Meech Lake Constitutional Accord and texts subsequently agreed to, as authorized by the Senate on June 11, 1987. The said supplementary budget is as follows:

Professional and Other Services	$ 5,000

Respectfully submitted,

ROYCE FRITH
Deputy Chairman

TUESDAY, May 17, 1988

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

FIFTY-SECOND REPORT

Your Committee has examined and approved the supplementary budget presented to it by the Chairman of the Standing Senate Committee on Social Affairs, Science and Technology for the purposed expenditures of the said Committee with respect to its examination of the document entitled: "A Study Team Report to the Task Force on Program Review (Nielsen Task Force) - Service to the Public - Veterans" and the examination of the Production and Distribution of the National Film Board Production "The Kid Who Couldn't Miss", as authorized by the Senate on December 16, 1986, June 30, 1987 and March 22, 1988. The said supplementary budget is as follows:

Professional and Other Services	$ 33,748
Transportation and Communications	5,600
All Other Expenditures	1,000
	$ 40,348

Respectfully submitted,

ROYCE FRITH
Deputy Chairman

APPENDIX "B"

(*See p. 3385*)

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

FOURTEENTH REPORT OF COMMITTEE

TUESDAY, MAY 17, 1988

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

FOURTEENTH REPORT

Your Committee, to which was authorized by the Senate on 9th February 1988 to examine and report upon the Final Report of the Special Committee of the House of Commons on Child Care, entitled: "Sharing the Responsibility" and to examine the Federal Response to the said Final Report in which is outlined the National Strategy on Child Care, 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,

ARTHUR TREMBLAY
Chairman

APPENDIX (A) TO THE REPORT

SUBCOMMITTEE ON CHILD CARE
(STANDING SENATE COMMITTEE ON SOCIAL AFFAIRS SCIENCE AND TECHNOLOGY)

APPLICATION FOR BUDGET
AUTHORIZATION FOR THE PERIOD
1st APRIL TO 31st JUIN 1988

Extract from the *Minutes of Proceedings of the Senate*, Thursday, February 9, 1988:

"With leave of the Senate,
The Honourable Senator Tremblay, for the Honourable Senator Spivak, moved, seconded by the Honourable Senator Macquarrie:

That, notwithstanding its order of reference of 5th May 1987, the Standing Senate Committee on Social Affairs, Science and Technology be authorized to continue the examination of the Final Report of the Special Committee of the House of Commons on Child Care, entitled: "Sharing the Responsibility";

That the Committee be further authorized to examine the Federal Response to the said Final Report in which is outlined the National Strategy on Child Care; and

That the Commmittee present its Report no later than June 30, 1988.

The question being put on the motion, it was --
Resolved in the affirmative."

CHARLES A. LUSSIER
Clerk of the Senate

Extract from the Standing Senate Committee on Social Affairs, Science and Technology, Tuesday, March 1st, 1988:

"The Honourable Senator Bonnell moved, -

That the Ad Hoc Subcommittee on Child Care become the Subcommittee on Child Care responsible for the examinationof the Committee's order of reference, in accordance with the proposed Research Plan; that the same senators be members of the Subcommittee, namely the Honourable Senators Gigantès, Marsden, Robertson, Rousseau and Spivak; and that the Honourable Senators Spivak and Marsden continue as Chair and Deputy Chair respectively.

The question being put on the motion, it was --
Resolved in the affirmative."

DENIS BOUFFARD
Clerk of the Committee

SUMMARY

Professional and Other Services	$ 13,600
All Other Expenditures	900
	$ 14,500

The foregoing budget was approved by the Committee on 22nd day of March, 1988.

The undersigned or an alternate will be in attendance on the date that this budget is being considered.

Arthur Tremblay
Chairman, Standing Senate Committee on Social Affairs, Science and Technology

Date: March 22, 1988

Approved by:

Guy Charbonneau
Chairman, Standing Committee on Internal Economy, Budgets and Administration

Date: May 12, 1988

EXPLANATORY NOTES

Professional and Other Services (including salaries)

Special Research Assistant 3 weeks @ $900. per week (Candidate to be determined)	$ 2,400	
Proof-reading and Editing of Reports 30 hours @ $40 per hour	1,200	
Expenses of Witnesses 20 persons @ $500.	10,000	$ 13,600

All Other Expenditures

Purchase of Stationery, Books and Periodicals	400	
Contingencies	500	900
TOTAL		$ 14,500

* Expenses of witnesses (per person)
Contingency fund for bringing witnesses to Ottawa as required

Air/Ground Transportation	$346.60
Hotel Accommodation: 1 night @ $80.	80.00
Living expenses: 2 days @ $36.70 per day	73.40
	$500.00

APPENDIX (B) TO THE REPORT

TUESDAY, May 17, 1988

The Standing Committee on Internal Economy, Budgets and Administration has examined and approved the budget presented to it by the Chairman of the Standing Senate Committee on Social Affairs, Science and Technology for the purposed expenditures of the said Committee with respect to its examination of the Final Report of the Special Committee of the House of Commons on Child Care, entitled: "Sharing the Responsibility" and the Federal Response to the said Final Report in which is outlined the National Strategy on Child Care, as authorized by the Senate on February 9, 1988 . The said budget is as follows:

Professional and Other Services	$ 13,600
All Other Expenditures	900
	$ 14,500

Respectfully submitted,

ROYCE FRITH
Deputy Chairman

APPENDIX "C"

(*See p. 3385*)

PREVENTIVE HEALTH CARE

FIRST REPORT OF SPECIAL COMMITTEE

TUESDAY, MAY 17, 1988

The Special Committee of the Senate on Preventive Health Care has the honour to present its

FIRST REPORT

Your Committee, to which was authorized by the Senate on 17th December, 1987 to examine and report upon the role that preventative medicine and other preventative measures, together with the provision of a wider range of health services can play in providing a more effective health care 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,

HAZEN ARGUE
Chairman

APPENDIX (A) TO THE REPORT

SPECIAL COMMITTEE ON
PREVENTIVE HEALTH CARE

APPLICATION FOR BUDGET
AUTHORIZATION FOR THE PERIOD
1st APRIL 1988 TO 31st MARCH 1989

Extract from the *Minutes of Proceedings of the Senate*, Thursday, December 17, 1987:

That a special committee of the Senate be establish to examine and report upon the role that preventative medicine and other preventative measures, together with the provision of a wider range of health services can play in providing a more effective health care system thus contributing to the health, happiness and longevity of Canadians; and further to examine how preventative medicine and other preventative measures might modify or control the ever increasing costs of health care;

That twelve Senators, to be designated at a later date, four of whom shall constitute a quorum, act as members of the special committee;

That the committee have power to send for persons, papers and records, to examine witnesses, to report from time to time and to print such papers and evidence from day to day as may be ordered by the committee; and

That the committee present its final report to the Senate no later than twelve months following its establishment.

CHARLES A. LUSSIER
Clerk of the Senate

SUMMARY

Professional and Other Services	$ 67,676
Transportation and Communications	3,000
All Other Expenditures	5,000
	$ 75,676

The foregoing budget was approved by the Committee on 27th day of April, 1988.

The undersigned or an alternate will be in attendance on the date that this budget is being considered.

Hazen Argue
Chairman, Special Committee of the Senate on Preventive Health Care

Date: May 4, 1988

Approved by:

Guy Charbonneau
Chairman, Standing Committee on Internal Economy, Budgets and Administration

Date: May 12, 1988

EXPLANATORY NOTES

Professional and Other Services (including salaries)

Secretary-typist/word processor bilingual		
(Candidate to be determined) 32 weeks at 5 days a week 8 hours a day = 1280 @ $18	$ 23,040	
Expenses of Expert Witnesses		
Transportation and Accomodation: 10 persons @ $980*	9,800	
Living Expenses: 10 persons @ $36.70 per persons / day × 2 days	734	
Expenses of Witnesses		
Transportation and Accomodation: 30 persons @ $980 *	29,400	
Living Expenses: 30 persons @ $36.70 per persons / day × 2 days	2,202	
Proof-reading and Editing of Reports 50 hours @ $50 per hour	2,500	$ 67,676

Transportation and Communications

Telegrams, Postage, Freignt & Courier	3,000	3,000

All Other Expenditures

Purchase of Stationery, Books and Periodicals	2,000	
Contingencies	3,000	5,000
TOTAL		$ 75,676

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* Average Ottawa - St. John's - Ottawa Ottawa - Vancouver - Ottawa $ 900
Hotel - 1 night 80

APPENDIX (B) TO THE REPORT

TUESDAY, May 17, 1988

The Standing Committee on Internal Economy, Budgets and Administration has examined and approved the budget presented to it by the Chairman of the Special Committee of the Senate on Preventive Health Care for the proposed expenditures of the said Committee with respect to its study of the role that preventative medicine and other preventative measures, together with the provision of a wider range of health services can play in providing a more effective health care system, as authorized by the Senate on 17th December 1987. The said budget is as follows:

Professional and Other Services	$ 67,676
Transportation and Communications	3,000
All Other Expenditures	5,000
	$ 75,676

Respectfully submitted,

ROYCE FRITH
Deputy Chairman

THE SENATE

Wednesday, May 18, 1988

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

Prayers.

COPYRIGHT ACT

BILL TO AMEND—MESSAGE FROM COMMONS—MOTION FOR NON-INSISTENCE UPON SENATE AMENDMENTS—DEBATE ADJOURNED

The Hon. the Speaker: Honourable senators, I have the honour to inform the Senate that a Message has been received from the House of Commons, which reads as follows:

House of Commons
Canada

Tuesday, May 17, 1988

ORDERED,—

That a Message be sent to the Senate to acquaint Their Honours that this House disagrees with both amendments made by the Senate to Bill C-60, An Act to amend the Copyright Act and to amend other Acts in consequence thereof, because this House believes that the amendments contradict the principles of the Bill which will provide new rights for creators and a new board to adjudicate between the interests of creators and users of copyright material.

More Specifically:

Amendment 1 deletes the new exhibition right, to the detriment of visual artists who should be compensated for the exhibition of their works.

Amendment 2 delays the coming into force of sections giving the Copyright Board jurisdiction over the collective administration of copyright, to the detriment of both users and creators of copyright material, for whom the Board would be an adjudicative tribunal operating to ensure that royalties to be paid will be equitable.

ATTEST

ROBERT MARLEAU
The Clerk of the House of Commons

Honourable senators, when shall this Message be taken into consideration?

Some Hon. Senators: Now.

Hon. Richard J. Doyle: Honourable senators, I move:

That the Senate do not insist on its amendments to Bill C-60, An Act to amend the Copyright Act and to amend other Acts in consequence thereof, to which the House of Commons has disagreed;

and

That a Message be sent to the House of Commons to acquaint that House accordingly.

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

Some Hon. Senators: Agreed.

Senator Frith: Explain!

Senator Doyle: Honourable senators, I think the motion speaks for itself. The only thing that I might add is that on Friday of this week the new National Gallery will be opened and I think it would be appropriate that we should honour the occasion by passing this legislation.

Some Hon. Senators: Hear, hear!

Hon. Ian Sinclair: Honourable senators, I move the adjournment of the debate.

The Hon. the Speaker: Honourable senators, is Senator Sinclair adjourning it to the next sitting or to any specific date?

Senator Sinclair: I suggest next week.

Some Hon. Senators: The next sitting of the Senate.

Senator Sinclair: The next sitting.

On motion of Senator Sinclair, debate adjourned.

CAPE BRETON DEVELOPMENT CORPORATION ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-127, to amend the Cape Breton Development Corporation Act.

Bill read first time.

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

On motion of Senator Doody, bill placed on the Orders of the Day for second reading on Tuesday next, May 24, 1988.

[*Translation*]

RAILWAY SAFETY BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill

C-105, an Act to ensure the safe operation of railways and to amend certain other Acts in consequence thereof.

Bill read first time.

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

On motion of Senator Doody, bill placed on the Orders of the Day for second reading on Tuesday next, May 24, 1988.

[*English*]

CRIMINAL CODE

BILL TO AMEND (PROTECTION OF THE UNBORN)—FIRST READING

Hon. Stanley Haidasz presented Bill S-16, to amend the Criminal Code.

Bill read first time.

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

On motion of Senator Haidasz, bill placed on the Orders of the Day for second reading on Tuesday next, May 24, 1988.

QUESTION PERIOD

AGRICULTURE

WESTERN CANADA—DROUGHT CONDITIONS—GOVERNMENT ASSISTANCE—REQUEST FOR ANSWER

Hon. H.A. Olson: Honourable senators, I wonder if the Leader of the Government in the Senate can tell us today—and more particularly if he can tell the actual producers in Western Canada—whether or not a program is being developed that will be of assistance to them in the present emergency.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, my friend, the Deputy Leader of the Government, has a delayed answer that he intends to table a bit later, but if Senator Olson wishes, I can read it into the record now.

Senator Olson: I invite the leader to do that.

Senator Murray: Agriculture Canada, through the Prairie Farm Rehabilitation Administration, has been monitoring drought conditions in Western Canada on an ongoing basis. PFRA, which operates 86 community pastures, reports that forage growth has been slow as a result of dry conditions and cool temperatures. Grazing is not expected to be delayed longer than one to three weeks in most areas, although there are some pockets where it is more severe. Hay and other feed supplies are still good and most producers are able to delay pasturing with no difficulty.

The first and most immediate concern for livestock is the lack of drinking water. PFRA and the provinces have been working to develop new and expand existing water supplies in cooperation with producers. PFRA provides both technical and financial assistance up to one-third the project cost for individuals and up to 50 per cent for groups of farmers and municipalities to resolve water supply problems. PFRA's proposed budget for rural water development facilities is approximately $7.2 million for 1988-1989. In addition, they provide extensive technical assistance in planning and developing these supplies.

If dry conditions continue, there will be significant shortages of hay and pasture. The drought committees in each province, in cooperation with the Agriculture Canada Working Group on Drought, continue to monitor the situation and report to federal and provincial ministers. Each province offers a forage listing service as an aid to farmers locating suitable hay and pasture.

Through the Crop Insurance Program forage and livestock producers have the opportunity of purchasing financial protection against the possibility of reduced feed supplies. In the event of a continued drought and crop insurance claim payments, farmers can use these funds to assist in defraying the cost of purchasing feed and/or moving feed and livestock.

Senator Olson: Honourable senators, I appreciate the review of the situation. I am aware that a long-range water development program is available through PFRA and provincial groups. However, that is not what farmers need. They need some immediate relief to feed cattle in areas where the grass has not grown at all this spring, not at all. I suppose what the leader just read is the complete report so far from the Minister of Agriculture. I want the leader to know that people in the area who are familiar with the situation were well aware that the efforts referred to were going on, but there has been no announcement as to what kind of relief program this government, in cooperation with provincial governments, is going to put in place.

Honourable senators, I am not talking about an expensive program. The price of hay is beginning to rise very rapidly. A transportation subsidy program such as the ones that were put in place in the past by more than one government would stabilize the price of hay and give the cattle producer a much wider choice on where to buy it, which keeps costs from escalating and prevents local gouging. The program would not cost a lot of money. I think perhaps up to $10 million would pay for it. That is why I do not understand the paralysis of this government in getting on with announcing the program. I certainly hope that the minister and whoever is in the field looking at this situation are not saying, as the leader just said, "If the drought continues, there will be some kind of program." I want the Leader of the Government to know that this is an emergency now, today, May 18. Thousands of cattle are being moved by truck already, and hay is being hauled in large quantities.

• (1410)

It seems to me to be unconscionable that a government would demonstrate the kind of paralysis that this government is demonstrating by saying that there is no emergency now. I want to inform the Leader of the Government in the Senate

that an emergency does exist right now, and I hope he will convey that assessment of people on the ground to the Minister of Agriculture and whoever else will be involved in setting up the program.

Senator Murray: Honourable senators, I appreciate the point Senator Olson is making, but, with great respect, I must observe that he is debating the reply that I brought on behalf of the minister and of the government. That is his right, but I suggest, however, that he should do so in a more organized and effective fashion by bringing in a notice of inquiry and then making his speech on this matter. I would undertake at that time that either I or one of my colleagues will speak on behalf of the government in such a debate.

Senator Olson: Honourable senators, I gave such notice of motion yesterday, and I intend to proceed with that because I think we need a program and that this government needs some guidance and recommendations. However, that is a longer range approach. I hope that we do not have to rely on that motion to provide recommendations to the government for some immediate relief. In terms of a longer term program, I do intend to move my motion.

Can the minister give us some undertaking now that the government will look at this with urgency in light of the existing emergency situation?

An Hon. Senator: Hear, hear!

Senator Murray: Honourable senators, I trust I have indicated that exactly that is being done by the federal government in cooperation with the provinces and the industry. The honourable senator should not be under any illusions on that score.

I am suggesting to him that if he has further representations to make he should make them in a debate and I will see that they are conveyed to the minister, and, indeed, I will undertake to have a spokesman for the government reply on our behalf.

Senator Olson: Honourable senators, I spent the last couple of hours on the telephone checking with people on the ground in the area of Canada that is being affected. Will the minister give an undertaking to carry a message to the minister to the effect that he really should get some people out there to look at the real world?

Hon. Hazen Argue: Honourable senators, I have a supplementary question to that asked by Senator Olson.

I ask the minister to consider the fact that if something is not done in this emergency situation producers may liquidate their herds and that the loss of breeding stock would disrupt the beef economy of those producers for a long time to come. The urgency is to do something to assure those people that there is some support so that they will maintain their herds which are essential to the well-being of the prairie economy in the years ahead. There are precedents for those kinds of programs.

Senator Murray: Honourable senators, again I appreciate the points being made by the honourable senator, but I do want to assure him that the Minister of Agriculture and other ministers in this government from western Canada are in close, daily touch with this situation.

Senator Argue: Can the minister say whether there will be an announcement at an early date as to what action this goverment is going to take?

Senator Murray: Honourable senators, just a few minutes ago I reported from the Minister of Agriculture as to what the situation is, what the attitude of his department is, and what activity is taking place as between the federal and the provincial governments. When there is something further to report, I will not hesitate to bring a report into the Senate.

Senator Olson: Like tomorrow?

Senator Argue: That kind of poor report generates the question.

ECONOMIC SUMMIT, 1988

RE-ENERGIZING OF DEBT STRATEGY—POSSIBLE CANADIAN PROPOSAL—INTERPRETATION OF DELAYED ANSWER—REQUEST FOR MORE SPECIFIC ANSWER

Hon. George van Roggen: Honourable senators, my question is for the Leader of the Government in the Senate.

On May 10 Senator Phillips, on behalf of the government, tabled a delayed answer in response to a question by Senator MacEachen concerning the position the government might be taking at the Economic Summit, relative to Third World debt.

The answer from the government, which I quote, reads as follows:

> Since the onset of the debt crisis in 1982, the Canadian government has supported a cooperative international strategy for managing the financial problems of heavily indebted developing countries. The strategy has been applied on a case by case basis to a wide variety of countries, and has succeeded in gradually reducing the threat to the international financial system and in bringing needed economic reforms and a resumption of economic growth to some of the indebted countries. The strategy has evolved more or less continuously throughout this period, with the most recent development being the introduction of new financial innovations which succeed in reducing the absolute amount of a country's debt. Two such schemes have been implemented already—by Mexico and Bolivia—and more are apparently being studied by these and other countries. Canada supports such new and imaginative innovations, which are designed and implemented on a case by case, voluntary basis, and whose essential financial aspects are determined by market forces.

Honourable senators, to that point the answer is a pure description of what is commonly known as the Baker plan, which most people presently concede, including, I think, the Minister of Finance, needs to be superseded by more active measures.

The answer goes on to state:

> We reject, as do other creditor and indeed debtor countries, the notion that some "magic wand" financial scheme can be devised which will rapidly eliminate the international debt problem—

Nothing that I could find in the question posed justified such an insulting reference to the intelligence of those in this chamber, particularly those senators who served, as did the Leader of the Government, on the committee that studied this subject at some length recently. Why the government thought it necessary to impute to us the idea that we thought there was some "magic wand" that would cure this problem, I do not know. However, that is not the subject of my question.

The answer is banal in the extreme and is patronizing in the extreme. Even the briefing notes given to a recent delegation of this Parliament going to Europe dealt with many more innovative steps that the government was considering in this area, including four, by my count, that could be attributed, in part, to the report of my committee in this matter.

The Minister of Finance, in the text of a speech given on April 24, and which was circulated in the dossier that arrived at my desk relative to the forthcoming summit, addressing himself to Third World debt—which he acknowledged was still of urgent importance—stated:

> There is widespread recognition that the problem facing the poorest countries can only be addressed through increased amounts of concessional financing. More must be done on that score. We believe that rescheduling commercial credits at interest rates that are below prevailing market rates represents an important new channel for assistance.

He went on in that same speech to deal with the need to address, through GATT, trade matters so that these countries can export their products to developed countries. I need only mention the massive provisioning of Canadian banks, to say nothing of our forgiveness of all sovereign debt in Africa for which I commend the government.

The *Globe and Mail* of this morning, May 18, has a very—

Senator Doody: Question!

Senator van Roggen: I have a question in exactly one minute.

The *Globe and Mail* this morning, in a lead editorial—which might enlighten some honourable senators if they were to read it—goes on at length to describe the numerous suggestions being posed by different countries and institutions, including Canadian institutions, to help resolve this debt problem, which is getting worse, not better. One paragraph of that editorial states:

> Canada's Bank of Nova Scotia has made a similar proposal, First Interstate Bancorp. of Los Angeles another, the Canadian Imperial Bank of Commerce yet another. But all of them run up against the over-principled opposition of the Reagan administration to anything that smacks of "interference" in markets. And all of them look to the G-7 summit to bring the wisdom of other leading capitalist states to bear on Ronald Reagan's myopia.

[Senator van Roggen.]

● (1420)

My question to the minister is: Are we to take the answer that was tabled here on May 10 to mean that we stand four-square with "Ronald Reagan's myopia" in doing nothing but parroting the old Baker plan? Would the government leader go back to the department and ask for something other than this rather patronizing piece of pablum that we received on May 10? Indeed, would he ask for a statement of the specific things Canada is hoping to take to the summit by way of suggestions that would help alleviate this problem?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, subsequent to the tabling of the reply on behalf of the government by Senator Phillips on May 10, many of the same points just raised by Senator van Roggen were placed before us in much gentler language, as is his wont, by the Leader of the Opposition. Senator van Roggen's question, therefore, is superfluous in the extreme. In reply to Senator MacEachen, I undertook to refer the matter again to the Department of External Affairs to see whether an elaboration might be forthcoming at an early date.

HEALTH AND WELFARE

ACQUIRED IMMMUNE DEFICIENCY SYNDROME—EDUCATION, RESEARCH AND TREATMENT—GOVERNMENT ASSISTANCE

Hon. Stanley Haidasz: Honourable senators, earlier this week, at an international conference on AIDS, delegates deplored the meagre financial assistance given by the federal government for education only—a mere $750,000—to assist in the education, research and treatment of the victims of AIDS. I would like to ask the Leader of the Government in the Senate whether it is his government's intention to increase financial aid in these three areas.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators will be aware that the National AIDS Program was established in 1983. In May 1986 the present Minister of National Health and Welfare announced a $39 million five-year national program to address the AIDS issue. The program comprises the following elements: research on all aspects of AIDS; public and professional education through a contract with the Canadian Public Health Association; support for community-based AIDS organizations throughout the country, and an enhancement of diagnostic capability in order to detect the presence of the AIDS virus in regions throughout the country.

In July of 1987 the federal centre for AIDS was established in order to coordinate all activities undertaken by the Canadian government for the control and management of AIDS. I am aware from media reports of criticisms of government policy at the conference to which my friend referred. When there are further announcements to be made, they will be made by the

Minister of National Health and Welfare, and I will inform the Senate of them.

COMPLIANCE ORDER FOR DRUGS OTHER THAN AZT

Hon. Stanley Haidasz: Honourable senators, I have a supplementary question. According to the latest statistics, approximately 1,761 active cases of AIDS presently exist in Canada. Some of these suffering Canadians are now facing death and are asking the government to approve quickly drugs other than AZT so that they can try them in an effort to save their lives. Is it the intention of the government to expedite matters and to issue a compliance order for the use of drugs other than AZT for the treatment of AIDS?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): I think I brought in a reply to that question, or to a similar question, some time ago. I shall ask for an up-to-date report from my colleague, Mr. Epp, and I shall bring that report in as soon as possible.

Senator Haidasz: I have another supplementary question. Would the Leader of the Government in the Senate make representations to his government to bring in legislation similar to that in the United States, called the Orphan Drug Act, which assists pharmaceutical companies in conducting research and producing more rare drugs for the treatment of AIDS?

Senator Murray: Honourable senators, I shall convey my friend's representations to my colleague, Mr. Epp.

NATIONAL GALLERY OF CANADA

CHILD-CARE FACILITIES

Hon. Lorna Marsden: Honourable senators, I am sure we are all delighted to know that the new National Gallery of Canada will be opening this week. It will be an attraction for Canadians and visitors from abroad and a great national institution.

I wonder if the Leader of the Government in the Senate would tell us whether this new, important national facility will have a child-care centre where young children can be left while visitors view the exhibits.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I shall make inquiries.

CANADA-UNITED STATES FREE TRADE AGREEMENT

STATUS OF AND STATEMENTS ATTRIBUTED TO CANADIAN TRADE AMBASSADOR—GOVERNMENT POSITION

Hon. Charles McElman: I would like to ask a question of the Leader of the Government in the Senate. Is Mr. Simon Reisman currently on the payroll of the Government of Canada as trade ambassador?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I shall inquire as to the exact status of Ambassador Reisman.

Senator Haidasz: And his salary.

Senator McElman: I am not interested in his salary, honourable senators.

When you inquire, would you take into account his recent activities? If he is still on the payroll, perhaps his pay might be deducted for the particular day I am concerned about.

While speaking to the Saint John's Board of Trade, he put aside the role of trade ambassador and entered the field of politics. I do not know if he was becoming a prospective candidate.

Senator Murray: On what side?

Senator McElman: In any event, I draw to the attention of the Leader of the Government one or two of Mr. Reisman's comments. While speaking about the Free Trade Agreement, he suggested that the Senate might try to block it. Up to this point I have not heard that from anyone.

Senator Flynn: He is referring to your side of the house.

Senator McElman: Of course not. Like you, I respect the role of Parliament. Mr. Reisman said:

> If the Senate were to try . . . to deny the will of the Canadian people, expressed in the elected representatives in the Parliament, of course it puts the Senate at risk.

He goes on at great length to make references to the Honourable Leader of the Opposition in the Senate, which I will not deal with at this time.

He then goes on and makes a more intelligent statement. He says:

> I shouldn't be trying to speak for the political people . . .

However, he does, and he says:

> I think the prime minister intends to put this agreement through the Parliament of Canada expeditiously and then go to the people.
>
> My advice is get the agreement in place and then go to the people.

I ask the Leader of the Government if he considers statements of this kind to be part of the role of a trade ambassador?

Senator Murray: Honourable senators, I shall have to inquire to see what Mr. Reisman's present status is. With regard to his comments about the Senate and the danger of the Senate's blocking the will of the elected representatives of the people, that does not seem to me to be an excessive comment but, rather, a statement of the obvious.

● (1430)

Senator McElman: From the honourable senator I accept that as an appropriate comment by him. I am simply saying

that I do not accept it as an appropriate comment from Ambassador Reisman—if he is still an ambassador.

THE CABINET

STATEMENTS ATTRIBUTED TO MINISTER OF ENERGY, MINES AND RESOURCES—REQUEST FOR GOVERNMENT ACTION

Hon. Charles McElman: Moving to another subject—

Senator Flynn: Good!

Senator Sinclair: He is embarrassed!

Senator McElman: Senator Flynn, when I finish with this one, I do not think you will say, "Good."

Senator Flynn: I'm an optimist!

Senator McElman: I am about to return you to your usual role of being a pessimist.

Senator Frith: "Pest" or "pessimist"?

Senator McElman: Choose your own word.

On May 11, 1988, the *Toronto Star* reported under the cut line "Stand on guard for our culture says 'lost intellectual' Masse." I have a couple of quotations from that article.

First, it is stated in the article, after a two-hour interview, that "closest friends of the Prime Minister have always said privately that Mr. Masse looks down his nose at Mulroney's intellect."

Senator MacEachen: Oh!

Senator Argue: He has a long way to look!

Senator McElman: Are you listening, Senator Flynn?

Senator Flynn: Yes. I was just saying, "What do you think he thinks of us?"

Senator Steuart: He likes you; he's just not crazy about that other fellow!

Senator McElman: From Mr. Masse's pinnacle, I suspect that he does not think much of us.

I have another quotation from Mr. Masse. He states:

> I admit. I feel alone.

Senator Argue: Intellectually!

Senator McElman: He goes on to say:

> I'm an intellectual lost in a world of pragmatists.

He then moves to policy, and he says:

> My point in the cultural sector is that the problem isn't a lack of money—
>
> What we have is a lack of policy.

That is a statement made by a minister in the cabinet. He says, "What we have is a lack of policy." There are some delightful quotations in this article. I will just read one more.

Senator Frith: More, more!

Senator Flynn: We have all afternoon; go ahead!

Senator McElman: I know you are enjoying it!

[Senator McElman.]

Senator Frith: You even have permission from Senator Flynn!

Senator Flynn: I am enjoying it even more than you are.

Senator McElman: That, I question.

He goes on to say:

> My background is my background. It's a background—

Senator Frith: Give us a moment to digest that. That is a profound statement. That is a heavy, intellectual comment. It is a little deep for us.

Senator McElman:

> —learning about systems, learning about histories, learning about civilizations and literature and art . . . that makes me different from the others—

Some Hon. Senators: Oh!

Senator McElman:

> —because I think about the why of things.

My question to the Honourable Leader of the Government is: Why don't the Leader of the Government and his colleagues release this man from the Philistine mob so that he may soar, perhaps to the heights of Mount Olympus, where he could deal with his intellectual equals, the gods?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I must confess that I was regaling myself and some friends recently reading an interview that Monique Begin had given to the media within the last few days, lamenting the great difficulty she had encountered in making her male colleagues in the Trudeau government understand the need for policies affecting women—

Senator Argue: What about Marc Lalonde?

Senator Murray: —of the need for day care, and so on.

I shall make some inquiries on this matter. While I am looking for Simon Reisman, I shall also look for Marcel Masse and Monique Bégin at or near Mount Olympus.

Hon. Philippe Deane Gigantès: Honourable senators, I hope this is not an announcement on the part of the government leader that he is not feeling well and that he will depart this vale of tears for the heights of that mountain in Greece!

Senator Flynn: You have come down a long way yourself!

DELAYED ANSWER TO ORAL QUESTION INDIAN AFFAIRS

CONTROL OF EDUCATION—IMPACT OF MASTER TUITION AGREEMENT—GOVERNMENT ACTION

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have a delayed answer other than the one that Senator Murray read a few minutes ago. It is in answer to a question asked by Senator Marchand on May 3, 1988, dealing with Indian Affairs—Control of Education—Impact of Master Tuition Agreement—Government Action.

(*The answer follows:*)

Historically, the federal government has accepted financial responsibility for on-reserve Indian students attending schools on and off reserve. For such students attending provincial schools, the federal government reimburses the per student costs incurred by provincial authorities, subject to agreed upon terms.

Under the Master Tuition Agreement, the federal government meets its financial obligations resulting from the provision of provincial education services to such Indian students. The newly signed Agreement continues this basic arrangement but allows local agreements between bands and school districts to be developed in meeting the federal responsibility.

The Department was not able to fully obtain the Indian position (of using only local agreements between bands and school districts) in its negotiations with the province. This resulted from the fact that provincial legislation did not allow school districts to enter into tuition agreements. An agreement with the province was therefore required in order to make local level agreements possible. In addition, not all bands wanted a local agreement or wanted to negotiate a local agreement at the same time. There would have been a considerable delay in meeting the federal responsibility of paying the education costs if it was to wait for putting in place local level agreements.

Although using local agreements is a major departure from the province's existing practice and requires change to the province's fiscal framework of education, the province agreed to make local agreements possible. This may be regarded as a most significant step toward Indian control of Indian education and a watershed which provides the direction for future developments in Indian education in British Columbia.

POST-SECONDARY EDUCATION

FEDERAL GOVERNMENT SCHOLARSHIPS—ALLOCATION OF FUNDS—FURTHER ANSWER

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, Senator Stewart asked a question yesterday concerning a scholarship program for undergraduate students in Canadian universities. He referred to previous questions he had asked on March 30 last, to which I had responded on April 19.

I have some further notes which I will read into the record at this point. They are in French.

[*Translation*]

The purpose of the program is to identify and reward talented young Canadians who are interested in pursuing studies and a career in science and engineering, so as to help Canada better meet the challenges posed by international competition.

The federal Government has jurisdiction to act in this field by virtue of its general spending power. Parliament will be asked to approve the required funds at the appropriate time.

The provinces also support this initiative announced by the Prime Minister on January 13. They are particularly pleased with the built-in program goal of awarding at least 50 per cent of these scholarships to women in order to assure them of fair representation in scientific disciplines in future.

This is not a program designed and delivered unilaterally by the federal Government. The provinces (in particular, the Science and Technology and the Education ministers) are consulted at each step in the development of the future program. This is part of a broader framework of federal-provincial consultation on the future of post-secondary education in Canada, which included the Forum on Post-secondary Education in the fall of 1987 and which continues on a regular basis with meetings of the Council of Ministers of Education of Canada (CMEC) and the Secretary of State and other federal ministers, depending on the issues under discussion.

All the details of the selection process and the program development procedures were stated in an announcement by the Minister responsible, the Hon. F. Oberle, in a press release issued on March 28.

[*English*]

I have a copy somewhere of the press release put out by my colleague, Mr. Oberle, on that date. I can send a copy of it to Senator Stewart.

• (1440)

EMERGENCIES BILL

SECOND READING

On the Order:

Resuming the debate on the motion of the Honourable Senator Kelly, seconded by the Honourable Senator Bielish, for the second reading of the Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof.—(*Honourable Senator Stewart* (*Antigonish—Guysborough*)).

Hon. John B. Stewart: Honourable senators, this is one of the most important bills introduced by the government in the present Parliament. It is a bill which demands close examination by the Senate. I turned up the pages of the *House of Commons Debates* for 1914, when the War Measures Act was enacted, and I found that the second reading is recorded in nine *Hansard* lines. Then, at the committee and third reading stage, it took exactly 31 *Hansard* lines. Honourable senators, I think we must find time and space to give this bill a more thorough consideration.

As Senator Hicks stated in his most helpful address yesterday, and as Senator Kelly had stated earlier, the bill seeks to anticipate four different kinds of emergency situations; four situations in which the normal processes of parliamentary government would be set aside. The first of these is a public welfare emergency such as a drought; the second is a public order emergency; the third is an international emergency; and the fourth category is a war emergency.

The bill is extraordinary in at least three ways: First, it delegates to the Governor in Council legislative powers that are normally retained jealously by Parliament itself. Second, it authorizes the Governor in Council to legislate on matters that normally come within the exclusive legislative jurisdiction of the provincial legislatures. Third, it authorizes massive interventions in Canadian society—interventions touching and even controlling people's lives and liberties, people's property and the operation of the economy. Talk about government intervention in the market! This bill authorizes intervention in the market of a kind that we have not seen in any other piece of legislation since at least 1945. This is massive intervention in society and in the market.

I have reviewed Senator Kelly's address given on April 28, 1988. In that address he commended the massive delegation of power to the Governor in Council which would be effected by this bill. I could not help thinking back to the days when the Right Honourable John George Diefenbaker used to denounce government by order in council. In those days that was one of the great Liberal vices. However, now it seems that delegation of legislative power has become a good thing.

It is true that the bill makes elaborate provision for supervision by Parliament of the use of the powers delegated to the Governor in Council. However, so great is the shift of actual power—as distinct from supervisory power—from Parliament to the executive government in the case of international emergencies or war emergencies that we must ask ourselves what need there would be for Parliament itself to meet and to act—that is, what need aside from the performance of its supervisory role.

I do not argue at this time that the bill should not be enacted in its present form. That is not the case I wish to make. My submission is much more modest. It is that we need to know far more than we have been told so far about the meaning of the bill and about the implications of the bill.

Just what are the powers that the government is asking Parliament to delegate? For each of the four types of emergency the Governor in Council would be able to arm itself with emergency powers by a declaration of emergency. In the case of a war emergency, the bill states—and I quote from clause 38(1):

> When the Governor in Council believes, on reasonable grounds, that a war emergency exists and necessitates the taking of special temporary measures for dealing with the emergency, the Governor in Council, after such consultation as is required by section 44, may, by proclamation, so declare.

[Senator Stewart.]

The provision for a declaration in each of the other three types of emergency is exactly the same, except for minor variations concerning consultation with provincial governments.

Notice, honourable senators, that in all four instances the essential requirement is strictly subjective. That requirement is the belief of the Governor in Council, the belief of the ministers. There must be *prima facie* grounds for that belief, but it is on the Governor in Council—not on any court—that Parliament is being asked to confer the power to declare an emergency.

Similarly, when we turn to the orders or regulations that would be possible under the proposed statute, we are told that the Governor in Council may make such orders or regulations as the Governor in Council believes are necessary or advisable. In the case of a public welfare emergency such as a great drought, those orders or regulations may deal with ten matters, including the requisition, use or disposition of property, and the direction of persons to perform essential services.

Honourable senators, since this is really a new provision not paralleled in the War Measures Act, we must ask just what kind of emergency is contemplated that would go beyond the capacity or the authority of a provincial government. I am not suggesting that one cannot envision such circumstances, but I think that before Parliament delegates authority to deal with a situation, the kind of situation that the government has in mind ought to be described.

What situations have arisen in the past that show that this extensive delegation of power is desirable or advisable? What does the government have in mind? In what instances in the past has the government found itself legally incompetent to do what ought to have been done?

In the case of a public order emergency, the Governor in Council is to be empowered to make extraordinary new laws dealing with five matters. Those matters include the prohibition of any public assembly that may reasonably be expected to lead to a breach of the peace, travel to any specified area or the use of specified property. Honourable senators, why are such extraordinary powers needed in Canada? We are not now talking about a welfare emergency; we are talking about a public order emergency. What kind of threat to peace, order and good government—or to law and order, to use a more conventional expression—is anticipated here? What does the government have in mind? What situations have arisen in the past that would suggest that this kind of power is required for the future?

● (1450)

An international emergency is defined as:

> —an emergency involving Canada and one or more other countries that arises from acts of intimidation or coercion or the real or imminent use of serious force or violence and that is so serious as to be a national emergency.

The orders or regulations to be made by the ministers in such a situation may deal with 12 matters, including the appropriation and control of property, the control of any industry or

service, the control of travel, and the appropriation of money without normal parliamentary authority. This is an extraordinary request by the government for parliamentary power.

Honourable senators will have noticed that in the case of the three aforementioned types of emergency the Governor in Council would be limited to specific matters, matters such as property, travel, performance of essential services, and the like. However, in the case of war emergencies, there is no specification. In other words, there is no limitation. The bill simply and starkly provides for a wholesale delegation. Clause 40(1) reads:

> While a declaration of a war emergency is in effect, the Governor in Council may make such orders or regulations as the Governor in Council believes, on reasonable grounds, are necessary or advisable for dealing with the emergency.

A war emergency is defined as:

> —war or other armed conflict, real or imminent, involving Canada or any of its allies that is so serious as to be a national emergency.

The War Measures Act, which is the act supplanted by this far more comprehensive bill, provides for war or insurrection. This bill makes provision for three other lower level types of emergency. The government is asking for delegated power for three new types of emergency. It is asking for emergency powers over Canadians in three new types of situations. We need a full explanation of the need for these new powers.

Now I would like to focus the attention of honourable senators on the provisions for war emergencies. Here the government contends that it is replacing the bad, old War Measures Act with a fine new statute. I ask: In what way would the power of the Governor in Council to make orders and regulations under this proposed statute be less, or more moderate, than the powers under the War Measures Act? The War Measures Act states:

> The Governor in Council may do and authorize such acts and things, and make such orders and regulations, as he may by reason of the existence of real or apprehended war, invasion or insurrection deem necessary or advisable for the security, defence, peace, order and welfare of Canada, and for greater certainty, but not so as to restrict the generality of the foregoing terms, it is hereby declared that the powers of the Governor General in Council extend to all matters coming within the classes of subjects hereinafter enumerated,—

And the act goes on to set out a list of enumerated heads. In contrast, this bill is wonderfully succinct. I have already quoted its operative provision with regard to war emergencies. It says that "the Governor in Council may make such orders or regulations as the Governor in Council believes, on reasonable grounds, are necessary or advisable for dealing with the emergency." It is very economical in its language. There seems to be no difference whatsoever in the scope or plenitude of delegation when it is believed by the government that war is real or to be expected. Senator Flynn was absolutely right in his remarks on this point yesterday.

We must know what powers it is that the government is seeking from Parliament. I would like to put forward some questions concerning specific powers. I do not propose that this is an exhaustive list; certainly it is not. I have picked out a few questions, most of which deal with important powers. Perhaps one of my questions would be dismissed in the other place as trivial.

The first question is: Could the provisions of other acts of Parliament be altered by orders in council made under this bill? Clause 4 of the bill states in part:

> Nothing in this Act shall be construed or applied so as to confer on the Governor in Council the power to make orders or regulations.
>
> (*a*) altering the provisions of this Act; or—

What about orders or regulations altering the provisions of other acts?

We must remind ourselves that there is jurisprudence relative to the alteration of the provisions of acts of Parliament by order in council. In 1918 the Supreme Court of Canada, in a famous case, found that exemptions from military service established by Parliament itself in the Military Service Act, 1917 had been legally altered by order in council. Exemptions had been reduced by an order in council made under the War Measures Act. It was argued in that case that the enumeration of the several specific heads on which orders might be made had the effect of limiting the power delegated by Parliament to the Governor in Council by the general words; however, that contention was dismissed. The Chief Justice of Canada said in the ruling:

> It was also urged, at the argument, that the powers conferred by section 6 were not intended to authorize the Governor in Council to legislate inconsistently with any existing statute, and particularly not so as to take away a right (the right of exemption) acquired under a statute. Here, again, Mr. Newcombe's answer appears to be conclusive. There is no difference between statute law and common law, and consequently if effect is given to that point the government would be denied any power to amend the law as a war measure, no matter how urgent or necessary that might be for public safety. Such an interpretation seems absurd and impossible. It seems to me obvious that Parliament intended, as the language used implies, to clothe the executive with the widest powers in time of danger. Taken literally, the language of the section contains unlimited powers.

He was speaking there of the War Measures Act.

● (1500)

The question I am asking is: How do the powers that would be delegated in clause 40 differ from the powers given to the Governor in Council under the War Measures Act? There seems to be no difference, except that here the delegation is accomplished in more economical language.

Then I ask another question: Could orders or regulations under the Emergencies Act now proposed be used to introduce conscription and to send conscripted personnel overseas? This could be done under the comparable provisions of the War Measures Act. I remind honourable senators that in 1940 the Mackenzie King government had Parliament enact the National Resources Mobilization Act which prohibited sending conscripted persons overseas. Then in the spring of 1942, after a plebiscite, the government of the day undertook to remove that prohibition in what came to be called, rather awkwardly, the "National Resources Mobilization Act Amendment Act." One of the members of the King government, Mr. Cardin, from the province of Quebec, resigned from that government because he did not accept this as good public policy. In a letter to Mr. Cardin the Prime Minister stated:

> As you are aware, the government might have proceeded in this matter by order in council under the War Measures Act. Having regard, however, to its responsibility to parliament, the government has felt that such action as is necessary to bring existing legislation into conformity with the will of the people expressed in the vote on the plebiscite should be taken, not by order in council under the War Measures Act, but by act of parliament.

In other words, Mr. King was saying we could have gone the order-in-council route—we could have used the delegated power—but we preferred not to. Mr. King liked to pat himself on the back for being a great lover of Parliament.

Honourable senators, in a speech delivered later Mr. King made a very important interpretation of the War Measures Act and, therefore, by implication, to the extent that this bill parallels the War Measures Act, of the present bill itself. He said:

> Up to the present, I have said nothing of the powers which, under the War Measures Act, the governor in council already possesses. Under that act, as interpreted by judicial decision and by the legal advisers of the government, the governor in council has authority, notwithstanding section 3, to send men enlisted under the National Resources Mobilization Act to points outside the boundaries of Canada and the territorial waters thereof. In other words, if, to-day, in the opinion of the government, the war situation demanded the dispatch overseas of men already called up under compulsion for military service, the government has the necessary legal power to order their dispatch.

In other words, Mr. King is reporting that according to the advice that had been given to the government of that day by the law officers of the Crown, under the War Measures Act, they could have conscripted men and they could have sent them overseas even though there might have been on the statute books a prohibition. Indeed, the War Measures Act was used in November 1944 for the latter purpose.

My question is: How different would the legal situation be if the bill now before us were law? That is a question I think we must have answered. It is not good enough to say that it is a question that is not relevant at this time If we pass this bill, will we be delegating to the Governor in Council the capacity to conscript people into the armed forces and to send them outside Canada?

Third, what provision does the bill make for dealing with insurrection, real or imminent? When Senator Kelly moved second reading on April 28, he referred to the 1970 incident. He said:

> . . . I think the best that can be said of the events in 1970 is that when the government went to the cupboard, the only thing available was the War Measures Act, a very blunt instrument designed, as its name suggests, for wartime use.

The implication of Senator Kelly's comment is that this bill will put something additional, something better, something more suitable in the cupboard. Well, where is that something? One immediately looks at the provisions with regard to a public order emergency; yet they seem to be inadequate for the kind of situation to which Senator Kelly is referring. Perhaps there is something in the bill—but if there is, I have not been able to find it—which would be appropriate to the kind of situation to which he referred.

Fourth, could an order be made ordering the internment of Canadian citizens during an emergency? The relevant provision in the bill, clause 4(*b*), states:

> Nothing in this Act shall be construed or applied so as to confer on the Governor in Council the power to make orders or regulations . . .
>
> (*b*) providing for the detention, imprisonment or internment of Canadian citizens or permanent residents as defined in the *Immigration Act, 1976* on the basis of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

What about other grounds? Camilien Houde would not have been protected by any of those prohibitions when he was detained during World War II.

Senator Flynn: It is the same as we have in the Charter. Why do they repeat it?

Senator Stewart: I am sorry, I do not understand the point.

Senator Frith: He is asking the same question as you, which is: Why do they repeat the language?

Senator Stewart: There is a point that we should notice here. Under the Canadian Bill of Rights, a person detained would have access to the remedy of *habeas corpus*. That was used during the Second World War, or at least its use was anticipated by Mr. St. Laurent who was the Minister of Justice. What would have happened if there had been access to a writ of *habeas corpus* in the case of the Russian spies who were held incommunicado in 1946? I am referring to the Gouzenko incident. Mr. St. Laurent said that a writ of *habeas corpus* would not have helped those who were detained. They would have obtained their writ, but the government would have displayed an order for their detention and that would have satisfied the court that they were legally detained. So the

writ of *habeas corpus* does not mean a detained person is going to get a trial on the merits.

• (1510)

Fifth, what, if any, legal obstacle would there be in the law of Canada, constitutional or otherwise, to the imposition of new taxes by order in council during a war emergency?

This possibility was canvassed in 1939. There seems to have been a view that that could be done under the War Measures Act. If the powers in the Emergencies Bill are comparable, if they are parallel to those in the War Measures Act insofar as war emergencies are concerned, I ask the question: Could the executive government proceed to levy new taxes on Canadian corporations, for example, without parliamentary action?

Those are some of the major questions that I think we have to raise here. They were not raised in the other place.

An Hon. Senator: Shame!

Senator Stewart: I have another question which is peculiarly a Senate question. Provision is made in clause 61(1) for the tabling of orders and regulations made pursuant to the act. However, clause 61(2) makes provision for the review of secret orders or regulations. In other words, what is anticipated is that most orders and regulations would be tabled and made public in Parliament; however, some orders and regulations might be held back. That, incidentally, was done in the case of the order in council that permitted the holding of the spies incommunicado in 1946. There is a cautionary provision, however; there is to be a Parliamentary Review Panel. That panel is to be "a committee of both Houses of Parliament."

Then we are told, in clause 62(2):

> The Parliamentary Review Committee shall include at least one member from each party that has a recognized membership of twelve or more persons in the House of Commons.

My question is: Does this mean that if emergency orders were made by the present Progressive Conservative government, the presence of one Progressive Conservative senator would be sufficient to constitute a joint committee? Or if on some future date orders in council were made by a Liberal government or an NDP government that the presence of one Liberal senator, or, if it happened to be an NDP government, one NDP senator—if one can imagine that—would be sufficient? There appears to be no provision for participation of senators from both sides of this house on the Parliamentary Review Committee. I think that is probably an oversight, which could be corrected easily with unanimous support in this house.

Honourable senators, I am not arguing that this bill should not be passed in its present form insofar as its major components are concerned; what I am saying is that we have to do better than they did in 1914. There are very important questions concerning taxation, conscription, the expenditure of public money and other matters to which we have to have clear and unequivocal answers from persons in positions to give clear and unequivocal answers. This is a measure that we have to take seriously. The country will applaud us if senators on both sides of the chamber do thorough work on this proposed measure.

Hon. Senators: Hear, hear!

Hon. William M. Kelly: Honourable senators—

The Hon. the Speaker: Honourable senators, I wish to inform the Senate that if the Honourable Senator Kelly speaks now his speech will have the effect of closing the debate on the motion for second reading of this bill.

Senator Kelly: First of all, I want to thank Senator Hicks, Senator Flynn and, of course, Senator Stewart for their interventions. This is indeed an important bill. I cannot help but agree totally with many of the comments Senator Stewart has made. There are serious questions that need answers. I am tempted to try to offer my own comments on the questions, but I think they would fall short of what is needed here. I think it is important to see that this bill moves to committee as soon as possible, where the minister, representatives of the Department of Justice and other appropriate witnesses can respond to these very sensitive and important questions.

Motion agreed to and bill read second time.

MOTION FOR REFERRAL TO COMMITTEE—DEBATE ADJOURNED

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

Hon. William M. Kelly: Honourable senators, I move that Bill C-77 be referred to the Special Committee of the Senate on National Defence.

The Hon. the Speaker: It is moved by the Honourable Senator Kelly, seconded by the Honourable Senator Nurgitz, that the bill be referred to the Special Committee of the Senate on National Defence.

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

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, having listened to Senator Stewart, I think we should consider the appropriateness of having this bill referred to a Committee of the Whole. Therefore, I move the adjournment of the motion of reference so that I may have an opportunity to discuss this with my colleagues and also with the leadership on the other side.

The Hon. the Speaker: It is moved by the Honourable Senator Frith, seconded by the Honourable Senator Cottreau, that further debate be adjourned until the next sitting of the Senate.

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

Hon. Jacques Flynn: Honourable senators, I believe Senator Frith moved the adjournment of the debate on the motion to refer the bill to the Special Committee of the Senate on National Defence.

Senator Hicks: Yes. That is all Senator Frith did.

Senator Frith: What motion was put?

Senator Flynn: I do not know.

Senator Frith: The motion I moved, Your Honour, was that the debate on Senator Kelly's motion to refer the bill to the Special Committee of the Senate on National Defence be adjourned.

Senator Hicks: Yes, and that does not interfere with the motion for second reading.

Senator Frith: The motion for second reading has been adopted.

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

Hon. Senators: Agreed.

On motion of Senator Frith, debate adjourned.

CRIMINAL CODE

BILL TO AMEND—SECOND READING

On the Order:

> Resuming the debate on the motion of the Honourable Senator Bélisle, seconded by the Honourable Senator Walker, P.C., for the second reading of the Bill C-89, An Act to amend the Criminal Code (victims of crime).—(*Honourable Senator Neiman*).

Hon. Joan Neiman: Honourable senators, I am happy to speak today to Bill C-89 and to know that the measures for the protection of and assistance to victims of crime will soon become legislative reality. As Senator Bélisle pointed out last week when he introduced this bill on second reading, victims have too often been the forgotten persons in the criminal justice system. They have been used, abused and/or ignored. So measures to protect them are long overdue.

● (1520)

Senator Bélisle has summarized very carefully what those measures are, so I need not repeat them. I think it is safe to say that we, and the public generally, will support their broad intent.

In going through the proceedings of the legislative committee of the other place, it was clear that the sympathy of its members was fully engaged in promoting and strengthening the rights of and protection for victims. Those objectives are laudable in themselves and are worthy of our consideration and support, but there are other factors which must be weighed with equal care. Those factors involve principles which are fundamental to our entire criminal justice system: open and public trials; freedom of the press; the right of the accused not to be convicted of an offence unless he or she is given a fair trial in accordance with age-old precepts, which include the right of the accused to be given a reasonable opportunity to test every element of the Crown's case; and the right to be sentenced, even if duly convicted, according to principles of sentencing that reflect the concerns of all members of society and which are applied fairly and evenly.

We must respond to the needs of victims without unduly impinging upon any of these basic principles and without sacrificing the rights of the accused. This may require a very delicate balancing of interests. The bill contains several different measures designed to move that balance closer to the legitimate needs and interests of victims of crime. These measures give rise to a number of legal and constitutional issues that, I suggest, have not been given a close enough examination to this point.

[Senator Frith.]

I am thinking of such proposed measures as the extension of the discretionary and mandatory bans on publication of the names of complainants and witnesses. Bill C-89 extends publication bans to three more offences. At present all of the offences to which such bans apply are sexual offences. The bill adds one more sexual offence and two offences that are not of this character—extortion and criminal interest rate.

Senator Bélisle has offered what appear to be valid reasons for extending non-publication provisions to non-sexual offences, although the Supreme Court of Canada has declared, in the case of the Attorney General of Nova Scotia *et al. v. MacIntyre*, which dealt with loan-sharking, that the:

> . . . sensibilities of an adult person, whether he or she is the accused or a witness, is not a valid basis for limiting the publication of criminal proceedings.

Therefore, the question we must ask ourselves is whether we are prepared to see a gradual erosion of the principle of open trials through the piece-by-piece addition to these provisions of new offences.

As my honourable friend noted, the provisions will make the non-publication ban mandatory when the victim is under the age of 18 years. It would also be mandatory when the complainant, whether over or under the age of 18 years, or the prosecutor asks for it. However, the Chief Justice of Ontario, in the case of *The Canadian Newspapers Co. Ltd. v. Attorney General for Canada*, has stated that:

> Openness of the courts is essential for the maintenance of public confidence in the administration of justice . . .

The Appeal Court also found any mandatory ban to be unconstitutional as an infringement of the rights guaranteed by the Charter of Rights and Freedoms. I should add that an appeal of this finding was heard by the Supreme Court of Canada on March 2 of this year, so we may have a final statement on this matter before the Senate completes its examination of Bill C-89.

There are good reasons for including in the bill provisions to permit photographic evidence to be used in many more ways, but I believe that some of the procedures to implement its use require more detailed study.

Other sections of the bill may also require more consideration. For instance, sections 445.1 and 446 of the Criminal Code already contain detailed provisions concerning detention and return of property, so the new amendments to them should be examined in order to understand why additional measures may be necessary and justifiable.

The provisions for the use of affidavits as to ownership and value of property also present particular problems. The question of the value of stolen property may be an extremely

critical one. The maximum jail sentence for theft of property worth more than $1,000 is ten years, but if the property is not worth more than $1,000, the maximum jail term is two years. The adequacy of an affidavit as a substitute for testimony at trial by the owner, and the requirements for the statements to be included in that affidavit, may be crucial questions.

The broadening of the court's power to order offenders to make restitution to victims is a welcome amendment, but the manner in which the application of these provisions is expressed may give rise to unintended consequences, including possible unconstitutional invasions of provincial jurisdictions.

The use of victim impact statements has been the subject of criticism and concern in some quarters, including judicial pronouncements. Nonetheless, we support the measures in this bill that are designed to give the victim a voice when it is time to consider the sentence. We must be certain, however, that they will be subject to controls that will ensure that they do not introduce elements prejudicial to the proper application of sentencing principles.

Each of these provisions that I have mentioned briefly invites a number of questions. Since I expect that Bill C-89 will be referred to the Legal and Constitutional Affairs Committee, I think it is preferable to raise them in that forum. It is my hope that the committee will be able to report back with reassurances, or, in the alternative, recommendations for amendments that would allay any concerns that may be raised.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

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

GOVERNMENT ORGANIZATION BILL, ATLANTIC CANADA, 1987

SECOND READING—DEBATE ADJOURNED

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations) moved the second reading of Bill C-103, to increase opportunity for economic development in Atlantic Canada, to establish the Atlantic Canada Opportunities Agency and Enterprise Cape Breton Corporation and to make consequential and related amendments to other Acts.

He said: Honourable senators, last month I had the honour to move and to open and close the debate in this chamber on the resolution for constitutional amendment based upon the Meech Lake Accord of 1987. Some weeks from now I expect to introduce into this place Bill C-72, containing the first amendments to be proposed to the Official Languages Act since that important piece of legislation was passed by Parliament in 1969.

• (1530)

Before this session ends I hope to bring into this place the legislation implementing the Free Trade Agreement signed between Canada and the United States.

These, honourable senators, are nation-building measures. Bill C-103, An Act to increase opportunity for economic development in Atlantic Canada, to establish the Atlantic Canada Opportunities Agency and Enterprise Cape Breton Corporation and to make consequential and related amendments to other Acts, is in the same category. It is a nation-building measure.

I want to say at the outset that the regional development policy—the attack on regional disparities—is as vital a part of this government's concept of national unity and national reconciliation as anything we have been discussing in Parliament during this session. I say that this is a new agency, a new effort, and a new concept in regional policy. I say that not to denigrate past efforts in this field.

As I pointed out last month in discussing the Meech Lake resolution, regional needs were recognized in our Constitution as far back as the B.N.A. Act of 1867. They were recognized in our parliamentary institutions and in a very early form of equalization. What we might regard as the modern commitment to regional policy and regional development goes back more than 30 years. Equalization, and the right to equalization payments, is now entrenched in our Constitution as a result of the 1982 exercise. Equalization payments have made it possible for the poorer provinces to offer to their citizens standards of provincial services that are reasonably comparable to those in the richer provinces of the country.

Over the past 30 years, with a good deal of help from the federal treasury, an infrastructure has been built throughout the Atlantic region—ports, airports, highways, industrial parks, and so forth. Even the various programs of business and industrial incentives that have been frequently criticized have not been without their positive result in creating and maintaining businesses and industries in that region that, in all likelihood, would not otherwise have located there.

Over the years we have had a series of federal agencies and departments—the Atlantic Development Board, the Atlantic Development Agency, the Department of Regional Economic Expansion, the Department of Regional Industrial Expansion—and we have had various instruments of federal-provincial cooperation in regional economic development, the two most recent such instruments being the General Development Agreements and the ERDAs—the Economic Regional Development Agreements.

The present government enriched considerably the regional development effort in its first two years in office. Certainly the ERDA system was enriched. Incentive tax credits were brought in. The Atlantic Enterprise Program was introduced, featuring, as it does, loan insurance and provision for interest rate buy-downs. The Cape Breton Investment Tax Credit was brought in. Enterprise Cape Breton Corporation was created. Yet, two years into the mandate of this government, dissatis-

faction with federal regional development programs was still pronounced in the Atlantic region, dissatisfaction that persisted, notwithstanding the enrichment of the regional development effort and notwithstanding the improvements in the old programs and the introduction of new programs under the present government.

This dissatisfaction expressed itself in relation to national programs which, in the view of many people in the Atlantic provinces, failed to take account of regional needs and circumstances. It was dissatisfaction expressed with regional programs which seemed always to be formulated outside the region and to be not sufficiently sensitive to the region. There was dissatisfaction with regional programs which, the private sector told us, were strangling through bureaucracy and red tape. We heard all the horror stories of bureaucratic ladders that had to be ascended by applicants for government assistance, leading from the local communities to regional offices to committees of senior officials and assistant deputy ministers in Ottawa. We heard the horror stories of the 30-page application forms that had to be filled out, and all the rest of it. Much of this forms part of the speech by the Right Honourable the Prime Minister in the course of a Throne Speech debate in the other place at the beginning of the present session.

It was, however, I believe, the dismantling of DREE and the creation of DRIE by the previous government that had a profoundly negative symbolic and psychological effect on the region. This was regarded by many people in the Atlantic region as a blow, because it seemed to confirm some of their worst suspicions about the inconstancy of the federal government's commitment to eliminate regional disparity.

The creation of DRIE out of the remnants of the old Department of Industry, Trade and Commerce and out of what was left of DREE was intended—or so it seemed—to blur the important distinctions between industrial policy, concerned as it was with the industrial heartland of Canada, and regional policy, which had been concerned largely with eastern Quebec and the Atlantic provinces. People in the Atlantic regions saw in the disappearance of DREE and its absorption into the industrial policy preoccupations of DRIE the downgrading of regional policy as a national priority.

So DRIE was badly received in the Atlantic region from the beginning. It was regarded as over-centralized and bureaucratized. Frankly, it was never accepted as being dedicated to regional development. In its operations it seemed to many people to lack efficiency and drive and the humanity that is necessary for a regional agency.

The present government had to consider what to do about this situation. One option, I suppose, would have been to try to recreate DREE, to unscramble the omelet, as it were. But that is a very complex undertaking. Those of us who saw the person-hours and the effort that went into creating DRIE and effecting the absorption of some of the old Department of Industry, Trade and Commerce functions into the Department of External Affairs are not anxious to see the whole machinery of government preoccupied for another three or four years in trying to undo what has been done in order to recreate DREE.

[Senator Murray.]

There was, I suppose, the option of creating another central bureaucracy, but given the mood and the attitude of the private sector and the provincial governments in the Atlantic region, that was, to put it mildly, not politically advisable.

● (1540)

The government sought recommendations from a number of sources, but to coordinate his effort and to do his own investigations we called on Professor Donald Savoie, the President and Director General of the Institut développement canadiens de recherche sur le développement régionale at the Université de Moncton. We also enlisted the services of Mr. Dalton Camp, senior adviser to the federal cabinet, who throughout his public and political career had shown a special interest and concern about national policies as they affect regional disparities.

Extensive and intensive consultations were held in the Atlantic region with provincial governments, various public institutions and the private sector.

The result of this has been the creation of an agency that builds on the experience of past achievements and failures. It is an Atlantic regional agency, which is effectively a department of the national government, with its own minister, deputy minister and bureaucracy, who have their place in national policy making and in national decision making.

Unlike other government departments, however, it is headquartered not here but in the region, in Moncton. Decisions are made in the region. There is a private and public sector advisory board drawn from the region. This agency has a decentralized autonomy, authority, flexibility and resources unprecedented in any other government department to carry out its mandate in and for the Atlantic region.

I want to emphasize that the closest consultation has been had with the provincial premiers and the private sector in designing this agency, in appointing the members of the board, and in developing the programs which we have been, and will be, bringing into effect under the sponsorship of the agency.

On June 6 last, when the Prime Minister announced the creation of the Atlantic Canada Opportunities Agency, we were given responsibility for the existing business incentive programs as they operated in the Atlantic provinces: the IRDP, the Atlantic Enterprise Program, Enterprise Cape Breton, and the Small Business Loans Act as it applied in the Atlantic region. We were told to simplify the process, cut the red tape and tailor and adapt these programs to the needs of the private sector in the Atlantic region.

We were also given responsibility for the ERDAs in the Atlantic region. We were given a mandate to coordinate economic development activities of the federal government in the Atlantic region. We were given a mandate to act in an advocacy role for the region in the development of national policies. On top of this, we were given $1.05 billion over a five-year period, in addition to ongoing regional development expenditures, so that we could develop new programs to encourage entrepreneurship and assist small and medium-sized businesses in the Atlantic region.

Last June we set about simplifying the incentive programs to make them more accessible, more responsive and more prompt to respond to the needs of the private sector. I delegated authority to the region and the local offices for these programs. At the present time only projects with eligible costs of more than $5 million come routinely to my desk. More than 90 per cent of all the applications for assistance are now decided in the region. This has meant a vastly increased take-up by the private sector of these incentive programs and an enormously improved turnaround time in dealing with these applications.

Last February 15 I announced a consolidation of the two major incentive programs then in place, increased assistance available to business and to a wider range of business and business-related activities.

Up to that point the two major programs in place were the IRDP, which offered grants, but to a limited range of businesses—almost exclusively in the manufacturing sector—and the Atlantic Enterprise Program, which supported a wider range of businesses, but offered only loan insurance and interest rate buy-downs.

Since February 15, ACOA, through its action program, offers grants and contributions, loan insurance and interest rate buy-downs to the widest ever range of business and business-related activities.

Assistance is available to business now for capital costs, expansions and modernizations, new product expansion, capital costs for innovation, studies and technical assistance, and even for hiring personnel to implement the marketing program for businesses in the Atlantic region. Now eligible for assistance are not only commercial enterprises but non-commercial organizations and associations, municipalities and their agencies, and universities and local development associations that offer specialized services to the small and medium-sized businesses in the Atlantic region.

What we have done and what we are doing with this action program is enlisting, as far as we can, all the energies and the talents that are available to us, whether they are in the educational system, local government or in the business community, to encourage entrepreneurship and to develop small and medium-sized businesses in the Atlantic region.

In little more than two months, from the time of the announcement on February 15 until April 29, ACOA has approved 337 applications and contributions of almost $42 million—that is in little more than two months. That brings the total since last June to some 1,146 applications approved, with contributions of $161 million, to make possible business investment in the region of $528 million.

I would like to take 20 seconds now to express my appreciation to the staff of the agency, and in particular to the president designate, Mr. Don McPhail, for the tremendous work they have done over the past year or so in handling the enormously increased number of applications that have come into this agency and in effecting the tremendously improved turnaround that has been possible. It is largely due to their dedication and to the extraordinary effort and extra hours of work that they have put in that the reputation and the credibility of the agency in doing what it has set out to do has remained not only intact but has been the subject in recent months of commendation from provincial governments and from many people in the private sector alike. I do want to congratulate and thank the members of our staff for their cooperation in this respect.

● (1550)

Honourable senators, this bill writes into law the unique authority and flexibility of this Atlantic Canada Opportunities Agency. I referred earlier to the coordinating role that is given to the minister and the agency in respect of the economic development activities of the federal government in the region. This coordinating role is backed up by a provision which gives the minister the ability to co-finance national programs of other departments and agencies in order to increase their impact in Atlantic Canada, or to work out special provisions that are unique to Atlantic Canada and would be a pre-condition of such co-financing.

The bill would also give the minister the authority to designate areas where exceptional circumstances provide opportunities for locally based improvements in productive employment. A further provision gives the minister the authority to make regulations within that particular area which would differ from the regulations in force elsewhere in the region. This power to designate areas of special opportunity rather complements the minister's authority under the Special Areas Act, which also comes under my jurisdiction now so far as the Atlantic region is concerned. It complements the minister's authority to designate areas needing efforts because of the exceptional inadequacy of opportunities for productive employment.

Honourable senators, I recognize that we will be going through the bill in more detail when it goes to committee. However, clause 13 outlines the numerous incentive programs—loans, guarantees, loan insurance, interest rate buy-downs, grants and contributions—that will be available to business and business-related activity through the Atlantic Canada Opportunities Agency.

I draw the attention of honourable senators to the fact that generally the regulation-making authority under this bill for adding to the programs that are listed in the bill and for establishing criteria will be in the hands of the minister, and not of the Governor in Council—just an added flexibility that is given to the agency and its minister to tailor programs to the needs of the region.

Let me say a word about Part II of this bill, which establishes the Enterprise Cape Breton Corporation. The purpose of the organization is to promote and assist the financing and development of industry on the Island of Cape Breton in order to provide employment outside the coal mining industry and to broaden the base of the economy of the island. Enterprise Cape Breton Corporation will do this on its own and in conjunction with others, whether individuals, governments or government agencies, either federal or provincial. This part of

Bill C-103 addresses the special needs of Cape Breton, and the Enterprise Cape Breton Corporation will be linked directly to ACOA through the president and the minister of ACOA. However, it will have its own slate of officers and staff and a head office in Sydney, under a vice president of operations. Under this bill, the corporation will carry forward the mandate of the industrial development division of DEVCO—the Cape Breton Development Corporation. Accordingly, Enterprise Cape Breton Corporation will have broad powers to make loans or grants to, invest in, purchase, lease or promote enterprises based in Cape Breton. ECBC will work closely with Enterprise Cape Breton, an agency created in July of 1985 which has had an impressive record of achievement in Cape Breton.

Honourable senators, the government does not pretend—and never has pretended—that this agency is some kind of panacea for the Atlantic region.

Senator Frith: Or magic wand!

Senator Murray: It is not about miracles; it is not a magic wand; it is not a "quick fix" for the economic problems of the Atlantic region. ACOA is focused more on opportunity than on disparity. That is to say, we are focused on the longer-term improvements that we want to make in the economy of the Atlantic provinces. Over time, and with the growing credibility of the agency in the region, I expect that this agency will become a key agent of economic change in the Atlantic region. Also, I believe that in our emphasis on developing an entrepreneurial climate and, in some parts of the region, an entrepreneurial culture that has been missing for many years, and by encouraging small and medium-sized business, we are on the right track. The other day I saw some statistics which pointed out that in Canada in the period from 1978 to 1985 1.2 million jobs had been created in this country; 86 per cent of those jobs are in firms with fewer than 50 employees; 7 per cent of them in firms with between 51 and 100 employees and only 7 per cent of those new jobs in large companies. In the same set of statistics, I observed that 60 per cent of all private-sector employment is now in firms with fewer than 100 employees.

Honourable senators, in establishing the Atlantic Canada Opportunities Agency, with its emphasis on small and medium-sized business, I believe we are on the right track. It may be, for a change, that the Atlantic region is on top of and ahead of national and international trends. In any case, this agency represents a fundamentally new direction for regional economic development policy. It represents this government's commitment to policies that are tailored to the specific regions of the country. It had its companion legislation debated here yesterday at second reading in the establishment of the Department of Western Economic Diversification.

Honourable senators, there is strong support throughout the Atlantic region for this concept. There is a good relationship that has developed between the agency and the premiers of Atlantic Canada, the private sector and amongst people generally in that region. I ask Parliament to give its support to this agency, to pass this bill in order to give us the legislative means to get on with the job of regional development in Atlantic Canada.

[Senator Murray.]

Some Hon. Senators: Hear, hear!

On motion of Senator Graham, debate adjourned.

WESTERN ARCTIC (INUVIALUIT) CLAIMS SETTLEMENT ACT

BILL TO AMEND—CONSIDERATION OF REPORT OF COMMITTEE—DEBATE CONTINUED

On the Order:

> Resuming the debate on the motion of the Honourable Senator Tremblay, seconded by the Honourable Senator Phillips, for the adoption of the Thirteenth Report of the Standing Senate Committee on Social Affairs, Science and Technology (Bill C-102, An Act to amend the Western Arctic (Inuvialuit) Claims Settlement Act, with one amendment), presented in the Senate on 5th May, 1988.—(*Honourable Senator Steuart (Prince Albert-Duck Lake)*).

● (1600)

Hon. D.G. Steuart: Honourable senators, let me say at the outset that I support Bill C-102. These amendments are necessary and deserve the support of the Senate. However, I want to speak on one or two problems arising from the original act, the Western Arctic (Inuvialuit) Claims Settlement Act. For two years I was involved as a senior negotiator for the Government of Canada in these negotiations. At that time I tried, but failed, to get the two problems I will speak about today included, and thereby solved, in the final settlement act. These were two of the reasons I stepped aside as chief negotiator. A clash with Mr. Bob DeLury, the chief negotiator for Inuvialuit, was the other major reason that I stepped down.

The first clause that I failed to have included in the final settlement act concerned the right and the responsibility of the Government of Canada to audit and check on the spending of the huge sums of money being handed over to the Inuvialuit. I was concerned then that their chief negotiator, Mr. Robert DeLury, was setting up such a complicated series of corporations that it would ensure his continued control of the Committee of Original Peoples Entitlement, or COPE, as the organization for handling the western Arctic claim is now known. Everything that has happened since that time has reinforced my suspicions. I have received numerous complaints from individual Inuvialuits living in the western Arctic that these funds are being mishandled, and that the ordinary people who are supposed to be helped by the settlement have received little or no benefit and do not really know what is going on.

About a year or so ago, the CBC program "The Fifth Estate" did a program on the COPE settlement which showed that huge sums of money had been badly invested and that money had been wasted on high-priced consultants from southern Canada. As well, it was pointed out that there had been an apparent conflict of interest in the investing of some of these funds. One example was cited, and I am told that there

are many more. It concerns the hiring of consultants who recommended the purchase of shares in companies that were owned by the same consultants. These purchases were made and money was invested either in the Bahama Islands or elsewhere in the Caribbean Islands for which no explanation has evidently ever been made. None of these charges—and there are many more—has been properly answered.

As a result, I wrote to the Honourable Bill McKnight, Minister of Indian Affairs and Northern Development, asking him to carry out an investigation. He refused. In fairness, I should say I also asked the Honourable John Munro, who was the minister in the previous government, to do the same thing, and he also failed to act. The reason given by both ministers was to the effect that this money belonged to the Inuvialuit and the government had no right to interfere in their internal affairs. I point out that the amount involved is over $150 million. The number of Inuvialuit concerned is about 2,500. In fact, it amounts to about $60,000 for every man, woman and child. Invested at 10 per cent, each individual could receive about $6,000 per year in perpetuity. I realize that that is not the way the money was intended to be spent. The Inuvialuit wanted to build something that would carry on and give their people independent living from now on.

In any event, I reject the excuse that the government could not, or should not, interfere. The mandate under which the Department of Indian Affairs and Northern Development operates, among other things, gives them the responsibility to help and support the aboriginal people of Canada. I have observed over the years that the same department has moved in on many Indian bands to audit the handling of money entrusted to them. On occasion, charges have been laid for the mishandling of funds. So why not do the same thing in the case of the Inuvialuit of the western Arctic?

It was, in fact, a Liberal government that produced the legislation, and it failed to follow up on complaints. However, I cannot understand why the Conservative government is following the same course. If this money is dissipated—and there is a great deal of evidence that this is happening—there will be an outcry as to why it was allowed to happen, and the government of that day will have to deal with it and will have to support these people, whether they like it or not. If an investigation is carried out and everything is being properly handled, no harm will have been done and the questions and suspicions will have been laid to rest. Such an investigation was just concluded in British Columbia, and the people accused of mishandling Indian bands funds, who were native people, were cleared and exonerated. The present minister has received complaints from northern residents, and I urge the government leader in the Senate to impress on him the urgency of carrying out an investigation into the operations of COPE and its handling of these huge sums of money entrusted to it on behalf of the Inuvialuit people.

Honourable senators, the other point I want to raise has to do with the control of the reindeer herd now owned by William Nasogaluak, an Inuvialuit and former mayor of Tuktoyaktuk. The original herd was purchased from Alaska by Canada many years ago. It changed hands once or twice and finally was purchased by Mr. Nasogaluak. The Government of Canada also gave him grazing rights on the Tuktoyaktuk Peninsula. I do not know if there was anything in writing at the time, but at the time of the granting of these rights the land was Crown-owned and such things as native settlements were a long way off. I do not think anyone really expected that the land would be anything but crown land in perpetuity.

However, the rights to graze this herd were bought by Mr. Nasogaluak. They were implicit and they should not have been taken away from him—literally expropriated. The former Liberal government had promised to ensure that Mr. Nasogaluak would be given the right to carry on those grazing rights with his herd of some 15,000 reindeer a short time before the last election was called. The promise was never carried out. The same problem was passed on to Mr. McKnight and the present government, and they have failed to resolve it. The government has had four years to right this wrong and have not solved this problem yet. In the meantime, Mr. DeLury and COPE are pressuring William Nasogaluak to sell the herd to them for far less than half its real value. He cannot graze that herd or slaughter the 4,000 or 5,000 reindeer per year he usually slaughters to sell all over the world because they have brought an injunction against him. So the value of his herd is deteriorating. He has no income. Nor do the many people in that area to whom he provided jobs. In fact, Mr. Nasogaluak was one of the great success stories of that part of the North. He is being denied simple justice and treated in a disgraceful manner. Again, I urge the government to take action to right these two wrongs.

When this bill was considered in the other place, members of all parties spoke in favour of it. Let me point out that they were all in favour of the Inuvialuit and all in favour of aboriginal rights, but most of them were not prepared to stand up for the rights of ordinary Inuvialuits who are hunters, trappers and fishermen, but not part of the insider circle that controls COPE and the settlement funds. In fairness, there is one exception, and that is Mr. Nickerson, the Conservative member for Western Arctic. He has pressed Mr. McKnight to take action on both these matters and to make sure that the owner of the reindeer herd is given a fair price. The minister pointed out that he was encouraging negotiations between COPE and Mr. Nasogaluak. He asked them to submit to binding arbitration. Mr. Nasogaluak agreed, but COPE refused. The reason that COPE refused is that they have had their eye on this reindeer herd since long before the settlement was ever made, and they know that they have everything to gain and nothing to lose. All they have to do is out-wait this poor individual and they will get the reindeer herd, or what is left of it, for nothing. I still think that Mr. McKnight has the responsibility to step in and protect this gentleman's right.

The minister has a great deal of power. For example, he could have refused to introduce this bill unless COPE agreed to fair negotiations. He has a tremendous amount of power when he wants to use it. He may not have the legal power to force them to binding arbitration, because perhaps that went

when we in this house and the members of the other House passed the original settlement act.

Honourable senators, this is an ongoing situation. There will always be changes being made to that act. This will not be the last change, and I hope that before he proposes any other changes to this act he will step in and make sure this problem is settled. Mr. McKnight and the Department of Indian Affairs and Northern Development have a responsibility to the Inuit people. They cannot and should not wash their hands of either of these serious problems.

Hon. Senators: Hear, hear!

Hon. Willie Adams: Honourable senators, I should like to congratulate Senator Steuart who, while not living in the territories, is obviously very familiar with this situation.

Honourable senators, two or three weeks ago, along with a couple of delegates from the Department of Indian Affairs and Northern Development, I attended a committee meeting chaired by Senator Tremblay. At that time there was discussion of the money being allocated to this organization and reference was made to the fact that over the last four or five years there has been no information as to how much money has been allocated to the Inuvialuit in settlement of their land claims. As Senator Steuart says, we do not know how many of the 2,500 Inuvialuit benefited from this.

At that time COPE was really concerned about the settlement, because activity in oil and gas exploration was going on in the Beaufort Sea and the Mackenzie Delta. There was a general feeling by the people that if they did not reach a settlement at that time, then they would lose in terms of the activity that was going on with the resultant loss of jobs for people in the community.

The concern of Senator Steuart and myself is that that money should be spent in the proper way, which is to create jobs for those living in the community. As Senator Steuart has said, some of the money has been invested outside of Canada, which leaves us with the question of how much of the settlement was invested in the activity going on in the Mackenzie Delta.

It also leads to the concern as to how much money was devoted to those with reindeer herds. The cultivation of reindeer herds does have some long-term ramifications in that the production of oil and gas in the North may have a limited life span, but protected reindeer herds can, in the future, mean economic stability for those living in the North. Unlike caribou, reindeer can be herded and reasonably domesticated.

Like Senator Steuart, I was glad to have an opportunity to discuss this bill in committee. It is the feeling of the committee that the company should be audited every year, as is any other organization. There is provision for $150 million over 15 years, and there should be some guarantee to those living in the community that the money will be allocated to be used for projects which will benefit the people of the Mackenzie Delta. As it is now, it may be that the money will benefit only those in the organization. Three weeks ago I visited Victoria Island, and the residents of that island, particularly the older people who have lived off the land all of their lives, were looking forward to a settlement so that they could enjoy some of the money before they die. I do not know what the policy of COPE is regarding those with known land claims.

As Senator Steuart has said, unlike other business people, there is a feeling in this respect that if they run out of money they will get more from the government next year. That is not the attitude in a private organization. We, here in Ottawa, have a responsibility in terms of how that money is spent, because we have a responsibility to protect the native people. We must ensure that the money is spent on the people in the northern communities.

I hope the minister is concerned about the money to be allocated to the Inuvialuit in the future.

Hon. Senators: Hear, hear!

Hon. Arthur Tremblay: Honourable senators, if no other senator wishes to speak to this report, I should like to say a few words.

Senator MacDonald: What does COPE stand for?

Senator Steuart: Committee of Original Peoples Entitlement.

Senator Tremblay: Thank you for the answer. I am not sure I could have given that answer to my colleague.

Senator Steuart: He was aiming the question at me.

Senator Tremblay: It is quite easy for me to admit that my colleague is much more knowledgeable on the subject matter of this bill and of the act itself than I am.

● (1620)

In any event, speaking on the report, I have not heard any indication that the report should not be adopted. Senator Adams attended the committee meetings and had an opportunity to ask questions of the witnesses from the department, and we have heard today the comments of Senator Steuart as they relate to the problems in the act itself. The substance of the bill which is before the committee is not about the totality of the act, and the matters that have been raised are technical ones and relate to reducing the necessity of having to address Parliament, as such, for settling problems more in the nature of procedural problems than of substance. But we have a contribution to make as a Senate, and we have found that there is a technical error, a typing error, so to speak, in the bill. The wrong date is indicated in clause 1(*c*). The date mentioned is April 11, 1987. The correct date is May 11, 1987. The report does amend the bill on that specific point. That being said, I move that the report be adopted.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, there is a provision that permits the Clerk of the Parliaments, who is the Clerk of the Senate, to make such corrections without the Senate amending the bill and having it returned to the other place with a message in that regard. I cannot cite that provision, but I think we should obtain the opinion of parliamentary counsel as to whether, first, this is

appropriate, and whether my recollection is correct—that is, that there is the power to make such a correction.

Hon. C. William Doody (Deputy Leader of the Government): I think it would be faster if we went the other route.

Senator Frith: I pass! In any event, I draw that to the attention of honourable senators, and in particular to the chairman of the committee. Obviously, we are prepared to cooperate with the government in this regard.

Senator Tremblay: Do I understand that Senator Frith is referring to a sort of omnibus bill which—

Senator Frith: No, it is not that; I am referring to another provision that allows certain types of errors to be corrected by the Clerk of the Parliaments. This seems to be the classic case. That provision allows the Clerk of the Parliaments to correct wrong dates or wrong numbers rather than having the Senate make a formal amendment, sending the bill back with a message, having it placed on the Order Paper in the House of Commons, having it attended to by the House of Commons—with their concurrence, and so forth—and then referring it back to the Senate. As I understand it, the Clerk of the Parliaments, who is also the Clerk of the Senate, can make corrections of that kind on his own judgment, but based on the obvious need for such a correction.

I think it is worth waiting a day so that we can look into this.

Senator Tremblay: If I am correct, we were informed of that technical error by the officials in the department. It is important to them that the correction be made. We understood that they had gone to the lawyers in the Department of Justice and asked them if they could make the correction. They were not told in so many words, but it was the implicit understanding that they could ask us, the Senate, to propose an amendment to correct that error. They have gone through the process and have reached the conclusion this has to be done by way of an amendment.

I have nothing else to add by way of clarification.

Senator Frith: I have a great deal of respect for the expertise—and I mean this sincerely—of the lawyers in the Department of Justice, but sometimes they do not know what is available in Parliament as distinct from what is in the statutes. I suggest that we take at least a day to consider this matter. I suggest that we have this looked into, have a report made, and if the bill can be corrected in this manner, we can do that tomorrow; if we cannot do that, we will then send it back to the House of Commons.

Hon. Heath Macquarrie: Honourable senators, may I ask Senator Frith what advantage he sees in not accepting what the Senate committee—composed of a very prestigious group of people—has recommended and, rather, having this corrected by one of the clerks of the chamber?

As I recall what I have read about Sir John A. Macdonald, he thought one of the important functions of the second chamber was to revise and improve legislation which came from the lower House, and this, it seems to me, is exactly what the committee is doing. Why say, "Oh, we won't do it that way; we will turn it over a clerk."? That seems fascinating, but I cannot see it as being very helpful.

Senator Frith: Honourable senators, I understood that the provision is there for exactly this kind of situation. Perhaps what Senator Macquarrie is saying is that we should get rid of this provision because there is no case in which we should exercise this particular power. The reason I raise this is that I believe it was created for exactly this kind of situation, where it is merely a matter of a comma, a number, or something of that kind, and this avoids the Senate and the House of Commons going through the mechanism both houses must go through for more serious amendments.

If Senator Macquarrie and Sir John A. Macdonald both think that this provision ought not to exist at all, then I am inclined not to fight against it. But I am suggesting that we have a look at this for one day. However, this is a government problem and it can do what it likes with it.

Senator Doody: I do not think it is a problem; I think we will be putting it on for third reading tomorrow anyway.

Senator Frith: But I should like something to be done in the meantime.

Senator Doody: We will look into this in the meantime, and if that is the way we go, that is the way we go. It is just a matter of going through the normal procedure.

Senator Tremblay: So, do I understand that we will give the bill third reading tomorrow?

Senator Doody: One way or the other.

Senator Frith: Somehow it never works out when I try to be helpful!

Hon. Eymard G. Corbin: Honourable senators, if the technocrats have finished speaking, I should like to ask Senator Tremblay a question.

Senator Steuart's speech left quite a strong impression with me. He outlined certain problems at the administrative level, and I would have expected Senator Tremblay to react to the comments made by Senator Steuart and, indeed, Senator Adams. Is it Senator Tremblay's intention, if he does not address those comments today, to do so at third reading stage?

I ask that because it appears to me the concerns expressed by Senators Steuart and Adams are left hanging in the air over our heads. Is anyone going to do anything about these specific problems?

Senator Tremblay: I did not understand that they had in mind amendments or modifications to the bill which is before us. I understood that they raised problems relating to the act, not to the amendment to the act. I do not see any necessity to give specific answers to the questions they have raised, because they are beside or beyond the substance of Bill C-102.

I do not question that there are problems such as they have raised, but those problems relate to the act as a whole, not to Bill C-102. We would have to add many clauses to Bill C-102 to solve the kinds of problems they have raised. Senators

Steuart and Adams can correct me if I am wrong, but I did not think they had proposed amendments to solve the problems they raised.

• (1630)

Senator Corbin: Honourable senators, have we adopted the report at this stage?

An Hon. Senator: Not yet.

Senator Corbin: Am I in a position to adjourn the debate?

An Hon. Senator: Yes.

Senator Corbin: Then I so move.

On motion of Senator Corbin, debate adjourned.

SENATE AND HOUSE OF COMMONS ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming the debate on the motion of the Honourable Senator Murray, P.C., seconded by the Honourable Senator Roblin, P.C., for the second reading of the Bill C-83, An Act to amend the Senate and House of Commons Act.—(*Honourable Senator Stewart (Antigonish-Guysborough)*).

Hon. John B. Stewart: Honourable senators, I understand that at least one other senator is ready to speak on this motion. I would be more than happy to yield to any senator wishing to do so today.

[*Translation*]

Hon. Jacques Flynn: Honourable senators, Senator Stewart (Antigonish-Guysborough) had told me he would yield to anyone interested in debating this bill. When I think about the difficulties which Senator Frith just experienced when trying to solve a problem, I wonder if I might not find myself in the same predicament.

In any case this bill relates exclusively to the internal economy of the House of Commons, notwithstanding the fact that the statute amended or to be amended by this bill is entitled the Senate and House of Commons Act.

In fact, the bill completely ignores the Senate, and that is where the main problem lies. The reluctance it has engendered can be seen in the fact that the Senate has not done anything about it since Senator McElman spoke to the bill last February 11.

The lack of cooperation mentioned by Senator McElman may not be due to ill will because it was found that similar problems had occurred in the past, even when the Liberal Party held the majority in both houses and there was no such systematic confrontation as we have witnessed more often since 1984.

I would lay the initial blame on the British North America Act, Section 53, which I will quote to set the record straight:

> Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.

[Senator Tremblay.]

As explained previously, the purpose of the bill is to provide remuneration for members of the House of Commons who have special responsibilities, and these are mainly chairmen of committees. What we have is a money bill that necessarily originates from the House of Commons.

Human nature being what it is, we tend to look after our own affairs first, ignoring the impact this may have on others. Applying this principle to the remuneration of parliamentarians, I would say that natural egotism, together with the existence of Section 53 and the fact that any discussion of remuneration of parliamentarians tends to be a very discreet process, tends to create the kind of situation we now have with this bill. No advance consultation and quick action, which is what the House of Commons did in this case.

The initiative, of course, lies with the House of Commons in all these matters. I suggest that the answer is to find a formula that would correct the deficiencies in Bill C-83 and prevent similar situations from recurring. And how should Bill C-83 be corrected? Perhaps by amending the more excessive provisions pointed out by Senator McElman, or by adding provisions it lacks, such as additional remuneration for members of the Senate with special responsibilities. I am thinking of the absurd situation where this bill provides that the joint chairman of a joint committee who is a member of the House of Commons receives remuneration, while there is no reference to the other joint chairman who is a senator and does exactly the same work and has the same responsibilities. How can we remedy this? How can we provide for communication with the House of Commons? I think there should always be advance consultation. How could this be arranged? I think that is a question we have to consider.

Of course, if the question is put for second reading at this stage, it is likely many senators will vote against the bill. To avoid confrontation between the two chambers on a matter where there is no problem between the parties, since this is a matter that concerns Parliament generally, I suggest that the bill be referred to the Committee on Internal Economy, Budgets and Administration.

As far as I know, this procedure would not have the effect of killing the bill. Of course, that would be the case if the committee did not submit a favourable report. However, if the committee submits its report and finds a remedy for the two problems that I pointed out, namely the bill itself and future procedures for bills that affect the interests of both chambers, the bill is likely to pass. Debate will be resumed on second reading, and we can then consider amendments or any other remedies the committee may recommend.

I move that the bill be not now read a second time and that its subject matter be referred to the Committee on Internal Economy, Budgets and Administration.

[*English*]

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, Senator Flynn has anticipated a procedural problem. Such a motion has the reputation of being a blocking motion or one that kills a bill. He has pointed out that he does

not think that is so. I do not wish to raise a procedural point, except to say that I want to adjourn the debate on his motion to consider that, because I know it is not his intention to kill the bill.

• (1640)

Honourable senators, I move the adjournment of the debate on that motion.

Hon. Charles McElman: Honourable senators, I would like to pose a question to Senator Flynn before that motion is put.

I agree totally with Senator Flynn that matters of a financial nature in such a bill have to originate from the House of Commons. However, suggestions were made for necessary amendments to the bill that require no expenditure of funds. Senator Flynn has not mentioned those amendments. Is he in support of them?

Senator Flynn: I certainly would be in agreement with those amendments that I think Senator McElman has in mind. The problem is that we cannot attach any amount to those amendments that he has in mind.

Senator McElman: Senator Flynn, I believe you have misunderstood. There are some proposals that I made earlier in the debate with no dollars attached to them. They were cleaning up some of the anomalies currently in the legislation, but do not require the allocation of funds. I wonder, Senator Flynn, if you have perhaps given some thought to those?

Senator Flynn: I am certainly in favour of correcting the bill by way of amendments that are within our competence. There is no doubt about that. For instance, I had in mind that we could return the bill with amendments, leaving blank the amount of remuneration that we want. Of course, there is the possibility that someone will say that that is outside the scope of the bill; but we could do that just the same and see what happens.

Depending on the consideration given by the committee, there might be a system of communications that would enable the other place to initiate a correction by way of another bill that could be sent to us in due course, to take care of the problems we want to resolve, and in the meantime we would consider this bill further. I do not want to go into the details of that here, because it would be up to the committee to find a way of solving the problems of this bill and future bills of the same nature.

Senator McElman: May I suggest to Senator Flynn that his memory is shorter than it should be. When he suggests that we may expect another bill which would resolve the problems, surely he remembers the pension situation?

Senator Flynn: I certainly agree with Senator McElman on that point.

[*Translation*]

Hon. Eymard G. Corbin: I would like to ask Senator Flynn whether he also wants the Committee on Internal Economy, Budgets and Administration to deal with the retroactive application of legislation. Does he believe that the Committee on Internal Economy, Budgets and Administration should also consider this or is it only for the members of the other place?

Senator Flynn: I impose no limit on the Committee on Internal Economy, Budgets and Administration. All aspects of the Bill and the overall problem should be considered by the committee.

Something else that could be considered would be to establish a joint committee for this purpose. I remember that some years ago a bill on public service pensions was referred to a special joint committee, thereby avoiding this problem of lack of prior communication between the two houses.

On motion of Senator Frith, debate adjourned.

[*English*]

CHILDHOOD POVERTY AND ADULT SOCIAL PROBLEMS

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE AUTHORIZED TO STUDY RELATIONSHIP

On the Order:

> Resuming the debate on the motion of the Honourable Senator Robertson, seconded by the Honourable Senator Flynn, P.C.:
>
> > That the Standing Senate Committee on Social Affairs, Science and Technology be authorized to examine and report upon the relationship between childhood poverty and certain significant and costly social programs that manifest themselves in adult life, and on measures which might better alleviate such problems; and
> >
> > That the Committee present its report no later than March 31, 1989.—(*Honourable Senator Bonnell*).

Hon. M. Lorne Bonnell: Honourable senators, I rise in support of the motion to authorize the Standing Senate Committee on Social Affairs, Science and Technology to study the relationship between childhood poverty and certain significant and costly social problems. I suggest that this would be a larger and more comprehensive study than one would think by reading the motion put before the Senate.

We have to think about the word "childhood" and what it means. Some years ago Senator McGrand did a study called "Child at Risk". When a motion was put before the Senate to study children at risk, we had to confine the study to almost the early years of childhood; otherwise, the study would have taken many years to carry out.

When we talk about childhood in this motion, do we mean early childhood? Do we mean children up to 18 years of age? Do we mean children who are receiving family allowances? Do we mean children who are under the care of their parents? What do we mean by the word "childhood"?

Moreover, before we get too involved in this study, perhaps we should consider what is meant by the word "poverty" and its causes and effects. Some time ago Senator Croll did a study on poverty in Canada that dealt with poverty in all age groups. When we clarify that word, it is essential that the choice we

make is not only one based on technical convenience but is also a statement of our attitude toward the unemployed, the underemployed, the disabled, the elderly, and other classes of people with low incomes or no incomes.

• (1650)

Definitions of "poverty" range from the simplistic definition of "lack of income" to comprehensive definitions which include social and economic exclusion and general lack of power. Various concepts of poverty include some or all of the following: first, subsistence, where concern is with the minimum income necessary to maintain health and working capacity; second, "inequality," where society is seen as a series of stratified layers and poverty is defined by how the bottom layers fare relative to the rest of society; and, third, "externality," where the social consequences of poverty for the rest of society comprise the area of concern rather than the needs of the poor. The "externality" dimension of poverty is exemplified by the Economic Council of Canada.

"Poverty" has been defined by the Economic Council of Canada as "insufficient access to certain goods, services and conditions of life which are available to everyone else and have come to be accepted as basic to a decent, minimum standard of living."

This is a relative definition in the sense that it relates poverty to a minimum standard of living. It recognizes that people are considered poor if their standard of living is significantly below that enjoyed by most people in the society. A relative standard of living is a more realistic measure of poverty and is minimum subsistence.

Poverty is always relative to a given time and place. The differences between Canadian and Asian poverty do not make the former any more tolerable. The poor in Canada are judged, and judge themselves, relative to the general situation in their own country at any given time. They are not comforted or helped by reminders of their apparent affluence compared with the living standards of Asiatic or Latin American poor. Furthermore, the Canadian poverty levels of 1961, 1971 and 1981 are not the same, because the general standard of living has continued to rise over the past 30 years. What we define as "poverty" must change constantly in relation to general living standards. In this sense, poverty's definition can never be precise.

John Kenneth Galbraith described poverty as follows:

> People are poverty-stricken when their income, even if adequate for survival, falls markedly below that of the community. Then they cannot have what the larger community regards as the minimum necessary for decency; and they cannot wholly escape, therefore, the judgment of the larger community that they are indecent.

An even more comprehensive definition of poverty based on consideration of inequality would define poverty as a lack of "command over resources over time." Resources are taken to include not only money income and assets but also political power, individual self-respect and opportunity.

[Senator Bonnell.]

Another definition of poverty according to income data can be used to define poverty in either an absolute or a relative sense. One method is to define poverty in terms of the income needed to sustain some minimum or subsistence level of physical health and capacity for work. The income requirements to provide adequate food, clothing and housing for a family of a given size are used to establish a poverty level. This method defines poverty in terms of an absolute "minimum needs" standard, and therefore is not concerned with relative inequality. Statistics Canada's definition of poverty is based, for example, on the following statement:

> A basic assumption for the main set of estimates was that any family or individual spending more than 70% of total income on food, clothing and shelter was in a low-income situation and likely to be suffering from poverty.

Nevertheless, most people think of poverty—and the poor suffer poverty—as income deficiency resulting in material deprivation. The latter concept of poverty as low income, while in it itself insufficient, is nonetheless necessary both for the measurement of poverty and for the development of programs to eliminate it.

Poverty is one of the greatest social problems of Canada today. Unless we act now in a meaningful way, about five million Canadian children will be looking forward to a bleak and bitter struggle for survival in the 1990s and into the twenty-first century. These children are suffering today at a time when we are arguing about our social welfare system and the richness of our country. The poor of today know they are poor, and they are helpless victims of social welfare systems that do not begin to look after their needs to give them a basic standard of living.

It has been said that no nation can achieve true greatness if it lacks the courage and determination to undertake the surgery necessary to remove the cancer of poverty from its body politic. Governments talk about helping the poor, but in each case, with all their budgets and welfare programs, they seem to be taxing the poor more, and the poor are getting poorer, the rich are getting richer, and five million Canadian children are living below the poverty line.

I believe a thorough study of this problem should be undertaken. The poor can no longer wait. They need immediate action, and they need it now! The present welfare system does not seem to meet the needs of the poor, and each and every time the government finds itself in need of money it seems to tax the poor more, including putting a sales tax on food.

Some people have said that the poor are always with us. I believe that with a proper social welfare program, and with opportunities for education and training for those in need, better housing and job opportunities, and maybe a guaranteed income to all, a great deal can be done to remove this cancer.

There is another myth voiced by some that the poor pay relatively less in taxes than others. While they may pay less in total income tax than others because their income is less, the proportion of their income which they pay in income taxes and

other forms of taxation is actually greater than the proportion of taxes paid out by people who are well off.

So, honourable senators, while I think the idea of the motion is good, I wonder if the terms of reference are clear and if the committee really knows what it has in its mind. So far as I am concerned, I hope it will take into consideration the poor and the children of this country in order to give them an opportunity for the twenty-first century; and I hope it comes forward with a guaranteed income for everyone.

Some Hon. Senators: Hear, hear!

Motion agreed to.

● (1700)

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

THIRTY-SEVENTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the thirty-seventh report of the Standing Committee on Internal Economy, Budgets and Administration (benefits for unrepresented employees), presented on Tuesday, May 17, 1988.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I move the adoption of this report.

Motion agreed to and report adopted.

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

THIRTY-EIGHTH TO FIFTY-SECOND REPORTS OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the thirty-eighth to fifty-second reports of the Standing Committee on Internal Economy, Budgets and Administration, presented on Tuesday, May 17, 1988, approving supplementary budgets of the following committees:

38th Agriculture and Forestry;
39th Agriculture and Forestry;
40th Banking, Trade and Commerce;
41st Banking, Trade and Commerce;
42nd Energy and Natural Resources;
43rd Energy and Natural Resources;
44th Fisheries;
45th Foreign Affairs;
46th National Defence;
47th National Finance;
48th Official Languages;
49th Regulatory Scrutiny;
50th Standing Rules and Orders;
51st Committee of the Whole on the Meech Lake Constitutional Accord;
52nd Social Affairs, Science and Technology.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, with leave, I move the adoption of the reports referred to in Order Nos. 11 through 25 en bloc.

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

Hon. Senators: Agreed.

Motion agreed to and reports adopted.

[*Translation*]

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

FOURTEENTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fourteenth report of the Standing Senate Committee on Social Affairs, Science and Technology (budget for the child care study), presented to the Senate on May 17, 1988.

Hon. Arthur Tremblay: Honourable senators, do I need the Senate's permission to move adoption of the fourteenth report of the Social Affairs, Science and Technology Committee or may I move it directly? This report was presented to the Senate yesterday.

Now, this report is along the same lines as the proposals just made by Senator Frith, except that it comes under the Committee on Internal Economy, Budgets and Administration.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, if I understand correctly, it is just a matter of moving the motion because the budget has been tabled and senators have had the opportunity to examine it. We can therefore move adoption of the report.

Senator Tremblay: Very well. So, honourable senators, I move the adoption of this report.

The Hon. the Speaker *pro tempore:* Do you agree, honourable senators?

Hon. Senators: Agreed.

Motion agreed to and report adopted.

[*English*]

PREVENTIVE HEALTH CARE

FIRST REPORT OF SPECIAL COMMITTEE ADOPTED

The Senate proceeded to consideration of the first report of the Special Committee on Preventive Health Care, presented on Tuesday, May 17, 1988.

Hon. Hazen Argue: Honourable senators, I move the adoption of this report.

Motion agreed to and report adopted.

STANDING RULES AND ORDERS

NINTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the ninth report of the Standing Committee on Standing Rules and Orders, presented on Tuesday, May 17, 1988.

Hon. Gildas L. Molgat moved the adoption of the report.

He said: Honourable senators, I wish to say a few words on this matter now, although it is not necessary that we proceed with a vote on it today. In the last few minutes some material has been distributed to you. You may be wondering what this document is that has suddenly appeared on your desks—

Senator Doody: That is what this mystery package is!

Senator Molgat: —so I thought I should explain what it is that the committee is proposing. The *Minutes of the Proceedings of the Senate* of March 16 of this year will give honourable senators an example of what we might accomplish if we adopt the report proposed by the Standing Committee on Standing Rules and Orders.

Honourable senators, if you go through the first few pages of the document I have had distributed to you, you will see the items that would be struck out and would not have to appear in the front part of our daily proceedings. Using this example from March 16, you will see that ten pages of material would be condensed to four pages.

If you now turn to the next section, you will see what the identical *Minutes of the Proceedings of the Senate*, No. 126, would look like if we followed the proposal. For example, say an item was not adopted but was simply stood—and, as you know, many items are stood each day; instead of writing out the full text, we would simply show there that that item had been postponed until the next sitting of the Senate. By following this proposal I think we would save substantially in printing costs.

However, honourable senators, the item would still appear on the Orders of the Day; so there would be no problem for any senator to determine what a given item number consisted of; it would simply be a case of turning to the Orders of the Day and it would be printed therein.

However, where we would have the saving is in the front portion of the *Minutes of the Proceedings of the Senate*, where the report of the proceedings of the previous day appears. So much for the votes and proceedings.

Then, honourable senators, if you look further into the document before you to the section marked "Appendix", you will see there a proposed format for the index to the Journals. On the left-hand page you will see what our Journals staff must now do with respect to the index for the bound volume produced at the end of the session. At the moment, they must put in all of those page numbers, even though nothing at all has happened on most of those occasions. Our proposal is to eliminate that procedure and substitute what is indicated on the right-hand side as the proposed format. We would simply list again the same items, and list the times or pages where the debate actually took place. The other page numbers, where the items were not debated but were in fact stood, we would not list. So again, honourable senators, you will see that there would be a substantial saving in the printing of those pages.

Moreover, in addition to that, there would be a substantial saving in terms of the work of the staff, who now have to go through the procedure of tabulating all the numbers every day and then, at the end of the session, must do a very extensive proof-reading job to ensure that, indeed, all of those pages are correct.

Therefore, honourable senators, our recommendation is to follow this new procedure in order to reap the benefits from both the standpoint of the printing savings and the standpoint of the staff.

Motion agreed to and report adopted.

WAR VETERANS ALLOWANCE

AMENDMENT OF ACT—ORDER WITHDRAWN

On the Order:

> Resuming the debate on the inquiry of the Honourable Senator Marshall calling the attention of the Senate to the urgency of amending the *War Veterans Allowance Act* in order to remove the restriction that requires a Canadian veteran who served overseas in World War II and who chose to take up residence outside Canada to return to Canada for 365 days in order to become eligible to receive the allowances payable under the Act and any other benefits available thereunder.—(*Honourable Senator Phillips*).

Hon. Jack Marshall: Honourable senators, this was an inquiry to which Senator Bonnell responded. The subject matter is very similar to that contained in Order No. 33 on the order paper. In fact, Order No. 33 takes into account everything that is included in Order No. 30, and does it in more detail and more in line with the regulations.

This afternoon I discussed this matter with Senator Bonnell and he agreed that we might withdraw Order No. 30. I notice that he is not in the chamber at the moment, although he was here a few moments ago, but if you are willing to take my word, that matter could now be withdrawn.

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I think it is in order to delete this item, since Senator Phillips and Senator Marshall talked to Senator Bonnell about it and he has no objection.

Hon. Royce Frith (Deputy Leader of the Opposition): So Senator Marshall is asking for leave to withdraw Order No. 30.

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

Hon. Senators: Agreed.

Order withdrawn.

● (1710)

WAR VETERANS ALLOWANCE AND CIVILIAN WAR PENSIONS AND ALLOWANCES

GOVERNMENT CONSIDERATION OF AMENDMENT OF LEGISLATION—DEBATE CONTINUED

On the Order:

Resuming the debate on the motion of the Honourable Senator Marshall, seconded by the Honourable Senator Phillips:

> That, in the opinion of this House, the government should consider the advisability of amending the *War Veterans Allowance Act* and Part XI of the *Civilian War Pensions and Allowances Act* in order to provide for the payment of an allowance, as defined under each of those Acts, to any Canadian veteran or qualified civilian of World War I, World War II or the Korean conflict, or to any widow or orphan of such a veteran or qualified civilian as defined in those Acts, whether or not such veteran or qualified civilian, widow or orphan has resided in Canada at any time since either of those wars or the Korean conflict, as the case may be; and
>
> That, within 120 days after the adoption of this resolution, the Leader of the Government in the Senate should consider the advisability of tabling in the Senate the response of the government to this recommendation.—(*Honourable Senator Marshall*).

Hon. Jack Marshall: Honourable senators, I shall try to be as brief as possible. When the proceedings of this chamber were interrupted on April 28, I was dealing with the inequities of the War Veterans Allowance Act as they affect Canadian veterans who chose to remain overseas after fighting for their country. I was discussing the inconsistencies of the responses of governments to the many representations made by the Canada-United Kingdom Veterans Association. I would like to put on record a brief description of that association. It is the only constituted organization of Canadian veterans in the United Kingdom with branches wherever there are considerable numbers of ex-servicemen. It was organized in July 1948 at the instigation of the Canadian government and various separate veterans' associations when it was thought desirable to amalgamate for the general welfare of all concerned. Branches can be found in Aldershot, Brighton, Brussels, Croydon, Eastbourne, Guildford, Hastings, London, Redhill, Southampton and Worthing, with additional branches being organized in other parts of the country.

I received a letter from the welfare officer at Macdonald House, 1 Grosvenor Square, London, who looks after the Canadian veterans who remained overseas. This letter will give honourable senators an idea of what these veterans are earning. It is addressed to me and it is dated March 1, 1988. It reads in part:

> As you are aware, the British system of retirement pension is based upon the number of contributions paid during working life . . . the basic individual weekly pension is at present £39.50.

If you multiply that by the current rate of exchange, which is approximately $2.23 or $2.30, it is probably less than $100. The letter goes on:

> This pension commences at age 65 for men and 60 for women when the individual ceases to be employed and if married, will be added to by a further £23.75, making a total married couples pension of £63.25.

Listen to this next sentence. It reads:

> If they happen to be over eighty, it is raised by the grand sum of 25 pence!! It is of course quite possible that many of our veterans did not pay enough contributions to enable them to qualify for the full basic retirement pension, nor do they have enough years of residency in Canada to enable them to claim Old Age Security.

I hope this puts into perspective what these people are earning. If they qualified for the War Veterans Allowance, they would be earning $1,136, less what they are getting in England, and they would be able to live a decent life by receiving what is, in fact, Canada's commitment to them in 1917. Because of an anomaly in the act, however, these people, who are aged and infirm, must return to Canada, spend a year here, and then return to England to get those benefits, and they simply cannot do that.

When I began my discourse on the anomalies in the act on April 28, I was about to refer to an appearance by the Minister of Veterans Affairs before the House of Commons committee. One of the MPs present posed the question on the residence rule, to which the minister replied:

> I very much sympathise with those veterans overseas and especially for the ones who are most needy.
>
> It would however, be difficult to relax the one-year residency requirement for those who reside overseas given the recent pressures to expand war veterans allowances for our veterans resident in Canada.

I take it that he means that there are two different classes of veterans. There are those who went overseas and fought various battles with the intent to do everything possible for Canada and remained there and those who remained in Canada. Because of the pressure Canadian veterans in Canada are able to put on the minister, they are higher on the priority scale than those who decided, of their own free will, to stay in England, the U.S. or elsewhere.

Honourable senators, I say that one has nothing to do with the other, except in the numbers of people involved, and they are justified in their request. With the greatest respect, the answer is entirely irrelevant. The government is saying that those veterans who remain in Canada are more deserving than those who fought for many years for Canada and remained overseas, which was their right. If it was not their right, then there is something wrong with our Charter. I have no hesitation in supporting the Canada-service-only provision put forward by the Royal Canadian Legion. In fact, I have spoken in support of it in this chamber. However, I wonder about the humane treatment of Canadians, regardless of where they live.

It says in the Charter of Rights and Freedoms that every citizen of Canada has the right to "enter, remain in and leave Canada", unless they are the subject of one of our international extradition agreements. The Charter also says that every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without

discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. However, at the same time, the Charter's equality guarantees do not rule out laws or programs designed to favour individuals or groups who may be at a disadvantage in society, such as programs of equal employment opportunities for women, native people or visible minorities. The Constitution makes it clear that equality is not a right to be acquired but a state that exists. It ensures that individuals are entitled to full equality under the law, not just in the laws themselves but in the administration of the law as well. It says nothing about where a Canadian lives. If I read it properly, that Canadian can live in Canada or elsewhere.

Another question was asked of the minister at the same hearing about the worn-out excuse of trying to get a reciprocal agreement with the United Kingdom. It has always been under consideration, but now it is getting too late to do anything. I have here a newspaper article from a Newfoundland paper which may illustrate how we look after our people with our various laws and regulations in this regard. The article is entitled "Canadian Citizens from Germany will get pension improvements." So our enemy during World War II, against whom our Canadian servicemen fought, is recognizing Canadians who lived and worked in that country and yet the United Kingdom does not. The article reads in part:

> Canadian citizens who are originally from and worked in the Federal Republic of Germany will get more money in social security pensions because of a new agreement between Canada and Germany.
>
> The agreement, which was signed in May of this year, will come into effect in the spring of 1988.
>
> "The revised agreement will bring to many, not all, Canadians who are receiving German social security pensions improved benefits," said Guenter K. Sann, the Honorary Consul to Canada for West Germany.

I have received a copy of the agreement from the Department of Health and Welfare. I am sure that this must be very upsetting for those Canadian citizens in the United Kingdom who fought for Britain, their mother country. Britain will not enter into a reciprocal agreement to look after our veterans as we do theirs, and other Allied veterans, by allowing them to qualify for the War Veterans Allowance if they have lived in this country for ten years. The minister appeared before the House of Commons Committee on Veterans Affairs and at that time the same answer was given by the deputy minister, which was that we are trying to enter into a reciprocal agreement with the U.K. Honourable senators, I believe we will never see that, because they will never get to that stage, regardless of what we say.

● (1720)

The Agreement on Social Security between Canada and the Federal Republic of Germany states:

> Under German law, implementing arrangements are subject to ratification by the Parliament of the Federal Republic of Germany, together with the Agreement. For Canada, an implementing arrangement derives its legal standing from this Article and needs only to be signed by the Canadian competent authority in order to take effect.

The governments of Canada and the Federal Republic of Germany will notify each other when the requirement of the respective laws have been met to enable the implementing arrangement to take effect. The arrangement will have the same period of duration as the agreement.

Honourable senators, I would be glad to furnish this agreement to the minister if he wishes to go over and talk to Mrs. Thatcher. However, nothing will be done if they make excuses year after year.

I mentioned in my speech on March 1 that there are many inconsistencies in what the Minister of Veterans Affairs is saying. I know, and everyone knows, what an esteemed man George Hees is. Everybody knows he has done more for veterans, as far as legislation is concerned, than has anyone before him. He has introduced and implemented many good measures which we and veterans have been waiting for for many years. However, there are some inconsistencies.

On November 22, 1984, in a letter to the Canada-U.K. veterans, he said:

> . . . you can rest assured that both I and the officials of my department are giving serious consideration to relaxing this requirement even further and will be doing so . . . if it is at all possible bearing in mind the current economic state.

The economic state has never been better, at least that is what I hear every day. I do not see why we cannot come through for these few hundred veterans. Perhaps I am exaggerating and there may be a few thousand. They are deserving; it is their right to receive War Veterans Allowance; and they should not be overburdened with the outdated and outmoded section of the act which requires them to return to Canada.

On September 10, 1984, the minister said:

> I cannot see a strong case being made to extend the income maintenance provisions of Canada's social assistance, of which WVA is a part, to individuals who elected to remain in another country at the end of the war or who now reside in another country and want to apply for a Canadian benefit such as WVA.
>
> There are no plans at the present time to amend WVA with respect to the eligibility requirement for veterans residing abroad.

Honourable senators, it is my understanding that once, when he was in the U.K., the minister said, "The need to go back to Canada is nonsense. After all—if they were able to go back the money would be provided." Honourable senators, it would have to be provided if they were able to come back, but they cannot because they are too sick. They are too aged and they are too infirm to return.

Honourable senators, I should like to quote an article from the *The Sunday Sun* of March 6, 1988, written by Major

General Bruce Legge, a friend of veterans, and a friend of the militia, the reserves and the army.

Senator Frith: And a classmate of mine at Osgoode. I mention that at the end because that is the least of his distinctions!

Senator Marshall: Mr. Legge wrote:

> The only test for war veterans' allowance should be whether . . .

He then refers to the two veterans—

> . . . served in action in the Canadian army. The limitation of present residence in Canada is a spurious one. The requirement of making the application in Canada could be overcome in two ways: Legally, Canada's diplomatic missions abroad are housed on Canadian soil and an application made at Canada House in London should be acceptable.

I do not know how far-fetched that is, but why should we not implement that?

Senator Frith: I would call it "close fetched."

Senator Marshall: He goes on to say:

> If that were not so, then the solution would be to fly these veterans on a Canadian Air Force flight which weekly connects Trenton and Gatwick.
>
> Since we now have in Canada a minister of national defence, Perrin Beatty, who is the equal of the greatest of Canadian ministers of defence of the past, and since we have in George Hees the very epitome of the perfect minister of veterans affairs, I am certain that the problem . . . can be solved.
>
> Perhaps your publicity is all that will be required to overcome this cruelty. The Canadian people would certainly want war veterans' allowance to be paid to all Canadian veterans who fought in Canada's wars, regardless of where they now live.

Honourable senators, everyone says that it should be given, but no one does anything about it.

To the credit of the Canadian government, they are sending over $100,000 every year to look after 260 veterans whose plight has been brought to our attention by the Canada-U.K. veterans. Honourable senators, that only amounts to $16 per month per veteran. Along with the less than $100 that they receive, it is still not enough money, and many of them are suffering.

Many veterans overseas might have qualified for disability pensions. One case comes to mind of a widow in poverty. Her husband had died after having served two and half years as a prisoner of war, which entitled him—and he never received it—to the equal of 25 per cent of a disability pension. When he died his wife was entitled to half of that. He would have been entitled to $424.40, so she would have been entitled to something over $200. That would have helped her.

Honourable senators will remember Mr. Percy Mercer and members of the Legion appearing before the committee. They were surprised to find out what was going on, and as a result of our meeting they are working on a number of cases. I spoke to Percy Mercer this morning and he tells me he is sending over 70-odd cases. Honourable senators, perhaps those people would have received disability pensions which would have allowed them to live in comfort. Some were high-ranking officers and some were heroes. I know Canada does not want to leave Canadians in that state of distress, regardless of where they live. We send foreign aid in the millions to all foreign countries which are in need. I do not want to be too melodramatic, but I feel, honourable senators, that we can do no less for our veterans before it is too late.

Canada can wipe out by just one stroke of the pen the provision that veterans have to return to Canada for 365 days. These elderly people have to come to Canada, spend money staying here for shelter and food, when they would rather spend their few remaining years at home with their wives and families.

Honourable senators, I ask you to support this motion.

Hon. Senators: Hear, hear!

Hon. Henry D. Hicks: Honourable senators, I do not wish to take much time, but, as Senator Marshall is aware, I happen to know something about this problem.

I am in complete agreement with the statements that he has made and with the action that he is taking to urge the government to reconsider the question of amending the legislation that would so easily and so urgently help this rather small group of Canadian veterans who served their country and who, for various reasons, have chosen to live outside Canada, most of them in the United Kingdom. They are denied the benefits which they should have, and it is even more ironic that if they could come to Canada and spend a year here, they could then qualify and go back to the United Kingdom. It seems ridiculous that we should deny these people what I consider to be their rights and then say, "If you come to Canada, although you have no other reason for doing so, and spend a year, then you will get your entitlement. Then you can go back and continue to live in England, France, Germany or wherever it may be."

I hope that if this motion is passed it will be brought to the attention of the authorities concerned. I agree with Senator Marshall that the present Minister of Veterans Affairs is one of those people in the line of good Ministers of Veterans Affairs we have had in Canada. I hope that some attention will be given to the views not only of Senator Marshall but of the Senate of Canada in relation to this matter.

• (1730)

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I have a word or two to add to this debate. This may seem to be quite outside of the scope of the motion, but I want to say for the record that many important events happen in the Senate late in the day and that we hear good speeches late in the day, as we have heard today.

Every time I come up against the horrors of war, as I often do in movies, books and other sources of information, I feel that we do not do enough for our veterans. I am glad to have

heard the interventions of both Senator Hicks and Senator Marshall. I think we should support this motion.

Hon. M. Lorne Bonnell: Honourable senators, I tended to agree with most of the comments made by Senator Marshall and most of the comments made by Senator Hicks, but I have to take some exception to Senator Marshall's reference to the current Minister of Veterans Affairs doing more for veterans in Canada than any previous Minister of Veterans Affairs. I do not agree with that. The current Minister of Veterans Affairs is well respected across Canada, as Senator Marshall has stated, and we all love him and think he is a great fellow. He has done some great things, but a previous Minister of Veterans Affairs, the Honourable Daniel J. MacDonald from Prince Edward Island, did many things for veterans. I can list what he did for widows, such as the widows' pension and the Aging Veterans Program, which finally came into full effect this year. The Honourable George Hees changed the name to VIP, but that program was put in place by a former government and a former minister.

That is beside the point. What my colleague Senator Marshall said about veterans is all true. What he is trying to do is worthwhile, and I should like to add more support to his motion; therefore, I move the adjournment of this debate until the next sitting of the Senate.

On motion of Senator Bonnell, debate adjourned.

BUSINESS OF THE SENATE

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I ask that all remaining orders stand.

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

Hon. Senators: Agreed.

NEWFOUNDLAND

MATTERS OF FEDERAL AND PROVINCIAL SIGNIFICANCE— INQUIRY WITHDRAWN

On Inquiry No. 4:

By the Honourable Senator Ottenheimer:

> That he will call the attention of the Senate to matters of federal and provincial significance, with particular reference to the province of Newfoundland.

Hon. Gerald Ottenheimer: Honourable senators, with leave of the Senate, I ask that this inquiry be withdrawn. I actually put this on the order paper as the subject of a maiden speech. Being so influenced by the benefits accruing to the country from the Meech Lake Accord, I spoke during that debate. I am happy to inform honourable senators that I am no longer a maiden!

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

Hon. Senators: Agreed.

Inquiry withdrawn.

The Senate adjourned until tomorrow at 2 p.m.

THE SENATE

Thursday, May 19, 1988

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

Prayers.

THE ESTIMATES, 1988-89

SUPPLEMENTARY ESTIMATES (A) REFERRED TO NATIONAL FINANCE COMMITTEE

Hon. C. William Doody (Deputy Leader of the Government), with leave of the Senate and notwithstanding rule 45(1)(*e*), moved:

That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in the Supplementary Estimates (A) for the fiscal year ending the 31st March, 1989 (Sessional Paper No. 332-825).

Motion agreed to.

ADJOURNMENT

Hon. C. William Doody (Deputy Leader of the Government), with leave of the Senate and notwithstanding rule 45(1)(*g*), moved:

That when the Senate adjourns today, it do stand adjourned until Tuesday next, 24th May, 1988, at two o'clock in the afternoon.

Motion agreed to.

QUESTION PERIOD

THE SENATE

ABSENCE OF GOVERNMENT LEADER FROM CHAMBER

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I have to inform the Senate that Senator Murray is absent today.

AGRICULTURE

WESTERN CANADA—DROUGHT CONDITIONS—GOVERNMENT ASSISTANCE—REQUEST FOR ANSWER

Hon. H.A. Olson: Honourable senators, could I ask the deputy leader if he has with him today a report on the government's program to deal with the emergency drought situation in Western Canada?

Hon. C. William Doody (Deputy Leader of the Government): I have nothing further to add to what Senator Murray provided yesterday. If further information is forthcoming, I will certainly bring it forward.

EMERGENCIES BILL

MOTION FOR REFERRAL TO COMMITTEE—ORDER STANDS

On the Order:

Resuming the debate on the motion of the Honourable Senator Kelly, seconded by the Honourable Senator Nurgitz, that the Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, be referred to the Special Committee of the Senate on National Defence.—(*Honourable Senator Frith*).

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, you will remember that I adjourned the debate on this motion yesterday because we were giving consideration to having the matter referred to a Committee of the Whole. We are still discussing that, so I think we should stand this order until Tuesday.

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

Hon. Senators: Agreed.

Order stands.

[*Translation*]

WESTERN ARCTIC (INUVIALUIT) CLAIMS SETTLEMENT ACT

BILL TO AMEND—REPORT OF COMMITTEE ADOPTED

On the Order:

Resuming the debate on the motion of the Honourable Senator Tremblay, seconded by the Honourable Senator Phillips, for the adoption of the Thirteenth Report of the Standing Senate Committee on Social Affairs, Science and Technology (Bill C-102, An Act to amend the Western Arctic (Inuvialuit) Claims Settlement Act, with one amendment), presented in the Senate on 5th May, 1988.—(*Honourable Senator Corbin.*)

Hon. Eymard G. Corbin: Honourable senators, yesterday I adjourned the debate on the consideration of the report of the

Senate Standing Committee on Social Affairs, Science and Technology because I felt that Senator Tremblay's response to the remarks of Senator Steuart (Prince Albert-Duck Lake) and Senator Adams fell somewhat short of the mark. Honourable senators, I apologize if I speak off the cuff today, but I was very busy attending Senate committee proceedings this morning and I did not have time to gather all my thoughts. I believe I can express my concern in a few words.

You will recall that yesterday Senator Steuart (Prince Albert-Duck Lake) referred to real, serious and enduring problems concerning the funds and the way they are spent or invested. He referred as well to a reindeer herd owned by William Nasogaluak, an Inuvialuit and former mayor of Tuktoyaktuk.

In a nutshell, that is what Senators Steuart (Prince Albert-Duck Lake) and Adams wanted to draw to the attention of the Senate. They did say they were in favour of the bill. They had no intention of delaying passage, nor do they intend to ask that the bill be referred back to the Standing Committee on Social Affairs, Science and Technology for further consideration. I have no such intention either. But the only thing Senators Steuart (Prince Albert-Duck Lake) and Adams are seeking is a commitment from the government, and particularly from the Minister of Indian Affairs and Northern Development, Mr. McKnight, that they will indeed consider the two serious issues which have been raised.

I thought Senator Tremblay would at least undertake to draw the matter to the attention of the Minister of Indian Affairs and Northern Development, but all he said in his remarks was that this problem has precious little to do with the amendment to Bill C-102 as such. That is when I thought a moment of reflection might be welcome, that perhaps a slight delay would give Senator Tremblay an opportunity to see whether he might—on behalf of his party or the Minister of Indian Affairs and Northern Development—undertake to have the minister look into the two problems which have been raised.

I think it was wise on the part of Senator Steuart (Prince Albert—Duck Lake) and Senator Adams to bring to the attention of the government these two serious problems.

At what level should these problems be dealt with? I do not know. I am certainly not an expert in this area, and even less in accounting. The fact is, there are problems and serious ones at that. We want to advise you of these problems now, because we would not want to hear in one or two years hence that the Government was not aware of how serious the problems were. It is better to wake up and take action now than later.

By the way, pressures are being exerted on the Senate by several of our colleagues to set up another Senate standing committee which would deal exclusively with the problem of native people in this country. Will it be necessary to go to that extreme to convince the government that not everything is fine and dandy in many services of the Indian Affairs administration? I do not think we will have to go that far. With a little good will and especially the government's assurance that the minister will deal effectively with the issues raised yesterday by Senator Steuart and Senator Adams, we could certainly proceed with the other stages of the bill.

[Senator Corbin.]

I wonder if, having slept on it, Senator Tremblay could tell us now whether he has had an opportunity to talk to Mr. McKnight, the Minister of Indian Affairs and Northern Development, and whether the minister has made commitments in line with what Senator Steuart and Senator Adams had indicated. Thank you, honourable senators.

[*English*]

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, on the technical question raised yesterday about the correcting of errors in bills, we have, as requested, an opinion from Parliamentary Counsel. Perhaps this would be a good time to put that opinion on the record so that if the question comes up again we can refer to it.

I have a memorandum to the Clerk of the Senate, Mr. Lussier, from Mr. du Plessis. The subject is "Technical errors in bills." It reads as follows:

> You have asked me to brief you concerning the correction of mistakes in the parchments of bills in various stages of their passage through both Houses. The following is, to the best of my knowledge, the current situation.
>
> (1) There is no provision of law nor is there any provision in the *Rules of the Senate* or in the *Standing Orders of the House of Commons* that clearly allows for corrections of errors, no matter how small. Standing Order 126 of House of Commons gives a limited authority to the Law Clerk of that House "to revise" bills before third reading in that House. This Standing Order provides some authority to correct obvious errors but is limited in scope and there is no similar provision in the *Rules of the Senate*.
>
> (2) Over the years, there has been a practice of making editorial corrections. They are never made by the Clerk of the Parliaments acting alone. They are usually made by the Law Clerks of both Houses acting together and then initialled by the Clerks of both Houses. I understand that the present Clerk of the House of Commons has delegated to the Law Clerk of that House the task of initialling such editorial changes.
>
> (3) After Royal Assent, no mistake, no matter how minor, should be corrected by parliamentary officials without proper legislative authority.
>
> (4) No guidelines have been established for deciding which errors are the proper subject-matter of clerical correction and which require parliamentary amendment. A good guide for clerical correction is to work by analogy to errors that the courts would feel comfortable in characterizing as "an obvious typographical error or slip of the draftsman's pen." Driedger, *Construction of Statutes* (2d), pages 128 to 130, deals with this topic. I attach copies.

I do not propose to put those copies on the record.

With respect to Bill C-102, the case of *R.*—

I do not know whether that is *Regina* or *Rex*. I cannot remember if it was a queen or a king in 1845.

An Hon. Senator: It was a queen.

● (1410)

Senator Frith: Thank you.

I am going to take a moment to allow some of our erudite historians to get that on the record. Imagine my making that mistake when we are so close to her birthday! I will continue from the memorandum:

> *R.* v. *Wilcock*, (1845) 7 Q.B. 317, 115 E.R. 509, referred to in Driedger, is, in my opinion, sufficient authority to allow for the correction of a date (a) where the date is wrong in fact, and (b) where the reference is clear enough to ascertain without doubt the correct date.
>
> The situation that has arisen in the case of Bill C-102 illustrates a continuing problem that, I believe, should be remedied. There is clearly a need for a provision of law authorizing the Law Clerks of both Houses to make editorial changes in accordance with guidelines reflecting correct legal principles.

It is then signed by Mr. Raymond du Plessis, our Parliamentary Counsel.

Therefore, honourable senators, with that on the record, it seems to me that we should follow the recommendation of the chairman of the committee and of Sir John A. Macdonald.

Hon. Heath Macquarrie: Honourable senators, my good friend, Senator Frith, is leading me into a path that I have tried to avoid in all of my years in Parliament; that is, that most discussions of procedure are an egregious waste of time. However, I cannot resist saying again that I am profoundly perplexed and quite filled with wonderment as to what benefit Senator Frith thinks that his intervention is accomplishing for the Senate, for this bill and for parliamentarianism.

If I wanted to go to the Archives up on Wellington Street and I walked up on the north side of that great thoroughfare and arrived at the Archives, and then someone such as Senator Frith said, "But you could get there by going up the south side," and then suggested that it would be better to return and go up on the south side, I could not accept that as being very good advice, either legal, geographic or travelwise.

It seems to me that there is nothing that suggests that a committee of the Senate, or, more precisely, the Senate itself, cannot amend a bill, whether it is with respect to a major, profound, matter or whether it is an indication that they have simply put in the wrong month. Why would it be better to say, "No, let us forget all about that," and go and get some clerk to scratch that out? The committee, an emanation of this honourable body itself, has done that; it has done that which a Senate committee should do; it has looked at the bill. It looked at it very carefully; there were excellent speeches and brief speeches—which was very good—and then the committee suggested an amendment. Honourable senators, why in the world should we hold back and say that it would be better to have the Clerk strike that out and, at the same time, ask the committee to rescind, to start all over again and follow a better course—namely, to have the Clerk perform that function?

Surely, if you are saying that the Senate should not be amending legislation, you are saying something very strange, unreasonable and far-fetched which that great and glorious Canadian, Sir John A. Macdonald, could not possbily understand. Nor can I understand it today.

I say to Senator Frith, let us go on with this procedure. The Senate committee has done magnificently under the distinguished chairmanship of my colleague, Senator Tremblay. Why go back and say, "Let us do it by a pencil stroke from a clerk"?

Senator Frith: Honourable senators, I think that Senator Macquarrie had decided that he was going to make that speech, no matter what, because, as other senators may have noticed, all I asked was that we look into this procedure and find out whether or not it is available. As I said a moment ago, we found out that it is very doubtful that it would be available. I therefore said that the Senate should go on and do what it is doing.

However, I did not want to interfere with Senator Macquarrie's tackle, even though I had already put the ball on the ground for a "safe catch." I think in football that is called "piling on." In any event, I am not blowing that whistle; I think we should go on, as Senator Macquarrie agrees, and as I already agreed today, and have the Senate make the amendment.

Senator Macquarrie: On a point of order, honourable senators, I am not accustomed to being accused of talking too much in this chamber. I have the greatest regard for Senator Frith. He is erudite, brilliant and charming, but I have never thought of him as being reticent or taciturn. I do not accept very cheerfully the suggestion that I am the one who likes to make speeches, whether I mean them or not or whether they have to be made.

Hon. Charles McElman: Honourable senators, I welcome the opportunity to pile "it" on, too! Although I was never much of a football player, I did once play rugby quite well. Like Senator Frith, yesterday I wanted to make some remarks but held them until today, so I will now deal with them.

Honourable senators, I agree with Senator Macquarrie. If there are amendments to be made in committee—even amendments of this nature— they should be made by the committee. Some honourable senators are aware that although I supported the initial introduction of the so-called "Hayden formula" for pre-study in certain cases, I have strongly opposed its becoming a habit of the Senate, because I believe that it is in many cases doing through the back door what the Senate ought to do through the front door. Instead of making agreements with ministers or getting an undertaking that something will be done at a later date, when we feel that something ought to be done by way of amendment to legislation, we should do it that way—we should go straight through the front door of the House of Commons rather than through its back door. So it is

in that light that I support the approach of Senator Macquarrie to things even of this minuscule nature. When amendments are to be made, let us do our job and make those amendments.

Hon. Jacques Flynn: Honourable senators, I do not want to pile "it" on: I want to come to the rescue of Senator Frith; but that doesn't mean that I will be nice to everybody!

I think it is useful to have that opinion on the record for future problems. I agree with Senator Macquarrie that we should go ahead and send the amendment to the House of Commons—

Senator Frith: So do I!

Senator Flynn: —especially since this is the first amendment since 1984 that is not in confrontation with that House; it is really an amendment which is helpful.

Senator Frith: I knew there would be a catch!

Senator McElman: Could I ask Senator Flynn: How is it that the House of Commons has accepted many amendments made by the Senate during the current session? Were they bowing to a confrontational approach, or did they find a good basis for making those amendments as suggested by the Senate?

Senator Flynn: You are certainly opening a can of worms with that question!

Senator McElman: That's all right—you've got the worms; let's go fishing!

Senator Flynn: The answer to that question is obvious: The government had to compromise with the stubborn Liberal-dominated Senate.

Some Hon. Senators: Oh! Oh!

[*Translation*]

Hon. Arthur Tremblay: Honourable senators—

The Hon. the Speaker *pro tempore:* Honourable senators, I wish to inform the Senate that if Senator Tremblay speaks now, he will close the debate.

Senator Tremblay: Honourable senators, I am petrified at the thought that a mere comment on my part could stimulate the creative imagination of some of my colleagues, as it did yesterday. Therefore, as the saying goes, "Once bitten, twice shy", I will limit myself to the strict minimum in order not to delay further the adoption of this report.

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

Hon. Senators: Agreed.

Motion agreed to and report adopted.

● (1420)

[*English*]

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

[Senator McElman.]

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

SENATE AND HOUSE OF COMMONS ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED—SUBJECT MATTER OF BILL REFERRED TO COMMITTEE

On the Order:

Resuming the debate on the motion of the Honourable Senator Murray, P.C., seconded by the Honourable Senator Roblin, P.C., for the second reading of the Bill C-83, An Act to amend the Senate and House of Commons Act,

And on the motion of the Honourable Senator Flynn, P.C., seconded by the Honourable Senator Doody, that the Bill be not now read the second time but that the subject-matter thereof be referred to the Standing Committee on Internal Economy, Budgets and Administration.—(*Honourable Senator Frith*).

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I have nothing to add to what I said yesterday.

Motion agreed to and subject matter of bill referred to Standing Committee on Internal Economy, Budgets and Administration.

PATENT ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

Resuming the debate on the motion of the Honourable Senator Bonnell, seconded by the Honourable Senator Petten, for the second reading of the Bill S-15, An Act to amend the Patent Act.—(*Honourable Senator Thériault*).

Hon. L. Norbert Thériault: Honourable senators, it seems that everyone wants to be brief today. To be quite honest, before speaking to this order I had meant to complete the gathering of information that I began when we dealt with Bill C-22 to prove that, in fact, that bill was so bad that people would feel its influence for a long time. I must admit that I have not been able to complete the gathering of that information. However, I would like to make my point.

I shall use my own province of New Brunswick as an example. A month or so ago the new government of the province of New Brunswick brought in a budget in which they felt obligated to increase the fee charged to seniors in the Pharmacare Program from $3 to $6.84 per prescription. I have said publicly in New Brunswick, and I say it now, that I disagree with the government on that score. Nevertheless, I looked into their figures and the projections for their expenditures in that program and I find that what has happened is exactly what was stated by the minister of the previous government when we were studying Bill C-22. I find that increased pressure placed on seniors by that new budget of the

Government of New Brunswick, which more than doubles the cost of prescriptions, is mainly due to the increased drug prices in 1987. The projection for 1988 is over $10 million.

The information I have received from other provinces points in the same direction. I do not think that the mover of this bill, or anyone else, and certainly not myself, is naive enough to think that the government of today will change its mind. They decided in their negotiations with the Americans on free trade that this was just one more way to sell part of this country to the Americans, and proceeded with their legislation. I pointed out that this would happen in the province of New Brunswick and that it will happen in all the provinces of Canada. The working poor and the aged are the ones who will be penalized. I am sure that this legislation will remain as a reflection of the four years this government was in power, and therefore I support the motion.

On motion of Senator Doody, for Senator Cogger, debate adjourned.

THE CONSTITUTION

CONSTITUTION AMENDMENT, 1987—MOTION FOR MESSAGE TO COMMONS—ORDER STANDS

On the Order:

Resuming the debate on the motion of the Honourable Senator Frith, seconded by the Honourable Senator MacEachen, P.C.:

That a Message be sent to the House of Commons to inform that House that the Senate has authorized the proclamation of an amendment to the Constitution in the terms of the following schedule, to which it desires their concurrence:

SCHEDULE

CONSTITUTION AMENDMENT, 1987

Constitution Act, 1867

1. The *Constitution Act, 1867* is amended by adding thereto, immediately after section 1 thereof, the following section:

"**2.**(1) The Constitution of Canada shall be interpreted in a manner consistent with

(*a*) the recognition that the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English- speaking Canadians, concentrated outside Quebec but also present in Quebec, constitutes a fundamental characteristic of Canada;

(*b*) the recognition that Quebec constitutes within Canada a distinct society;

(*c*) the recognition that aboriginal peoples constitute a distinctive and fundamental characteristic of Canada;

(*d*) the recognition of the multicultural nature of Canadian society, and in particular respect for the many origins, creeds and cultures as well as the differing regional identities that helped shape Canadian society; and

(*e*) the recognition of the advantages of developing the Canadian economic union."

(2)(a) The role of the Parliament of Canada to preserve and promote, and the role of the provincial legislatures to preserve and, subject to subparagraph (2)(*b*) to promote, the fundamental characteristic of Canada referred to in paragraph 1(*a*) is affirmed.

(*b*) The role of a province in relation to promotion applies from the time it is adopted by a resolution of the legislative assembly of that province.

(3) The role of the legislature and Government of Quebec to preserve and promote the distinct identity of Quebec referred to in paragraph (1)(*b*) is affirmed.

(4) Nothing in this section derogates from the powers, rights or privileges of Parliament or the Government of Canada, or of the legislatures or governments of the provinces, including any powers, rights or privileges relating to language."

2. The said Act is further amended by adding thereto, immediately after section 24 thereof, the following section:

"**25.** Where a vacancy occurs in the Senate, and until an amendment to the Constitution of Canada is made in relation to the Senate pursuant to section 42 of the *Constitution Act, 1982*, the government of Canada shall, within six months after the vacancy occurs, call an election in the province or territory to which the vacancy relates for the purpose of filling that vacancy, and, notwithstanding the provision of section 29 of the *Constitution Act, 1867*, for a term of nine years."

3. The said Act is further amended by adding thereto, immediately after section 95 thereof, the following heading and sections:

"Agreements on Immigration and Aliens

95A. The Government of Canada shall, at the request of the government of any province, negotiate with the government of that province for the purpose of concluding an agreement relating to immigration or the temporary admission of aliens into that province that is appropriate to the needs and circumstances of that province.

95B.(1) Any agreement concluded between Canada and a province in relation to immigration or the temporary admission of aliens into that province has the force of law from the time it is declared to do so in accordance with subsection 95C(1) and shall from that time have effect notwithstanding class 25 of section 91 or section 95.

(2) An agreement that has the force of law under subsection (1) shall have effect only so long and so far as it is not repugnant to any provision of an Act of the Parliament of Canada that sets national standards and objectives relating to immigration or aliens, including any provision that establishes general classes of immigrants or relates to levels of immigration for Canada or that prescribes classes of individuals who are inadmissible into Canada.

(3) The *Canadian Charter of Rights and Freedoms* applies in respect of any agreement that has the force of law under subsection (1) and in respect of anything done by the Parliament or Government of Canada, or the legislature or government of a province, pursuant to any such agreement.

95C.(1) A declaration that an agreement referred to in subsection 95B(1) has the force of law may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement.

(2) An amendment to an agreement referred to in subsection 95B(1) may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized

(*a*) by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement; or

(*b*) in such other manner as is set out in the agreement.

95D. Sections 46 to 48 of the *Constitution Act, 1982* apply, with such modifications as the circumstances require, in respect of any declaration made pursuant to subsection 95C(1), any amendment to an agreement made pursuant to subsection 95C(2) or any amendment made pursuant to section 95E.

95E. An amendment to sections 95A to 95D or this section may be made in accordance with the procedure set out in subsection 38(1) of the *Constitution Act, 1982*, but only if the amendment is authorized by resolutions of the legislative assemblies of all the provinces that are, at the time of the amendment, parties to an agreement that has the force of law under subsection 95B(1)."

4. The said Act is further amended by adding thereto, immediately preceding section 96 thereof, the following heading:

"General"

5. The said Act is further amended by adding thereto, immediately preceding section 101 thereof, the following heading:

"Courts Established by the Parliament of Canada"

6. The said Act is further amended by adding thereto, immediately after section 101 thereof, the following heading and sections:

"Supreme Court of Canada

101A.(1) The court existing under the name of the Supreme Court of Canada is hereby continued as the general court of appeal for Canada, and as an additional court for the better administration of the laws of Canada, and shall continue to be a superior court of record.

(2) The Supreme Court of Canada shall consist of a chief justice to be called the Chief Justice of Canada and eight other judges, who shall be appointed by the Governor General in Council by letters patent under the Great Seal.

101B.(1) Any person may be appointed a judge of the Supreme Court of Canada who, after having been admitted to the bar of any province or territory, has, for a total of at least ten years, been a judge of any court in Canada or a member of the bar of any province or territory.

(2) At least three judges of the Supreme Court of Canada shall be appointed from among persons who, after having been admitted to the bar of Quebec, have, for a total of at least ten years, been judges of any court of Quebec or of any court established by the Parliament of Canada, or members of the bar of Quebec.

101C.(1) Where a vacancy occurs in the Supreme Court of Canada, the government of each province and the elected government of each territory may, in relation to that vacancy, submit to the Minister of Justice of Canada the names of any of the persons who have been admitted to the bar of that province or territory and are qualified under section 101B. for appointment to that court.

(2) Subject to subsection (5), where an appointment is made to the Supreme Court of Canada, the Governor General in Council shall, except where the Chief Justice is appointed from among members of the Court, appoint a person whose name has been submitted under subsection (1) and who is acceptable to the Queen's Privy Council for Canada.

(3) Where an appointment is made in accordance with subsection (2) of any of the three judges necessary to meet the requirement set out in subsection 101B(2), the Governor General in Council shall appoint a person whose name has been submitted by the Government of Quebec.

(4) Where an appointment is made in accordance with subsection (2) otherwise than as required under subsection (3), the Governor General in Council shall

appoint a person whose name has been submitted by the government of a province other than Quebec.

(5) Where an appointment is made in accordance with subsection (2) and, if within a period of three months, no name which has been submitted under subsection (1) is acceptable to the Queen's Privy Council for Canada, the Chief Justice may make an interim one-year appointment from among justices of the Federal Court of Canada or provincial Superior Courts.

101D. Sections 99 and 100 apply in respect of the judges of the Supreme Court of Canada.

101E.(1) Sections 101A to 101D shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws under section 101 except to the extent that such laws are inconsistent with those sections.

(2) For greater certainty, section 101A shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws relating to the reference of questions of law or fact, or any other matters, to the Supreme Court of Canada."

7. The said Act is further amended by adding thereto, immediately after section 106 thereof, the following section:

"**106A.**(1) The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the Parliament of Canada after the coming into force of this section, in an area of exclusive provincial jurisdiction, if the province carries on a compatible program which meets minimum national standards.

(2) Nothing in this section extends the legislative powers of the Parliament of Canada or of the legislatures of the provinces."

8. The said Act is further amended by adding thereto the following heading and sections:

"XII—CONFERENCES ON THE ECONOMY AND OTHER MATTERS

148. A conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once each year to discuss the state of the Canadian economy and such other matters as may be appropriate.

XIII—REFERENCES

149. A reference to this Act shall be deemed to include a reference to any amendments thereto."

Constitution Act, 1982

9. Sections 40 to 42 of the *Constitution Act, 1982* are repealed and the following substituted therefor:

"**40.** Where an amendment is made under subsection 38(1) that transfers legislative powers from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply.

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

(*a*) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(*b*) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province was entitled to be represented on April 17, 1982;

(*c*) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;

(*d*) subject to section 43, the use of the English or the French language;

(*e*) the Supreme Court of Canada; and

(*f*) an amendment to this Part.

42.(1) An Amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with subsection 38(1):

(*a*) the powers of the Senate and the method of selecting Senators; and

(*b*) the number of members by which a province or territory is entitled to be represented in the Senate and the residence qualifications of Senators.

(2) Subsections 38(2) to (4) do not apply in respect of amendments in relation to matters referred to in subsection (1).

42A. Notwithstanding subsection 42(1) of the *Constitution Act, 1982*, the establishment of new provinces and the extension of existing provinces into territories shall be a matter exclusively for the Governor General in Council and the elected government of the territory affected."

[**10.** Deleted.]

[**11.** Deleted.]

[**12.** Deleted.]

13. Part VI of the said Act is repealed and the following substituted therefor:

"PART VI
CONSTITUTIONAL CONFERENCES

50.(1) A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once each year, commencing in 1988.

(2) The conferences convened under subsection (1) shall have included on their agenda the following matters:

(*a*) the aboriginal and treaty rights of the aboriginal peoples of Canada, including self-government;

(*b*) Senate reform, including the role and functions of the Senate, its powers, the method of selecting Senators and representation in the Senate;

(*c*) roles and responsibilities in relation to fisheries at the first meeting only; and

(*d*) such other matters as are agreed upon."

14. Subsection 52(2) of the said Act is amended by striking out the word "and" at the end of paragraph (b) thereof, by adding the word "and" at the end of paragraph (c) thereof and by adding thereto the following paragraph:

"(*d*) any other amendment to the Constitution of Canada."

15. Section 61 of the said Act is repealed and the following substituted therefor:

"**61.** *A reference to the Constitution Act 1982*, or a reference to the *Constitution Acts 1867 to 1982*, shall be deemed to include a reference to *any amendments thereto.*"

General

16. Nothing in the *Constitution Amendment, 1987* derogates from any of the rights and freedoms guaranteed by the *Canadian Charter of Rights and Freedoms* or affects Part II of the *Constitution Act, 1982.*

CITATION

17. This amendment may be cited as the *Constitution Amendment, 1987.*

Hon. Royce Frith (Deputy Leader of the Opposition): This order stands in Senator Flynn's name. I had mentioned to Senator Flynn that we hoped to deal with this next week.

Hon. Jacques Flynn: You said "next week." Yes.

Senator Frith: Thank you.

Order stands.

BUSINESS OF THE SENATE

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I ask that all remaining orders stand.

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

Hon. Senators: Agreed.

AGRICULTURE

WESTERN CANADA—DROUGHT CONDITIONS—SUBJECT MATTER REFERRED TO AGRICULTURE AND FORESTRY COMMITTEE

Hon. H.A. Olson, pursuant to notice of Tuesday, May 17, 1988, moved:

That the subject matter of the potentially disastrous drought in Western Canada be referred to the Standing Senate Committee on Agriculture and Forestry

—to assess the magnitude and intensity of the damage;

—to invite witnesses to the committee hearings; and

—to report, with recommendations to the Federal Government, for assisting people adversely affected, especially Farmers and Ranchers.

He said: Honourable senators, I want to say a few words about this motion to refer the problem of the drought in Western Canada to the Agriculture and Forestry Committee.

Senator Argue: Hear, hear!

Senator Olson: Although there have been a number of comments made by me, and there were some comments by the government in response yesterday, I have to say that I do not believe that the government's response is appropriate for the intensity of the situation that exists there now.

I want to say at the outset that I will be brief, because I would like this motion to get to the committee as soon as possible so that they can get on with the business of trying to help the government design a program to deal with it. However, I am also keenly aware of all the things that the committee has to do to set up the logistics of the committee; to travel, if that is part of it; to call witnesses; to write a report, and so on. I certainly hope that the government will take its responsibility seriously and come in with an immediate relief program based on the kind of urgent consideration that I think it deserves.

• (1430)

I think it is appropriate for the Senate to consider this motion, because an entire region of Canada is suffering under the terrible drought that is now afflicting Western Canada. One thing we have been told over the years is that it is the responsibility of the Senate to represent regional interests in and convey regional concerns to the Parliament of Canada. Of course, it is also a fact that there are no members of the opposition from Alberta and Saskatchewan to raise these concerns in the other place. If representations are being made to the government, and I presume they are, by the members of

the House of Commons, there is no publicity given to them, and therefore the producers that are involved do not know what is going on.

I am sure that some members are talking to the Minister of Agriculture and the Minister of State (Grains and Oilseeds) about this matter. The unfortunate thing is that under our political system—with all its advantages and with some weaknesses—they do not tell the producers what they are doing, what they are considering, or when they are going to come up with a program. Again, I think it is particularly appropriate for the Senate to be considering this problem.

The concern that this motion may be flawed, because it does not have a date on which to report, was raised with me earlier today outside of the chamber. I admit that such a date is missing, and that the motion also does not ask for authority for the committee to adjourn from place to place in Canada—that is, to hold meetings in the area where the drought is being experienced. I thought very carefully about whether I should ask the Senate to amend the motion to put in a date by which it was to report, and also to include authority to adjourn from place to place in Canada—in other words, so that it could hold meetings in Alberta, Saskatchewan and that part of British Columbia that is severely affected.

After I investigated the matter, I found that we are not obliged to put those particulars into a motion. I think such details should be referred to the steering committee of the Standing Senate Committee on Agriculture and Forestry. That steering committee can then decide if it wants to report to the Senate by a specific date and whether it wants to have the authority to adjourn from place to place in Canada. I do not believe that the committee, no matter how rapidly it tries to come to grips with this problem, can develop a timely program. The government has to come up with a program, an urgently developed program, to deal with the situation. The committee can consider the long-term implications. But there are thousands of cattle being shipped out of the area right now. They were shipped yesterday, the day before, and even last week.

The government said in its report yesterday that if the situation continued it would come up with a program. But we need one now. We need a program to move feed, particularly hay or fodder, into the areas where the brood cows are now starving, and that is not stretching it one bit. My cattle are not affected, so I am not crying for my own sake, but I have neighbours who have not stopped feeding their cattle since last winter because there has been no grass, none at all. Those cattle are indeed starving. They are losing weight day by day. That is why I say that the committee's recommendations would be of little immediate assistance. There simply is not enough time to go through that process.

Senator Marchand may wish to participate in this debate, because he told me earlier today that ranchers in his area of British Columbia are also shipping their cattle to areas that have experienced rainfall. They are willing to appear before the committee almost immediately to give an assessment of the situation today, along with their views on what ought to be done on a longer-term basis so that we can cope with drought emergency situations in the future.

I am also aware that the four western premiers are meeting today and that they have, according to news reports, two items of business on their agenda, one being Ontario's objection to the Free Trade Agreement. They are going to indicate to the Premier of Ontario that they do not appreciate his comments about what he is going to do about the Free Trade Agreement. The other item of business is the drought in Western Canada. They are meeting on a yacht someplace off the west coast to try to develop a program to deal with that.

I could say all kinds of things about that, but I really do not want to make any disparaging remarks. What I am interested in doing today is getting the government to look at the problem seriously and to act with the urgency that the situation deserves. That is why I am being very restrained in what I say today.

Honourable senators, when Senator Stewart was speaking yesterday on Bill C-77, he drew to our attention the fact that that bill has a provision for the government to act when there is a drought. In Part I of Bill C-77—and I know it is not the law yet, but it is there, and obviously part of the government's policy or it would not have brought it in—under "Public Welfare Emergency", it states:

> "public welfare emergency" means an emergency that is caused by a real or imminent
>
> (*a*) fire, flood, drought, storm, earthquake or other natural phenomenon—

The bill goes on to spell out all of the things that the Governor in Council will be obliged to do if it perceives a drought, a flood, or whatever.

Senator Tremblay: Only if the bill is passed.

Senator Olson: This must be government policy or it would not have introduced that bill. That is why I am asking the government to take its own advice and come up with a program to deal with this drought situation.

In case anyone is interested in some of the facts, some of the meteorologists have told us that the drought that is taking place on the southern Prairies of Canada is the longest and driest on record. The situation is even worse than it was back in the 1930s. I realize that we have developed ways and means of dealing with dry periods that are more advanced than those we had in the 1930s. For example, we have machinery that prevents soil erosion and drifting. We did not have such machinery then. We have seen improvements with new seed varieties that are more suited to the climatic and soil conditions that are there. But let there be no misunderstanding about how serious the drought is.

It started in 1984, and there has been little relief since then. We have now had two winters with very little snowfall. In the spring there was no runoff. The small amount of snow we did get evaporated. Normally in that part of the southern Prairies there are several feet of snow that melts in the spring. When the ground is frozen, we have what is known as a runoff that fills the summer waterholes. They provide water for the cattle

on the range. That has been going on for years, but for the last two years there has been no runoff in the spring. In that area you do not get any runoff in the spring unless the ground is frozen. You can get fairly heavy rainfall, but the ground soaks that up like a blotter if it is not frozen.

A drought is a devastating experience for people who rely on their cattle herds for their income. Those cattle herds are now being dispersed, sold off, and it is not a matter of just simply going out and buying more females, whether they be calves or yearling heifers, as replacements. A brood cow herd is a herd of cows that has been kept in a certain area. The cows are familiar with their surroundings and are comfortable. They do not have blemishes, bad eyes, bad feet, bad udders, or whatever. All of those things have to be worked out of a herd before it becomes profitable for a rancher to keep it for raising calves and pursuing his livelihood.

● (1440)

Honourable senators, recently on television some of you may have seen films of dust storms which are again starting to occur. The soil is so dry it erodes and blows around—sometimes to the point where traffic on the highway comes to a standstill. It fills houses with dust and dirt. When a farmer looks at that, he sees his whole asset being blown away. Once or twice in my lifetime I have seen situations where the topsoil, that is, the top four to six inches, was blown away in a week. The topsoil is the loose, cultivated soil, so it can easily be blown away. People who understand this sort of phenomenon tell us it can take Mother Nature 500 years to produce one inch of topsoil. It is pretty clear what happens to a farmer when his topsoil is blown away—he loses the productivity of his farm.

I suppose the only compensating factor is that he, in turn, may get some topsoil which has been blown from his neighbour's farm to the south or to the west, depending on which way the wind was blowing. However, that is not where it all goes. Some of it blows into the riverbanks and coulees where it cannot be used for production of grass or any other farm product.

In the Prairies the thickness of the topsoil varies, but in most places it is four to eight inches. Underneath that is a different kind of soil, which does not have the capacity to produce vegetation.

It would be helpful now if the government were to give some indication of the kind of program it is going to establish and support. Cattlemen want to keep their herds, and they would go to some additional expense, such as buying feed while hoping for the rain—and we hope it will come tomorrow or next week or soon, at any rate—if they knew a program would be announced immediately, but when there is no announcement they do not know how long they will have to wait. What is clear is that if the sell-off gets much more intense, there will be a depression in prices, because the class of cattle that will be coming to market will be over-supplied and the price will go down. That is the situation those cattlemen will find themselves caught in. When the sell-off is over, the price will start to go back up again, and cattlemen will have to start buying them back at that level. That will happen some time later, either this year or next year. If they knew that the governments of Canada and the provinces were standing behind them to help them through this emergency, I think they would go some additional distance to try to hang on to those brood cows.

Much more could be said in trying to explain this to honourable senators, but I hope you will pass this motion fairly quickly so that we can get on with a consideration of this subject.

I also hope—and I say this sincerely—that the government will come in with a program that is going to be helpful both in terms of the transportation of hay and fodder into the area where these cattle need it and also in terms of the transportation required to take cattle out to other areas where there is some grazing. There have been some satisfactory rains in Manitoba over the last three weeks or so, an area up to then that was dry, but it has rained enough now so the grass is growing rather well. I know of some cattlemen who are shipping their cattle there now.

In the meantime, whether this motion is passed or not, we need a short-term program to be announced immediately, for the reasons I have explained today and on other days recently. I hope that honourable senators, and particularly senators from the prairie area, will support me in my effort to have a program announced now, because it is needed now, not next week or next month.

Hon. Heath Macquarrie: Honourable senators, needless to say, I am not about to make a protracted speech on agriculture, because I am not the best farmer in the best farming province in the country, which is Prince Edward Island, but I was moved by what Senator Olson said. I have always respected him as a man who knows this area—and I do not mean geographically, I mean industrially. He is an expert in these matters.

I would like him to know that it is not only the people of the Prairies who are concerned about this. In my part of Canada, as Senator Phillips will agree, the weather is a topic of conversation. Sometimes we wish it were sunny when we want to go on a picnic; and sometimes we wish it would rain when we are concerned about our gardens, but we do not really know what adverse weather is. I know of no really serious drought in Prince Edward Island. I know of no really serious problem with too much rainfall. In so many parts of Western Canada the whole climatic pattern is against the farmer. It is an old simplicity to say that Alberta is on the wrong side of the Rocky Mountains, but that is not Alberta's fault.

I want to assure the honourable senator that while I am not an expert in this, in the caucus of my party much concern and much anguish has been expressed about this situation, not just by the ministers but by the members, and not only by those from the west.

The great problem is, of course, what to do for the best. Just a few days ago I had a telephone conversation with some of my people who live in Manitoba. There was nothing they wanted to talk about more than the fact that, finally, rain had come, and we all rejoiced in that.

Honourable senators, this is a very important matter, and I am sure that senators who are far more knowledgeable than I will be able to make a valuable contribution to this debate. I can express concern, but I cannot readily provide a solution.

When I lived in Brandon, Manitoba, my landlord, Mr. Tinline, a most excellent man—I am sure Senator Olson has heard of him—as a young agriculturalist, played a major role in the soil rehabilitation program of the Prairies. It was his great fear, anxiety, indeed dread, that some day that terrible erosion, that terrible depletion of the good soil of the Prairies, would occur again. I was a little surprised and saddened—although the degree of suffering is not important, because we know this is a terrible situation—to hear Senator Olson say that, in terms of rainfall, the situation is worse now than it was in the mid-thirties. That is shocking. We thank him for his serious presentation of this grave problem.

Hon. Len Marchand: Honourable senators, I want to say a few words in support of the motion by Senator Olson. I confirm that just this morning I was in touch with the general manager of the B.C. Cattlemen's Association, Mr. Lorne Leach, who advised me of the current seriousness of the drought. He also informed me that he, on behalf of the cattlemen of British Columbia, has been in touch with the provincial and federal Ministers of Agriculture, suggesting measures that can be taken. I think Senator Olson has outlined some of those measures. Those measures should be taken soon.

Mr. Leach had mentioned that they not only want to look at the current situation but they want to take some measures that might be considered long term, for example, waterhole development. I do not know if senators here know anything about how waterholes are built in the rangelands of British Columbia, but waterhole development is very much a part of range management. In good years and normal years cattlemen are able to scoop out a piece of earth from the rangeland where they might see some dampness. Waterholes—at least, good ones—will generally last all summer.

● (1450)

At the present time you can almost walk across the South Thompson River because the water is so low. The waterholes on the rangelands are dry. Quite a few wells are dry. The cattlemen are having to haul water from various areas to keep things going, and that is costly. There are situations where they are now trying to move cattle to areas where there might be some grass, but it is a costly proposition to move cattle 100, 200 or 300 miles.

The drought area covers quite a large part of the interior of British Columbia. It is in the Cariboo area; it is in the Kamloops area; it is in the Okanagan; and it is a little in the Prince George area as well. If this body can see fit to pass the motion that Senator Olson has put forward, I am sure that fact could go a long way to indicating to the minister that urgent action should be taken. This is not confined to just the Prairie regions of the country. It includes a large area of British Columbia.

I would like to assure honourable senators that the ranchers in the interior of British Columbia would appreciate very much if something could be done.

I would also like to confirm something that Senator Olson mentioned. In my conversation with Mr. Leach, he said that he would be able to appear before the Standing Senate Committee on Agriculture and Forestry on a moment's notice to make some representations and suggestions, which the cattlemen of British Columbia agree with. They know that this problem cannot be solved overnight. One of the greatest things that could happen is to have rain, but we have not had that. There have been rainfalls here and there, and perhaps pasture situations in some of the areas have improved, but not enough. There is still a dire need to do something on a short-term basis.

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, first, I would like to refer to the opening comments of Senator Olson. He stated that someone had suggested to him that there was no reference to a budget, and I agree with him. Obviously, if he is not going to spend any money, then he certainly does not need permission.

Another point that I would like to raise—and here I am trying to be helpful—is that it is not my intention to ask for a sunset clause. In the rules of the Senate it says that a sunset clause should be included in a motion, and I thought it might save Senator Olson time and inconvenience if he had put one in. Certainly I have no intention of trying to delay the progress of this very worthwhile motion on its way to the committee. Anything that can be done to help alleviate the tragic situation that the farmers in Western Canada are experiencing at this point should certainly be done.

Once again, I would like to re-emphasize the comments made by the Leader of the Government in the Senate to the effect that the government is very much aware of the problem. It has been monitoring it very carefully and is taking whatever steps it can to alleviate the problem. I am sure it will treat the situation with the same kind of care and attention that it has treated other problems that have arisen within the farming community in the past.

Hon. David A. Croll: Honourable senators, I am a product of the Great Depression and the great drought. I was in office at the time; I was a minister of the Crown.

I remember the help that was given to the west. However, people made a lot of noise about it; they were not quiet. They were not quiet in Parliament; they were not quiet in the provincial parliaments. They were screaming, "Do something! Do something!" However, we did not quite know what to do.

I knew what the situation was out west at that time because I went out and saw it. Senator Olson has said to me, "Dave, you ain't seen nothing yet. It's much worse than it was then." I get around as much as anyone, and I do not remember anyone saying to me, "How are the westerners getting on with the drought?" Nobody talks about it; nobody says anything about it.

We have many methods of communication today. Not too many people read newspapers, but this situation should be

aired on television. I am not particularly interested in what is happening in Beirut or Israel right now. I am interested in what is happening in my own country, and I would like to see this situation shown on television so everyone can see what is happening. I did see that some of the cattle were being moved out. I know what that means to a farmer. Sure, there are not as many farmers now as there were in the past, but they are there.

I think we have been negligent in that we have not been telling the story to the rest of Canada. I hold the communications media responsible for that. There is an obligation to let us know what goes on in every part of the country, good or bad. I know it is the bad news that attracts people, but this is bad enough for everyone to consider.

I think a message should go to the CBC and others that they are neglecting their duty in not letting the rest of the country see what is going on in the west and how these people are suffering.

As a farmer, that is all I can say now.

Hon. Hazen Argue: Honourable senators, I support the motion put forward by Senator Olson. In my judgment, on Parliament Hill, in the field of agriculture, Senator Olson has no competition; he is in a class all by himself, and he is an expert. That should be clear to anyone who listened to him this afternoon. When he says that things are terrible out there, they certainly are.

I said to my friend, "Bud, don't feel you never get any attention in the Senate, because I heard your voice on a national news broadcast last night on CKO, and you were complaining about lack of action on the question of the drought." There is some attention being paid to the Senate, and I hope this motion will bring about even greater attention.

This is the worst drought certainly in living memory. Agriculture Canada said that last winter was surpassed in dryness only by the 1910-11 winter. If that is the case, this has been the driest winter in 77 years. Apparently, at the Lethbridge Agriculture Research Station total rainfall for the month of April 1988 was zero. There was no rainfall. How can there be less rainfall than zero? It is a tragedy out there. It is a terrible situation in Alberta. The western half of Saskatchewan is, I would say, about as bad as Alberta. So, it is a drought that reaches across half of Saskatchewan. However, just to make a general statement, in the eastern half there have been some recent rains that have helped a great deal.

● (1500)

The big danger now—and it is happening already, as you have been told by Senator Olson—is that the farmers and ranchers are desperate. They see their cattle starving; they do not want to see them starving to the point that they die; they want to salvage whatever they can, so the whole herd, built up perhaps over 20 or 30 years, goes off to market. The effect of one herd of cattle after another going off to market is that, of course, the price falls to rock bottom.

Then, Revenue Canada comes in and says, "Let's say that next year you sell all of your cattle. It is all current income. Revenue Canada will soak you for a very large tax payment because you have been in a desperate situation and have had to sell off all of your cattle. That is the law."

Therefore, honourable senators, it is time for action and for effective emergency action. There are things that can be done, and they have to be done not only for the ranchers and the farmers but sometimes for the towns and villages. The people in the towns and villages have no water, and they, too, must have water. The village of Limerick has been greatly in the news, and even sometimes in the national news, because the people have no water. Farmers have to haul water locally for their livestock. Now the town, too, is desperate and does not know whether to start digging wells or to buy pumping equipment to pump water from a long distance.

Honourable senators, action must be taken, and Senator Olson has spelled out the kind of action that needs to be taken. You cannot turn on the water taps; you cannot make it rain. But the government can say to those ranchers, "We will provide a herd maintenance program." Those words were used by a government instigating a program to deal with exactly the same type of situation back in 1980, when I first came into the cabinet. That was a controversial program at that time and not everyone liked it. If I remember correctly, it paid $35 per head for each cow that was maintained in the herd. Therefore, if someone had 100 cows, they received a few thousand dollars.

There were also provisions made for money to be used for the hauling of hay to the cows; there was money for the transporting of cows perhaps hundreds of miles to pasture so that the cows could have the benefit of grazing on a decent pasture.

One of the advantages of a program such as that is the signal that it sends out that the Government of Canada wants the herds maintained. It is not only the money, although that is important; it is not only the transportation, although that is also important: it is, rather, a feeling out there that if you are in this situation, your government, the national government, cares about you, believes your herd is important and wants you to maintain it. When that signal goes out, supported by a program, then action can be taken and action will be taken to support those herds.

There is really no alternative for farmers. The cattle are suffering, but the prospects for grain crops are also very low. The farmers are going out and are planting the seed in the soil where it will not germinate. You might say, "Why is it that farmers are dumb enough to seed grain where it will not germinate?" Honourable senators, farmers are not that dumb. They know that the grain will never grow if it stays in the bin. Also, the calendar says that it is time to seed, so the farmers go out and seed, and the crops have been growing in the ground, although sometimes in very dry soil. Therefore, the grain farmers are trying to cope with the situation.

However, a lot of the grain farmers are also livestock farmers and they need some support. Honourable senators, if we do not support the livestock producers now and if we do not support those grain farmers now, then we lose the herds and we lose the farmers. In that way, we destroy an economy, we

destroy a community, and we destroy a way of life. Honourable senators, something needs to be done.

In 1980 there was a Conservative government in Manitoba, an NDP government in Saskatchewan, a Conservative government in Alberta, and a Liberal government in Ottawa. All of those governments acted collectively and something was done. Today, there is no collective action and there does not seem to be any prospect of any action being taken quickly. By the lack of action—

Senator Doody: Perhaps we should adjourn this debate and continue it next week so that we can obtain a reply for you.

Senator Argue: I do not care whether you adjourn the debate. It is up to you whether or not you do that. I do not think we should adjourn the debate.

However, honourable senators, that is the way things are, and instead of bragging about the nonsense that was put on the record yesterday as to what the government is doing, I think we should all be looking at this situation and doing something about it.

There was a drought in Western Canada in 1985, but it was not really a spring drought; it was a sort of summer and fall drought. The prospects in the spring were not too bad. Then the drought came on and farmers asked that action be taken, and some action was taken. My wife, Jean, organized a farm women's group and they took action. In fact, there was lots of grassroots action out in the west and, finally, a payment of $50 per cow was paid, and that helped. Honourable senators, this is the kind of action that is required, and required now.

Honourable senators, let me read to you what the government's action is, because it was put on the record yesterday by Senator Murray:

> Agriculture Canada, through the Prairie Farm Rehabilitation Administration, has been monitoring drought conditions in Western Canada on an ongoing basis.

In other words, they have not been sleeping; they have been awake. That is good. Also, they have found out that it is not raining, so they are monitoring the situation. Isn't that great!

> PFRA, which operates 86 community pastures,—

Some bureaucrat in Ottawa wrote this, I suppose.

> —reports that forage growth has been slow—

Isn't that something? It is actually zero, but they say it has been slow.

> —as a result of dry conditions and cool temperatures.

It would not matter if it were cold or hot; if it is dry, nothing will grow, and I suppose the temperature is not really much of a factor.

> Grazing is not expected to be delayed longer than one to three weeks in most areas,—

Honourable senators, do they know when it is going to rain? Do they know that in two or three weeks the grass will be growing? Of course they do not know, and the grass will not be growing in that part of Western Canada unless it rains.

> —although there are some pockets where it is more severe.

Such as the big pocket that is Alberta or the small pocket which is half of Saskatchewan. These, I suppose, are the "some pockets".

> Hay and other feed supplies are still good—

Which is not true.

> —and most producers are able to delay pasturing with no difficulty.

Senator Olson says that the cows are starving, but the official position of the Government of Canada and PFRA is that "most producers are able to delay pasturing with no difficulty."

Senator Murray then went on:

> The first and most immediate concern for livestock is the lack of drinking water.

Et cetera, et cetera. Then he went on to say—and listen to this:

> Through the Crop Insurance Program forage and livestock producers have the opportunity of purchasing financial protection against the possibility of reduced feed supplies.

Isn't that great?

> In the event of a continued drought and crop insurance claim payments, farmers can use these funds to assist in defraying the cost of purchasing feed and/or moving feed and livestock.

In other words, honourable senators, wait until your crop ceases to exist; wait until crop insurance says that there is no crop; wait until you get a payment in October and then you can go and buy some feed. By that time the cows may all be dead, of course, because they will have starved to death; on the other hand, they may all have been sold. However, the official position of the Government of Canada—because that is what it says—is that if the drought continues, then:

> . . . producers have the opportunity of purchasing financial protection against the possibility of reduced feed supplies. In the event of a continued drought and crop insurance claim payments, farmers can use these funds to assist in defraying the cost of purchasing feed and/or moving feed and livestock.

Honourable senators, the situation is very serious. Money and funds are required to take cattle to grazing at some distance away where that is the farmer's decision or the rancher's decision. Freight should be paid to move feed to the cattle. There should be a program maintaining the grain supplies that are in the elevators in local areas so that those grain stocks can be made available to livestock. I believe it is again time for the government to initiate a herd maintenance program.

● (1510)

Honourable senators, this is an emergency. Why is it not being looked into? Perhaps it is in the wrong region. Perhaps if we transferred the drought to Ontario we would hear a hell of a scream. We would see a much more powerful lobby than

what we can get coming out of the west. If drought were likely in Quebec, the program would have been in place before the drought arrived and there would be no need for emergency measures. Even if that did not happen, it would not take three or six months until something was done about it—it would be done quickly. I say that, honourable senators, without complaint. That kind of fast action is required. It behooves the governments of Western Canada, the producers out there and other interested people to bring the problem before the federal government so that the pressure will be so great it will have to act. Let us hope that it will act quickly.

Hon. Joyce Fairbairn: Honourable senators, I do not wish to extend unduly this debate, but I do feel it important to underline most strenuously the words of Senator Olson, Senator Argue and Senator Marchand on this issue, which is almost impossible to explain if you have not been there. I think a great many people in Canada know that our agriculture sector is already in a state of financial crisis. On top of the financial crisis, we now have the potential for devastation in parts of our prairie community. As Senator Argue has said, it does not affect small pockets this time—it affects whole provinces or large portions of provinces. There are farmers in our area in southwestern Alberta who refer to their land as "the Sahara Desert with a fence," and that is an apt description.

Honourable senators, we travelled down there last weekend. Visitors from other parts of the province said, "Well, you are going to get rain—look at those dark clouds." Honourable senators, those were dust clouds—those were clouds filled with topsoil blowing off the areas of southwestern Alberta, and it will take more than a decade to replace that soil. We are talking about farmers who cannot wait for task forces—they cannot wait for federal-provincial meetings that result in something three weeks, four weeks or six weeks down the road. We are talking about people who need action now to have assistance in terms of feed brought to their cattle or immediate financial and transportation assistance by which to move these herds to an area where they can survive. Otherwise, we are not going to have just an agriculture crisis—we are going to have a social crisis of major proportions in those small towns and villages, and one which will encroach upon the cities. It may take months before the cities realize that. But if we do not have action for our livestock producers now, I shudder to think of the kinds of speeches we will be making in the fall.

Let us get this issue before our committee. I know that Senator Olson did not even want to have to make this motion. The government can act within the week to get things moving in the Prairies. I most strongly urge the Deputy Leader of the Government in the Senate to carry that message, loud and clear, to the government so that we do not have to wait for even the initial steps to be taken before one of our committees.

Hon. Sidney L. Buckwold: Honourable senators, I will not be too long this afternoon, but it would be wrong for me to sit here as a senator from Saskatchewan without endorsing what has already been said by those who have spoken on this serious issue. As one who was raised in Saskatchewan and started his business career in the height of the drought of 1935, '36, '37 and '38, I can say that it is difficult to visualize how we could possibly go back to those times. Yet, the other day I was driving my car and I literally had to stop myself from crossing a prairie road because of the tumbleweeds that were blowing across a road obscured by dust. Those are the symbols of a drought: tumbleweeds, and the fact that when you go outside you can just feel the grit in the air—and I am not speaking politically, although that might be encouraging!

I want to draw to the attention of honourable senators the impact not just upon the farmers but upon small businesses—upon those who make their living supplying farmers in the villages and hamlets surrounding the bigger cities. Big cities always manage to keep going—they have some industry; they have some civil servants with permanent salaries—but in Alberta, Saskatchewan and Manitoba literally hundreds of small villages are the lifeblood of those provinces. We used to classify them as "the two-elevator town," the "three-elevator town," and the big one, like the one Senator Argue hails from—Kayville—I wonder whether there is an elevator there yet.

Senator Argue: There is one.

Senator Buckwold: Kayville has one elevator, and it is filled up, sometimes, by the wheat grown by Senator Argue.

I draw to the attention of honourable senators that in the census of 1931 Saskatchewan was the third largest province by population in the Dominion of Canada. There was Ontario, there was Quebec, and there was Saskatchewan. We were larger than Alberta, Manitoba and British Columbia. We had, in 1931, the same number of people, within a few thousand, as we have today, in 1988, and we keep talking about the progress of that province. Our people moved out by the tens of thousands just to survive. The scene that is imprinted indelibly in my mind is one of wagons and old trucks loaded down with beds and diningroom chairs—it is the scene of the people of Saskatchewan, literally like the Okies, moving on.

Honourable senators, I am not trying to be a tear-jerker and I am not trying to draw from you the kind of response that you might get from begging for nickles. This is a very serious problem. Not only will the farmers be faced with further devastation in addition to low prices, high interest rates and loans—we keep hammering away about those—but the small businessmen in these areas will be faced with similar disasters. I do not know how many of these small storekeepers, implement dealers and café owners can keep going. That is why I implore the Deputy Leader of the Government in the Senate to try to impress upon those decision-makers, who I know will recognize the need, the absolute importance of action as soon as possible. Let us do something before the horse is out of the barn. We know that eventually the government will come through, that the door will be closed, but unfortunately, as I have said, it will be too late.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, so that we can pass this motion today, let us clear up the procedural point raised by Senator Doody. The

rule that applies in this case is rule 83A. It refers to certain guidelines about financial procedures in Appendix III. In this case, the appropriate one is guideline 2:02, which states:

> A notice of motion to establish a special committee or to authorize a committee to conduct a special study shall not refer to special expenses but shall set a date by which the committee is to report to the Senate.

I am sure that we will all give leave to Senator Olson to set a date so that he can comply with that guideline and the motion can go forward with no procedural encumbrance.

On the second point—that is, the power to travel—I believe that Senator Olson is quite right. Guideline 2:03 applies. The steering committee should decide if it wants to travel and then seek funds. I think it would be a good idea to put in a date so as to obviate any problem that might arise with that other guideline.

• (1520)

Senator Olson: With leave of the Senate, perhaps we could put in the date of October 31. I hope I will be able to talk the committee into filing some interim reports.

The Hon. the Speaker *pro tempore:* Is it agreed, honourable senators, that the motion be amended by including the date October 31?

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

Motion, as amended, agreed to.

The Senate adjourned until Tuesday, May 24, 1988, at 2 p.m.

THE SENATE

Tuesday, May 24, 1988

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

Prayers.

QUESTION PERIOD

AGRICULTURE

WESTERN CANADA—DROUGHT CONDITIONS—MEETING OF MINISTERS OF AGRICULTURE—GOVERNMENT ACTION

Hon. H.A. Olson: Honourable senators, I would ask the Leader of the Government in the Senate if a meeting between the ministers of agriculture from the four western provinces and the federal minister has been called to deal with the serious drought situation in western Canada.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I do not have the date of such a meeting. I think my friend is aware that a meeting will take place.

Senator Olson: I have a supplementary question. Will the Leader of the Government give us an assurance that he will convey to the minister the urgency of this situation and that, in fact, it is worse today than it was yesterday; it is worse this week than it was last week; and that there is such an extreme emergency that each day's delay has very serious consequences for some people, who have already begun selling off their herds?

Senator Murray: Honourable senators, with great respect, I think the honourable senator should cease trying to convey the impression that nothing is being done by provincial and federal governments on this matter.

As I have indicated previously, there is a federal-provincial committee monitoring the situation carefully. There have been contacts at the ministerial level between Ottawa and the provinces, and there will be a meeting between the federal minister and his provincial counterparts.

The honourable senator tries to convey the impression that nobody in the federal government has heard about these conditions. I want to assure him that the interests of western Canada and the serious drought situation there are well known to the large and effective delegation of western Canadian members of the House of Commons.

Senator Olson: If that is true, there has been a long period of time—an unconscionable period of time—between the seriousness of the situation being realized and any action being taken. Before the leader gets that disgusted look on his face, I want to tell him that there are people out there right now—today, the day before yesterday and last week—who are wondering what the federal government is going to do about this situation. They are now faced with the problem of having no feed for their livestock. I do not know how I can get that through to the leader. All I was asking the minister to do was convey the urgency of the situation so that some action will be taken.

In case he does not know, I can tell him that the livestock auction sales in western Canada are now starting to fill up with brood cows, but that this is not the time of year to sell brood cows unless there is an emergency situation, such as the inability of farmers to feed them.

Day after day those cattle are losing weight. They are losing as much as three pounds to four pounds a day, and at the prices currently set that is costly.

I do not want to get into a speech—

Senator Argue: Go ahead.

Senator Olson: —but the government ought to move on this. I do not offer any apologies to the leader for trying to indicate that the emergency is now and yet no action has been taken.

I ask politely again if the leader would convey to the authorities in the federal government that the urgency is now, not some time later after the government has monitored the situation some more.

Senator Murray: Honourable senators, with great respect, it is not necessary to convey to the responsible minister, or to the elected representatives of the people of western Canada, the urgency of this situation. They are well aware of the urgency of the situation.

Senator Olson: I can advise my honourable friend that the livestock producers in western Canada have been given no indication of positive action of which they are aware; therefore, I should like them to know: When does the federal government intend to take its responsibility and do something about this situation?

WESTERN ARCTIC (INUVIALUIT) CLAIMS SETTLEMENT ACT

BILL TO AMEND—THIRD READING—ORDER STANDS

On the Order:

Third reading of the Bill C-102, An Act to amend the Western Arctic (Inuvialuit) Claims Settlement Act, as amended.—(*Honourable Senator Macquarrie*).

Hon. Heath Macquarrie: Honourable senators, on Thursday last I gave notice that I would move third reading of this bill

today, but in the light of some very important observations and questions raised by honourable senators opposite I have asked the minister's office to provide more information on these important matters. I think it would be helpful to stand this until tomorrow, at which time I will have that information, rather than have the Senate survive on the kind of insufficient information I might tend to give.

Order stands.

COPYRIGHT ACT

BILL TO AMEND—MESSAGE FROM COMMONS AND MOTION REFERRED TO COMMITTEE

On the Order:

Resuming the debate on the motion of the Honourable Senator Doyle, seconded by the Honourable Senator MacDonald (*Halifax*):

That the Senate do not insist on its amendments to the Bill C-60, An Act to amend the Copyright Act and to amend other Acts in consequence thereof, to which the House of Commons has disagreed; and

That a Message be sent to the House of Commons to acquaint that House accordingly.—(*Honourable Senator Sinclair*).

Hon. Ian Sinclair: Honourable senators, on May 4 a vote was held in this chamber considering the report of the Standing Senate Committee on Banking, Trade and Commerce on Bill C-60. That bill was sent back to the House of Commons and, after its being over there for some 18 days, a message was sent to this chamber suggesting that the Senate not insist upon its amendments. I was more than a little taken aback, as I am sure were other members of the committee, by what I will call "MacDonald to the power of 2," or "MacDonald squared," if you want to put it that way.

Senator Frith: Oh, she would resent being "squared".

Senator Sinclair: Well, you never know how these things will parenthetically work out until you try them. At any rate, in the other place, the "Honourable Flora MacDonald to the power of 2," if I can put it that way, said that our committee sat for only three days and heard 20 witnesses and that it did not have professional advice in this complicated matter. Well, I would suggest that any objective reading of the record of the Senate committee would indicate that there was more than "cursory examination" given to the bill. I could, however, be wrong. And maybe this bill does need more examination. Maybe it is required that the Senate take this bill to the people. Maybe it is required that the Senate committee travel. Maybe the bill should not be before the committee for three days, but for three months. I do not know if that is what she had in mind.

In any event, honourable senators, I would suggest that the message and the bill be referred back to the Standing Senate Committee on Banking, Trade and Commerce for consideration and report.

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, quite obviously, if it is the wish of the Senate to send this bill back to the committee, then that is where it is going to go. It seems to me to be a rather tragic misuse of the powers of this place to so treat a bill that has been passed by all parties in the other place and has obviously got the consent of the elected people of all political stripes. If this place decides, in a fit of pique or a fit of disturbance over the minister's comments, that the Senate has not taken enough time to look at the bill, then perhaps the Senate should also think of the fact that the minister suggested that we accept the bill as it was originally presented and as, once again, it was passed at its second presentation in the House of Commons.

Honourable senators, I think it is most unwise for this house to take the position that it is obviously going to take on a bill of this nature. I am not going to go into the details of the bill. Those who served on the committee are very familiar with it. As to the suggestion that it has not been well considered, I think members of this place know differently. Not only this government but previous governments have tried for a long while to find a fair and equitable way to treat members of our artistic and creative community in this country. To find that they will be further delayed in receiving the kind of justice they so deserve, simply because of some fit of distemper of certain members of the Banking, Trade and Commerce Committee, is deplorable in my view. If, indeed, it is the wish of this house to send the bill back to committee, then obviously that is what will happen. But I have to advise honourable senators that, in my opinion, that is a very short-sighted course of action in terms of the future of this house.

Some Hon. Senators: Hear, hear!

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators know how I feel about this bill. I have spoken about it in committee and in the house. As I said then, I believe the bill should pass.

• (1410)

However, concerning the procedure of sending it back to the committee, as a courtesy and for efficiency in the operation of the Senate and its committees, and to maintain a cordial relationship between the Senate and its committees—and I have said this on other occasions with regard to other bills—when the Senate adopts a committee report on a bill that is sent to the House of Commons with amendments, which are not accepted in the other place, and the Senate is asked to not insist on those amendments, it should be sent back to the committee whose report was first adopted to enable them to react to the message from the House of Commons.

As I said, honourable senators know how I feel about the merits of the bill itself; but as for sending it back to the committee, I believe that we ought to do so.

The Hon. the Speaker: In amendment, it is moved by the Honourable Senator Sinclair, seconded by the Honourable Senator Frith:

That the motion, together with the Message from the House of Commons on the same subject, dated 17th May,

1988 be referred to the Standing Senate Committee on Banking, Trade and Commerce for further consideration.

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

Senator Frith: In view of my feelings about the bill, I would prefer that someone else second it.

The Hon. the Speaker: Will another honourable senator second it?

Senator Hicks: I will second it.

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

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators who are against the motion in amendment please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: I shall ask for a voice vote again, because it sounded quite even.

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

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators who are against the motion in amendment please say "nay"?

Some Hon. Senators: Nay.

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

And two honourable senators having risen.

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

• (1420)

The Hon. the Speaker: Let the doors to the chamber be locked.

Motion in amendment carried on the following division:

YEAS

THE HONOURABLE SENATORS

Anderson	LeBlanc
Argue	(*Beauséjour*)
Bonnell	Lucier
Bosa	MacEachen
Cottreau	Marchand
Croll	McElman
Davey	Neiman
Fairbairn	Olson
Frith	Sinclair
Gigantès	Stanbury
Hébert	Turner
Hicks	van Roggen
Langlois	Watt—26.
Lawson	

[The Hon. the Speaker.]

NAYS

THE HONOURABLE SENATORS

Asselin	Molson
Atkins	Murray
Balfour	Nurgitz
Barootes	Phillips
Bazin	Robertson
David	Roblin
Denis	Spivak
Doody	Steuart
Doyle	(*Prince Albert-Duck Lake*)
Macdonald (*Cape Breton*)	Tremblay
Macquarrie	Walker—21.

ABSTENTIONS

THE HONOURABLE SENATORS

Nil

Hon. C. William Doody (Deputy Leader of the Government): I wonder if Senator Sinclair can indicate to the Senate when he intends calling his committee together to try to move this subject along?

• (1430)

Hon. Ian Sinclair: Honourable senators, the Standing Senate Committee on Banking, Trade and Commerce has a meeting scheduled for 5:15 this afternoon in Room 250 East Block, to consider further work of the committee. At that time we shall discuss matters pertaining to this and other subjects.

PATENT ACT

BILL TO AMEND—SECOND READING—ORDER STANDS

On the Order:

Resuming the debate on the motion of the Honourable Senator Bonnell, seconded by the Honourable Senator Petten, for the second reading of the Bill S-15, An Act to amend the Patent Act.—(*Honourable Senator Cogger*).

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, this matter was adjourned in the name of Senator Thériault for some time and it now stands in the name of Senator Cogger. While we realize the senator on our side did have it in his name for some time, we would like to have this matter dealt with more speedily now than we then dealt with it.

Hon. C. William Doody (Deputy Leader of the Government): I appreciate Senator Frith's comments. Senator Cogger, as you know, is quite interested in this particular subject matter and has yielded to anybody who wishes to speak on the matter. I am sure that he still feels the same way. I know he intends to participate in the debate himself, and as soon as he returns I am sure he will be prepared to proceed.

Order stands.

CAPE BRETON DEVELOPMENT CORPORATION ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Orville H. Phillips moved the second reading of Bill C-127, to amend the Cape Breton Development Corporation Act.

He said: Honourable senators, our colleague from Cape Breton, Senator Muir, originally intended to deal with Bill C-127, to amend the Cape Breton Development Corporation Act, but, unfortunately, he and Mrs. Muir were injured in a car accident over the weekend. Therefore, I am somewhat in the position of being a backup quarterback to move the legislation along.

I was tempted to begin by saying that this is a relatively short and simple bill. However, last week, during a conversation I had with Senator McElman, we were laughing about the various times that this has happened in the Senate. Therefore, I should perhaps resist that temptation.

The Cape Breton Development Corporation, orginally established in 1967, was allowed to make capital advances on the Consolidated Revenue Fund to the amount of $10 million. Then, in the 1970s, that figure was increased to $25 million. The amendment before us today will increase the amount to $50 million.

In 1984 Devco suffered a devastating loss with a fire in No. 26 colliery in Glace Bay. As a result, the federal government has invested the sum of $218 million to provide for a new colliery at Phalen and to expand the one at Victoria Junction. In addition, the federal government has moved on various other fronts to provide assistance to Cape Breton. These include the investment tax credit, the topping-up assistance program and Cape Breton Enterprise, which would become part of ACOA.

• (1440)

Devco, when it was established, had the function of presiding over the orderly closing of Cape Breton Mines. At that time it was anticipated that the market for coal from Cape Breton Mines would decline. However, events since that time have changed the situation and we now find that the demand for Cape Breton coal has increased. Sales in the year 1984-85 totalled 2.5 million tonnes and in the year 1987-88 will total 2.8 million tonnes.

Devco had a loss of $1.8 million in the year 1987-88; however, in the year 1988-89 Devco would have a profit of $13.1 million. That $13.1 million does not provide for the depletion and replacement of equipment.

The Phalen Colliery, as I stated, opened in the summer of 1987 and now provides between 650 and 700 jobs for coal miners, and when it reaches its full capacity it will be producing approximately 4.5 million tonnes per year. Unfortunately, honourable senators, the anticipated profit of $13.1 million will not meet the requirement for replacing and maintaining equipment below the surface and the surface infrastructure. Therefore, the federal government will have to provide funding to cover the cost of most of the $43.1 million required in ongoing capital expenditures. It is anticipated that Devco will have a requirement for capital advances of $37 million by the end of June 1988. Therefore, honourable senators, the necessity of amending the act to provide for capital advances in the sum of $50 million. I again mention the fact that Devco will have a requirement of $37 million by the end of June, and I hope that the Senate will have disposed of the matter by that time.

Thank you for allowing me to substitute for Senator Muir. I realize my remarks are not as interesting and that I certainly do not have the understanding of Cape Breton that Senator Muir has. However, I am sure that with some forebearance the Senate will be able to pass this legislation.

Hon. Senators: Hear, hear.

On motion of Senator Cottreau, for Senator Graham, debate adjourned.

RAILWAY SAFETY BILL

SECOND READING—DEBATE ADJOURNED

Hon. Mira Spivak moved the second reading of Bill C-105, to ensure the safe operation of railways and to amend certain other Acts in consequence thereof.

She said: Honourable senators, Bill C-105, the Railway Safety Bill is to make provision for securing the safe operation of railways. This bill confirms the commitment to safety as the first priority of the Canadian transportation system. There has been action to improve the safety of air, marine and road transportation through the Aeronautics Act, the Canada Shipping Act, new minimum requirements for offshore drilling rigs, navigational control for ships and tightening of security at airports. Bill C-105 extends that action to the railways.

The commitment to safety in transportation was set forth in section 3 of the National Transportation Act, 1987, which requires that:

> The transportation system meets the highest practicable safety standards.

Bill C-105 before us now has been prepared to implement this policy for Canada's railways.

The Railway Safety Act will be followed by a bill to create a transportation accident investigation board. That independent board will be empowered to investigate accidents in all federally regulated modes of transportation, drawing upon expert staff to determine causes and to recommend means to prevent any recurrence.

To give some background, for many years the safety of Canada's railways has been regulated under the Railway Act. This act originated at the turn of the century when the railway system was rapidly expanding. At that time much of Canada's railway system was under construction to open up new territory and to encourage settlement. Lines were often speculative ventures with uncertain revenue prospects, built by small companies without adequate financial reserves. There was a strong temptation to cut corners on construction and operating costs, and legislation was needed to allow the government of

the day to control these activities closely for the protection of the public and railway employees.

Whether the companies were big or small, their operations were a far cry from those of today. Trains were short, slow, few and far between. The environment has changed. Canada's railways now move massive volumes of freight to and from factories, mines, farms and ports to keep the national economy healthy. The trains themselves have grown enormously. Fifteen-thousand-tonne trains are now commonplace, compared to 200- or 300-tonne trains at the time when the Railway Act was first written. Today's large trains move faster and with fewer stops than ever before.

Railways are in the midst of the technological revolution. Sophisticated communications equipment and computer systems now control the movement of trains. A major new development will soon allow the transmission of train movement instructions directly by radio to computers on board locomotives. The government is providing funding to encourage this development known as the "advanced train control system". This and other technological advances offer significant improvements to railway safety. The railways are making large investments in high technology, with much more to come.

However, while the transportation environment and the railways have changed, the legislation has remained the same. The railway safety regulator is handicapped while working under the existing Railway Act, which was designed for another era. This fact was reflected in the report of the commission of inquiry into the Hinton train collision. Justice Foisy was concerned that government is not keeping pace with the need to modernize rules and regulations.

Currently, matters of safety regulation, economic regulation, accident investigation, and the assorted provisions governing telegraph systems and railway corporate affairs are all combined in one voluminous Railway Act. The combination of safety and economic regulation and accident investigation in one agency of government is no longer considered to be in the public interest. There is a potential for conflict amongst these responsibilities and, while no such conflict has been evident in the performance of the Canadian Transport Commission or its successor, the National Transportation Agency, it is the policy of the government to separate these responsibilities.

● (1450)

The Railway Act has placed too great an emphasis on detailed regulation of routine construction work, which today is covered by nationally accepted engineering standards. It has many anachronistic references to operating practices that disappeared from Canadian railways years ago. It also imposes on the railway rule-maker the review procedure for government regulations, which were designed to protect the rights and privacy of individuals, not to deal with technical aspects of railway operations. The government regulator and the industry face serious delays when making needed changes to operating rules simply because the Railway Act requires it. Mr. Justice Foisy in his inquiry into the Hinton train collision was sufficiently concerned about these delays to recommend specifically that the government "take immediate steps to make the uniform code of operating rules current and to maintain it in that condition." It is difficult, if not impossible, to do so under the provisions of the Railway Act.

Today's safety concerns focus on how railways operate and maintain heavy density main lines involving the movement of 15,000-tonne freight trains and passenger trains carrying hundreds of people; yet the Railway Act gives limited powers of inspection to professional engineers. "Rules and operations" inspectors, who are not professional engineers, are performing essential functions without the legal backing to enforce their decisions.

The penalties found in the Railway Act are absurd by today's standards. An engineer can be fined $8 for failing to blow his whistle at a crossing, while a multimillion dollar corporation may face a fine of $100. The Railway Act also contains the threat of punishment by hard labour—a harsh, outdated concept, some may say.

Honourable senators, the need is clear: Railways and the transportation environment are changing rapidly and the legislation must meet the challenge.

Under the Criminal Code, it is a criminal offence to drink and drive or to drive dangerously. The public has a right to expect that these prohibitions apply to all transportation; but while they apply to trucks, airplanes and ships, it is surprising to know that these offences do not apply to persons responsible for the movement of railway equipment.

This unusual situation probably occurred because the railway companies own and control the railway equipment and the tracks over which it moves, employ the people who operate the equipment and have their own police forces. The combination of railway operating rules and internal enforcement may have been the justification for an otherwise unacceptable omission.

While the railways' absolute prohibition against impairment on the job has been effective in minimizing the threat to public safety, railway operating employees work difficult hours and spend much of their time away from home. Research into the use of alcohol and drugs indicates that these working conditions create a high risk of substance abuse.

The public is exposed to the operation of trains as passengers, as motorists at grade crossings and as individuals living or working near railway lines. Train crews routinely control the movement of freight trains, which, to an increasing extent, carry a wide variety of dangerous commodities. It is essential that their vigilance is not in any way impaired by alcohol or drugs. For this reason the Criminal Code provisions that apply to truck drivers, ships' captains, aircraft pilots and every motorist should also apply to railway employees. This is an omission which the new legislation corrects.

There are certain fundamental principles on which the regulation of railway safety in Canada must be based: Safety regulation must be separated from responsibility for economic regulation and accident investigation; the roles and responsibilities of the regulator and railway management must be clearly defined; the regulator must have the power to protect

public and employee safety; management must be responsible and accountable for the safety of operations; consultation is essential, including full public inquiries on important issues; regulation must be flexible and responsive in an environment of rapidly changing services and technology, especially where new technology will improve safety; unnecessary and unproductive regulation should be eliminated, and penalties for offences must be meaningful.

Bill C-105 has been drafted to deal with these many concerns, most importantly in the following ways. The Railway Safety Bill provides a clear focus on safety by placing in a single act all of the federal government's powers for the regulation of railway safety. Unlike the existing Railway Act, decision-making under this bill is concerned only with questions of safe railway operation, which, as defined in the bill, include the safety of the general public. By allocating those powers to the Minister of Transport and leaving the economic regulation of railways with the National Transportation Agency, the bill will achieve that needed separation of responsibilities.

The Railway Safety Act will give the government all of the powers necessary to ensure safety on the railways. For the construction, maintenance and operation of the system, the railways must satisfy the minister that each element has been planned, executed and controlled in a manner that is consistent with regulations and rules. The bill clearly makes the railways responsible for developing and implementing these measures and does not place the minister or government officials in the position to make management decisions. The minister will have the essential power to accept or reject management's proposals.

The Governor in Council will establish the basic regulations for the safety of the system without limitation on the power to determine the content of those regulations. The minister will have the power to impose rules of operation where railway companies have failed, for whatever reason, to develop rules that are acceptable and where these rules are essential for safe operation. The minister will also have the power to order companies to cease using, and to remove, structures which pose a threat to safety.

Honourable senators, these are extensive powers. In order to ensure their effective use, the bill provides for regular consultation by creating a railway safety consultative committee. The committee will include representation from the railways, railway unions, shippers, municipalities and the public; and will include persons having special interest or expertise in railway safety matters. Through the exchange of ideas and views, proposed regulatory changes can be carefully thought through in advance, using consultation to avoid confrontation.

Bill C-105 removes the anachronisms of the existing legislation and provides for the regulation of construction projects in keeping with safety requirements today. The powers of inspection under the Railway Safety Act will enable the government to monitor the safety of any of these projects at any time.

As to Justice Foisy's concern about keeping railway operating rules up to date, this bill provides a streamlined rule-making process, permits regulations and rules to incorporate and update technical information by reference and establishes time limits to encourage prompt decision-making by the regulator. The Foisy commission also called for the separation of rule-making and accident investigation and for prosecution for breach of rules, both of which have been provided for in this bill. Finally, Justice Foisy recommended that railway legislation require the reporting of employee medical conditions that might jeopardize railway safety. This provision is to be found in clause 35 of the bill.

By eliminating unproductive regulatory activities and simplifying the regulatory process, Bill C-105 will allow the government to redirect existing resources into more productive areas. Today the emphasis must be placed on inspection for compliance. With broadened powers of inspection, regulatory staff can be placed anywhere on the system where they are needed.

Inspectors appointed under the Railway Safety Act will have full power to order railways to stop any operation that might prejudice safety. There will be no compromise on this power, but, in response to industry fears about potential abuse, inspectors will be required to act through railway supervisory staff, when possible, and to notify the minister when an order of this nature has been issued. If requested, the minister will be in a position to judge if these powers are being exercised as intended and will be able to rescind any order that is inappropriate.

I mentioned the meaningless penalty provisions of the existing legislation. Bill C-105 provides for fines of up to $200,000 for corporations and up to $10,000, or imprisonment for up to one year, for individuals, along with the power to treat continued violations as separate punishable offences for each day incurred. These constitute substantial penalties to any organization or individual and fill the gap that exists in the current legislation.

It is a sad fact that threats to the security of transportation are an increasing problem worldwide. Bill C-105 provides powers that will help the government to react to any such threats to the Canadian railway system. We may hope that it will never be necessary to use these powers, but it is essential that they be available now to protect the system in the future.

• (1500)

Finally, Bill C-105 introduces a number of amendments to related legislation. Of particular importance are the amendments to the Criminal Code regarding the drinking or dangerous driving provisions, and amendments to the Railway Relocation and Crossing Act. On this latter act, Bill C-105 repeals the parts dealing with grade crossing improvements and grade separations but retains and improves these essential powers which allow the government to promote improvements to safety. In response to requests from Canadian municipalities, Part I of the Railway Relocation and Crossing Act, which deals with the relocation of rail lines, has been retained.

The bill before you was prepared after thorough consultations with provinces, municipalities, railways, railway unions, shippers, shippers of dangerous commodities, owners of private railway equipment and, of course, public interest groups. The basic provisions of the bill have widespread support among the persons consulted, and amendments made to the original draft have accommodated many minor concerns raised by interested parties.

It may be of comfort to honourable senators to know that the safety record of Canada's railways is very good. Our perception of railway safety is often conditioned by the few major accidents that are so widely reported. I would like to reassure you that the railways are basically safe. Moreover, they are becoming safer. In seven of the last eleven years CP Rail has been the safest Class 1 railway in North America. Over the same period CN Rail has been consistently within the top six.

Although the record is good, it can be improved. To do this we must have an understanding of the problem. Of the total fatalities that occur in railway accidents, over 40 per cent are due to accidents at grade crossings. Almost without exception, these could be prevented by the motor vehicle driver. Another 40 per cent of the fatalities involve trespassers struck by moving railway equipment. The key to reducing this terrible toll is to educate motorists and children to the dangers of railways and to improve safety at grade crossings.

Bill C-105 makes provision for government to take action through continued funding of crossing improvements and grade separations, and through a new provision to allow the Minister of Transport to fund a wide range of safety-related activities, including educational programs, such as Operation Lifesaver, that are aimed at school children.

Honourable senators should also be aware that there are major efforts under way aimed at improving railway safety and protecting the public. The government established the Toronto Area Dangerous Goods Task Force and the Task Force on the Shipment of Dangerous Goods through the B.C. lower mainland. Both task forces, which involve provincial and municipal governments and public interest groups, are considering the risks and alternatives related to transporting dangerous commodities through urban areas. The results should be relevant to communities throughout the country.

As mentioned earlier, the government commissioned Justice Foisy to carry out a full investigation into the tragedy at Hinton. Justice Foisy's excellent report was released to the public, and the Minister of Transport also made public progress on implementing the recommendations. Significant changes have been made to rules governing hours of rest for train crews. The unsatisfactory "deadman pedal" has been prohibited and will soon disappear from locomotives, to be replaced by the more reliable and tamper-proof "reset safety control" device. Wherever possible, the recommendations of the Foisy Report have already been implemented. Other longer-term proposals are under active consideration. Justice Foisy's recommendations for legislative action are embodied in the bill now before us.

[Senator Spivak.]

There are many areas in which the government has acted to improve safety on our railways. Bill C-105 is an important step in continuing and accelerating the work. The Railway Safety Act will be the means to achieve that objective, and I am sure that honourable senators will assist by giving this bill speedy passage.

On motion of Senator Turner, debate adjourned.

EMERGENCIES BILL

REFERRED TO COMMITTEE OF THE WHOLE

On the Order:

> Resuming the debate on the motion of the Honourable Senator Kelly, seconded by the Honourable Senator Nurgitz, that the Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, be referred to the Special Committee of the Senate on National Defence.—(*Honourable Senator Frith*).

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I have received a letter from Senator Kelly, and I believe a copy was sent to Senator Doody.

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, in all modesty, I have to say that it is the other way round.

Senator Frith: That is only as it should be. He should have sent it to his deputy leader first.

The effect of his letter is that this bill should be referred to a Senate Committee of the Whole. If so, with consent, we can amend the motion accordingly and have it passed.

Senator Doody: Honourable senators, we have no problem with that. A time has been tentatively set for Wednesday, May 31. That time has to be confirmed with the minister's office, but I understand that he and his officials have agreed to attend on us at that time. If that is agreeable, there will be a Committee of the Whole on this particular bill at that time.

The Hon. the Speaker: It is moved by the Honourable Senator Doody, for Senator Kelly, seconded by the Honourable Senator Frith:

> That Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, be referred to a Committee of the Whole on Wednesday next.

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

Senator Frith: Since a date has not been agreed to, perhaps we can just refer it to a Committee of the Whole. Then the Committee of the Whole can be set up to meet the minister's schedule.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion that it be referred to a Committee of the Whole?

Hon. Senators: Agreed.

Motion agreed to.

CANADIAN ENVIRONMENTAL PROTECTION BILL

SECOND READING—ORDER STANDS

On the Order:

Resuming the debate on the motion of the Honourable Senator Robertson, seconded by the Honourable Senator MacDonald (Halifax), for the second reading of the Bill C-74, An Act respecting the protection of the environment and of human life and health.—(*Honourable Senator Kenny*).

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I would ask honourable senators opposite if they can give an indication of when this bill might go forward. It was introduced in this house by Senator Phillips on Tuesday, May 10, 1988. Second reading was proposed by Senator Robertson on May 17.

I can appreciate that honourable senators might have difficulties with a particular bill, but, in all fairness, a bill of this significance should be debated in this place. It is not possible to explain or defend the actions of a chamber that refuses to debate government legislation. I can well understand the reluctance of senators in some cases to agree with matters that are put forward by government, but this is a major piece of environmental protection legislation. I believe it deserves to be addressed.

Senator Kenny, in whose name this bill stands, could very well be absent on official and important business. I do not quarrel with that. All of us have occasions when we cannot be here. Nevertheless, he is only one star among a whole galaxy of stars on the other side. I am sure there is someone other than he who is capable of addressing this particular bill, and getting it into committee, or whatever it is that the Senate wishes to do. The time has come when this bill should be addressed.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I should like to accept, with as much humility and grace as I can, the compliment paid by the Deputy Leader of the Government in recognizing the superabundance of talent that we have on this side of the chamber.

Senator Doody: Hear, hear!

Senator Frith: I agree that we should never refuse to debate legislation that is properly before us, and I make it quite clear that we are not doing so here.

Senator Kenny was absent last week, except for Thursday. He is away again on public business until next week. He had asked for the opportunity to prepare some material for our caucus concerning his positions on some aspects of this bill. He wants to have done that by next week, when we meet on May 31. He is then prepared—and he told me this before he left—to deal with it at second reading next week in the hope that it will get to the committee that week. So far as I know, there are no other senators on this side wishing to join in the debate at second reading.

● (1510)

What it comes down to is this: it was debated first one week ago, and, if this plan is implemented, debate on second reading will have been completed by May 31 or June 1, which will be in approximately two weeks. As far as I am aware, it will go to committee then.

While that is perhaps a week longer than the government would wish, I can assure them that that is all it amounts to, and that there is no refusal to debate and no wish to delay the debate unduly.

Senator Doody: I thank Senator Frith for his explanation. I should point out that it was not my intention to indicate that Senator Kenny should be denied an opportunity to speak to the bill; of course, he and every other senator has a right to speak to the bill on second reading, in committee and on third reading. It simply seems to me that, for a chamber that is setting itself up as a responsible legislative chamber, it is not proper procedure to suspend debate for two or three weeks on a government bill because of the unavoidable absence of one of its members. There are others who could fill in nicely, I am sure, and do that which is necessary, which is the point that I was trying to make.

Senator Frith: Well, then, I should make it clear also that if anyone else wishes to debate this bill in the meantime, he or she may do so. Senator Kenny has accepted being the opposition's spokesman on the bill, and I think all senators would want to grant him that right and meet his convenience as to when he speaks on it.

Order stands.

WAR VETERANS ALLOWANCE AND CIVILIAN WAR PENSIONS AND ALLOWANCES

MOTION RE GOVERNMENT CONSIDERATION OF AMENDMENT OF LEGISLATION ADOPTED

On the Order:

Resuming the debate on the motion of the Honourable Senator Marshall, seconded by the Honourable Senator Phillips:

That, in the opinion of this House, the government should consider the advisability of amending the *War Veterans Allowance Act* and Part XI of the *Civilian War Pensions and Allowances Act* in order to provide for the payment of an allowance, as defined under each of those Acts, to any Canadian veteran or qualified civilian of World War I, World War II or the Korean conflict, or to any widow or orphan of such a veteran or qualified civilian as defined in those Acts, whether or not such veteran or qualified civilian, widow or orphan has resided in Canada at any time since either of those wars or the Korean conflict, as the case may be; and

That, within 120 days after the adoption of this resolution, the Leader of the Government in the Senate

should consider the advisability of tabling in the Senate the response of the government to this recommendation.— (*Honourable Senator Bonnell*).

Hon. M. Lorne Bonnell: Honourable senators, I am rising to support the motion. It seems that I am always supporting the government on their motions!

I should also like to support Senator Doody on his viewpoint that no legislation should be held up unduly by not being debated. In that Bill S-15 has been on the order paper since March 1, everyone certainly must have had time to consider it well. Perhaps we will get rid of it next week as well, and send it to committee.

Honourable senators, first, I should like to congratulate Senator Marshall and Senator Phillips, who, as two veterans of the last great war themselves, always consider the veterans, their widows and orphans, and always support any legislation that seems to be of benefit to this group of Canadians.

I, on behalf of this side of the house, wish to support the motion:

> That, in the opinion of this House, the government should consider the advisability of amending the *War Veterans Allowance Act* and Part XI of the *Civilian War Pensions and Allowances Act* in order to provide for the payment of an allowance, as defined under each of those Acts, to any Canadian veteran or qualified civilian of World War I, World War II or the Korean conflict, or to any widow or orphan of such a veteran or qualified civilian as defined in those Acts, whether or not such veteran or qualified civilian, widow or orphan has resided in Canada at any time since either of those wars or the Korean conflict, as the case may be;

The only thing I would say, honourable senators, is that the motion does not go far enough. I would also add, "That it is time that those veterans who served in Canada be considered for the war veterans allowance."

There have been many great veterans of our armed forces. Because they were so good at their jobs, they were kept here in Canada to teach other veterans. Whether they were in the air force, navy or army, they signed up for active service and wanted to go overseas, but, because they did such an excellent job as teachers and instructors, they had to stay here in Canada in those roles and did not have an opportunity to go to England or abroad. Because of that, today they, or their widows and orphans, are penalized. They are no longer eligible for the war veterans allowance, the aging veterans program or the VIP program, as it is now called—all those benefits that others are taking advantage of because they happened to have gone overseas for a short period of time.

I would like to see a section added by which the government would give the war veterans allowance to those veterans of the two great wars and the Korean conflict who served in the Canadian area for at least 365 days—put a limit on it!—so that they or their widows and orphans could receive some benefit.

I also think there could be a section to cover veterans who clean up after a war is supposedly over. For example, in Korea the war is still not "over," because an armistice was never signed; there was just an agreement between the officers. Many of our Canadians went to Korea, after that agreement between the north and the south, to help clean up the mess. Many of the mines that had been laid were still there and many of our soldiers were injured; but they are not eligible for pension because the war was apparently over. There should have been a time limit of one or two years after the deadline of 1953 so that they would still be eligible for a disability pension or war veterans allowance.

I understand that that happened in the first great war, and that a year or two afterwards the veterans who had gone overseas after the actual conflict or after the armistice had been signed were still eligible for war veterans allowance or disability pensions.

I would also have added a section to support the many Canadians who were in the clean-ups in Chalk River and Nevada and were exposed to atomic bombs, atomic energy and radiation and who have since died with leukemia or cancer. No doubt their diseases were caused by radiation, but that is difficult to prove. Nevertheless, the United States of America has passed legislation giving the benefit of the doubt to the veteran, so that, if a veteran who has died with leukemia or cancer was exposed to radiation in Nevada or anywhere else, his widow is automatically eligible for a war pension.

• (1520)

However, that is not the case in Canada. Here, we have no such legislation. Our veterans must go and fight their cases before the chief medical officer and try to prove to him that the reason they are suffering from leukemia or that their colleagues have died from the same disease is that they were exposed to radiation. However, the connection between radiation and these cancerous diseases is a hard thing to prove. The veterans get many differing medical opinions, and some of these opinions are that there might be no connection whatsoever; other opinions are that there could be a connection. Be that as it may, it seems that there is a very high incidence of death from leukemia among veterans who were involved in the Chalk River clean-up or the Nevada clean-up.

Honourable senators, perhaps I would also have added to this motion a section concerning the wives of veterans so that, after their husbands had died, their pensions would continue; they would retain their pension rights and their eligibility for war veterans allowance. Perhaps they could even receive free drug benefits, since many of the widows of war veterans pay exorbitant costs for their drugs today. They are in situations where they are often alone, paying rent and maintaining a household. When the main pensioner has gone, life is sometimes very difficult for widows and orphans left behind.

There are a great many areas the Department of Veterans Affairs should be looking at to help these veterans and widows of veterans, whose numbers, it should be added, grow fewer every year. If you read the monthly *Legionnaire* magazine, you will see on the last two or three pages lists of names of many of

our Canadian heroes who are no longer with us. I think it should be kept in mind that the list of those eligible for benefits and pensions gets smaller and smaller every year.

Surely the time has come to give those veterans in Canada who did not have the opportunity of serving abroad, but who served here for at least 365 days, the opportunity to apply for War Veterans Allowance. Moreover, if they are 65 years or over, they should also be eligible for the aging veterans program or the VIP program. In that way, they could receive help with shovelling their driveways in the winter time and having the grass cut in the summer. Also, if they are disabled or crippled, they could be eligible for homemaker services as other war veterans are.

We are finding that there is a great need for more nursing home beds to be made available for veterans. A capital works program should be set up to take care of that need for beds as well as for chronic care units. Many of our veterans today are now senior citizens and are becoming disabled. No doubt the VIP program has helped to keep them at home as long as possible. However, many of them can no longer stay home. They need nursing care and chronic hospital care, but the beds are not available for them.

In the past federal governments thought it wise to assign a proportion of veterans' hospital beds to provincial governments. In retrospect, that action seems a little hasty, since those beds are now needed as hospital beds and chronic beds for the veterans themselves. However, I believe that some arrangement could be worked out with the provinces so that the necessary chronic care hospitals could be constructed on a joint basis, whether 75/25 or 60/40, and the needs of veterans could be taken care of, especially over the next five to seven years, when, as I see it, the need for such care will increase.

Honourable senators, I could go on and on about the things that our veterans should have. However, the motion before this chamber is with respect to those veterans who have not returned to Canada but are still living abroad. Let me say that that is at least a step in the right direction. We can look forward 120 days to when the Leader of the Government in the Senate will, I hope, bring back to this chamber a response from the government of the day on what action it intends to take concerning this matter. All I can say is that I hope the government will give this motion its full support.

I know that the minister himself would like to support it, because he, too, is a veteran; he believes in their case and always listens to their concerns. However, it is sometimes difficult for the Minister of Veterans Affairs to have his wishes accepted by cabinet as a whole. Therefore, I would ask the Leader of the Government in the Senate, who seems to have great clout in the cabinet, to put his shoulder to the wheel and support the Minister of Veterans Affairs with respect to this matter. I am quite sure that, if he does that, we will receive a good report—perhaps in less than 120 days. In any event, I give full support to this motion of Senator Marshall's and Senator Phillips'.

Hon. Senators: Hear, hear!

Motion agreed to.

The Senate adjourned until tomorrow at 2 p.m.

THE SENATE

Wednesday, May 25, 1988

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

Prayers.

BANKING, TRADE AND COMMERCE

NOTICE OF COMMITTEE MEETING

Hon. Ian Sinclair: Honourable senators, you will recall that yesterday in response to a question by Senator Doody it was indicated that a meeting of the Standing Senate Committee on Banking, Trade and Commerce would be held that evening at 5.15 to consider the future work of the committee.

One of the items we dealt with at that meeting was Bill C-60, and arrangements have been made for the committee to meet with the minister on Friday next at 2 p.m. in room 256-S. I hope that notices of that meeting will be circulated to you, honourable senators, before you leave your offices, although that may not be possible. In any event, that meeting has been set up and the minister and her staff will be available to appear before the committee at that time.

[*Translation*]

PRIVATE BILL

REGIONAL VICAR FOR CANADA OF THE PRELATURE OF THE HOLY CROSS AND OPUS DEI—REPORT OF COMMITTEE PRESENTED

Hon. Joan B. Neiman, Chairman of the Standing Senate Committee on Legal and Constitutional Affairs has the honour to present the following report:

Wednesday, May 25, 1988

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

TWENTY-FIRST REPORT

Your Committee, to which was referred Bill S-7, An Act to incorporate the Regional Vicar for Canada of the Prelature of the Holy Cross and Opus Dei, has, in obedience to the Order of Reference of Thursday, October 29, 1987, examined the said Bill and has agreed to report the same with the following amendments:

1. *Page 3, clause 6:*

(a) strike out line 14 and substitute the following:

"6. (1) The Regional Vicar may by by-law"

(b) strike out line 16 and substitute the following:

"(b) determine within Canada the place of the head office"

(c) add, immediately after line 29, the following subclause:

"(2) A copy, certified under the seal of the Corporation, of any by-law made under paragraph (1)(*b*) shall be forthwith filed with the Director of the Corporations Branch, Department of Consumer and Corporate Affairs, and shall be available for inspection at the office of the Director during normal business hours."

2. *Page 3, new clause 7.1:* Add, immediately after line 32, the following heading and clause:

"Financial Disclosure

7.1(1) Annual financial statements prepared in accordance with generally accepted accounting principles shall be submitted, within six months after the end of each fiscal year of the Corporation, to the Director of the Corporations Branch, Department of Consumer and Corporate Affairs.

(2) Any person may, during normal business hours, examine at the office of the Director referred to in subsection (1) the annual financial statements of the Corporation submitted to the Director pursuant to that subsection."

Respectfully submitted,

JOAN B. NEIMAN
Chairman

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

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

QUESTION PERIOD

[*English*]

AGRICULTURE

WESTERN CANADA—DROUGHT CONDITIONS—MEETING OF MINISTERS OF AGRICULTURE—GOVERNMENT ACTION

Hon. H.A. Olson: Honourable senators, I should like to ask the Leader of the Government in the Senate if he and his colleagues are aware that we are having another dry day in western Canada.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I can confirm that the meeting between the Minister of Agriculture, the Honourable John Wise, and his provincial counterparts in western Canada will take place on Tuesday next, at which time these elected officials will be following up on previous discussions among them and among their various departmental officials. We will be outlining to the provinces in more detail the approach of the federal government to this serious problem.

SUPREME COURT OF CANADA

APPOINTMENT OF JUSTICE—PROVISION OF MEECH LAKE ACCORD

Hon. M. Lorne Bonnell: Honourable senators, some weeks ago we were honoured and privileged to have appointed to this place a new senator from Newfoundland, the Honourable Gerald Ottenheimer. Senator Ottenheimer, who has lots of experience, is not in his seat today. I suspect that he is in Newfoundland with the Fisheries Committee. His appointment can probably be considered the first to the Senate under the Meech Lake Accord. We now have a new judge on the Supreme Court. Were the provisions of the Meech Lake Accord followed in the appointment of that judge, and was the province asked to present a list of names?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, the provisions of the Meech Lake Accord respecting appointments to the Supreme Court of Canada do not come into effect until the accord has been proclaimed.

Senator Olson: That is a new interpretation!

Senator Bonnell: Honourable senators, it is my understanding that, although the Meech Lake Accord has not been passed by all the provinces and that although it is not in effect as yet, it was agreed by all the premiers who signed—

Senator Barootes: All?

Senator Bonnell: It was agreed by all the premiers who signed the document and by the Prime Minister that they would try to live within the provisions of the Meech Lake Accord until it was proclaimed.

Senator Murray: Honourable senators, with regard to appointments to the Senate, there is a political accord providing that appointments be made according to an interim procedure, even before the amendments are proclaimed. Therefore, as my friend has noted, in the case of the vacancy for Newfoundland, the Government of Newfoundland was asked to submit, and did submit, a list of names from among which the Prime Minister selected one; namely, Senator Ottenheimer. No such agreement was made with respect to appointments to the Supreme Court of Canada. However, since it is the most recent appointment—that of Mr. Justice Sopinka—that is of interest to the honourable senator, I would simply observe that the Attorney General of Ontario indicated in a media report today that he was indeed consulted by the federal Minister of Justice and that he thought that the appointment was, if I recall his exact description, "a first class appointment."

Senator Bonnell: I have no doubt that the appointment is a first class appointment. The man has great experience; he is well qualified; and he will make an excellent Supreme Court judge. However, that is not my problem. My problem is that I had thought that there was some agreement—perhaps not a written agreement or a contract, but a kind of unwritten agreement—that the Prime Minister and the provincial government involved would submit lists for these appointments.

Senator Murray: The honourable senator's problem is that he has not read the accord. There is, as I say, a political agreement among First Ministers that the procedure for Senate appointments will take place immediately. However, the procedure in respect of Supreme Court appointments will not take place until the amendments are proclaimed. We are living within a spirit of national reconciliation in this country which, I am happy to say, is alive and well.

WESTERN ARCTIC (INUVIALUIT) CLAIMS SETTLEMENT ACT

BILL TO AMEND—THIRD READING

Hon. Heath Macquarrie moved the third reading of Bill C-102, as amended, to amend the Western Arctic (Inuvialuit) Claims Settlement Act.

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, prior to third reading of this bill, I would remind you that Senator Macquarrie was asked to obtain some information regarding this matter. He has the information with him and I believe it would be worthwhile for us to hear it.

Hon. Royce Frith (Deputy Leader of the Opposition): It should be on the record.

Senator Macquarrie: Honourable senators, I must say that I was torn between the benefit I would convey upon my colleagues by not making a speech as against the commitment I made earlier to inquire of the ministry as to matters raised by some of my colleagues. Today I am in that usual position of using the hand of Esau and the voice of Jacob, and I am sure honourable senators will know when I am being Esauvian and when I am being Jacobian.

I was interested in the remarks made at various stages of the debate on this small but, I think, valuable and important bill. I was pleased to have the privilege of attending the meeting of the Standing Senate Committee on Social Affairs, Science and Technology chaired by my distinguished colleague, Senator Tremblay. I was impressed by the remarks and questions of the various senators who took part. I was also favourably impressed by the two witnesses from the department who attended to provide information. In fact—and this is, by the way, not in the text—I have a high regard for the present Minister of Indian Affairs and Northern Development. I think he is bringing workmanlike attitudes and sensitive compassion

to a most important portfolio. I saluted him when this bill was presented, because it seems to me that, in a way, legality is catching up with actuality and reality and there is much, in fact, to do in this particular area of our national concern.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): That is certainly Jacobian.

Senator Macquarrie: My biblical interpreter here is identifying the tone of my remarks.

Senator Murray: Perhaps we should hear a few words of Esau.

Senator Macquarrie: The fact of the matter is that we had a request for an investigation into allegations of mismanagement of settlement funds by the Inuvialuit Regional Corporation and Canada's legal and moral obligations with respect to Canadian reindeer. Those are the two matters with which I will deal.

Yesterday I summoned the most up-to-date information and I received it not long ago. First of all, allegations of mismanagement of settlement funds by the Inuvialuit Regional Corporation have been raised from time to time as the agreement has been implemented. The government has given very serious consideration to these concerns, all the while keeping the intent and significance of this landmark agreement in mind.

● (1410)

One of the main objectives of the Inuvialuit Final Agreement was to give the Inuvialuit the right to manage their own affairs and a practical framework in which to get on with the job. That meant setting aside the paternalistic regime which had for too long ruled the relationship between the aboriginal people and the government.

Under the settlement, the government agreed to provide financial compensation to the Inuvialuit as part of the benefits package which was negotiated in exchange for the release of their claim to certain lands and rights. The agreement also made provisions for privately owned corporate structures to manage these funds for the beneficiaries—the Inuvialuit people themselves.

The IRC was established as the umbrella organization—the owner and controller of development, investment and land corporations for all Inuvialuit. The IRC and other corporations that were set up under the agreement are private corporations. Therefore, the government has no more authority over their affairs than it has over the affairs of any non-native private corporation. I think, honourable senators, we can all imagine the uproar that would greet any government intrusion in the latter case and wonder why native-owned corporations should be treated with any less respect.

The Inuvialuit investment strategy appears to be one of building a strong economic base through long-term investments in the renewable and non-renewable resource sectors. The people now own interests in Aklak Air, Northern Transportation Company Limited, various food services, tourism outlets, such as Guided Arctic Expeditions, and oil and gas investments.

The board and councillors of the IRC have also made other investments less directly related to the western Arctic, presumably in the interests of building a broadly-based portfolio for their owners. Such decisions are, quite properly, theirs to make. The value of those investments is also theirs to assess. The government has no grounds on which to question the decisions of the duly chosen officers of a private corporation.

The IRC is concerned about misunderstandings of its activities by the people it serves and about the possibility that it does not have the information it needs to clear up such misunderstandings. The corporation has already addressed that problem—a terrible expression!—by conducting an audit of its operation in order to improve communications with its members. Thus, honourable senators, in keeping with the constructive spirit of the final agreement, the representatives of the Inuvialuit are dealing independently with the concerns of their people.

Honourable senators, the second issue relates to Canadian Reindeer Limited. This matter was dealt with at some length by the minister, Mr. McKnight, during the second reading of the bill in the other place. I will simply summarize the main points here.

The dispute between the IRC and Canadian Reindeer Limited—a successful private company owned by an Inuvialuit, Mr. William Nasogaluak, who bought its assets from the Government of Canada in 1978—began in 1984. At that time half the grazing reserve that previously supported the herd was transferred to the Inuvialuit as part of the Inuvialuit Final Agreement. Mr. Nasogaluak, as a private Inuvialuit businessman, and the IRC, as a private corporation owned by all Inuvialuit, have since been unable to reach agreement on the use of the these grazing lands by the herds.

The Justice Department advises that this is a dispute between two private parties and that Canada has no legal responsibility to settle the matter. Nevertheless, the government has put considerable effort into attempts to bring the two parties together over the past four years. The Government of Canada would like to see this unique Canadian enterprise preserved and has offered to set up binding, independent arbitration of the dispute. That offer has been refused.

Court actions have now been initiated and the government cannot impose a solution unless both parties agree to such government involvement. The government can, however, give meaningful support to the essential objective and the honourable intent of the Inuvialuit Final Agreement. The commemorative scroll presented in celebration of the settlement expressed confidence that the Inuvialuit Final Agreement will lead to a challenging future built on the traditions of the past. That is a significant challenge, honourable senators, and it is up to us to do what we can to support the Inuvialuit in every appropriate way as they grow to meet it.

After the useful discussions on Bill C-102 in this chamber, I urge the adoption of this bill at its final stage.

Hon. D.G. Steuart: Honourable senators, I listened with interest—I suppose that is one way of putting it, the kindest way to put it—to what was said by the honourable senator, which I am sure he got from the Department of Indian Affairs, which is under the stewardship of "Buffalo Bill" McKnight, the new Minister of Indian Affairs. And I am sure he got it from the Inuvialuit people, because it is the line we have heard for the last two years. It is as full of holes as a Swiss cheese and it is a cop-out—a terrible cop-out.

To begin with, it is a lie to say that because the Government of Canada handed over to the Inuvialuit or the Inuit of the western Arctic some federal funds it has washed its hands of any further responsibility. To say that the Inuvialuit must be treated just like anyone else and be given their independence is another paternalism of the federal government. I presume, then, that the government will take the same attitude when it hands over millions of dollars' worth of federal funds to Indian bands all over Canada. But, honourable senators, I have never seen the government hesitate to stick its nose in or to send the Mounties in or to send the auditors in to check up on the way the Indian people spend their money within the bands or the national Indian organizations or the provincial Indian organizations.

From the headlines of the last two days we have seen that the RCMP are looking into the supposed handing over of some money that was given to the Indian people by the Government of Canada. According to the RCMP, this money may have been turned over to a Liberal candidate, John Munro, to help in his leadership race. The government says that it cannot interfere, that it gave that money to the Indians, that they are independent and that if they want to give the money to John Munro or Brian Mulroney or anyone else, "that is their business, not ours." But the Government of Canada did not hesitate for one minute to send in the RCMP to see whether there was some wrongdoing that had been committed. The Government of Canada did not hesitate for one minute to send the RCMP to British Columbia, where they just finished an internal audit and examination of the handling of funds of another great Indian band out there. They have only just absolved the individual chief of that band of any wrongdoing.

Honourable senators, what has been told to us is not true and it is not factual. The Government of Canada regularly looks into the handling of money given to the aboriginal people, and so it should, just as it should look into the handling of money given to anyone else if there has been evidence of the mishandling of it. As to the listing of these successful companies by the honourable senator—and I am sure he did it in all good faith and sincerity, because this information was probably handed to him— that is what we want to look into. These are companies involving oil wells and other types of investments of money, which, as he said, have nothing to do with northern development.

I am not questioning their right to invest their money in any way they want to; nor is anyone else questioning it. But I do question this right if there is a conflict of interest at any point in the handling of this money. That is what I think must be examined. Serious allegations in this regard have been made by a number of people; the honourable senator is aware of this; he has mentioned it himself, and the Minister of Indian Affairs is also well aware of it. All I am saying is that the government had better look into this before it is too late.

• (1420)

According to what you have said, when the reindeer herd was taken over by Canada, and subsequently sold to its present owner, the grazing rights in the Tuktoyaktuk Peninsula went along with the herd. When the COPE Agreement was finalized, it was clearly understood—and this is not the fault of the present government—that a settlement would be made. It was well known that the COPE people—the Inuvialuit people—wanted that herd and wanted to take it over. It was understood that arrangements would be made, because the present owner literally owned the grazing rights for that great piece of land. That land was handed over—rightfully so—to the Inuvialuit. However, the grazing rights should not have been handed over. The grazing rights predated the handing over of that land.

The Department of Indian Affairs, under the Liberal government at the time, said that they would look after it. Shortly after that that government was defeated, and the department did not look after it. I do not know whether they tried and did not have time, but it was not looked after. That responsibility was then inherited by the new administration, and they have washed their hands of it and walked away from it.

I agree that Mr. McKnight has tried to get the two parties together. Of course the Inuvialuit will not agree to meet with the owner of the herd. Why should they? They only have to wait and they will starve that fellow out. They will then get the reindeer herd—or what is left of it—for next to nothing. In fact, they are offering to him less than half what the herd is worth.

I do not know if the government has a legal responsibility. I do not know if there is anything in writing. However, they do have a clear, moral responsibility to intervene. It is not good enough for the present Minister of Indian Affairs to say that he has no clout and that he cannot do anything. He did not have to bring this bill forward. He could have said to them, "Until you settle this, there will be no change in the Western Arctic (Inuvialuit) Claims Settlement Act." He has all kinds of clout. He is working with them all the time. If he were dead serious, he would ask those people to go back to the bargaining table, and a decent settlement would be made with the present owner of the reindeer herd.

While I appreciate the honourable senator's answering the questions that were posed by myself and other senators, I would once again ask that the Leader of the Government in the Senate go back to the Minister of Indian Affairs and say to him, "Look! Face your responsibility," because this will blow up in someone's face. I do not know how long that money will last, but I understand it is going pretty fast. Anyone, when receiving money, makes good investments and bad investments. People take their chances. If, in fact, there has been a serious conflict of interest, as has been charged, in my opinion that is a mishandling of money entrusted by the Government

of Canada to the Inuvialuit. There should be better answers to these questions than we have heard today.

The Hon. the Speaker: It is moved by the Honourable Senator Macquarrie, seconded by the Honourable Senator Balfour, that this bill be read the third time now. Is it your pleasure, honourable senators, to adopt the motion?

Senator Steuart: On division!

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

CRIMINAL CODE

BILL TO AMEND (PROTECTION OF THE UNBORN)—SECOND READING—DEBATE ADJOURNED

Hon. Stanley Haidasz moved the second reading of Bill S-16, to amend the Criminal Code.

He said: Honourable senators, I welcome this opportunity to open the debate on second reading of Bill S-16, which was given first reading last week in this chamber.

The urgent and vital issue of our abortion laws and, in particular, the protection of the unborn child has always been on my mind. I recall on December 8, 1981, when, on third reading of the Canadian Charter of Rights and Freedoms, I moved in the Senate an amendment to add a special clause stating that "nothing in this Charter precludes Parliament from legislating on the rights of unborn children." However, that did not pass. After the January 28 decision of the Supreme Court that a vacuity now exists in the criminal law of Canada as a result of that decision, I believe that it is high time to address this question—especially since section 251 of the Canadian Criminal Code has been struck down.

Daily almost 200 to 300 children are being killed in abortion clinics. That, I believe, is not only immoral but also intolerable.

The purpose of this bill is to reassert society's vital interest in its unborn children. That interest is as fundamental to the continued existence of our society as it is to the existence of the human race.

I should also add that according to our most recent national statistics the increase in our population is barely 1.7 per cent; and in the province of Quebec it is 1.4 per cent. If we examine this even further—as especially demographers tell us—the present generation will probably not replace itself at the present diminishing birth rate occurring in Canada.

In examining the legislative options open to us in the matter of abortion, I think we need to begin with facts rather than myths; the facts of biology, medical science, legal tradition and the law still existsing in the Criminal Code of Canada, as well as the facts set forth in the Supreme Court decision of January 28.

● (1430)

Many of these facts are being ignored in much of the contemporary debate concerning this topic. In particular, the Supreme Court of Canada judgment, and especially because it involves not one written decision but four, has left itself open to misunderstanding and misinterpretation. Let us ask ourselves: What did the court actually say? The majority held that the system of abortion committees, established by section 251 of the Criminal Code, violated security of the person for many women. It also declared, however, that other procedures might be devised which would not conflict with the principles of fundamental justice. The decision did not establish that abortion is a right in Canada. Madame Justice Wilson did claim it to be so, but she was a minority of one; and no matter how close Chief Justice Dickson or Mr. Justice Beetz came to that position, they did not declare that such a right exists.

Of course, Mr. Justice McIntyre, relying on the analysis of the law of abortion by the Ontario Court of Appeal, said that no basis can be found in our history, philosophy or legal precedent for the idea that there is a right to abortion in Canada.

Justice Wilson was strongly in favour of the American position set forth in the *Roe vs Wade* decision under which abortion is a matter of right for a woman in the first trimester, then gradually the state acquires more and more interest in the developing child. However, as has been widely observed, any line of demarcation, such as 12 weeks, 20 weeks or 30 weeks, is entirely arbitrary. Justice Wilson discounts the value of the unborn child and the seriousness of abortion in the early stages of life.

Some would suggest that the bill before this house is in conflict with the decision of the Supreme Court of Canada in Morgentaler's case. Some believe that the Supreme Court has made full, legal protection for children in the womb an impossibility. I believe they have failed to understand the full implication of the court's decision.

The judges who struck down the abortion law made pro-abortion statements. Chief Dickson wrote that:

> . . . forcing a woman by threat of criminal sanction to carry a fetus to term, unless she meets certain criteria unrelated to her own priorities and aspirations, is a profound interference with a woman's body and thus a violation of security of the person.

Such a statement does not strip Parliament of its power to make laws protecting unborn children. I think it is of crucial importance for us in this chamber to understand the fact that the judges of the Supreme Court of Canada explicitly stated that they were not making a ruling on the constitutional rights of the unborn child. Nor did they make any findings on the nature of life in the womb.

I think it is clear why the judges have done this. In the fall of this year the Supreme Court of Canada will hear an application from Mr. Joseph Borowski, a former Minister of Highways in the Manitoba government. Mr. Borowski is asking the Supreme Court of Canada to find that unborn human beings are included in the term "everyone" as found in the Charter of Rights. If the Supreme Court agrees with Mr. Borowski that the term "everyone" includes unborn children, then children in the womb will enjoy a constitutionally-pro-

tected right to life. In that case, legal protection for the unborn would not simply be allowed; it would be required. In short, the Supreme Court judges have allowed themselves the right to agree with Mr. Borowski. By doing so, they have also allowed Parliament room to provide full legal protection to unborn children.

Furthermore, the judges spoke of the fact that restrictions on abortion are an infringement of the security of the person of women. What was also said, but is seldom quoted, is that the finding of an infringement of security of the person does not, of itself, render a law in conflict with the Charter of Rights. As the Chief Justice said:

> Such a finding does not end the section 7 inquiry.

The Chief Justice was referring to the fact that a law is only invalid if it infringes the security of the person, and if that infringement takes place outside the principles of fundamental justice.

As you will recall, section 7, the section of the Charter under which the old abortion law was found to be invalid, states:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

This phrase "in accordance with the principles of fundamental justice" keeps alive the right of Parliament to protect human beings in the womb.

Many of our laws impose hardship on certain individuals, and many of our laws infringe the security of the person of many people. The mere fact that a law abridges the right to security of the person does not, of itself, render a law invalid under the Charter of Rights. Consider that every law which imposes a jail term infringes the liberty and security of the person of those who are sent to jail. Yet our courts have no problem upholding such a law as valid under the Charter.

In order for a law to be invalid, it must not only abridge one's security of the person; it must also conflict with the principles of fundamental justice. Thus, there is a two-part test in determining the constitutionality of any abortion law.

I believe this indicates the way in which a law protecting all unborn children can be held as valid by the Supreme Court of Canada. It is in accordance with the principles of fundamental justice that the rights of some be restricted in order to protect the lives of other human beings. The Criminal Code outlaws murder. That law certainly restricts the liberty and security of certain persons, such as those who live with and care for infirm relatives, and whose lot would be improved if they could end the life of that person. Yet murder laws are certainly valid under the Charter, and I think the reason is simple: It is in accordance with the principles of fundamental justice to protect human life, even though doing so may impose hardships on other individuals.

Similarly, we today have enough knowledge and we have the power and responsibility to decide when the life of a human being begins and to ensure that from that moment on our laws give that human being full protection.

Now let us look at the scientific evidence. I believe we must consider what modern science tells us about the nature of life in the womb, and we must ensure that our laws are consistent with the findings of medical science. It is a scientific fact that from conception a zygote is a unique human individual with an indentity and life distinct from that of either of its parents. In its genetic code it has all the information that it needs for the production of a complete and mature human being. All it needs to do is to continue developing. The zygote is real life. It is actual life. It is human life. Of course it possesses potential, as does the new-born baby and as does any person until one reaches the termination of one's life. So I believe that one should never speak about the unborn as potential life but as life which has potential.

● (1440)

The rapidly developing science of fetology continually reveals to us new things about the unborn baby, even in the first hours after conception. As Sir William Liley, a professor of perinatal medicine and World Health Organization consultant for maternal health and child health testified at the Borowski trial in May 1983, "New knowledge was revealed about the unborn baby even in the first hours after fertilization." I would like to say more about this matter later in my speech this afternoon.

But now I want to make this statement: I believe that abortion is the taking of human life. If that is so, how can it be justified? Some people argue that many women must choose between abortion and carrying a child and living in poverty. Well, efforts urging extensive programs of social action to reduce poverty are to be applauded and supported, but still the basic fact remains that we do not allow people to kill those dependent on them because they are living in poverty or for any other circumstantial reason.

I think you would all agree with me that respect for human life is fundamental to our society. We insist that all human beings possess an intrinsic dignity and a basic right to existence. Such a right is not negotiable and it is not to be qualified. It is not to be affected by public opinion polls or anything of the sort. Canadians will not and cannot justify killing the handicapped, the infirm, the mentally deficient or people of a particular race, colour or creed. Canadians will not withdraw their protection from any class or category of human beings. We refuse to consider killing the elderly because they are old and weak. For this very same reason we must not regard life as optionable at the other end of the spectrum, the beginning of life. We have rejected capital punishment in our society. We, therefore, cannot possibly justify taking the lives of the most innocent and the most vulnerable of human beings.

Some people are willing to allow abortion for so-called "serious therapeutic reasons." Well, there are no therapeutic reasons for abortion, and that point is held by medical specialists. An abortion is not therapeutic for the mother and it certainly is not therapeutic for the baby. The day when the child in the womb could be regarded as an antagonist of the mother is long past, even though the Justices of the Supreme Court make reference to a woman's access to medical treat-

ment when her life is in danger. More than 20 years ago Dr. Allan Guttmacher, a leading American advocate of abortion on demand, declared, "Today it is possible for almost any patient to be brought through any pregnancy alive, unless she suffers from a fatal illness such as leukemia, or any other cancer, and, if so, abortion would be unlikely to prolong, much less save, life."

In the 1983 Borowski trial, Professor Liley stated that he was unaware of any medical complications or condition that would be regarded as absolute grounds for terminating a pregnancy. Allowing abortion for so-called therapeutic reasons is simply to allow them under false pretences. The overwhelming majority of induced abortions are not done for purely medical reasons. Statistics tell us that they are performed for social and economic reasons or because of pressure from parents or boyfriends or husbands. I have experienced such circumstances in my 35 years of medical practice. Unfortunately, one patient, who succumbed to the pressures from her relatives and her parents, later committed suicide. So the law must not allow such abuse of women. No one should allow such abuse of pregnant women, for either their health or their babies'.

One of the myths I wish to destroy today is that of "the mother versus the child." As I just mentioned, virtually all abortions performed in Canada since the change in the abortion law in 1969 have been performed for social or other reasons, and not for health reasons at all. There are some medical treatments that are necessary in an attempt to save the life of the mother and which will indirectly result in the death of her unborn child. For example, a pregnant woman who develops cancer of the uterus will be treated either surgically or with chemotherapy. The purpose of these medically recognized treatments is to remedy her cancer. They are necessary to save her life, but they invariably result in the death of her unborn child. Such treatments are recognized as good medicine, and they are consistent with the best moral view, which is that we must always do our best to save the lives of both the mother and the child. Such treatments have always been permitted under law, and Bill S-16 explicitly allows for such treatments.

The obligation of members of my own profession has always been to heal the sick. Pregnancy is a normal thing. It is not an abnormal condition. A woman who is pregnant is not thereby in a condition requiring a surgical procedure. Pregnancy is not a disease. Physicians should return to the age-old tradition of Hippocrates, who predated the Christian era by 400 years.

● (1450)

The Hippocratic oath, which I also took upon graduation from medical school at the University of Toronto in 1951, required me and my classmates, my colleagues, to preserve human life, not to destroy it. It is scandalous that doctors have become licensed executioners in our society today. It means a betrayal of everything that they have stood for and sworn to uphold.

Furthermore, no gestational law is morally acceptable. Some people would consider abortion under 24 weeks, but, even under the restrictions of the old section 251, 89 per cent of abortions in Canada were done in the first 12 weeks.

Some people argue that, if abortions were to be prohibited, women would simply go to illegal clinics. While some of them would do so, most would not. Instead, they would carry their baby to term. The pre-1969 statistics of illegal abortions and the deaths resulting from them were utterly fraudulent and were part of the pro-abortion campaign of propaganda and deception.

I believe that the law has a teaching function. To legalize acts of violence means that those who do the legalizing become participants in the crime. Moreover, truth is perverted. That is why legal, "frontstreet" abortions are considered worse than illegal, "backstreet" abortions.

Furthermore, the rejection of the right to kill the unborn is not the view of some religious sect, but is a defence of the dignity of the human person.

This battle has been fought for over 4,000 years, though never as intensely as today in Canada.

Abortion is the killing of a human being innocent of any crime. No human being or group of human beings has the right to kill another human being except in self-defence. This general principle finds expression in natural law, the Sacred Scriptures, the Christian and Moslem traditions, Mosaic law as well as in other religious traditions. Abortion is against the objective, moral order. It is not a Catholic or Christian issue. The Sumerians condemned abortion 4,000 years ago. So did Hammurabi in the 18th century B.C., and, as I mentioned ealier, the Greek physician, Hippocrates, in the year 400 B.C., who encased the condemnation in a medical oath—"Thou shalt not administer abortion-causing drugs or instruments." This oath entered the general stream of western civilization until it was, unfortunately, cast aside in many medical schools in the 1960s and 1970s with the coming of the permissive society.

Again, I state that human life begins at the moment of conception, that is, when the ovum is fertilized by a male sperm. In that moment a unique and separate individual exists and, as I mentioned earlier, contains a full genetic code which will determine its physical characteristics, even to the colour of its eyes. With modern technology, medical scientists have been able to confirm, at ever earlier stages, the various features of this human life. By 1983, for example, medical instruments had become so sophisticated that they could ascertain the independent production of blood by the fetus at 17 days. These instruments detected the heart beat at 24 days and registered brain waves at 35 days. Only a decade or so ago it was thought that the brains of pre-born babies did not become active until two-thirds of the way through pregnancy.

Honourable senators, these facts were mentioned, as I said earlier, by Sir William Liley, who testified at the Borowski trial in Regina in May 1983. It is useful to remind ourselves of that case. In other words, scientific evidence definitely confirms that life begins at conception. Now that this is clear, all

talk about so-called rights to terminate a pregnancy, as the euphemism has it, I believe, should cease.

It is worth relating that the question of when human life begins was answered once and for all during the Borowski trial in Regina in May 1983. Arguing the case for the defence of the unborn, Morris Schumiatcher called nine expert witnesses to answer the question of whether the unborn are human beings or not.

Sir William Liley—the professor I mentioned earlier, who was knighted for his pioneering work in amniocentesis—was called as a main witness. He pointed out that the unborn child is not part of his mother's body, but a separate person who dictates his own growth and when he is to be born. Long before the time when an abortion would be performed his heart begins beating and brain activity can be recorded.

Dr. Jerome Lejeune, professor of fundamental genetics at the University of Paris, testified that:

> At the moment of fertilization the whole symphony of life is ready to be played out.

He noted that he had never heard any discussion of when a cat's or a cow's life begins. On purely scientific grounds, he could not understand why there should be any controversy over this question with regard to human beings. Dr. Lejeune reiterated that human life begins when an egg is fertilized, the time when all the genetic information necessary and sufficient to build each and every one of us is transformed.

Under cross-examination, Mr. Schumiatcher's witnesses were repeatedly pressed to say that the unborn constitute only potential life. They all refused to agree to that. Sir William Liley said that the term is meaningless in biology. There is either life or there is not, and, if it is the offspring of human parents, it belongs to the human species and no other.

Much has been made recently of difficult cases. It is often suggested by people of good will that abortion must be available to victims of rape or incest. We must be realistic about the magnitude of this problem.

Pregnancy caused by rape, however, is a rare occurrence. A number of factors are said to contribute to this: The short period each month during which a woman is fertile; the use of contraceptives such as a birth control pill; the physical and psychological condition of rapists, which results in many such attacks being incompleted; and the fact that a woman's physiology is such that intense stress caused by fear interferes with ovulation and can make pregnancy impossible. So rare is pregnancy caused by rape that in a scientific survey of 3,500 consecutive rapes treated in hospitals in the Minneapolis-St. Paul area no cases of pregnancy occurred. That study took place over a ten-year period.

● (1500)

Be that as it may, we must take account of the fact that some pregnancies do arise under horrible circumstances. Rape and incest do result in some pregnancies. What is our reaction, as a caring society, to any woman who finds herself in that position? We are challenged to provide a solution which is compassionate and loving, a solution which is in keeping with the dignity of human life. We recognize that such a woman has been through a brutal experience. We must then offer her every assistance and support that we can.

By legalizing abortion for such women, however, we would simply be adding to their trauma. We would be telling them that our solution to their problem is to give them the opportunity to kill their own child. That is no help at all. Killing one's own child brutalizes a woman, regardless of who the father of the child is. Abortion cannot undo the trauma of rape or incest . It can only add another trauma. One act of violence cannot undo another act of violence.

Instead, we should and must commit ourselves as a society to creating and financing social programs which will help these women. This will be a mark of our concern and true compassion.

In the name of justice we do not impose the death penalty on those guilty of incest or sexual assault. If that is fair and just, how can we turn around and suggest that the death penalty should be imposed on an unborn child—on the innocent child whose life was created by the criminal act?

The value of a human life is not determined by the circumstances of one's conception. We do not place greater value on a person because the parents planned the pregnancy. No, we must value and protect all human life as equal, regardless of age, of parentage or social status.

Yet the proponents of abortion suggest that we should treat some human beings as having more rights than other human beings. The advocates of abortion suggest that the law should allow for the killing of a child in the womb if that child is handicapped. Bill S-16 rejects any such approach, as any just and humane law must.

The handicapped are as fully human as you or I, and their lives deserve the full protection of the law. To reject this is to endorse the principle that one's right to life varies according to one's abilities and talents. Such a philosophy is characteristic of the most brutal and inhumane regimes that our civilization has ever seen. It would allow for the killing of an untold number of people, for where would we draw the line? Who would decide what abilities and characteristics are needed to be deemed worthy of protection?

Do honourable senators think that one of the world's greatest pianists, who was born in Poland, Arthur Rubinstein, should have been born? Let us listen to what he said, as printed in *Time* magazine of February 25, 1966:

> My mother did not want to have a seventh child so she decided to get rid of me before I was born. Then a marvellous thing happened. My aunt dissuaded her, and so I was permitted to be born. Think of it! It was a miracle!

That, I believe, is a profound and stunning testimonial for us to remember from Arthur Rubinstein.

In the February 23, 1988, issue of the *Medical Post*, published in Canada, Mr. Colin Muncie, a Toronto journalist, wrote the following:

I was born what used to be called an illegitimate child, a term that from the time I first understood it I considered absurd, because there are no illegitimate children; only illegitimate parents. I was no source of joy when a period was lost and I was found. I was the cause of panic, scandal and shame to all concerned. The simplest, easiest and quickest way to forestall that little problem was by an abortion—me. Fortunately, free-standing abortion clinics were not around back then, and as a result I am here today . . . Had the Morgentaler mentality been free and unfettered by the law in 1939, as it now is in Canada, I undoubtedly would have been "untimely ripped" from my birth-mother's womb. Instead, because of the conservative laws of the puritanical country and times I was born into, I lived to be adopted by wonderful parents who had already raised nine natural children of their own, and who all loved me as I loved them—as family. I bless them today for what they gave me: Their caring, their respect for life and their name. This man Morgentaler and his ilk are no heroes to somebody like me—a fetus who escaped the abortionists. This man some would place on a pedestal, would have denied me my life, and my children's lives and their children's lives. For a fistful of dollars and what I consider a dubious "principle", abortion on demand, he would destroy generation upon generation . . . But I do believe that those who tout Dr. Morgentaler as one of the great men of his time should take a moment to pause and listen. If they do, they may hear a small voice through the din of all those shouting that they alone have God on their side in this issue. It is a voice crying in the womb: "What about me? What about me?" I say it is a legitimate question to ask.

Honourable senators, let us pause and listen to that voice—the voice of the unborn human being within its mother's womb. We must never forget that abortion is an act of violence. To legalize abortion is to legalize acts of violence. Our whole society will be corrupted if the law itself becomes an instrument of corruption. We must protect our laws from that terrible fate.

I urge honourable senators and I urge our government to take up this challenge of protecting the unborn human being with unrelenting determination, perseverance and responsibility. This will be our greatness as a nation and our contribution to the dignity of life, the fundamental and ultimate human right from which will flow harmony and justice in our society.

Honourable senators, if there is wisdom among us, and I believe there is, and if there is the will, as I believe there should be, and if there is experience, as I know there is, and if there is compassion, as I am sure there is, then let us mobilize these qualities and employ them as legislators in the best way to defend and preserve human rights and fundamental freedoms. I therefore urge honourable senators to take up this challenge with a deep sense of urgency, responsibility and determination. This will then be, I believe, another great opportunity for the Senate to save and serve all our people.

I call upon honourable senators to support Bill S-16.

[Senator Haidasz.]

On motion of Senator Macdonald, debate adjourned.

• (1510)

ROYAL ASSENT

NOTICE

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

RIDEAU HALL

25 May 1988

Sir,

I have the honour to inform you that The Honourable Gérard V. J. La Forest, Puisne Judge of the Supreme Court of Canada, in his capacity as Deputy Governor General, will proceed to the Senate Chamber today, the 25th day of May, 1988, at 4.45 p.m., for the purpose of giving Royal Assent to certain Bills.

Yours sincerely,
Anthony P. Smyth
Deputy Secretary, Policy and Program

The Honourable
The Speaker of the Senate
Ottawa

[*Translation*]

THE CONSTITUTION

CONSTITUTION AMENDMENT, 1987—MOTION FOR MESSAGE TO COMMONS—DEBATE CONTINUED

On the Order:

Resuming the debate on the motion of the Honourable Senator Frith, seconded by the Honourable Senator MacEachen, P.C.:

That a Message be sent to the House of Commons to inform that House that the Senate has authorized the proclamation of an amendment to the Constitution in the terms of the following schedule, to which it desires their concurrence:

SCHEDULE
CONSTITUTION AMENDMENT, 1987
Constitution Act, 1867

1. The *Constitution Act, 1867* is amended by adding thereto, immediately after section 1 thereof, the following section:

"**2.** (1) The Constitution of Canada shall be interpreted in a manner consistent with

(*a*) the recognition that the existence of French-speaking Canadians, centred in Quebec but also

present elsewhre in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec, constitutes a fundamental characteristic of Canada;

(*b*) the recognition that Quebec constitutes within Canada a distinct society;

(*c*) the recognition that aboriginal peoples constitute a distinctive and fundamental characteristic of Canada;

(*d*) the recognition of the multicultural nature of Canadian society, and in particular respect for the many origins, creeds and cultures as well as the differing regional identities that helped shape Canadian society; and

(*e*) the recognition of the advantages of developing the Canadian economic union.

(2)(*a*) The role of the Parliament of Canada to preserve and promote, and the role of the provincial legislatures to preserve and, subject to subparagraph (2)(*b*) to promote, the fundamental characteristic of Canada referred to in paragraph 1(*a*) is affirmed.

(*b*) The role of a province in relation to promotion applies from the time it is adopted by a resolution of the legislative assembly of that province.

(3) The role of the legislature and Government of Quebec to preserve and promote the distinct identity of Quebec referred to in paragraph (1)(*b*) is affirmed.

(4) Nothing in this section derogates from the powers, rights or privileges of Parliament or the Government of Canada, or of the legislatures or governments of the provinces, including any powers, rights or privileges relating to language."

2. This said Act is further amended by adding thereto, immediately after section 24 thereof, the following section:

"**25.** Where a vacancy occurs in the Senate, and until an amendment to the Constitution of Canada is made in relation to the Senate pursuant to section 42 of the *Constitution Act, 1982,* the government of Canada shall, within six months after the vacancy occurs, call an election in the province or territory to which the vacancy relates for the purpose of filing that vacancy, and, notwithstanding the provision of section 29 of the *Constitution Act, 1867,* for a term of nime years."

3. The said Act is further amended by adding thereto, immediately after section 95 thereof, the following heading and sections:

"Agreements on Immigration and Aliens

95A. The Government of Canada shall, at the request of the government of any province, negotiate with the government of that province for the purpose of concluding an agreement relating to immigration or the temporary admission oa aliens into that province that is appropriate to the needs and circumstances of that province.

95B. Any agreement concluded between Canada and a province in relation to immigration or the temporary admission of aliens into that province has the force of law from the time it is declared to do so in accordance with subsection 95C(1) and shall from that time have effect notwithstanding class 25 of section 91 or section 95.

(2) An agreement that has the force of law under subsection (1) shall have effect only so long and so far as it is not repugnant to any provision of an Act of the Parliament of Canada that sets national standards and objectives relating to immigration or aliens, including any provision that establishes general classes of immigrants or relates to levels of immigration for Canada or that prescribes classes of individuals who are inadmissible into Canada.

(3) The *Canadian Charter of Rights and Freedoms* applies in respect of any agreement that has the force of law under subsection (1) and in respect of anything done by the Parliament or Government of Canada, or the legislature or government of a province, pursuant to any such agreement.

95C. (1) A declaration that an agreement referred to in subsection 95B(1) has the force of law may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement.

(2) An amendment to an agreement referred to in subsection 95B(1) may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized

(*a*) by resolution of the Senate and House of Commons and of the legislative assembly of the province that is party to the agreement; or

(*b*) in such other manner as is set out in the agreement.

95D. Sections 46 to 48 of the *Constitution Act, 1982* apply, with such modifications as the circumstances require, in respect of any declaration made pursuant to subsection 95C(1), any amendment to an agreement made pursuant to subsection 95C(2) or any amendment made pursuant to section 95E.

95E. An amendment to section 95A to 95D or this section may be made in accordance with the procedure set out in subsection 38(1) of the *Constitution Act, 1982,* but only if the amendment is authorized by resolution of the legislative assemblies of all the provinces that are, at the time of the amendment, parties to an agreement that has the force of law under subsection 95B(1)."

4. The said Act is further amended by adding thereto, immediately preceding section 96 thereof, the following heading:

"General"

5. The said Act is further amended by adding thereto, immediately preceding section 101 thereof, the following heading:

"Courts Established by the Parliament of Canada"

6. The said Act is further amended by adding thereto, immediately after section 101 thereof, the following heading and sections:

"Supreme Court of Canada

101A. (1) The court existing under the name of the Supreme Court of Canada is hereby continued as the general court of appeal for Canada, and as an additional court for the better administration of the laws of Canada, and small continue to be a superior court of record.

(2) The Supreme Court of Canada shall consist of a chief justice to be called the Chief Justice of Canada and eight other judges, who shall be appointed by the Governor General in Council by letters patent under the Great Seal.

101B. (1) Any person may be appointed a judge of the Supreme Court of Canada who, after having been admitted to the bar of any province or territory, has, for a total of at least ten years, been a judge of any court in Canada or a member of the bar of any province or territory.

(2) At least three judges of the Supreme Court of Canada shall be appointed from among persons who, after having been admitted to the bar of Quebec, have, for a total of at least ten years, been judges of any court of Quebec or of any court established by the Parliament of Canada, or members of the bar of Quebec.

101C. (1) Where a vacancy occurs in the Supreme Court of Canada, the government of each province and the elected government of each territory may, in relation to that vacancy, submit to the Minister of Justice of Canada the names of any of the persons who have been admitted to the bar of that province or territory and are qualified under section 101B. for appointment to that court.

(2) Subject to subsection (5), where an appointment is made to the Supreme Court of Canada, the Governor General in Council shall, except where the Chief Justice is appointed from among members of the Court, appoint a person whose name has been submitted under subsection (1) and who is acceptable to the Queen's Privy Council for Canada.

(3) Where an appointment is made in accordance with subsection (2) of any of the three judges necessary to meet the requirement set out in subsection 101B(2), the Governor General in Council shall appoint a person whose name has been submitted by the Government of Quebec.

(4) Where an appointment is made in accordance with subsection (2) otherwise than as required under subsection (3), the Governor General in Council shall appoint a person whose name has been submitted by the government of a province other than Quebec.

(5) Where an appointment is made in accordance with subsection (2) and, if within a period of three months, no name which has been submitted under subsection (1) is acceptable to the Queen's Privy Council for Canada, the Chief Justice may make an interim one-year appointment from among justices of the Federal Court of Canada or provincial Superior Courts.

101D. Sections 99 and 100 apply in respect of the judges of the Supreme Court of Canada.

101E. (1) Sections 101A to 101D shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws under section 101 except to the extent that such laws are inconsistent with those sections.

(2) For greater certainty, section 101A shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws relating to the reference of questions of law or fact, or any other matters, to the Supreme Court of Canada."

7. The said Act is further amended by adding thereto, immediately after section 106 thereof, the following section:

"**106A.** (1) The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the Parliament of Canada after the coming into force of this section, in an area of exclusive provincial jurisdiction, if the province carries on a compatible program which meets minimum national standards.

(2) Nothing in this section extends the legislative powers of the Parliament of Canada or of the legislatures of the provinces."

8. The said Act is further amended by adding thereto the following heading and sections:

"XII-CONFERENCES ON THE ECONOMY AND OTHER MATTERS

148. A conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be

convened by the Prime Minister of Canada at least once each year to discuss the state of the Canadian economy and such other matters as may be appropriate.

XIII—REFERENCES

149. A reference to this Act shall be deemed to include a reference to any amendments thereto."

Constitution Act, 1982

9. Sections 40 to 42 of the *Constitution Act, 1982* are repealed and the following substituted therefor:

"40. Where an amendment is made under subsection 38(1) that transfers legislative powers from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to hich the amendment does not apply.

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

(*a*) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(*b*) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province was entitled to be represented on April 17, 1982;

(*c*) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;

(*d*) subject to section 43, the use of the English or the French language;

(*e*) the Supreme Court of Canada; and

(*f*) an amendment to this Part.

42. (1) An Amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with subsection 38(1):

(*a*) the powers of the Senate and the method of selecting Senators; and

(*b*) the number of members by which a province or territory is entitled to be represented in the Senate and the residence qualifications of Senators.

(2) Subsections 38(2) to (4) do not apply in respect of amendments in relation to matters referred to in subsection (1).

42A. Notwithstanding subsection 42(1) of the *Constitution Act, 1982,* the establishment of new provinces and the extension of existing provinces into territories shall be a matter exclusively for the Governor General in Council and the elected government of the territory affected."

[**10.** Deleted.]

[**11.** Deleted.]

[**12.** Deleted.]

13. Part VI of the said Act is repealed and the following substituted therefor:

"PART VI
CONSTITUTIONAL CONFERENCES

50. (1) A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once each year, commencing in 1988.

(2) The conferences convened under subsection (1) shall have included on their agenda the following matters:

(*a*) the aboriginal and treaty rights of the aboriginal peoples of Canada, including self-govenment;

(*b*) Senate reform, including the role and functions of the Senate, its powers, the method of selecting Senators and representation in the Senate;

(*c*) roles and responsibilities in relation to fisheries at the first meeting only; and

(*d*) such other matters as are agreed upon."

14. Subsection 52(2) of the said Act is amended by striking out the word "and" at the end of paragraph (b) thereof, by adding the word "and" at the end of paragraph (c) thereof and by adding thereto the following paragraph:

"(*d*) any other amendment to the Constitution of Canada."

15. Section 61 of the said Act is repealed and the following substituted therefor:

"**61.** A reference to the *Constitution Act 1982*, or a reference to the *Constitution Acts 1867 to 1982,* shall be deemed to include a reference to any amendments thereto."

General

16. Nothing in the *Constitution Amendment, 1987* derogates from any of the rights and freedoms guaranteed by the *Canadian Charter of Rights and Freedoms* or affects Part II of the *Constitution Act, 1982.*

CITATION

17. This amendment may be cited as the *Constitution Amendment, 1987.*—(*Honourable Senator Flynn, P.C.*).

Hon. Jacques Flynn: Honourable senators, the mover, Senator Frith, presented this motion on May 3 and I then adjourned the debate. He has not budged; he has remained rather silent for several weeks and I said to myself that he perhaps thought that his resolution would best be forgotten. I was hoping that he would finally get the idea to delete it from the order paper.

I do not really see the reason for this motion. I read what he said in his presentation on May 3. So that honourable senators can judge the reasons that seem to have motivated Senator Frith, I shall quote from page 3277 of the *Debates of the Senate* for that day what I consider to be the gist of his statement. If by chance he thinks that I should quote more, I will gladly do so because his speech, if it can be called a speech, takes about a quarter of a page.

This is what Senator Frith said:

> I think that there is good reason, on constitutional amendments, for Parliament, that is, the Senate and the House of Commons, to try to speak with one voice, or, at least, to explore that possibility.

Senator Frith was suggesting the possibility of coming up with a single text.

> I do not think that we can explore that possibility formally without advising the other place of what we have done. That is the reason for this motion. It is to send a message to them to tell them what the Senate has done with a resolution that was tabled in the House of Commons by the government and then tabled separately here in the Senate.

One would then have to presume that the House of Commons does not know what went on in the Senate. However, on April 25, a few days after our decision on April 21 to adopt an amended resolution different from the one passed by the House of Commons, the same resolution appeared in the Order Paper of the House of Commons. In other words, the Government presented again the resolution that the House of Commons had adopted on October 23, 1987.

I don't see how we can inform the House of something that has been on the Order Paper for weeks, especially now that it has just started its second debate on the motion. When he opened the debate last week the Minister of Justice mentioned that the Senate had not adopted the same text as the House and he invited the House, in accordance with Section 47 of the 1982 Constitution, to adopt once more the same resolution.

There is therefore no need to inform the House of something it knows already. Secondly, in the *Rules of the Senate*, Section 105 states that the Journals of the Senate may be searched by the House of Commons, as the Journals of that House may be searched by the Senate. There is communication between the two Houses.

Perhaps Senator Frith's idea stems from the rather extraordinary argument he came up with when Mr. Trudeau appeared before our Committee of the Whole on the subject of the Meech Lake Agreement, to the effect that those who think that section 47 abolishes the Senate's absolute veto in constitutional matters are misreading it. He suggested that the text could be read to mean that by adopting a resolution which differs from that of the House of Commons, the Senate gains back its absolute veto. After learning that the Senate had acted, the House could no longer ignore its difference of opinion with the Senate.

If that is truly his intention, if the Senate simply wanted to adopt a resolution in different terms, his motion to send a message to the House of Commons changes nothing. We have passed a resolution. That can be proven any time, if that is Senator Frith's argument.

You are adding absolutely nothing to the fact that the Senate decided on April 21 to send a message pertaining to a decision which, as I have stated, the House of Commons is already aware of.

Do you want to start all over again? Do you want to repeat to the House of Commons what you already said? Do you want to ask the senators to repeat what the majority of the Senate already said on April 23? Do you want to repeat the whole process? Do you want to rub it in?

That is really the only reason I can think of for this motion. Of course I remember the debate we had on April 20 and 21, when I introduced a motion that said what we had adopted and stated we had no objection to the text approved by the House of Commons, should it decide to disagree and adopt the same text it approved in October.

You will recall what happened when I introduced my motion. The first time, I was told: It's too soon. The next day, it was too late. The third time, it was still too soon.

Three times I tried to have a message that was different from what we had said so far, that we were approving a text that differed from the one approved by the House of Commons.

I really don't see the point of this message. It is not in order, because it is repetitive. As we all know, we are not supposed to move the same motion during one and the same session. Rule 47 contains a provision in that respect, but the precedents we find in *Beauchesne's* are even more specific. Normally, this is not a motion that could be presented because it is repetitive. We have already approved this text. We don't have to make the same decision twice. Actually, the problem we were facing when the debate ended on April 21 was to find out whether the Liberal majority in the Senate agreed with the Liberal minority in the House of Commons. The Official Opposition in the other place, after presenting the Senate's amendments to the original text, ended up supporting the text proposed by the government. I think that is the question we should consider in the Senate.

Here, they are repeating themselves. Do they want to challenge the House of Commons again, by saying that despite the position taken by the Liberals in the House of Commons, the Senate is sticking to its guns? Is that what they want to say? Then we should say so in no uncertain terms. Let us say that despite the fact the House of Commons is about to approve again the same resolution it approved previously in October

1987, we intend to maintain our position, we want to keep our amendments, even if we no longer have a say in the matter because of section 47, which has abolished—whatever Senator Frith may claim to the contrary—our absolute veto over constitutional matters and replaced it with a six-month suspensive veto.

If an issue ever needed clarification, this one certainly does. I remember there was considerable indignation about the fact that my motion said to the House: We have adopted this resolution and we invite you to give your approval. Obviously, by adopting this text, we hoped the House would approve it as well. It did not and decided to reconsider the original resolution. The Opposition Parties, which made their positions clear in the course of the debate last week, have indicated their position has not changed and that they will again and definitively support the Government's text, without amendments, when it comes to a final vote.

So I really don't see what Senator Frith wants to accomplish with this motion to send a message to the House of Commons. First of all, I consider it to be insulting, and I think the motion is unnecessary. By raising the issue again, unadorned, without the requisite qualifications and without the alternative I submitted to the Senate on April 21, which was declared out of order, it is of course out of the question that we on this side would support the motion.

I thought that perhaps we could move an amendment, but for the time being, I personally have no intention of doing so. I repeat that this move by Senator Frith is irregular and unnecessary. It is vexatious and comes close to being insolent and is, in any case, very insulting to the House of Commons.

• (1520)

[*English*]

Hon. Orville H. Phillips: Honourable senators, I was about to move the adjournment of the debate. However, if Senator Frith wishes to speak, he may do so.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I was rising to reply and close the debate. It is well known on the other side that we wanted a vote on this order this week. I have told that to the leadership on the other side and to Senator Flynn. This item has been on the order paper since May 3.

There is the additional fact that the House of Commons started debate on the reintroduced resolution last week, I believe, and will be debating it again next week. If we are going to do this, we should do it now, because there is no point in our sending it back after they have concluded the debate on the reintroduced resolution.

Those are the reasons I expressed to Senator Flynn, without much persuasive effect on him. Senator Flynn did not understand why we wanted the vote, but I believe he understood why it should be done this week. Therefore, we will oppose any further adjournment of the debate.

Senator Phillips: Honourable senators, I am almost terrified of the remarks made by the Honourable Senator Frith. Apparently, the new rule is that he sets the time schedule. I am not sure what rule that comes under, but it is one of those frequent changes that he makes in the rules for his own convenience.

I should point out that there are a number of items on the order paper that we on this side would like to have dealt with. For example, I am very interested in Bill C-103, to establish the Atlantic Canada Opportunities Agency. That bill has been standing on the order paper for some time. I would have liked a vote on Bill C-60 the other day, but that has to wait until it is convenient for Senator Sinclair. Bill C-74 stands on the order paper for the convenience of Senator Kenny.

I have no hesitancy and no regret in moving the adjournment of the debate.

Senator Frith: Honourable senators, I am not trying to set the rules my way. Senator Phillips has been around this chamber longer than I, and he knows very well that these questions do come up. Occasionally, both sides do want something dealt with. We discuss it, and we give each other notice of our intention to refuse a motion to adjourn the debate. I did so in this case. I followed the traditions of the Senate. I have nothing to add. I am prepared to make some comments about Senator Flynn's comments—

• (1530)

Senator Flynn: No!

Senator Frith: —but he says, "No!" He does not want those, and that is fine.

Senator Flynn: Not today.

Senator Frith: Then there is nothing else to add.

For those reasons, and the reasons that I have expressed to the leadership on the other side and to Senator Flynn for some time now, we will ask for a vote on the motion to adjourn the debate.

MOTION TO ADJOURN DEBATE NEGATIVED

The Hon. the Speaker: It is moved by the Honourable Senator Phillips, seconded by the Honourable Senator Macquarrie that further debate be adjourned until the next sitting of the Senate.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators who are against the motion please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: It sounds even to me!

And two honourable senators having risen.

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

The Hon. the Speaker: Let the doors to the chamber be locked.

Motion negatived on the following division:

YEAS

THE HONOURABLE SENATORS

Asselin	Macquarrie
Atkins	Murray
Balfour	Nurgitz
Barootes	Phillips
David	Robertson
Doody	Spivak
Doyle	Tremblay—15.
Flynn	

NAYS

THE HONOURABLE SENATORS

Anderson	Leblanc
Argue	(*Saurel*)
Buckwold	McElman
Cools	Neiman
Cottreau	Olson
Davey	Pitfield
De Bané	Rizzuto
Fairbairn	Robichaud
Frith	Stanbury
Gigantès	Steuart
Guay	(*Prince Albert-Duck Lake*)
Haidasz	Turner
Hébert	Watt—24.

ABSTENTIONS

THE HONOURABLE SENATORS

Nil

The Hon. the Speaker: Let the doors be opened.

MOTION IN AMENDMENT NEGATIVED

Hon. Nathan Nurgitz: Honourable senators, with respect to the main motion for a message to the Commons, I move, seconded by the Honourable Senator Tremblay:

> That the motion be amended by striking out all the words after the words "that House" in the second line of the first paragraph and replacing them by the following:
>
> "that notwithstanding that the Senate has, on 21st April, 1988, authorized the proclamation of an amendment to the Constitution in the terms of the following Schedule, the Senate does not oppose a proclamation of an amendment in the terms of the Resolution adopted by the House of Commons on 26th October, 1987, if the House should adopt again the same resolution in the same terms."

[The Hon. the Speaker.]

● (1610)

The Hon. the Speaker: It is moved by the Honourable Senator Nurgitz, seconded by the Honourable Senator Tremblay:

> That the motion be amended by striking out all the words after the words "that House" in the second line of the first paragraph—

Hon. Royce Frith (Deputy Leader of the Opposition): Dispense!

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

Senator Frith: No.

Senator Flynn: Yes.

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

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators who are against the motion please say "nay"?

Some Hon. Senators: Nay.

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

And two honourable senators having risen.

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

Senator Frith: Honourable senators, if it is agreeable to my friends opposite, we would accept the previous vote's being applied to this motion in amendment.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): No, no! These are two entirely different propositions. I do not see how the Deputy Leader of the Opposition can presume that all of his colleagues will necessarily vote against the amendment that has been proposed by Senator Nurgitz. This is a very important amendment, and if my friends opposite vote against it they will find themselves in direct opposition to the position taken by their counterparts in the House of Commons.

Senator Frith: Honourable senators, I make no more presumptions than the Leader of the Government does, who apparently is making the presumption that there will not be the same vote on his side either. So, if any honourable senators wish to disagree with either the Leader of the Government's presumption or what he thinks is my presumption, they can do so. However, I take it that—

Senator Murray: I want the fans of John Turner to have an opportunity to stand up.

Senator Frith: And we are saving you the opportunity of sending a message that would indicate support of the "killer amendments" of the Senate.

The Hon. the Speaker: Honourable senators, as we have just had a vote, if it is agreed, perhaps we should lock the doors and record this vote right away.

Some Hon. Senators: Agreed.

The Hon. the Speaker: Let the doors to the chamber be locked.

Motion in amendment negatived on the following division:

YEAS

THE HONOURABLE SENATORS

Asselin	Macquarrie
Atkins	Murray
Balfour	Nurgitz
Barootes	Phillips
David	Robertson
Doody	Spivak
Doyle	Tremblay—15.
Flynn	

NAYS

THE HONOURABLE SENATORS

Anderson	Leblanc
Argue	(*Saurel*)
Buckwold	McElman
Cools	Neiman
Cottreau	Olson
Davey	Pitfield
De Bané	Rizzuto
Fairbairn	Robichaud
Frith	Stanbury
Gigantès	Steuart
Guay	(*Prince Albert-Duck Lake*)
Haidasz	Turner
Hébert	Watt—24.

ABSTENTIONS

THE HONOURABLE SENATORS

Nil

MESSAGE TO COMMONS

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, we are ready for the question on the main motion.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Are you not going to close the debate?

Senator Frith: I did not want to impose on you.

Honourable senators, Senator Flynn and I have been discussing the main motion for some time—that is, since the motion was originally put. We have failed to persuade each other to change our positions. He has put his position forward; I put my position forward earlier. I do not think there is anything I can add, because there is nothing new in the debate except Senator Flynn's reference to rule 105, which states:

> The *Journals of the Senate* may be searched by the House of Commons, as the *Journals* of that House may be searched by the Senate.

If it is the objective—as it is my objective with this motion—to be sure that the House of Commons knows what the Senate has done with the amendment to the Constitution by resolution tabled in this house, then the Senate should send to the House of Commons a message indicating what we have done rather than rely on the fact that we may or may not have searched the records. That is the reason for the motion and that is why I ask honourable senators to support it.

● (1620)

Hon. Jacques Flynn: Has Senator Frith closed the debate? We were not warned.

[*Translation*]

The Hon. the Speaker: Honourable Senators, the Honourable Senator Frith moved, seconded by the Honourable Senator MacEachen, P.C.: That a message be sent to the House of Commons to inform the House that the Senate proposes the proclamation of an amendment . . .

[*English*]

Senator Frith: Dispense!

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

Some Hon. Senators: Yea.

Some Hon. Senators: Nay.

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

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators who are against the motion please say "nay"?

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: Would honourable senators agree to having the vote forthwith?

Hon. Senators: Agreed.

The Hon. the Speaker: Is it the wish of honourable senators to have the doors locked now? I wish to have a consensus here. Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: Please lock the doors.

Hon. Orville H. Phillips: Honourable senators, could we agree that the vote will be the same as the previous one?

Hon. Senators: Agreed.

The Hon. the Speaker: Then I declare the main motion carried.

Motion agreed to.

BUSINESS OF THE SENATE

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, if it is agreeable, all other orders shall stand.

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

Hon. Senators: Agreed.

The Hon. the Speaker: Do I take it that all inquiries shall be stood?

Hon. Senators: Agreed.

The Senate adjourned during pleasure.

At 4.45 p.m. the sitting of the Senate was resumed.

The Senate adjourned during pleasure.

ROYAL ASSENT

The Honourable Gérard V.J. La Forest, Puisne Judge of the Supreme Court of Canada, in his capacity as Deputy Governor General, having come and being seated at the foot of the Throne, and the House of Commons having been summoned, and being come with their Deputy Speaker, the Honourable the Deputy Governor General was pleased to give the Royal Assent to the following bills:

An Act respecting animal pedigree associations (*Bill C-67, Chapter 13, 1988*)

An Act to amend the Customs Tariff (*Bill C-118, Chapter 14, 1988*)

The House of Commons withdrew.

The Honourable the Deputy Governor General was pleased to retire.

The sitting of the Senate was resumed.

The Senate adjourned until tomorrow at 2 p.m.

THE SENATE

Thursday, May 26, 1988

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

Prayers.

CANADA-UNITED STATES FREE TRADE AGREEMENT IMPLEMENTATION

NOTICE OF MOTION TO AUTHORIZE FOREIGN AFFAIRS COMMITTEE TO STUDY SUBJECT MATTER OF BILL C-130

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I give notice that on Tuesday next, May 31, 1988, I will move:

> That the Standing Senate Committee on Foreign Affairs be authorized to examine the subject-matter of the Bill C-130, An Act to implement the Free Trade Agreement between Canada and the United States of America, in advance of the said Bill coming before the Senate or any matter relating thereto.

AGRICULTURE AND FORESTRY

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Dan Hays: Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*a*), I move:

> That the Standing Senate Committee on Agriculture and Forestry have power to sit at three thirty o'clock in the afternoon today, even though the Senate may then be sitting, and that Rule 76(4) be suspended in relation thereto.

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

Hon. Charles McElman: Explain!

Senator Hays: Honourable senators, as you are aware, the subject matter of the drought situation in western Canada was referred to the committee on Thursday, May 19, 1988. We have an opportunity to hear from the Minister of Agriculture at 3.30 p.m. today. There was a suggestion that the minister could appear before a Committee of the Whole on Wednesday if he were unavailable today; he is available today and the committee would like to hear from him.

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

Hon. Senators: Agreed.

Motion agreed to.

BUSINESS OF THE SENATE

EMERGENCIES BILL—RESOLUTION INTO COMMITTEE OF THE WHOLE AT 6 P.M., TUESDAY, MAY 31, 1988

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*a*), I move:

> That, notwithstanding Rule 12 of the *Rules of the Senate*, the Senate do resolve itself into a Committee of the Whole at 6:00 o'clock p.m. on Tuesday next, 31st May, 1988, to consider the Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof.

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

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, Senator Doody advised me that he had arranged for the minister to appear at 6 p.m. on Tuesday next. Honourable senators will recall that we agreed it would be appropriate for the Senate to consider this important legislation in Committee of the Whole and to ask for the attendance of the minister. We also had discussions about whether it would be possible to have the Committee of the Whole sit in the evening, if necessary. Senator Doody arranged for the minister to appear at 6 o'clock on Tuesday, that suiting the minister's schedule. I told Senator Doody that I had not been able to discuss the matter with our principal spokesman on this bill, Senator Stewart, and that we would not want to proceed if he could not attend.

I know of no reason why he will not be able to attend and, obviously, we want to suit the convenience of the minister and those senators who are most interested in this piece of legislation. Senator Doody felt that he should at least make the arrangements and give advance notice of this meeting. I repeat that I know of no reason why we would be unable to suit the convenience of the minister, but we may not be able to guarantee that we will not ask for another date, if it should turn out that this date is not suitable for senators on this side.

Senator Doody: I can only add, honourable senators, that it is difficult, if not impossible, to try to anticipate the whereabouts of every senator who might be interested in a particular subject or project at a particular time. When it was suggested by honourable senators opposite that the Committee of the Whole would be the most appropriate forum for this particular hearing, I acceded with some reluctance—to be mild about it. I am not convinced that it is the proper forum, but, in any event, I went along with it at that time. It was also suggested that an evening session might be most appropriate.

I conveyed that message to the minister, who agreed to be here at 6 o'clock on Tuesday evening. Realizing that the schedules of ministers are not always easily adjusted, I did take the opportunity to make that arrangement with him. I sincerely hope that those senators who are interested in this matter can be in the chamber then. In any event, that is the time that has been arranged.

Senator Frith: Honourable senators, I do not want to leave the impression, as apparently I have with Senator Doody, that I felt that we should not discuss this matter in Committee of the Whole unless we had checked with all senators to make sure that it met with their convenience. That is not my position at all. When we set dates for this sort of thing, including dates for votes and so on, we try to suit the convenience of those persons most interested. I want to suit the convenience of the minister. I merely add this as a caveat: I think we should also consider the particular senators who are interested.

Motion agreed to.

ADJOURNMENT

Hon. C. William Doody (Deputy Leader of the Government), with leave of the Senate and notwithstanding rule 45(1)(*g*), moved:

> That when the Senate adjourns today, it do stand adjourned until Tuesday next, 31st May, 1988, at two o'clock in the afternoon.

Motion agreed to.

THE SENATE

ACTING OPPOSITION LEADER IN ABSENCE OF OPPOSITION LEADER AND DEPUTY LEADER FROM CHAMBER

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, Senator MacEachen is away on the business of the Foreign Affairs Committee. Incidentally, the meeting at 6 o'clock on Tuesday of the Committee of the Whole would also conflict with the meeting of the Foreign Affairs Committee, but that is another consideration which I am sure we can work out.

In addition, I have to leave now for a speaking engagement in Cobourg. I wish to advise honourable senators that in our absence Senator Petten will be the Acting Leader of the Opposition.

Hon. Senators: Hear, hear!

Senator Doody: Send a message to the House of Commons!

Senator Frith: If Senator Doody is asking for leave to send a message to the House of Commons to that effect, I am prepared to grant leave.

If there are any procedural nitpickers—and I am sure there are not!—Senator Petten ought to have leave to occupy the seat of the Leader of the Opposition, since the rules provide that he is not permitted to speak unless he rises in his place. This being his place until further notice, I take it he has such leave.

[Senator Doody.]

QUESTION PERIOD

THE CONSTITUTION

CONSTITUTIONAL ACCORD, 1987—POSSIBILITY OF AMENDMENTS UNDER SEVEN-PROVINCES-50-PER-CENT-OF-THE-POPULATION RULE

Hon. Philippe Deane Gigantès: Honourable senators, I should like to ask a question of the Leader of the Government in the Senate. I shall supply him with a photocopy of a newspaper clipping from the *Globe and Mail* that I have in my possession. Would the Leader of the Government ask one of his experts to refute an argument made by the eminent Professor of Law, Dr. Bryan Schwartz? Dr. Schwartz said that there are almost no amendments that can be made under the seven-provinces-50-per-cent-of-the-population rule after Meech Lake is passed. I know there are probably disagreements with that.

I would be grateful to the Leader of the Government if he could give a more satisfactory answer than last time, when he said, "Well, you don't understand." I wish to understand, and I would like a careful answer to a question that is honestly meant.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I don't doubt that the question is honestly meant. However, I do not know what the honourable senator expects of me. If he is looking for a legal opinion, he should seek one from a lawyer in private practice or from a lawyer who is acting for his party. Surely he cannot expect me to impose upon the law officers of the Crown and ask them to provide an analysis of an opinion that turns up in the "Letters to the Editor" column in the *Globe and Mail*.

Senator Gigantès: Honourable senators, this opinion directly contradicts things which—

Senator Flynn: Who cares, other than you?

Senator Gigantès: Senator Flynn, you may not care about the effect of the Constitution on the country—

Senator Flynn: I do not care what you say.

Senator Gigantès: But as a new Canadian—

Senator Flynn: And you look like one, too!

Senator Gigantès: —I do not have your habit of not worrying about the viability of this country. Like Mr. Robertson Davies, I worry about Canada.

If this article contradicts statements that the Leader of the Government has made here in this chamber, I think they should concern him since they are contradictions of things he has said.

Senator Murray: Honourable senators, this would not be the first time that I have been contradicted in public, even by eminent authorities. I am sure that it will not be the last time. With the greatest of respect to the letter writer in the *Globe and Mail*, I cannot be expected to impose upon the law officers by asking them to produce an analysis or an opinion of a letter to the editor. As the honourable senator suggests, that opinion may come from someone eminent in the field, but—and I am trying to find a way to say it and not sound arrogant—it is irrelevant.

Senator Gigantès: Would the Leader of the Government get an opinion from a public servant other than a law officer of the Crown?

Senator Flynn: Not for you.

Senator Gigantès: Or is this subject not a subject that we can discuss any longer? Are you trying to preclude discussion of the effects on the country of the Meech Lake Accord?

Senator Murray: Honourable senators, I am not trying to preclude discussion about anything. The opinion of the professor expressed in a letter to the editor of the *Globe and Mail* is hardly one that Parliament or the government is required to take official notice of. I cannot help my honourable friend. The Senate chapter on Meech Lake is closed.

• (1410)

Senator Gigantès: However, Canada is not closed, I hope, and its Constitution is not closed. Is the minister saying to me that, if I took each of these questions and asked one of them for some 30 seconds per meeting, he would reply to me, "The chapter is closed"?

Senator Murray: Honourable senators, my friend is surrounded—

Senator Flynn: He does not understand!

Senator Murray: —in the Liberal caucus by Queen's Counsel to the left of him, Queen's Counsel to the right of him, Queen's Counsel all around him. I see a number of them here today. Let him seek a legal opinion from them as to the bien fondé of the opinion put forward by the professor.

Frankly, I do not wish to lecture the honourable senator on procedure, but this is not a proper matter for raising on the Orders of the Day. I should not be expected to comment, nor should the public servants or law officers of the Crown be expected to comment, on opinions in a letter to the editor of the *Globe and Mail*.

PRIVILEGE

Hon. Charles McElman: Honourable senators, may I raise a question of privilege? In the discussion that has just taken place the Honourable Senator Gigantès commented that he was a new Canadian.

Hon. Jacques Flynn: Yes.

Senator McElman: Senator Flynn interjected, "And you look like one, too!"

Senator Flynn: Yes.

Senator McElman: There is an inference to that, honourable senators—

Senator Flynn: Well, it's yours!

Senator McElman: Please, let me finish the point.

Senator Flynn: That's not your problem.

Senator McElman: It is; it is the problem of the Senate.

If I heard correctly, I would like Senator Flynn to take the opportunity to clear away any misconception that might be placed upon his remarks—

Senator Flynn: Which misconception?

Senator McElman: —as to how new Canadians might look. That is an inference that this Senate should not permit on its record.

Senator Flynn: Which misconception do you have about what I said? I meant that he does not know much about Canada. That is what I meant.

Hon. Philippe Deane Gigantès: Honourable senators—

Senator Flynn: Or especially about Quebec! That misconception is wrong.

Senator Gigantès: —since this matter of privilege concerns me, I should like to say that, if what Senator Flynn said can be interpreted as meaning that I do not look like him, I am quite prepared to accept that gratefully.

Senator Flynn: I had hoped that you would say that.

Senator McElman: I insist that there is an inference—

Senator Flynn: I insist that I said—

Senator McElman: I have the floor. Will you sit down? I have the floor! For once, obey the rules of the Senate and sit down! You cannot stand when another senator is standing and speaking.

Hon. William J. Petten (Acting Leader of the Opposition): Call "Order!"

Senator McElman: I am speaking to a question of privilege. You sit down.

Senator Flynn: So am I!

Senator McElman: You are not. I am speaking on a question of privilege. You should have the courtesy to clear the Senate record of any disparaging remarks that you made. You get away with too much!

Senator Flynn: And you do, too!

You said that there was a misconception. I asked you, "What misconception?" You did not answer. I explained what I meant by saying that Senator Gigantès looks like a new Canadian. That has been cleared; yet you come up again and try to continue the debate on this matter, which is of no concern to you.

Senator McElman: Oh?

Senator Petten: But it is.

Senator Flynn: It is of no concern to you, as such. I have cleared my problem with Senator Gigantès. He has said that he does not want to look like me. I am happy that he said that, and that should be the end of the matter.

Senator McElman: Honourable senators, the matter is not only of concern to me; it is of concern to all senators and it is of concern to all Canadians, when someone uses his place in this chamber to make a remark that should not be made and leaves an inference that should not be left. I was trying to do the courteous thing to my honourable friend and give him an opportunity to say that he meant no affront to any new Canadian.

Senator Flynn: Honourable senators, I made that clear. The affront was only to Senator Gigantès. I said he does not know much about Canada and he does not know much about Quebec. I repeat that that was all that I meant, and that is the end of it. I do not see why you should question my view. If you don't like it, you can lump it!

Senator Gigantès: Honourable senators, since I am, unfortunately, involved in this controversy with Senator Flynn, I should like to point out that he did not say that I did not know, except when he said it the second time. Originally, he said I didn't look like himself, presumably—in other words, an older Canadian, which, of course, I grant immediately.

He also suggested something about Quebec, and I concede immediately that, although I am a Quebecer, I am not what he would call de vieille souche francophone. I bitterly regret that my blood is tainted!

CANADA-UNITED STATES FREE TRADE AGREEMENT

INCLUSION OF CANADA'S FRESH WATER RESOURCE

Hon. M. Lorne Bonnell: Honourable senators, perhaps I might change the subject and get Senator Flynn off the hook, which I am always doing for him.

Senator Flynn: You are going to hang yourself!

Senator Bonnell: I would not hang either myself or Senator Flynn; he is too good a friend of mine.

However, honourable senators, I should like to ask a question of the Leader of the Government in the Senate. I understand that one of the greatest resources of this country is being given away to the United States of America under tariff clause 22.01 of the Free Trade Agreement—namely, our fresh water resource.

Can the Leader of the Government in the Senate confirm that in fact the fresh water of Canada is part of the Free Trade Agreement? In the past it has been denied by others that water was included in this agreement. However, apparently under tariff clause 22.01, water is included in the agreement.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I can only say that the interpretation on which the honourable senator is basing his question is really nonsense.

Having said that, when the vote comes I invite him to vote in favour of the reference of the bill to the Standing Senate Committee on Foreign Affairs so that he will have an opportunity to satisfy himself as to the agreement and the bill that would give it effect in this country.

Senator Bonnell: Honourable senators, I notice that the Leader of the Government in the Senate has not made a denial in this matter. I also note that a recent article in the *Toronto Star* stated:

> According to former federal trade negotiator Mel Clark and Don Gamble, executive director of the Rawson Academy of Aquatic Science, a non-profit water research body, it could mean that the provisions of the trade deal override federal or provincial restrictions on the export of water.

Honourable senators, since water is a resource and we must sell our resources to the Americans at the same price as we charge Canadians, and since we do not charge Canadians for fresh water, we then have to give our fresh water free to the Americans.

I would therefore like the Leader of the Government in the Senate to confirm or deny that we are giving away our richest resource—namely, our fresh water—to the Americans.

Senator Murray: Honourable senators, I have said that the interpretation upon which the honourable senator based his question is nonsense. May I add to that that the assertions and the assumptions that the honourable senator is making are so farfetched as to be ludicrous. As I said, I invite him to satisfy himself on those points by accelerating the reference of this bill to the Foreign Affairs Committee for pre-study so that he can go into this matter in all the detail he would like and obtain the answers he is seeking.

• (1420)

Hon. H.A. Olson: Honourable senators, I have a supplementary question. Will the Leader of the Government answer the question? Is the fresh water resource included in the negotiations we are now committed to with the United States or is it not? Never mind all the gobbledegook of going to other things. Did you negotiate fresh water deliveries to the United States or did you not?

Senator Murray: No.

Senator Olson: Then why didn't you say so?

Senator Bonnell: Honourable senators, the minister has just said that our water resources are not part of the agreement. I ask that he read, in his spare time, tariff clause 22.01 of the tariff schedule to the agreement, which includes water.

Senator Murray: Honourable senators, I have answered the question. I do suggest that my friend take advantage of an early opportunity to ask detailed questions about the agreement and about the bill.

RAILWAY SAFETY

BILL C-105—REQUEST FOR DRAFT REGULATIONS

Hon. Charles Turner: Honourable senators, my question is for the Leader of the Government in the Senate. I am seeking information regarding Bill C-105, which deals with the safe operation of railways. Clause 18 says, in part, that the Governor in Council may make regulations with regard to "hours of work and rest periods to be observed by" certain workers and with regard to "the control or prohibition of the consumption of alcoholic beverages and the use of drugs by those persons." I would like to know whether the draft regulations are ready. If so, may I see a copy of the proposed regulations? The reason I would like to see them is that they may make a difference to the type of speech I make in the debate on this bill.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I note that my honourable friend has, himself, taken the adjournment of the debate on second reading of this bill. We look forward to hearing from him during that debate. I take it for granted that, when the second reading is concluded, it will be the wish of honourable senators that the bill go to committee, at which time my friend will have an opportunity to put questions about the possible regulations to the appropriate minister and/or his officials.

Senator Turner: Honourable senators, I have consulted with legal people, professors of law, drug experts and alcohol experts and they all tell me the rules and regulations are a violation of the Charter of Rights and Freedoms. If that is so, it will make a difference in the type of speech I make. I have 50 pages on rules and regulations pertaining to drugs and alcohol, which is a speech in itself. I could speak all next week on this subject.

Senator Phillips: Go ahead!

Senator Turner: I want to know whether the rules and regulations are ready so that I can take a look at them.

Senator Murray: Honourable senators, there is a requirement that the Minister of Justice must certify that any government bill coming before Parliament is in conformity with the Canadian Charter of Rights and Freedoms. I assure the honourable senator that proposed regulations are examined very carefully by the law officers in the same light—that is, to ensure that they are in conformity with the Charter of Rights and Freedoms.

As for the detailed regulations that may be brought in under this act when it passes, he will have to inquire of the minister and/or his officials when this bill goes to committee.

Senator Turner: Our experience with Bill C-22 indicates that once a bill is passed the rules and regulations are changed—drug prices went up! Therefore, I am suggesting that once this bill is passed in this house there will be no way anyone will be able to change the rules and regulations; so I request the information now.

(*Later*)

Hon. Charles Turner: May I have an answer to the question I asked the leader of the Senate a few moments ago?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, the answer is that I do not have the regulations. I cannot understand why the honourable senator, who has taken the adjournment on second reading of this bill, who will be debating this bill perhaps today, who will be going, I assume, to committee with this bill, and who will have the opportunity to question the minister and/or his officials on the regulations, persists. He knows that the usual course is that a statute gives regulation-making authority to the Governor in Council and that the regulations normally come in after the act is in force. The honourable senator is treating this matter as if some precedent were being established here. A precedent would be set if the regulations were published before the bill was passed.

Senator Turner: Honourable senators, after almost 20 years in Parliament, in both the House of Commons and the Senate, I have found that, once the rules and regulations are proclaimed, the concept of a bill is changed, to the detriment of the Canadian public. That is why, on behalf of the railroad brotherhoods of Canada, I am requesting this information.

CANADA-UNITED STATES FREE TRADE AGREEMENT

INCLUSION OF CANADA'S FRESH WATER RESOURCE

Hon. M. Lorne Bonnell: Honourable senators, on digging further into the situation regarding our great resource of water, I have discovered that apparently the intention of the Government of Canada was that water would be specifically excluded from the Free Trade Agreement. In fact, when the question arose when Mr. Reisman was the Canadian negotiator, his response was that water was to be excluded.

Nevertheless, apparently the government decided that it was so important to have the agreement that it allowed water to be included. That is one of the reasons why we did eventually come to an agreement. In an article published in the *Toronto Star* of May 21, 1988, it is stated:

> . . . Canada had planned to have the trade agreement specifically exclude water, but that last-minute U.S. pressure led to a decision at the highest levels of government in Canada to abandon plans for an exclusion.
>
> The final text includes some exemptions, for example on the export of raw logs. It contains other provisions for special treatment, such as in cultural industries and national security. But there's no mention of water.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, let me put it as directly as I can. Water is not a subject of the agreement between Canada and the United States except as a beverage under the Customs Tariff, as are soft drinks, which, as even the honourable senator will recognize, contain mostly water.

ENERGY

GEORGES BANK DRILLING MORATORIUM—PREPARATION OF LEGISLATION FOR NOVA SCOTIA

Hon. M. Lorne Bonnell: Honourable senators, I have another question which is also very important to Canada. It has to do with the fishing rights off the Georges Bank, one of the richest fishing grounds in the world. I understand that there has been a moratorium on oil drilling to the year 2000 on the Georges Bank to protect our fisheries off the Atlantic coast.

It is my understanding that there is now a bill before the provincial legislature of Nova Scotia that is intended to protect that fishing ground against oil drilling until the year 2000.

Mr. Ken MacInnis, a lawyer for the NORIG—"No Rigs on Georges Bank"—lobby group, says that the proposed legislation being put forward is ridiculous. He calls it a "menacing act" and says it "puts the onus on fishermen to keep an offshore moratorium against drilling on Georges Bank intact beyond the year 2000."

• (1430)

It is not the fishermen who are doing the drilling; it is the oil companies that are doing the drilling. To put a moratorium on the fishermen so that they will not drill until the year 2000 is not good enough. We need to put a moratorium on the oil companies.

I ask this question of the Leader of the Government in the Senate because Mr. MacInnis, the lawyer, accuses the provincial government of allowing Ottawa to draft the legislation and to present it to the Nova Scotia Legislature. Is the Government of Canada preparing legislation for the Province of Nova Scotia? Is it only the fishermen who cannot drill, and will the government allow the oil companies to keep drilling on Georges Bank and ruin the fisheries?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I cannot resist the opportunity to observe that the Nova Scotia Legislature, the home of representative and responsible government in this country, adjourned for the summer yesterday, having passed the Meech Lake Accord.

Some Hon. Senators: Hear, hear!

Senator Murray: The honourable senator will permit me to express my great pride and satisfaction in that achievement and event of yesterday.

The Nova Scotia legislation, to which the honourable senator refers, was, indeed, presented by the Nova Scotia minister on May 13 with a view to inhibiting offshore exploration on Georges Bank until the year 2000.

The Honourable Senator Bonnell is correct, as is Mr. MacInnis, in stating that the Nova Scotia bill seeks to mirror amendments to the federal legislation to implement the Canada-Nova Scotia Accord, which is Bill C-75.

If I am not mistaken, that legislation is presently before a legislative committee of the other place, and one expects that in the normal course of events it will arrive in this house where my honourable friend will have an opportunity to debate it and ask questions in committee about its purport and effect.

[Senator Murray.]

CANADA-UNITED STATES FREE TRADE AGREEMENT

STATUS OF HEAVY WATER

Hon. Stanley Haidasz: I should like to refer to the question Senator Bonnell asked a few minutes ago regarding water. I should like to ask the Leader of the Government in the Senate whether heavy water is within the ambit of the Canada-U.S. free trade pact.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Water as a beverage is within the ambit of the Free Trade Agreement. So far as heavy water is concerned, there are several warehouses full of it in Cape Breton. The previous government continued to turn it out, although there was no foreseeable market for it. We have had to close those plants—and this is a matter that will be debated later today—and have established Enterprise Cape Breton with a view to providing alternative employment for Cape Bretoners, an initiative which is having outstanding success, I am happy to report.

CANADA WINTER GAMES, 1991

REQUEST BY PREMIER OF PRINCE EDWARD ISLAND FOR ACOA FUNDING

Hon. M. Lorne Bonnell: I have a question for the Leader of the Government in the Senate regarding the Canada Winter Games, 1991, and a request by Premier Joe Ghiz for funding, but before putting my question I wish to thank the Leader of the Government in the Senate for inviting us to meet yesterday with the directors of ACOA, an energetic group of good businessmen from the four Atlantic provinces—

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): And women.

Senator Bonnell: And women. That group can certainly add to the drive of those four great provinces.

However, I was rather disappointed, as I told the minister privately yesterday, that the minister did not grab that opportunity to give equal representation to the four Atlantic provinces. There are five representatives from New Brunswick; five from Nova Scotia; five from Newfoundland; and three from Prince Edward Island, plus the APEC representative, making four in all. It happens that we have the leadership from APEC. That was the congratulatory note.

I read in the local paper of Wednesday, May 11, 1988, that the Honourable Joe Ghiz, who supports the Leader of the Government in the Senate very well and speaks well of him abroad and at home,—

Senator Steuart: So far!

Senator Bonnell: —is looking to the Honourable Lowell Murray for some funds through ACOA to assist in construct-

ing a rink and a regional centre of some sort for the Canada Winter Games, 1991.

Could the Leader of the Government in the Senate inform us if these funds will be made available for those games?

It will be almost impossible for the 125,000 Islanders to put forth any great expenditure of funds for that one occasion. Perhaps the leader could tell us now what funds he intends to make available so that I can go back to Prince Edward Island and tell Premier Joe Ghiz what a great fellow the Leader of the Government in the Senate is.

Senator Murray: Honourable senators, all of us rejoice in the selection of Prince Edward Island as the site for the winter games. We are confident that they will be at least as successful as the games that were held a couple of years ago in Cape Breton.

That being said, I should point out that the federal government is already quite substantially committed in a financial way to assisting those games through my colleague, Mr. Charest, the Minister of Fitness and Amateur Sport.

Premier Ghiz and I have spoken about whether ACOA funds would be available for the execution of a concept that would be more permanent than, and go beyond, the winter games. This has involved, as the honourable senator may know, some controversy on the Island involving the city of Charlottetown and various other interests.

In any case, my reply to Premier Ghiz and to the honourable senator is that, when all of these matters have been finally sorted out on the Island, the agency will be happy to entertain a proposition from Prince Edward Island in the sense referred to by Premier Ghiz. As usual, he will not be disappointed with the response.

Senator Bonnell: We could settle these things this afternoon, if the leader could guarantee a certain amount of money. We could settle this matter today, if the leader could tell us what was available and we could tell him whether we wanted a trade show building with a rink included, or whether we wanted just a rink, or whether we wanted to have that building in the Exhibition Grounds so that it could be used by all Prince Edward Islanders for trade shows, and so forth. So much depends on how much the leader can loosen the purse strings in Ottawa through ACOA or other means.

Senator Murray: Honourable senators, I am waiting precisely for my friends in Prince Edward Island to decide what it is they want to do and to make a proposition. We will consider this with great sympathy and seriousness, as I have told the premier.

• (1440)

PRIVATE BILL

REGIONAL VICAR FOR CANADA OF THE PRELATURE OF THE HOLY CROSS AND OPUS DEI—CONSIDERATION OF REPORT OF COMMITTEE—DEBATE ADJOURNED

The Senate proceeded to consideration of the Twenty-First Report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill S-7, An Act to incorporate the Regional Vicar for Canada of the Prelature of the Holy Cross and Opus Dei, with two amendments) presented in the Senate on 25th May, 1988.

Hon. Joan Neiman: Honourable senators, Bill S-7, to incorporate the Regional Vicar for Canada of the Prelature of the Holy Cross and Opus Dei, was referred to the Legal and Constitutional Affairs Committee several months ago; as I am sure its sponsor, Senator Bélisle, would say, probably far too many months ago. I wish to express my regret, on behalf of the committee, that it has taken us as long as it has to deal with this bill, but senators will recall that at the same time we were being pressed to deal with Bill C-84 and Bill C-55. The committee felt it was imperative to give government bills higher priority than private bills.

I wish to remind honourable senators that the organization generally known as Opus Dei is described in the bill as "a secular jurisdictional institution of the Roman Catholic Church." The committee heard evidence that Opus Dei has been active in Canada since 1957. It was incorporated as a non-profit organization under Part III of the Quebec Companies Act and has operated that way for some 30 years. In 1982 the organization was constituted as a personal Prelature of the Church under the Church's Apostolic Constitution *Ut Sit*. The committee heard that it was that change in canon law regarding the status of Opus Dei that prompted it to apply for a change in its civil legal structure in Canada.

The corporation sole originated as a common law device in England that was associated with the ecclesiastical offices of the Church of England. By "corporatizing" a church office, property ownership and succession could be dealt with independently of the person who held that office for the time being. Canada adopted the device for occasional use, but in this country a corporation sole may be created only by an act of Parliament or of a legislature.

The "corporation sole" in the religious or non-profit sector has never been provided for in any federal law of general application and is not in general use. However, as part of its historical role of incorporating religious institutions or organizations by private act, the Senate has in the past approved private bills to create corporations sole—for example, the "episcopal corporations" of the Roman Catholic Church and similar entities in other churches. A search of the index of private legislation reveals that 20 corporations sole have been created in this way to date; 15 are Roman Catholic or Ukraini-

an Catholic bishops—"episcopal corporations", and the other five incorporate offices of equal stature in other churches.

Public offices are also occasionally given the legal structure of a corporation sole by statute. Thus, the Governor General's Act creates a corporation sole of that office. Section 5 of the Veterans Land Act provides that the director is a corporation sole for certain purposes. In Ontario the office of Lieutenant Governor was made a corporation sole by provincial statute in 1980.

Honourable senators will recall that during the debate on second reading of this bill a few senators voiced strong opposition to the application because of the nature of the activities of Opus Dei in Canada and elsewhere. Similar objections were expessed by some members of the committee during its study of the bill. However, as chairman of the committee, I felt that it should confine itself to the legal aspects of the application for incorporation.

In approaching this issue, the committee found that there were few precedents and no statutory guidance. Honourable senators may recall that previous governments drafted and tabled legislation in the late 1970s and again in the early 1980s that would have modernized federal corporation law for non-profit corporations and put in place certain standard requirements. Unfortunately, that legislation—there were three government bills originating in and passed by the Senate and at least one in the House of Commons, Bill C-10 in 1980—all died on the order paper. Since that time there appears to have been no movement to bring in successor legislation. The current statutory framework for non-profit corporations is simply inadequate. It does not even contain provisions specifying accountability and disclosure requirements.

These questions arose in relation to Bill S-7. The committee noted the lack of financial disclosure requirements in the bill, and therefore devised and passed amendments requiring the corporation to file with the Department of Consumer and Corporate Affairs annual financial statements that would be publicly available. The committee considered these to be minimum requirements. The applicant indicated to the committee that he had no objection to such amendments.

Because Opus Dei has operated for a number of years under general corporation law, the Regional Vicar explained why the organization is seeking incorporation by private bill as a corporation sole rather than under the Canada Corporations Act as a federal non-profit corporation with the usual three-member board of directors. He asserted that the office of regional vicar was analogous to that of a bishop and that, since the corporation sole had been used from time to time to incorporate the office of bishop, the office of the regional vicar should be dealt with in the same way. The argument advanced by the petitioner to the effect that a corporation sole was needed to conform to the requirements of canon law was not regarded as persuasive. It was felt that applicants for corporate status should adhere to the principles and requirements of general application to all non-profit organizations. Unfortunately, as I have said, those requirements have not been set out in a modern context in statutory form.

As I mentioned earlier, the 20 previous corporations sole created by private act related directly to religious institutions at the level of a bishopric. The Regional Vicar stated that his office was analogous to that of a bishop, although the petition stipulated that the institution is "secular." The committee felt that the use of a corporation sole in this case might extend what has been until now a very limited use of this unusual legal device, and several members were uncomfortable with such an extension.

In the result, and despite the misgivings expressed by various committee members, which misgivings are caused by the lacunae in our corporate law, the committee has passed Bill S-7 with amendments.

However, I wish to advise honourable senators that there was complete unanimity in the committee that Parliament should no longer be required to act in the sort of statutory vacuum that appears to exist with respect to corporations sole.

Whatever the decision of the Senate might be with respect to Bill S-7, the committee has instructed me to request the Senate to advise the government in the strongest possible terms to proceed as quickly as possible with new legislation respecting the incorporation of non-profit and religious organizations. Furthermore, in doing so, the government should consider very carefully whether there is any continuing justification for the type of corporation sole considered here. If the government decides there is still such a necessity, then it should set out in the new legislation all the necessary safeguards and limits upon its use.

[*Translation*]

Hon. Rhéal Bélisle: Honourable senators, Bill S-7 has been before the Senate since April 2, 1987, nearly fourteen months. I opened the debate on second reading on April 7, 1987, when a long series of adjournments began.

• (1450)

[*English*]

Senator Neiman: Honourable senators, I understand that other senators would like to speak to this at the report stage before the debate is closed. I believe someone would like to take the adjournment of the debate.

Senator Bélisle: Honourable senators, I am speaking on the report just tabled by the chairman of the Standing Senate Committee on Legal and Constitutional Affairs.

Hon. Philippe Deane Gigantès: Honourable senators, on a point of order, if Senator Bélisle continues speaking—where is Senator Flynn? I would like to display my ignorance in his presence.

Hon. C. William Doody (Deputy Leader of the Government): That is all right, we can accept it.

Senator Gigantès: If Senator Bélisle now speaks, does this close the debate?

Senator Doody: No. Senator Bélisle did not open the debate. This is a debate on the report tabled by the chairman of the committee. I am certainly glad Senator Flynn is not here.

Senator Gigantès: I always regret his absence.

The Hon. the Speaker *pro tempore:* Would you please put the motion for the adoption of the report?

Senator Neiman: I move adoption of the report.

The Hon. the Speaker *pro tempore:* It is moved by the Honourable Senator Neiman, seconded by the Honourable Senator Cottreau, that this report be adopted now. Is it your pleasure, honourable senators, to adopt the motion?

[*Translation*]

Senator Bélisle: Honourable senators, Bill S-7 has been before the Senate since April 2, 1987, nearly fourteen months. I opened the debate on second reading on April, 1987, when a long series of adjournments began. We first adjourned until May 26, 1987, exactly one year ago, when Senator Hébert made a speech in which he made it abundantly clear that he did not like Opus Dei. After a second adjournment, debate was resumed on June 2, 1987. On that day, it was Senator Le Moyne's turn to explain that he didn't like Opus Dei. Neither of the two speakers considered the substance of the bill. Subsequently, Senator Corbin adjourned the debate until June 17, 1987, when after a speech in which he told us he didn't like Opus Dei either, he moved for further adjournment.

On June 29, 1987, after a few brief explanations, I was allowed to make a speech in which I responded to several objections and clarified many of the questions raised in the previous speeches. Then Senator Corbin adjourned the debate once again, this time until September 16, 1987, when he finally finished the speech he had started three months earlier. A further adjournment was requested, this time by Senator Stollery, who three weeks later declined to speak to the bill.

Finally, the bill was read a second time on October 27, 1987, and referred to the Standing Senate Committee on Legal and Constitutional Affairs.

This year, the committee sat four times to examine the bill: February 23, when the petitioner and his advisers were present, on March 8 and on May 5 and 12. Earlier, the chairman of the committee explained that the committee had been held up by other bills, and I understood.

At the last sitting, as we were just informed, the committee approved Bill S-7 with several amendments.

One cannot claim the bill has not been very carefully examined. The two senators who voiced their objections publicly in committee, Senators Hébert and Gigantès, have had all the time they wanted to examine every aspect of the bill. They informed us of all their objections which, I may add, were more theological than legal in nature and were based on their dislike of an institution of the Catholic Church, in this case Opus Dei, but were unable to convince either their colleagues in the Senate or those in committee, which is not surprising.

[*English*]

Honourable senators, since Confederation some 102 private bills have been tabled in the Senate on behalf of various religious bodies of different denominations, and, as the chairman has said, 23 religious organizations have been approved. All of those bills were adopted. Moreover, they were adopted relatively quickly and without anyone ever remotely considering the possibility of scrutinizing the beliefs or convictions of the petitioners.

It is only a few years since Canada enshrined in its Constitution a Charter officially recognizing freedom of religion. Yet we now witness members of this house taking advantage of their parliamentary prerogatives to criticize publicly the religious traditions of an official institution of the Roman Catholic Church, thus violating the principle of the separation of church and state, of religious beliefs and political opinions.

My colleagues, who are opposing the enactment of Bill S-7, are doing so for reasons that have nothing to do with the substance of the bill or with the law of this country.

During the last three meetings of the committee our Law Clerk and Parliamentary Counsel and the Chief of the Legal Division in Consumer and Corporate Affairs Canada repeatedly stated that the bill is perfectly consistent with Canadian law and that the request of the petitioner is fully justified. So as to appease the apprehensions of a few senators, they proposed—and the committee endorsed, with explicit consent of the petitioner—amendments aimed at providing for greater transparency in the financial operations of the corporation that the bill creates. These amendments constitute a legislative precedent, since none of the private bills previously adopted in this area contain similar provisions. This legislative precedent thus imposes on the corporation that we are being asked to create requirements that go beyond those generally imposed by law on corporate bodies.

[*Translation*]

Honorable senators, it seems to me it is high time, after nearly fourteen months of study, that we decided to adopt Bill S-7, which contains a petition that, according to our committee, is entirely justified and justifiable.

[*English*]

Senator Gigantès: Honourable senators, I should like to adjourn this debate in my name. I promise Senator Bélisle that I shall speak on this on Tuesday next.

On motion of Senator Gigantès, debate adjourned.

GOVERNMENT ORGANIZATION BILL, ATLANTIC CANADA, 1987

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming the debate on the motion of the Honourable Senator Murray, P.C., seconded by the Honourable Senator Flynn, P.C., for the second reading of the Bill C-103, An Act to increase opportunity for economic development in Atlantic Canada, to establish the Atlantic Canada

Opportunities Agency and Enterprise Cape Breton Corporation and to make consequential and related amendments to other Acts.—(*Honourable Senator Graham*).

Hon. B. Alasdair Graham: Honourable senators, first, I should like to thank Senator Murray for his introduction of Bill C-103. As will become apparent, I do not agree with everything that he said, as I am sure he will not subscribe totally to everything that I am about to say.

● (1500)

It is now nearly four years since the Prime Minister, speaking in Halifax, stated:

> A Progressive Conservative government will give the Department of Regional Industrial Expansion a specific legislative mandate to promote the least developed regions of Canada.

In October of 1986 the Atlantic Canada Opportunities Agency, ACOA, was introduced in the Speech from the Throne. The government stated that ACOA was "constituted to facilitate and coordinate all federal development initiatives in the area."

ACOA was given its mandate in June of 1987. That mandate reads as follows:

> Coordination and planning of all federal activities contributing to the economic growth of the region; in particular, procurement, training and skills development, job creation, technology infrastructure development and local investment, promotion and responsibility for federal small and medium-sized business and industrial development policy and programs in the region.

The mandate is impressive. It is expansive. But I am disappointed that the mandate is not reflected adequately in the legislation before us today.

Clause 13 of the act states in part:

> In carrying out its object, the Agency may,—

Among other things—

> —(a) in concert with other concerned departments and agencies of the Government of Canada, formulate plans and integrated federal approaches to support opportunity for economic development of Atlantic Canada;—

AOCA "may" do that; on the other hand, it may not. It might have been more helpful in addressing the concerns of Atlantic Canadians if this section of the legislation was more explicit by instructing all departments of government to provide assistance whenever the need arises. In Atlantic Canada, poverty and unemployment must be addressed with every policy instrument at hand.

Clause 4 of Bill C-103 states:

> The purpose of this Part is to increase opportunity for economic development in Atlantic Canada and, more particularly, to enhance the growth of earned incomes and employment opportunities in that region.

The objectives are commendable, but some concerned people believe that the government may be backing away from specific goals of regional development, such as reducing regional disparities and unemployment throughout Atlantic Canada, and most particularly in the most disparate areas of Cape Breton, Newfoundland and northern New Brunswick.

[Senator Gigantès.]

Honourable senators will know that previous governments continuously reaffirmed their commitment to regional economic development. Recognition was given to the confluence of economic forces which contributed to slow and uneven growth. It was understood that disparities would not be overcome overnight. For this reason the resources of several departments—DRIE, Transport, Energy, Mines and Resources, Supply and Services, among others—were marshalled to help address regional problems. Each department was to pull its weight in the national attack on regional disparities.

I have two specific concerns about a single regional agency with a single funding source. First, there is the danger that line departments with crucial regional responsibilities will not discharge their responsibilities. They might have a tendency to say, "Go to ACOA."

To illustrate this point, I suggest we look at the Canadian Job Strategy. This strategy was to reintroduce flexibility to the programs of Employment and Immigration. Instead, we have seen cutbacks, eligibility restrictions and a decreased emphasis on job creation. It is illogical, in my judgment, that the short-term unemployed must become long-term unemployed before qualifying for retraining assistance. The Canadian Job Strategy is not regionally sensitive and has been shown to be ineffectual in Atlantic Canada. Again, ACOA "may, in concert with other concerned departments, . . . formulate plans" to address this problem, but I believe that the legislation could be more explicit in this respect.

Second, I am concerned that ACOA's annual budget of $200 million represents not new, additional money, as is claimed, but, instead, a ceiling on regional development funding in Atlantic Canada. Honourable senators will know that the Industrial and Regional Development Program, IRDP, was the largest funded program within DRIE. The government will also acknowledge that the sunset clause in the IRDP legislation takes effect in five weeks' time, at the end of June.

In his speech last week, Senator Murray made reference to the IRDP initiative. He did not say that new applications for funding would not be accepted after June 30 of this year.

During the fiscal years 1985 to 1987, IRDP funding was worth $23.5 million to Newfoundland; $4.2 million to Prince Edward Island; $28.9 million to Nova Scotia; and $59.2 million to New Brunswick. My point is that the term "new money" is meaningless if this program is not renewed in some fashion. I am sure Senator Murray will want to address that question.

Senator Murray also told us that in the past year ACOA has approved approximately 1,100 applications for funding and given assistance in the order of $161 million. Those statistics are impressive, but it is my understanding that a very large part—perhaps close to 100 per cent of this money—was allocated under programs which predate ACOA. If that is true, I am not impressed.

Rural areas are placed at a particular disadvantage by this legislation. The IRDP tier system had its faults, but at least it allowed for a delineation of modern and slow growth areas. Honourable senators will know that the worst ravages of regional disparities are found in the small and isolated communities across the region. The ACOA legislation does not recognize this reality, in my opinion. For example, communities like Dominion and Arichat will see their proposed development projects subjected to the same criteria as those in Moncton and Halifax.

The vast majority of Atlantic Canadians who live in rural areas work in the primary resource industries. Bill C-103 holds no specific promises for fishermen, farmers, woodsmen or the men who mine coal, zinc, potash and iron ore in Atlantic Canada. The government was apprised of this shortcoming in the legislation during committee study in the other place. So far, the government has not responded.

A fundamental principle of regional development is the necessity of meeting basic infrastructure needs. Local initiatives are hampered by a lack of infrastructure. Private investment from outside the region will simply not materialize if infrastructure is not in place. The impact of technology and the ease of mobility, which the skilled labour force enjoys, has taken the demands for infrastructure beyond roads and industrial parks. In addition to capital infrastructure assistance to industry, we must look at community level infrastructure which enhances the quality of life for our residents and signals investors from afar that we will no longer tolerate the serious environmental degradation evident in our towns and cities. Broader regional goals in telecommunications and transportation infrastructure must be addressed. Given the importance of infrastructure upgrading to the region, it is unfortunate that Bill C-103 does not contain a commitment in this area.

• (1510)

Honourable senators, Part I of Bill C-103 is an attempt to respond—but is not an adequate response—to the economic problems of Atlantic Canada. Its shortcomings, however, pale in comparison to Part II—that section dealing with Enterprise Cape Breton Corporation and the dismemberment of the Cape Breton Development Corporation. In his speech Senator Murray made just passing reference to this section of the bill, and that undoubtedly was deliberate. I am sure he wants to save some ammunition for later. However, he did suggest that Enterprise Cape Breton Corporation "addresses the special needs of Cape Breton." Those Cape Bretoners opposed to relegating to the history books 20 years of success in initiating community growth through Devco are not pleased, by any stretch of the imagination.

Clause 33 of the bill states, in part:

> The objects of the Corporation—

That being the Enterprise Cape Breton Corporation—

> . . . are to promote and assist . . . the financing and development of industry on the Island of Cape Breton to provide employment outside the coal producing industry and to broaden the base of the economy of the Island.

I draw the attention of honourable senators to the words "to provide employment outside the coal producing industry." Rather than introducing a separate bill to eviscerate Devco, the government is attempting another sleight of hand.

This year, honourable senators, it is worthy of note that Devco celebrates its twentieth anniversary. In the intervening two decades it has recorded impressive gains in performance and made outstanding contributions to the economy of Cape Breton.

Devco was formed in response to economic events in Cape Breton in the mid-1960s which, as one observer put it, threatened to turn the Island into a slum. Cape Breton was already in serious economic distress when the Dominion Steel and Coal Corporation—the Island's largest employer by far at the time—announced its intention to close down its coal mines, thereby eliminating some 6,500 jobs, which represented approximately 14 per cent of the Island's total employment.

The economic and social disruption of the shutdown would have been so devastating to Cape Breton that the government could not let it happen. Devco was therefore established to take over Dosco's mines and to provide jobs and new industries outside the mining sector.

Devco's mission was succinctly defined by the Honourable Allan J. MacEachen, in the House of Commons when he was speaking on the motion introducing the corporation's enabling legislation:

> To acquire, reorganize and rehabilitate certain coal mining works and undertakings on Cape Breton Island, to conduct coal mining operations in the Sydney coal field and to promote and assist the development of industry on Cape Breton Island to provide employment outside the coal producing industry and to broaden the base of the Island's economy.

That speech was made in 1967. I believe it is acknowledged by everyone concerned that Senator MacEachen was the individual most influential in and responsible for the establishment of Devco.

Honourable senators, in order to deal with the separate tasks of rationalizing the coal industry and promoting new industry on Cape Breton Island, the Cape Breton Development Corporation Act provided for two divisions to be set up within Devco: namely, the Coal Division and the Industrial Development Division.

On a personal note, after the corporation was established, I happened to be the first employee on the ground in Cape Breton when Devco was preparing to take over the employees and assets of the old Dominion Coal Company. Senator Murray's father, the late Danny Murray, had been the chief inspector of mines for the province of Nova Scotia. Danny Murray was one of the most respected individuals in the coal mining industry anywhere in Canada, and I shall always be grateful for his friendship and wise counsel during that transitional period.

The Coal Division is responsible for the reorganization and operation of coal mining and related works in Cape Breton.

The purpose of the industrial development division is to promote and assist the financing and development of industry on the Island of Cape Breton; to provide employment outside the coal-producing industry; and to broaden the base of the economy on the Island.

In the late 1960s the global demand for coal in both industrial and power generation markets increased substantially, resulting in serious shortages and much higher prices. It appeared, moreover, that these improved markets for coal were the beginning of a trend rather than a short-term phenomenon. Accordingly, Devco undertook an internal review to reassess the prospects of Cape Breton's coal resources in light of the new conditions.

Based on this reassessment, Devco has directed its efforts to restoring the coal mining industry of Cape Breton and making it self-supporting. This goal has not been easy, but, as a result of significant investments in mining improvements and commendable efforts by the coal miners and management of Devco, much progress has been made in achieving that goal. Preliminary estimates show that the Coal Division's operating losses in fiscal year 1987-88 were under $2 million, and projections are that in the current year Devco will in fact at last achieve an operating profit.

The size and operations of Devco over these years have grown dramatically. The assets of the Coal Division at the end of fiscal year 1975-76 were $108 million. At the end of fiscal year 1986-87 the coal division's assets stood at $553 million, and today, with the completion of the new Phalen colliery, they are close to $600 million. In the mid-1970s coal sales generated revenues of approximately $50 million; today, annual sales are approximately $200 million.

Through the Industrial Development Division, Devco has become an entrepreneur on Cape Breton Island, demonstrating that Cape Bretoners can develop the economy, own and operate industry, and create employment. Devco has instituted bold ventures in rural industry sectors, specifically in agriculture, fisheries and tourism—bold new ventures which continue to see real, measurable, positive effects on the economy. Devco does not view development as a narrow goal. As the corporation's brief to the Legislative Committee on Bill C-103 states:

> Not only must industrial initiatives be in the best interests of Cape Bretoners, they must also improve upon the quality of life on the Island. Economic development is treated as a broad concept; it engages more than financial and managerial resources; it includes the development of individuals and of the overall community.

As an example of Devco's innovative work in the industrial development division, the tourism industry on Cape Breton Island has seen tremendous growth since the early 1970s, when Devco was the largest developer of tourism facilities on the island. Most of these facilities have been sold to private interests, as Devco has shifted its focus on tourism to marketing and promotional activities. Their success in this regard is unprecedented. Employment levels in tourism exceed those of coal and steel combined, and Cape Breton Island, as a region of Nova Scotia, receives the largest portion of tourism dollars in the province—even outdistancing the metropolitan area of Halifax. While recognizing these successes, one must also realize there is much left to be done.

The Industrial Development Division continues to fulfill its mandate by doing what the Coal Division cannot do in many of those communities whose history and economy are deeply rooted in coal. Among other things, the Industrial Development Division provides urban and industrial infrastructure, supports entrepreneurial development programs and supports local, self-help organizations.

We must underline and emphasize that the corporation is not two separate divisions with two mutually exclusive mandates. In reality, the mandate and the direction are the same: to modernize and diversify the Cape Breton economy.

The corporate mandate may be protected in legislation, but it is corporate policy that determines the results. The Cape Breton Development Corporation has, through policy decisions, chosen to be socially responsible to the people of Cape Breton Island.

● (1520)

Bill C-103 does not recognize the historical link between the two divisions of the Cape Breton Development Corporation. It also does not recognize that for thousands of rural Cape Bretoners the Cape Breton Development Corporation has meant, and continues to mean, the Industrial Development Division.

Merely exorcising the Industrial Development Division's powers from the Cape Breton Development Corporation Act does not ensure the continuance of that corporation's former direction or social responsibility. Devco has a social contract with the community that can be denied only if we are prepared to go back to the industrial society that existed in the nineteenth century and early twentieth century.

When Devco officials appeared before the Legislative Committee last March, in Port Hawkesbury, the Chairman of Devco, Dr. Teresa MacNeil, spoke of the special characteristics of Devco. She said, in part:

> The social conscience of the Cape Breton Development Corporation has long been possible by the work it assigned to the Industrial Development Division . . . It is possible, through program retention, to duplicate the current activities of the Industrial Development Division. That is not a problem. However, in so doing, the essence of the Cape Breton Development Corporation is being lost.

Reflecting on these comments from the chairman of Devco, I was reminded of an old maxim: "If it ain't broke, don't fix it."

I want to examine for just a moment what I view as the detrimental aspects of the provisions of this bill dealing with the creation of Enterprise Cape Breton Corporation. The future of the coal industry, and, indeed, most resource sectors of the Atlantic economy, depends upon innovative technologies which facilitate the development of new products for the marketplace. For instance, Devco has a joint interest in a

carbogel plant at Victoria Junction. Using the flexible mandate of the Industrial Development Division, Devco was able to lever private investment in its development of coal-water technologies. The vice-president of the Industrial Development Division, Keith Brown, testified before the Legislative Committee, when it met in Port Hawkesbury, that Bill C- 103 was in fact delimiting legislation. He said :

> The question is what happens after there are two corporations? Does the Coal Division have the powers to do that type of joint venture? We think legislatively they do not.

I caution honourable senators that a potentially more disturbing outcome may occur.

With reference to the original Devco legislation of 1967, the mandate of the Coal Division remains unamended to this day. For this reason Mr. Brown also stated:

> If you are taking all that developmental legislation away from the Cape Breton Development Corporation, then legislatively it leaves a coal company without the legislative ability actively to mine coal.

So, as a result, Devco will not only be limited in its ability to enter into joint ventures, but it may also be prevented from corporate expansion into other coal-based activities. The government has clearly ignored the fate of the Coal Division.

What the government is really doing is giving back to Cape Bretoners the old Dominion Coal Company. The last thing in the world that Cape Bretoners want back is anything that even remotely resembles the old Dominion Coal Company. Down there it is an absolute no-no! The Cape Breton Development Corporation will become strictly a coal company that is commercially driven. What we could be witnessing here is the thin edge of the wedge in a move towards privatization. Cape Bretoners will want to ask what the end result will be. How much of the labour force will be eliminated? Who or what will offset the effect on the Cape Breton economy?

The situation could be 1967 all over again, but with a very different twist to the scenario. Once again, coal production could be back in private hands on Cape Breton Island with work force levels drastically reduced. But this time, according to this legislation, we will no longer have an Industrial Development Division to soften the blow.

Some honourable senators may recall the report of the Cape Breton Advisory Committee which was released in September 1985. A major recommendation of the committee was that a new agency, Enterprise Cape Breton—not Enterprise Cape Breton Corporation as this legislation envisages, but Enterprise Cape Breton—be created as a subsidiary of Devco. Senator Murray suggested in his speech last Wednesday that the present configuration of agencies is a response to the petitions of Atlantic Canadians.

Honourable senators, I have here copies of letters addressed to federal ministers de Cotret and Murray signed by the Cape Breton Industrial Area Community Futures Committees—a group representative of citizens of all walks of life and all political stripes. I want to quote from just two of these letters. The first one is dated December 3, 1987, and is addressed to "Minister Robert de Cotret, Department of Regional Industrial Expansion." It reads, in part:

> Dear Minister de Cotret:
>
> Further to our earlier communication concerning the future of the Industrial Development Division of the Cape Breton Development Corporation, the public meeting referred to in our letter was held in Sydney on December 1, 1987. Enclosed are copies of the registration sheets from the session. Approximately two hundred fifty people from all areas of Cape Breton and representing a broad cross section of business, labour, municipal, and community leaders were in attendance. The meeting expressed its strong support for the retention of the Industrial Development Division and the legislation enacting it.
>
> To this effect the following motion was accepted from the floor and passed unanimously:
>
> Be it moved that the meeting empower the Chairman and regional representatives of the Community Futures Committees to communicate with the Minister responsible for Devco strongly endorsing the retention of the Industrial Development Division of Devco and further confirming with the Minister the peoples' desire to see the Industrial Development Division expanded to promote increased industrial development on Cape Breton Island.

It is signed by the meeting chairman, Reverend John Capstick; John Currie, chairman of the Northside Community Futures Committee; Mayor Bruce Clark, chairman of the Glace Bay and Area Community Futures Committee; and Charles Campbell, chairman of the Sydney and Area Community Futures Committee; and, of course, the signatures of approximately 250 leading citizens of the area are here as well.

Next, I would like to quote from a letter dated January 21, 1988, from Mr. C.A. Campbell, chairman of the Sydney and Area Community Futures Committee, addressed to Senator Murray. I shall not read the entire letter, but it does say:

> Our concerns may be outlined as follows:
>
> - There is no opportunity for on-going involvement in the decision making process by the community;
>
> - In fact, the structure proposed in the legislation, mitigates against the process of local decision making;
>
> - The Enterprise Cape Breton Corporation will be restricted from any participation in coal related industries.

Honourable senators, these civic leaders from various municipalities in Cape Breton have urged the minister to respect the integrity of the Devco legislation. The citizens' pleas have obviously fallen on deaf ears.

Before closing, I want to comment briefly on the initiative to create a Department of Industry, Science and Technology, to be known by the acronym DIST, out of the ashes of DRIE. Once this reorganization is complete, the government will have in place DIST, ACOA, the Western Diversification office and special regional funds for northern Ontario and outlying areas

of Quebec. Clearly, DIST will be responsible for industrial development in the heartland of Canada, in addition to guiding national science and technology policy. The dangers to Atlantic Canada are clear. Limited resources—$200 million annually for five years—will be targeted to small and medium-sized businesses in Atlantic Canada while funding for the major economic activities of the future remains in the most prosperous regions of the country.

• (1530)

I noted earlier that we must build from our strengths. Yet Enterprise Cape Breton Corporation cannot promote diversification within the coal producing industry of Cape Breton. In an absurd twist, though, its parent, ACOA, may fund new coal ventures outside Cape Breton Island.

Bill C-103 implies that the Industrial Development Division of Devco will continue as a new corporation with all its former power and ability. The new corporate structure of this "continued"—and that is the legislative word that is used—corporation, Enterprise Cape Breton Corporation, does not imply that the Industrial Development Division will continue as its former self. As a part of Devco, the Industrial Development Division currently reports to a board of directors with a chairman. Enterprise Cape Breton Corporation will report to the president of ACOA, headquartered in Moncton. This is not a "continued" corporation as the bill implies, but a totally new structure, unlike other Crown corporations in Canada.

Clauses 34(3) and 34(4) further weaken the former structure of the Industrial Development Division by giving the minister responsible for ACOA the ability to direct the Crown corporation, Enterprise Cape Breton Corporation. This removes the flexibility of the corporation to make decisions on its own, independently of government, as the Industrial Development Division has been able to do.

Honourable senators, I find very little in Part II of this bill worthy of support and I have deep concerns about the destruction of Devco.

For 20 years the economic fortunes of Cape Breton have been closely tied to those of Devco. Devco remains the major employer and generator of economic activity on the Island. Its continued operations are crucial to the future industrial and economic development of Cape Breton.

I will close with a comment from a *Cape Breton Post* editorial of May 12, 1988. In response to the question "Why change DEVCO now?", the paper responds: "It's a good question, and the government hasn't answered it."

Hon. William J. Petten (Acting Leader of the Opposition): Honourable senators, I move the adjournment of the debate.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Do I understand, honourable senators, that my friend is adjourning the debate on his own behalf or on behalf of the Leader of the Opposition?

May I also, at the same time, ask what is the intention of the opposition with regard to this important bill? I had formed the impression that we would be able to refer the bill to committee last week. That was not possible. This is the last sitting day of this week. Does the honourable senator know whether the opposition will have one speaker or several speakers next week, and when we may expect to be able to refer this bill to the Standing Senate Committee on National Finance?

[Senator Graham.]

Senator Petten: It is my understanding that we will be prepared to speak on Tuesday. Unfortunately, I was not here yesterday so I did not have an opportunity to speak with Senator MacEachen directly, but it is my understanding that Senator MacEachen will be ready to proceed on Tuesday. That is why I adjourned the debate in my name.

On motion of Senator Petten, debate adjourned.

INTER-PARLIAMENTARY UNION

SEVENTY-NINTH CONFERENCE, GUATEMALA CITY, GUATEMALA

Hon. Nathan Nurgitz rose pursuant to notice of Tuesday, May 17, 1988:

> That he will call the attention of the Senate to the Seventy-ninth Conference of the Inter-Parliamentary Union, held at Guatemala City, Guatemala, from April 11 to 16, 1988.

He said: Honourable senators, I should like to take a few moments to present the report of the Seventy-ninth Conference of the Inter-Parliamentary Union held on April 11 to 16 in Guatemala City. I seek the agreement of the Senate to table the report. I say that because the report is some 26 pages long and it has an appendix that consists of another 10 or 12 pages. That is in one language. It will, no doubt, amount to another 30 or 40 pages in the other official language. I think that tabling it would suffice, in that it would then be available, if any honourable senator wished to read it, and we would be able to save the expense of printing it. Copies are also available.

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

Hon. Senators: Agreed.

Report tabled.

Senator Nurgitz: Perhaps I may continue with a few brief comments about the report. As honourable senators are aware, the central aim of the IPU, the Inter-Parliamentary Union, is to advance the cause of peace and international cooperation by supporting the objectives of the United Nations. At the present time some 109 countries belong to this association. Next year, 1989, marks the centenary of the union and special celebrations are planned at each of the two regular conferences to commemorate this event.

At each conference countries may submit proposals for agenda items for the following conference. Approximately one year ago the World Commission on Environment and Development released its report, popularly known as the "Brundtland Report." Canada has strongly supported both the commission and its report. Our Minister of the Environment, the Honour-

able Thomas McMillan, in speaking to the United Nations General Assembly, said:

> Just as Canadians originally called for the Commission, generously funded it, and supported its work throughout, we are also consulting one another about how to act on its findings.

At the fall 1987 Inter-Parliamentary Union Conference Canada successfully proposed the inclusion of a debate in Guatemala City on the follow-up to the Brundtland Commission.

In addition, the agenda included the following subjects: peace and development leading to purely defensive military strategies; peace and development in Central America; and the current world situation.

Prior to our departure, the delegation received interesting and informative briefings from officials in the Department of External Affairs, the Department of the Environment, the Canadian International Development Agency and the International Development and Research Centre. Upon our arrival in Guatemala City, we had an excellent briefing on Canada-Guatemala relations by His Excellency Raymond Chrétien, our Ambassador, Ms. Dilys Buckley-Jones, our Chargé d'Affaires, and several staff members at our embassy in that city. Throughout our stay we received invaluable help and assistance from embassy officials. I should like to make particular mention of Mr. Bob Brack, who attended our daily breakfast caucuses and the conference proceedings.

On behalf of the delegation, I should also like to express our thanks and appreciation to the public servants who worked with us both here in Ottawa and in Guatemala.

Special mention should be made of Stephen Knowles and Barbara Reynolds. Throughout the pre-conference period, in making the necessary arrangements, and at the conference itself, the constant attention given by these two individuals added greatly to the effective performance of the Canadian delegation. Both Stephen and Barbara are well known in that international community, and Canada is the envy of many a country because of their unfailing dedication and expertise.

As well as the debate on the previously mentioned topics, there was an informal meeting on the health and well-being of the elderly chaired by Congressman Claude Pepper of the United States. I might add that Congressman Pepper was celebrating 50 years of membership in the IPU, having attended his first conference in 1938. "Long-term health care" was the subject discussed at this meeting on the elderly.

I wish to pay special tribute to the outstanding contribution of our colleague, Senator Thériault, himself a former provincial health minister. He delivered a moving and passionate speech about how Canada has provided long-term health care for its aging citizens. Delegates from many parts of the world remarked on his valuable contribution.

• (1540)

As you know, our Secretary of State for External Affairs, the Honourable Joe Clark, announced last November that the Canadian government had decided to restore bilateral aid to Guatemala. In order to see at first hand how Canadian money is being spent, our delegation arranged to visit two aid projects. The first project sponsored by Plenty Canada involved the introduction of soya beans—which are high in protein—into the diet of Guatemalans. The second was a food and health assistance program for widows and orphans of villagers killed in guerilla fighting.

The statutes of the Inter-Parliamentary Union state that its purpose is to promote personal contacts between members of all parliaments; to unite them in common action to establish and develop representative institutions; and to advance the work of international peace and development. Honourable senators, I feel that our report will demonstrate how this purpose is being met.

Hon. Senators: Hear, hear!

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

The Senate adjourned until Tuesday, May 31, 1988, at 2 p.m.

THE SENATE

Tuesday, May 31, 1988

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

Prayers.

[*Translation*]

THE LATE HONOURABLE PAUL C. LAFOND, D.F.C.

TRIBUTES

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, it is my sad duty to pay tribute to our colleague, Senator Paul Lafond, who passed away last Friday and whose funeral took place this morning in Hull.

When Paul Lafond was appointed to this chamber in 1970, he was in excellent company. Other new senators included the former Premier of Alberta, Senator Ernest Manning, our colleague, Senator Molgat and the eminent Senators Thérèse Casgrain and Eugene Forsey.

[*English*]

It would be fair to say that Paul Lafond's arrival in the Senate was somewhat overshadowed by the eminent company of new senators who came to the Senate at the same time. But when, on Friday, after eighteen years, he left us, he was one of our best known and most respected colleagues on Parliament Hill, in Canada and abroad. The reports of his committee on Defence Policy have been among the highlights of recent Parliaments.

Less known outside our immediate circle in the Senate was the care, patience and good humour with which, for some years, he coordinated committee schedules in this place—surely one of the most thankless tasks ever visited upon a colleague.

[*Translation*]

Before being appointed to the Senate, Paul Lafond had for many years been a key member of the national organization of the Liberal Party of Canada. For twenty years, from 1948 to 1968, Senator Lafond held the position of general secretary of the Liberal Federation of Canada. In that capacity he helped organize the conventions that saw the leadership of the Liberal Party go from Mackenzie King to St. Laurent, from St. Laurent to Pearson, and from Pearson to Trudeau. With his passing, another page in our history has been turned.

[*English*]

My cabinet colleague, the Honourable Flora MacDonald, was Paul Lafond's counterpart at national Conservative headquarters for many years. She spoke the other day warmly and with great regret of her political rival and good friend.

[*Translation*]

Beyond party lines, there is one thread that runs through all the stages of Senator Lafond's career and that is the armed forces.

From 1940 to 1945, he served as an officer in the Royal Canadian Air Force. His exploits over the Atlantic earned him the Distinguished Flying Cross.

Later, after his arrival in the Senate, Paul Lafond presided over the proceedings of the Senate Subcommittee on National Defence. He demonstrated his intellectual independence, criticizing the cuts made at the Department of National Defence, although they had been made by his own government.

I remember his trenchant and perhaps far-sighted comments in 1983, when he described the pitiful state of our armed forces. He said drily that our navy might be able to fend off an attack by St. Pierre and Miquelon!

He again demonstrated his independence and the fact that he was a man of deep convictions when he voted against the 1982 constitutional amendment presented by his government.

[*English*]

This morning at the funeral mass in Hull the presiding priest spoke of Paul Lafond's commitment to Canada and of his service to this country. He also emphasized Paul Lafond's attachment to his own corner of Quebec and Canada. He spoke of Paul Lafond's concern for the poor and the unfortunate of that city and region, of the leadership he gave as chairman of the annual fund-raising campaigns of Centraide, of his work for les oeuvres du Cardinal Léger.

[*Translation*]

Honourable senators, I am sure everyone in this Chamber will want to join the government in offering our condolences to Stella, Senator Lafond's wife, his two sisters and his friends.

[*English*]

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, I should like to associate the members of this side of the house and the members of the Liberal caucus and myself with the words of tribute that Senator Murray has so appropriately paid to the memory of the late Paul Lafond.

It does not seem, to me at least, that 18 years have passed since Paul Lafond was summoned to the Senate, having served for many years previously as an important official in the National Liberal Federation. It was during that period of his career that I had occasion to work with him on various electoral matters. At that time he established himself as an extremely competent person, who enjoyed the confidence of his party and the party leaders. That certainly was demonstrated

by the finesse and delicacy he showed in organizing very complicated leadership conventions.

His interest in politics had obviously prepared him for the active career he followed in the Senate. In a sense, it is unfortunate that the work of the Special Committee on National Defence has not received the wide currency in Canada that it deserves. The work is well known among defence specialists, but his conclusions are not as well known among the general public as a whole. Of course, Senator Lafond was a key person in that particular work.

I should like to conclude by referring to Paul Lafond's war service. He served for a number of years in the Royal Canadian Air Force and was decorated with an important award, which he wore most modestly but which was an indication of an achievement in service that not many attain. It is most unfortunate for all of us to have lost his presence, because he has been associated for so many years with the Ottawa scene.

I join with Senator Murray and others in expressing our deep sympathy to his widow, family and friends.

Hon. Henry D. Hicks: Honourable senators, the two senators who have preceded me have covered very well the career of our lately departed friend, Senator Paul Lafond. I need not go over that ground, but there are one or two points referred to by both of them that I would like to make brief comments upon, just the same.

First, Paul Lafond was, throughout his life, a citizen of Hull. But operating from that community so close to the national capital he became a true Canadian who comprehended this country as a whole, as a unit, and was more concerned with Canada as a whole than he was with its several parts—although, as Senator Murray said in referring to the oration of the presiding priest at his funeral this morning, he became well known for his concern for the poor and unfortunate people in the community in which he was brought up and in which he commenced his education.

I should also like to refer to Senator Lafond's war service, though much has already been said. He was doing research with the RCAF when war broke out. He became an officer in the Royal Canadian Air Force and served as such for five years, winning the Distinguished Flying Cross—no mean accomplishment. From that time on he continued his interest in Canada's armed forces—not only the air force but all of Canada's armed forces as an integrated defence unit. This was what enabled him to preside so well over the Committee on National Defence when it was a subcommittee of our Committee on Foreign Affairs and when it then achieved the status of a special committee of this house.

I am also glad that Senator Murray referred to, and Senator MacEachen continued to speak of, his service for 20 years as General Secretary of the National Liberal Federation.

Our system of Parliament, towards which our system of government is responsible, depends on party organization. Largely, the stability of our government owes a great debt to political parties. Those who serve them do a great service not only to their party but also to the country. As Senator Murray pointed out, Senator Lafond did not operate in an antagonistic manner with his opposite number in the Progressive Conservative Party. He was a professional person in this respect as well. That is something which in these times our political parties urgently need. As has already been said, he discharged those duties well.

Finally, in this chamber he will largely be remembered for the service he rendered as chairman of the Special Committee of the Senate on National Defence. The committee has issued four reports already. The first was entitled: "Manpower in Canada's Armed Forces." We have already seen some progress towards implementing the recommendations that that report made—not as rapid progress as those of us who are on the committee would have liked, but some progress—and some of us on that committee feel that we deserve some credit for having made a strong statement advocating policies which have been followed since then.

The second report had to do with Maritime Command. Here, again, we made the recommendation which resulted in—I do not say that we were the only ones, though—the beginning of the acquisition of the Canadian patrol frigates. We also recommended the acquisition of further submarines. However, we did not at that time consider nuclear-powered submarines, and that is a matter to which this particular committee has not yet addressed its attention. Our second and third reports had to do with Canada's territorial air defence and the fourth one with military air transport.

• (1410)

Shortly after we began what will probably be the committee's final study, an investigation into Canada's land forces, Senator Lafond's health caused him to retire as chairman of the committee. It then became my unhappy duty, honourable senators, to succeed him as chairman, and I am doing my best to bring the final report to a conclusion, with the able assistance of the senators who have been so faithful in supporting the work of the committee. I hope that we may be able to append to the report at that time a summary, together with a cost-updating, of all of the recommendations that we have made in our series of reports covering the whole of Canada's armed forces.

Honourable senators, perhaps I have spent a little too much time talking about these matters, but I have done so deliberately, because I say to you, honourable senators, that had it not been for Senator Paul Lafond's intimate knowledge of Canada's defence forces and his more personal knowledge of the key players who occupied the position of Chief of the Defence Staff and other top positons in all three services in Canada's forces, I do not think the committee would ever have made the progress that it did in putting together those reports. His personal hand was very active in the writing and composition of the reports and in thrashing out with the other members of the committee the recommendations that were made. Truly, Senator Paul Lafond was eminently qualified to do this job, and I regret exceedingly that he did not survive long enough to see the completion of our fifth and final report.

To all of this, honourable senators, I would add one other thing: While Senator Lafond concerned himself primarily with matters of defence, he was himself a most calm and placid man. No one would have called him warlike in any way, and when he addressed himself to the subject of the armed services of Canada, he was concerned about their defensive aspects—their preservation of Canada's security and perhaps Canada's sovereignty as well. We shall miss his leadership; we shall miss his pleasant personality; we shall miss the calmness with which he presided over committee meetings and dealt with his colleagues. I join the two honourable senators who have preceded me in extending my condolences and those of the other members of the Defence Committee to Madame Lafond and other members of Senator Lafond's family. Farewell to a great senator, a great Canadian and a great citizen.

Hon. Daniel A. Lang: Honourable senators, I would like to intervene at this point, if I may, because of a very long acquaintance with Senator Lafond. This acquaintance came about originally in the late 1950s in the depth of a Tory government reign, when Senator Lafond was Executive Secretary of the National Liberal Federation, and I think our colleague, Senator Davey, also had some official position at that time.

Senator Lafond's experiences and my own in this chamber followed somewhat parallel paths inasmuch as we came here as Liberals who had laboured in the political vineyards and had ended up being not large "L" Liberals but small "l" liberals and independents. I think that progression exemplifies the modifying influence of a span of years in this chamber, and I hope that it will set an example as to how both Paul and I felt this chamber should operate.

Paul's significant contribution as chairman of the Subcommittee on National Defence, which later became the Special Committee on National Defence, should not be minimized. I am quite familiar with the reactions to the reports of that committee amongst those who are knowledgeable and concerned with national defence, both in academe and in Reserve Forces capacities. The culmulative effect of those four reports forms the basis of the consciousness of this country today in military matters, and for that we owe Paul a debt of infinite gratitude.

Paul was, first of all, a Canadian. You need only look at his distinguished war record for evidence that. Second, he was an ardent Quebecois, and you need only to look at his stand on the constitutional issue of 1982 for evidence of that. Third, Paul was a small "l" liberal, and that is an order I would fully endorse.

If I may, I would like to quote from a poem by a mid-nineteenth century poet, Adam Lindsay Gordon, which, I think, rather epitomizes Paul as I see him now, in retrospect:

Question not, but live and labour
Till yon goal be won,
Helping every feeble neighbour,
Seeking help from none;
Life is mostly froth and bubble,
Two things stand like stone,
Kindness in another's trouble,
Courage in your own.

To Stella I send my personal sympathy and prayers.

Hon. Duff Roblin: Honourable colleagues, I am privileged to offer some words of respect and appreciation for the life and labours of our late colleague, the Honourable Paul C. Lafond, D.F.C., with particular reference to the Special Committee on National Defence, of which we heard something this afternoon. Unfortunately, I did not know him in his other role or his other activities, but I must say that I am unbounding in my admiration for the way in which he conducted his duties as chairman of that committee. In the first place, he was an excellent chairman. He knew how to give every committee member room to breathe and he knew how to bring out the best of the information that was available from the witnesses who appeared before us. He had a gift for synthesizing this mass of material into the concise and, in my opinion, effective reports that the committee issued from time to time. Make no mistake about it, Paul Lafond was the original animator and driving spirit behind the work of that committee. It reflects his leadership; it reflects his influence; it reflects his good judgment, and all that can be found by those who look at the reports with attention and with informed opinion.

● (1420)

I was a member of the committee, but I can tell you that it was Paul Lafond's committee. He was the man who led us through the work we had to do. I think he made a contribution—which is perhaps not as widely recognized as it should be—in bringing the question of national defence once again into the arena of public debate and consideration. It had languished for years in the shade.

While it is true that Senate reports are not what one would call "best-sellers," his reports had a significance that is still reflected in the discussions that take place on national defence in this country today. The recommendations contained in those reports are reflected to some significant extent in the white paper and certainly in other policy pronouncements that are being made from time to time with respect to that very important aspect of our public affairs.

I think Senator Lafond's gift was to provide a platform for those who wanted to discuss this topic, a forum for opinion to develop, and a focus on the essential points involved in the development of national defence policy. It seems to me that, along with those other important and significant contributions which he made to political life in this country, the contribution he made as chairman of the Special Committee of the Senate on National Defence will stand as a tangible memorial to the part he played in the evolution of Canada as a self-respecting and as a self-reliant nation. We have every reason to be satisfied and proud of the record he leaves as a Canadian parliamentarian and as a leader in the affairs of our nation.

I would like to add these words of appreciation and respect to those that have already been offered and to express to his wife and those he leaves behind our sincere condolences.

Hon. Senators: Hear, hear!

Hon. William J. Petten: Honourable senators, I would like to associate myself with the remarks of previous speakers.

I first met Senator Paul Lafond when he was General Secretary of the Liberal Party. He was most kind and helpful and always ready to lend a helping hand to those of us who were not as well versed in the political field as he. Under pressure, he was one in a million, never losing his cool and steering the rest of us on the right course.

I remember on one occasion a meeting went on too long. The next day the same group was assembled to continue the meeting. After an hour, an alarm clock went off in a drawer. Senator Lafond, as chairman of the committee, said, "Gentlemen, the meeting is over," and he returned the clock to the drawer. The meeting the following day went smoothly and quickly.

As has already been mentioned, he served with distinction in the RCAF from 1940 to 1945 and was awarded the D.F.C.

Honourable senators will remember his devotion to his work here in the Senate as Liberal caucus chairman, as a member of various committees and as chairman of the Special Committee of the Senate on National Defence. The excellent reports of that committee were due in no small part to his dedication and tenacity.

I will long remember him. With his passing, Canada has lost a distinguished son and I a great and dear friend. To his wife, Stella, and his sisters I extend my most heartfelt sympathy in their sad loss.

Hon. Hartland de M. Molson: Honourable senators, most of the things we think of in connection with Paul Lafond's life in the Senate have been said, and very appropriately said, but I would not like the day to pass without adding a few comments of my own.

To begin with, I did not know him—as I am sure the great majority of you did—when he was carrying out his work as an active member of a political party, but I did know him extremely well in committee work here. He and I were both members of the Canada-United States Parliamentary Group which studied Canada-U.S. relations. We also worked together on the Special Committee on National Defence from its inception.

There are one or two points that have already been made but could still be emphasized. One was his extreme modesty. His modesty did not prevent him from being able to lead. I am thinking at the moment of his chairmanship of the Special Committee of the Senate on National Defence. He showed all the qualities of leadership in a very quiet way and without any force or obvious effort. We all followed him cheerfully and he got extraordinarily good results. He earned the respect not only of the members of the committee but he also earned the great respect of the members of the armed forces. His reports had considerable influence on the trends developing in national defence.

A second thing we should remember is that under previous governments the Canadian Forces had been let slide to a far less respectable level over the recent years before the Special Senate Committee on National Defence was established. The strength of the armed forces had been greatly reduced and the equipment was obsolescent or obsolete. In fact, the Canadian Forces were suffering badly.

In spite of this, in travelling around the country with the committee, one of the constant surprises to us was the fact that we were fortunate to be able to attract the finest Canadian men and women to the armed forces. Whenever the committee travelled, we met hundreds of members of the armed forces. In our discussions, we expressed quite often our great pleasure to see the extremely high quality of young Canadians who joined the armed forces.

A third point is that, of his own choice, Paul Lafond chose to sit with our independent group. I will not say that he was unencumbered with political loyalty, because he was a Liberal, but I will say that he wanted to sit with us and to be his own master in the matter of his decisions on the issues in the Senate.

Finally, I should like to say that he was, undoubtedly, a very, very good friend. He never carried his feelings on his sleeve; it was never too obvious what he was thinking, but he was a reliable, constant and warm friend we were lucky to have. He will be greatly missed in the chamber; he will be very greatly missed in the nation; and he will certainly be sadly missed by all of us here who were his friends.

I would like to add my word to the expressions of sympathy and condolence that we are sending to Stella, his wife, and his sisters on his death.

[*Translation*]

Hon. Gildas L. Molgat: Honourable senators, I wish to join in the very well deserved tributes paid this afternoon to our colleague Paul Lafond.

Although we met through politics, I wish to speak now as a friend. My first dealings with Paul go back to the time when I was active in politics in Manitoba myself and he was a party worker. As in any organization, there were chairmen, former colleagues here, Senator Connolly, Senator Stanbury who is still with us, but in fact, the one we worked with was Paul Lafond. When we had to make a contact in Ottawa, Paul Lafond represented the Liberal Party in Ottawa for us.

As Senator Murray pointed out, the Honourable Paul Lafond and I later entered this Chamber on the same day, as it happened, in October 1970. Afterward, we worked together very often. That was how I could admire Paul Lafond's talent, such a calm man, who never got angry but was always at work, always on time for committees and totally reliable and always good-humoured. He was a man of keen intelligence and great spiritual depth. We have all lost a great man today. I wish to express my most sincere condolences to his wife Stella and his whole family.

● (1430)

[*English*]

Hon. Charles McElman: Honourable senators, I wish to join with those who have already spoken in tribute to the memory

of the late Senator Paul Lafond. Like Senator Molgat, I would like to speak briefly of Senator Lafond as a friend.

I will say at the outset that if Paul were here today he would be dreadfully embarrassed by all the fine things being said about him. He was a self-effacing man. Our acquaintanceship began more than 35 years ago, when Paul was general secretary of the party here in Ottawa and I held a similar office in the province of New Brunswick. He had some experience, while I was very green upon entering the field. He was of tremendous assistance to me. We did have something in common to begin with—we were both five-year veterans of the RCAF.

Honourable senators, I should say that our acquaintanceship of those early days soon blossomed into a relationship of mutual respect and solid friendship. Although we did not always agree on all issues, our friendship matured and strengthened over all those years and was one that I cherished greatly.

Some senators will recall that the idea of a separate committee on defence was first proposed by another great friend of Paul Lafond's, the late Senator Hamilton "Hammy" McDonald, who worked towards that end for some years here and was unable to see it accomplished. But Paul Lafond picked up that torch and often gave credit to "Hammy" McDonald for originating the idea. However, as has been said, Senator Lafond performed as chairman of that committee and gave leadership of a style and substance that could be equalled by very few.

Senator Lafond was a person of courage, integrity and great principle. As a senator he was dedicated, effective and could be termed in every way a full working senator.

I join with others in expressing condolences to Stella and to the other members of the family. I would like to add that there is one other of our acquaintances who should also have our condolences today, and that is the former Clerk of the Senate, Robert Fortier. He was a lifetime friend of Paul Lafond and is suffering his loss very deeply. I should tell honourable senators that during Paul Lafond's illness it was Robert Fortier who attended as often as possible to his personal needs and who proved of such tremendous assistance to Stella. A man whom we know and respect, Robert Fortier, is hurting today as few others are.

EXCISE TAX ACT
EXCISE ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-117, to amend the Excise Tax Act and the Excise Act.

Bill read first time.

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

Hon. Jacques Flynn: Honourable senators, I ask leave to move second reading tomorrow.

[Senator McElman.]

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

Hon. Senators: Agreed.

On motion of Senator Flynn, with leave of the Senate and notwithstanding rule 44(1)(*f*), bill placed on the Orders of the Day for second reading at the next sitting of the Senate.

CANADA POST CORPORATION

CLOSING OF VICTORIA, PRINCE EDWARD ISLAND POST OFFICE—PRESENTATION OF PETITION

Hon. Heath Macquarrie: Honourable senators, for the first and, perhaps, only time in this place, I have the honour to present a petition for the residents of Victoria, Queen's County, in the province of Prince Edward Island, praying that the post office in that beautiful and historic village be not closed but remain open in the interests of the community.

Hon. Senators: Hear, hear!

Senator Macquarrie: Although this is not necessary under our procedures, an act of supererogation is not forbidden by our rules. In this instance, I am in a position to authenticate and verify the signatures of all of these citizens of Victoria, Prince Edward Island.

FOREIGN AFFAIRS

CANCELLATION OF COMMITTEE MEETING

Hon. George van Roggen: Honourable senators, if I may, I will simply announce that the Standing Senate Committee on Foreign Affairs will not be sitting this afternoon at four o'clock.

[*Translation*]

THE ESTIMATES, 1988-89

REPORT OF NATIONAL FINANCE COMMITTEE ON SUPPLEMENTARY ESTIMATES (A) PRESENTED AND PRINTED AS APPENDIX

Hon. Fernand-E. Leblanc: Honourable senators, the Standing Senate Committee on National Finance has the honour to present its twenty-first report, on Supplementary Estimates (A) for the fiscal year ending March 31, 1989. I ask that the report be printed as an appendix to the *Debates of the Senate* and to the *Minutes of the Proceedings of the Senate* of this day and form part of the permanent records of this house.

The Hon. the Speaker: It is agreed, honourable senators?

Hon. Senators: Agreed.

(*For text of report see Appendix "A", p. 3544.*)

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

On motion of Senator Leblanc (Saurel), report placed on the Orders of the Day for consideration at the next sitting of the Senate.

• (1440)

[*English*]

AGRICULTURE AND FORESTRY

WESTERN CANADA—DROUGHT CONDITIONS—REPORT OF COMMITTEE PRESENTED

Hon. Efstathios William Barootes, for Hon. Dan Hays, chairman of the Standing Senate Committee on Agriculture and Forestry, presented the following report:

Tuesday, May 31, 1988

The Standing Senate Committee on Agriculture and Forestry has the honour to present its

EIGHTH REPORT

In compliance with the Order of Reference of Thursday, May 19, 1988, your Committee has heard a good overview of the drought conditions in Western Canada by the Minister of Agriculture and his officials.

Your Committee, recognizing the serious nature of the drought and its damage to Canadian livestock producers, recommends that prompt action be taken by the federal government to provide relief in the form of:

1. transportation assistance to pay a portion of the costs of transporting forage to drought-affected areas;
2. transportation assistance to pay a portion of the costs of moving livestock to and from any available grazing areas; and
3. transportation assistance to pay a portion of the costs of transporting water to areas affected by the drought.

The extent of federal transportation assistance should be at least equal to that under the 1980-81 Herd Maintenance Assistance Program and should be determined in conjunction with the provincial governments.

Further, your Committee recommends that

4. a special deferred income tax arrangement be implemented. This arrangement would allow livestock producers to sell their livestock inventory and then to repurchase the same dollar amount of inventory, within a reasonable time frame, with special tax treatment. The sale proceeds from livestock inventory sold due to drought conditions would be considered as taxable income in the year in which the livestock inventory is repurchased.

Your Committee recommends that the federal government give urgent consideration to such intiatives.

Respectfully submitted,

E.W. BAROOTES
for
DANIEL HAYS
Chairman

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

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

COPYRIGHT ACT

BILL TO AMEND—REPORT OF COMMITTEE ON MESSAGE FROM COMMONS AND MOTION FOR NON-INSISTENCE UPON SENATE AMENDMENTS PRESENTED AND PRINTED AS APPENDIX

Hon. Richard J. Doyle: Honourable senators, I have the honour to present the twenty-fifth report of the Standing Senate Committee on Banking, Trade and Commerce, concerning the motion of the Honourable Senator Doyle dated May 18, 1988, and the message from the House of Commons dated May 17, 1988, relating to certain amendments to Bill C-60, to amend the Copyright Act and to amend other acts in consequence thereof. I do so in the absence of the chairman of the committee, Senator Sinclair.

I ask that the report be printed as an appendix to the *Debates of the Senate* and the *Minutes of the Proceedings of the Senate* of this day and form part of the permanent records of this house.

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

Hon. Senators: Agreed.

(*For text of report, see Appendix "B", p. 3545.*)

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

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

[*Translation*]

STANDING RULES AND ORDERS

TENTH REPORT OF COMMITTEE PRESENTED

Hon. Gildas L. Molgat, Chairman of the Standing Committee on Standing Rules and Orders, presented the following report:

Tuesday, May 31, 1988

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

TENTH REPORT

Pursuant to Rule 67(1)(*f*) of the *Rules of the Senate of Canada*, your Committee recommends that Rule 67(1) of the *Rules of the Senate of Canada* be amended by striking out paragraph (*g*) and substituting the following:

"(*g*) The Committee on Internal Economy, Budgets and Administration, composed of fifteen members, four of whom shall constitute a quorum, which is authorized on its own initiative to consider all matters of a financial or administrative nature relating to the internal management of the Senate."

Respectfully submitted,

GILDAS MOLGAT
Chairman

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

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

ELEVENTH REPORT OF COMMITTEE PRESENTED

Hon. Gildas L. Molgat, Chairman of the Standing Committee on Standing Rules and Orders, presented the following report:

Tuesday, May 31, 1988

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

ELEVENTH REPORT

Proposals from several organizations requesting the establishment of a standing committee on the environment were referred to your Committee for consideration.

Your Committee examined the proposals and, in the process, reviewed the responsibilities of the present committees in the Senate.

While environmental affairs are under the specific jurisdiction of the Standing Committee on Energy and Natural Resources, it is the opinion of your Committee that the *Rules of the Senate of Canada* are flexible enough to permit the following committees to investigate environmental matters namely, the Standing Committees on Foreign Affairs; Transport and Communications; Social Affairs, Science and Technology; Agriculture and Forestry; and Fisheries.

Your Committee acknowledges that environmental quality is a very important subject. It has concluded however that, in view of the present number of standing, special and joint committees, it is not feasible to create an additional standing committee at this time.

Respectfully submitted,

GILDAS MOLGAT
Chairman

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

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

[*English*]

NATIONAL DEFENCE

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Henry D. Hicks: Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*a*), I move:

That the Special Committee of the Senate on National Defence have power to sit at seven o'clock in the evening today, even though the Senate may then be sitting, and that rule 76(4) be suspended in relation thereto.

If I have leave, and if honourable senators wish, I will give a brief explanation.

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

Hon. Senators: Agreed.

Senator Hicks: This meeting had been set up for some time before it was contemplated or known that the Senate would be sitting for special purposes as a Committee of the Whole at six o'clock this evening. Since the committee has a former Deputy Minister of National Defence coming before it, and since we have put him off for other reasons on at least one previous occasion, I am loathe to do so again. Therefore, I would like permission to sit at seven o'clock this evening to hear this witness.

Hon. Orville H. Phillips: Honourable senators, I am sure that Senator Hicks is aware that it was his deputy leader who proposed that the Senate deal with the Emergencies Bill in Committee of the Whole rather than having it referred to the Special Committee on National Defence. I find it rather strange that the Defence Committee would want to meet at the same time as the Committee of the Whole is sitting.

I suggest to Senator Hicks that we follow the procedure as laid out by his deputy leader last week. He was insistent that the Scroll be followed very closely, and I think we should do that this week.

Senator Hicks: I should like to reply to the Honourable Senator Phillips. It is not a question of the Special Committee on National Defence having decided that it wanted to sit when the Senate was sitting. We chose a time. In the 16 years that I have been in this chamber, I cannot recall the Senate's having a special sitting commencing at six o'clock in the evening. The Special Committee on National Defence has had great difficulty in arranging meeting times. We have had enough trouble accommodating our witnesses. This is a former deputy minister whose evidence we are anxious to hear. It will be difficult for us to rearrange this meeting.

More importantly, let me point out that the mandate of this committee expires in mid-December of this year. We have attempted to follow a schedule that would have enabled us to complete the taking of evidence before the end of May. We are now running up to June 22, because the Minister of National Defence, for whom we set aside a special meeting, was not able to come to that meeting. The next date that he could give us was June 22.

We are going to have little enough time to meet our deadlines, and I am reluctant to dispense with a hearing even though I acknowledge the importance of the Committee of the Whole. May I point out, however, that that meeting starts at six o'clock. We will all have an opportunity to hear the submission that the Minister of National Defence makes in

this chamber before we go to the Committee on National Defence for its own meeting.

I hope that the house will give permission. But since I do not think this is a matter of life or death, I will quite cheerfully abide by the wishes of honourable senators.

Senator Phillips: Honourable senators, I feel I want to follow the wishes of the Honourable Senator Frith.

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I would like to say a word regarding the six o'clock meeting time, which is not only unusual but is unique. As I understand it, the time was worked out between the sponsor of the bill and the minister's office. It was a time that appeared to be convenient for these people. In discussing it with my opposite number across the way, we agreed that an afternoon or evening session would be acceptable to the Senate. However, it seems that we have managed to come up with a sitting time that is neither afternoon nor evening. To that extent, I apologize to the Senate. I can only say that the decision was not mine but was arrived at in a most circuitous way; nevertheless, I take the responsibility for it.

I have taken the liberty of asking the Senate staff to provide us with a variety of food, which will be available in the Reading Room prior to six o'clock. In some small way, this may make up for the inconvenience of not having access to the restaurant, which does not open until 6 p.m.

With regard to the meeting of the Special Committee on National Defence, it would be a nice gesture if the committee members could be here when the Minister of National Defence is appearing before us, since obviously his concerns and views should be the concerns and views of the committee. There need not necessarily be a conflict here: The Committee of the Whole sits at 6 o'clock; Senator Hicks is talking about 7 o'clock. It may well be that we will be through by that time. However, I suspect that that is not so. This is a matter of great concern to many senators, and I expect that the minister and his support staff may be expected to stay longer than that. In any event, that is the situation as it now is, and I offer it to the Senate.

• (1450)

The Hon. the Speaker: Honourable senators, I have a motion. Does Senator Hicks wish to amend his motion to say, "after the Committee of the Whole has sat"—and in the event that it lasts too long, he will cancel it?

Senator Hicks: If we delay the sitting until after the Senate rises, we do not need any special permission. I would like to see the opinion of honourable senators taken on the motion.

The Hon. the Speaker: There is a motion by the Honourable Senator Hicks, seconded by the Honourable Senator Molgat, with leave of the Senate and notwithstanding rule 45(1)(*a*)—

Hon. Orville H. Phillips: Leave is not granted!

The Hon. the Speaker:

> That the Special Committee of the Senate on National Defence have power to sit—

Senator Flynn: Leave is not granted!

The Hon. the Speaker: Leave is not granted? Leave was granted earlier.

Senator Hicks: Leave was granted earlier.

Senator Bélisle: No.

The Hon. the Speaker: Yes; leave was granted earlier.

Senator Hicks: Leave was granted earlier. Before I made my statement, I said, "If leave is granted, and if honourable senators wish, I will make an explanatory statement." Leave was granted, and I proceeded to make my explanatory statement.

Senator Phillips: But the Chair did not call for leave. Therefore, I had no opportunity to comment.

Senator Hicks: Well, surely the honourable senator means that he did not take advantage of the opportunity that he had.

Senator Phillips: No; I respect the Chair. It is the Chair's duty to ask for leave and it did not.

The Hon. the Speaker: I will put the motion to the—

Senator Phillips: No, you cannot!

The Hon. the Speaker: It was moved by the Honourable Senator Hicks, seconded by the Honourable Senator Molgat—

Senator Phillips: You cannot do that!

The Hon. the Speaker: —with leave of the Senate and notwithstanding rule 45(1)(*a*):

> That the Special Committee of the Senate on National Defence have power to sit at 7 o'clock in the evening today, even though the Senate may then be sitting, and that rule 76(4) be suspended in relation thereto.

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

Senator MacEachen: Adopt the motion!

Senator Phillips: Has the Chair asked for leave?

The Hon. the Speaker: Well, I did ask for leave after Senator Hicks put the motion, and leave was granted.

Senator Phillips: Leave was not granted!

Senator Doody: Honourable senators, it is a strange situation when an explanation is offered after leave, theoretically, has been granted. If leave has been granted, you do not really need an explanation, do you? If you have leave, then that is all there is to it.

My understanding was that Senator Phillips wanted to hear the reasons for this unusual meeting time and then wished to make up his mind whether or not to grant leave. Having heard the explanation, he has decided that he does not want to grant leave, and that is the end of the matter.

Senator Hicks: With respect, honourable senators, I do not think that is right. Surely, the request for leave has to do with dispensing with notice; that is all. The leave was granted to dispense with notice, and I then made the motion. If honourable senators do not want to grant the motion, then they vote it down; it is as simple as that.

As I have said, I do not think that this is a matter of life or death—I will be quite cheerful whatever the outcome is—but I would like to test the views of honourable senators.

Senator Phillips: Honourable senators, I would point out that the normal procedure followed in this chamber is for the Speaker to rise and ask if leave is granted. I do not believe that procedure was followed. Therefore, there was no opportunity to refuse leave.

Senator Hicks: But you were not refusing leave for me to make the motion now. You gave me leave to make the motion now, thus dispensing with the notice. That is what the leave amounted to! You now do not like the substance of the motion that I made, or you do not like the explanation that I gave in support of it. That is quite understandable to me. You must simply vote the motion down, then; that is all.

The Hon. the Speaker: My understanding, honourable senators, is that leave was granted. I asked if leave was granted. I agree with Senator Hicks that we can either vote down the motion or approve it.

Senator Phillips: Honourable senators, I move the adjournment of the debate.

The Hon. the Speaker: It is moved by the Honourable Senator Phillips, seconded by the Honourable Senator Doody, that further debate be adjourned until the next sitting of the Senate.

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

Senator MacEachen: No.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

The Hon. the Speaker: Those contrary will please say "nay".

Some Hon. Senators: Nay.

The Hon. the Speaker: I must say that the "nays" have it.

Will honourable senators agree to dispense with the reading of the main motion again?

Some Hon. Senators: Agreed.

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

Senator Doody: It is not entirely a pleasure.

Some Hon. Senators: Agreed.

The Hon. the Speaker: Those in favour of the motion please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Those against the motion please say "nay."

Some Hon. Senators: Nay.

[Senator Hicks.]

The Hon. the Speaker: The motion is carried.

Motion agreed to, on division.

THE CONSTITUTION

CONSTITUTION AMENDMENT, 1987—NOTICE OF MOTION TO TRANSMIT COPY OF SENATE RESOLUTION TO LEGISLATIVE ASSEMBLIES AND FOUR NATIONAL ABORIGINAL ORGANIZATIONS

Hon. Charlie Watt: Honourable senators, I give notice that tomorrow, Wednesday, June 1, 1988, I will move:

> That the Honourable the Speaker do transmit to the Legislative Assembly of each province a copy of the Resolution to amend the Constitution of Canada, adopted by the Senate on the 21st April, 1988, and urge that the provinces do likewise; and
>
> That a copy of the said Resolution be transmitted by the Honourable the Speaker to the Legislative Assemblies of the Yukon and the Northwest Territories and to the four National Organizations representing the aboriginal peoples of Canada.

GOVERNMENT ORGANIZATION BILL, ATLANTIC CANADA, 1987

NOTICE OF MOTION TO INSTRUCT NATIONAL FINANCE COMMITTEE TO DIVIDE BILL C-103 INTO TWO BILLS

Hon. B. Alasdair Graham: Honourable senators, I give notice that on Wednesday next, June 1, 1988, I will move:

> That it be an instruction of this House to the Standing Committee on National Finance that it divide Bill C-103, An Act to increase opportunity for economic development in Atlantic Canada, to establish the Atlantic Canada Opportunities Agency and Enterprise Cape Breton Corporation and to make consequential and related amendments to other Acts into two Bills, in order that it may deal separately with Part I, entitled the Atlantic Canada Opportunities Agency, and Part II entitled Enterprise Cape Breton Corporation.

LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Joan Neiman, with leave of the Senate and notwithstanding rule 45(1)(*a*), moved:

> That the Standing Senate Committee on Legal and Constitutional Affairs have power to sit at 4 o'clock in the afternoon today, even though the Senate may then be sitting, and that rule 76(4) be suspended in relation thereto.

Motion agreed to.

● (1500)

PRIVATE BILL

REGIONAL VICAR FOR CANADA OF THE PRELATURE OF THE HOLY CROSS AND OPUS DEI—CONSIDERATION OF REPORT OF COMMITTEE—DEBATE CONTINUED

On the Order:

> Resuming the debate on the motion of the Honourable Senator Neiman, seconded by the Honourable Senator Cottreau, for the adoption of the Twenty-First Report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill S-7, An Act to incorporate the Regional Vicar for Canada of the Prelature of the Holy Cross and Opus Dei, with two amendments) presented in the Senate on 25th May, 1988.—(*Honourable Senator Gigantès*).

Hon. Philippe Deane Gigantès: Honourable senators, with all due respect, I should like to say that the remarks of the honourable chairman of the Standing Senate Committee on Legal and Constitutional Affairs argue for the rejection of this bill. However, after arguing for the rejection of this bill, the honourable chairman, no doubt out of the kindness of her heart and wishing to be accommodating, recommends that we adopt it, and I should like to illustrate that. In her remarks on page 3495 of the *Debates of the Senate*, Senator Neiman said that the purpose of S-7 was to incorporate the Regional Vicar for Canada of the Prelature of the Holy Cross and Opus Dei. She then pointed out that Opus Dei, in its request, describes itself as "a secular jurisdictional institution . . .".

Senator Neiman went on to tell us that this institution was incorporated as a non-profit organization under Part III of the Quebec Companies Act and has operated in that way for some 30 years with no problems. Senator Neiman then continued, and I quote:

> In 1982 the organization was constituted as a personal Prelature of the Church under the Church's Apostolic Constitution *Ut Sit*. The committee heard that it was that change in canon law regarding the status of Opus Dei that prompted it to apply for a change in its civil legal structure in Canada.

In the very next paragraph of her speech, the chairman pointed out that what the Senate was being asked to do was to grant a charter for a corporation sole, which has traditionally been a way of incorporating religious institutions. To that purpose, the Senate in the past has approved private bills to create corporations sole.

The chairman went on to tell the Senate that there were 20 precedents for this action and every single one of those precedents was to create episcopal corporations around a Catholic bishop and to incorporate offices of "equal stature" in other churches.

Honourable senators, it was quite clear from the evidence presented to the committee that the Regional Vicar does not have equivalent status with a bishop, because before the Regional Vicar can operate in a bishopric he must have the permission of the bishop. He is not, therefore, equal to the bishop since he has to ask for the bishop's permission to operate.

In other words, honourable senators, if we agreed to pass this bill, we would be creating a precedent that is different from the 20 previous precedents. We would be granting something which, so far, we have granted only to bishops or to people of equivalent stature, and this Regional Vicar does not have equivalent stature.

In her remarks the chairman also said that we had imposed some fairly stringent disclosure requirements in the bill. However, according to testimony given before the committee as to how Opus Dei operated before its incorporation, these disclosure requirements are obviously meaningless, because Opus Dei has operated, so far, with the help of numbered corporations into which various individuals or organizations—we don't know which—have deposited money which Opus Dei has used. If Opus Dei continues to operate in this way, drawing the majority of its funds or of its facilities from numbered corporations—not as a transfer to itself but with the right to use funds through the various numbered corporations, then the disclosure procedures and requirements we have proposed will, in effect, disclose nothing very much. Therefore, these procedures we have proposed would be meaningless.

We were also told by the chairman in her remarks that the argument advanced by the petitioner as to why the corporation sole was needed, namely, to conform to the requirements of canon law, was not regarded as persuasive. Let me say at this time that it is in fact the only argument, because they have been able to operate without being incorporated by the Senate. Before being proclaimed a prelature under canon law in 1982, this organization operated under the Quebec Companies Act, and since then it has operated without any obstacle or difficulty.

Honourable senators, I fail to see—and it was not obvious from any of the evidence given before the committee or from anything that the chairman herself said—in what way we would hamper the operations of Opus Dei or make them more difficult if we refused to grant this petition to allow for the incorporation of this organization as a corporation sole. Personally, I don't see what their problem is and therefore I don't see why we should give them a cure for or a solution to a non-existent problem.

Honourable senators, I quote again from the chairman's remarks to the Senate, at page 3496 of the *Debates of the Senate* of Thursday, May 26, 1988:

> As I mentioned earlier, the 20 previous corporations sole created by private act related directly to religious institutions at the level of a bishopric. The Regional Vicar stated that his office was analogous—

—that is, not equal—

> —to that of a bishop, although the petition stipulated that the institution is "secular."

Honourable senators, a bishopric is not secular, and a secular institution cannot be analogous to a non-secular institution.

The chairman then went on to say:

> The committee felt that the use of a corporation sole in this case might extend what has been until now a very limited use of this unusual legal device, and several members—

myself included—

> were uncomfortable with such an extension.

Honourable senators, what I am arguing is that we have 20 precedents, but these 20 precedents do not apply to this case.

Further on, the chairman said:

> . . . the committee has instructed me to request the Senate to advise the government in the strongest possible terms to proceed as quickly as possible with new legislation respecting the incorporation of non-profit and religious organizations. Furthermore, in doing so, the government should consider very carefully whether there is any continuing justification for the type of corporation sole considered here.

In other words, the committee does not actually believe there is any justification for this kind of corporation sole. Opus Dei has been able to operate without being a corporation sole, so why should we create this corporation sole? If things have to change—and at some point in legislating or in logic one must stop somewhere, this is a good point to stop, because we are being asked to extend the scope of our legislation to grant equivalent status to something that is neither a bishopric nor of equal status with a bishopric.

● (1510)

Therefore, in view of the contradictory message that appears in what the chamber has received from its committee, which is to say, "We do not really like this, but do it all the same!", I urge honourable senators to send the bill back to the committee for reworking.

On motion of Senator Hébert, debate adjourned.

GOVERNMENT ORGANIZATION BILL, ATLANTIC CANADA, 1987

SECOND READING

On the Order:

> Resuming the debate on the motion of the Honourable Senator Murray, P.C., seconded by the Honourable Senator Flynn, P.C., for the second reading of the Bill C-103, An Act to increase opportunity for economic development in Atlantic Canada, to establish the Atlantic Canada Opportunities Agency and Enterprise Cape Breton Corporation and to make consequential and related amendments to other Acts.—(*Honourable Senator Petten*).

Hon. William J. Petten: Honourable senators, when I adjourned the debate last Thursday it was my understanding that an honourable senator on this side of the house wished to take part in the debate. I have ascertained that this is not so. As I have no intention of taking part in the debate at this time, I would be perfectly happy if it were given second reading.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators—

The Hon. the Speaker *pro tempore:* Honourable senators, if Senator Murray speaks now, his speech will have the effect of closing the debate on the motion for second reading of this bill.

Senator Murray: Honourable senators, naturally I regret that Senator MacEachen, the Leader of the Opposition, has decided not to participate in the debate on second reading. No doubt we will have the opportunity to hear from him either in the committee hearings or at third reading of the bill.

Senator MacEachen: Or in the hinterland.

Senator Murray: Or in the hinterland; that is possible.

I do know that a notice of motion has been placed by our colleague, Senator Graham, which, I presume, we will have an opportunity to discuss in a day or so, calling on the National Finance Committee to divide Bill C-103 into two bills. We greeted this notice of motion silently and without prejudice to our right to discuss its procedural acceptability when the matter is called as well as the merits, if any, of proceeding in this way.

I thank Senator Graham for his very thoughtful contribution to the debate the other day. If I may in a personal way, I extend thanks to him for one or two personal references he made in the course of his speech. It is very difficult for me to take an aggressive or adversarial position toward Senator Graham's speech, considering the fact that he has made such kind remarks about my late father in the course of it. Those remarks are appreciated by me and by my father's numerous progeny, to whom I shall send copies of *Hansard*, and, indeed, they would have been appreciated by my father, coming as they do from an honourable senator from whom he had a great deal of admiration and regard.

Honourable senators, with the exception of Senator Graham's comments on the Industrial Development Division of Devco—and I shall come to those in a few moments—Senator Graham did not really have very much to say in defence of the status quo. He said nothing to deny the need for a new approach to regional development in the Atlantic provinces, and he said nothing in contradiction of the facts that I had earlier set out or in disagreement with the analysis.

Although he did not say so, I take it that he does not disagree too strongly, at any rate, with my contention that the dismantling of DREE was one of the mistakes of the previous government and the creation of DRIE was an error in concept and a failure in operation. There was the inevitable and unfortunate confusion that resulted between regional development policy as such and industrial policy.

I also said in my opening remarks—and I heard no argument from Senator Graham or anybody else on this point—that the incentive programs in their design and operation had become excessively bureaucratized. Certainly that was the

experience of the business community in the Atlantic provinces and it was the analysis that greeted the present government when we began to hold serious discussions in the region as to what should be done.

There is also a more long-standing criticism in the region that national programs are defficient in that so often they fail to take account of regional differences and regional needs. So very little has been said in the course of this debate in disagreement with the concept of ACOA, an agency located in the region, whose decisions will be made in the region, and which will be assisted by a public and private sector advisory board drawn from the region; an agency that has a strong mandate to coordinate federal economic development policies in the region, an advocacy role to pursue the interests of Atlantic Canada and unprecedented flexibility to design and carry out programs that are suited to this region.

After we get second reading of this bill, it shall be my intention to move that it be referred to the Standing Senate Committee on National Finance. I look forward to testifying before that committee and to examining in detail with the members of the committee the provisions of the bill—the flexibility, the authority, the resources and the autonomy it provides to pursue the interests of economic development in the Atlantic provinces.

● (1520)

The minister has the authority to make regulations, to create new programs, to co-finance national programs with other departments and to create areas of special opportunity within the region. I look forward to discussing the implications of all this with members of the committee when I appear before them.

Meanwhile, one or two points made by Senator Graham, I believe, require some comment from me now. He expressed his concern "... that ACOA's annual budget of $200 million represents not new, additional money, as is claimed, but, instead, a ceiling on regional development funding in Atlantic Canada." I thought that "old money" and "new money" arguments had been laid to rest some months ago, but since they have arisen again let me make a few comments for the record.

The Prime Minister's commitment on June 6 last year was that the $200 million per year allocated to ACOA over the succeeding five years would be over and above the ongoing expenditures on regional development in the Atlantic provinces. I took that to mean—and it does mean—that this $200 million per year is over and above federal spending on the business incentive programs that were in place last June—that is, the IRDP, the Atlantic Enterprise Program, Enterprise Cape Breton and so forth.

Thus, the honourable senator will find in the 1988-89 estimates that the figure for ACOA is not $200 million but, if my memory serves me correctly, $306 million, which reflects the fact that ACOA has inherited some of these business incentive programs that were in place.

The commitment for an additional $200 million for ACOA to spend on regional development would be over and above federal spending on the economic and regional development agreements, the ERDAs, with the Atlantic provinces. I should state here that there is perhaps $1.5 billion, in ballpark figures, in federal money now in force in the various ERDA subagreements and related agreements in the Atlantic provinces. ERDA's spending is continuing. A number of ERDA subagreements expired at the end of March 1988. Some new agreements will be put in their place; these, for the most part, have been negotiated and I and my colleagues will be announcing them in the next little while. The vast majority of the ERDA subagreements now in force will expire at the end of the present fiscal year, that is, at the end of March 1989, and as the minister responsible for ERDA in the region, I have begun a process of discussion and negotiation with the premiers of those provinces that will lead to new federal-provincial economic development agreements.

Therefore, the $200 million given to ACOA is over and above the business incentive programs and it is over and above the federal-provincial ERDA agreements. The $200 million a year is also over and above that part of the spending of federal line departments and agencies that might be described as regional development—the Ministry of Transport; the Department of Fisheries and Oceans; the Department of Employment and Immigration; DRIE itself, and its successor with its sectoral expenditures and its assistance to projects where the eligible costs are more than $20 million. All of those line departments continue their spending, and at least some of their spending can be described as regional development spending.

In brief, the $200 million per year allocated to ACOA for new programs, largely to foster entrepreneurship, to encourage small and medium-sized business, is not, as the honourable senator fears, a ceiling but is an add-on to the total regional development spending, which, far from declining, is increasing in the Atlantic provinces.

The honourable senator also mentioned the IRDP. As he points out, that business incentive program sunsets—if one can use the word "sunset" as a verb—on June 30. I should point out, however, that the ACOA Action Program, featuring incentives to business and business-related activities, which I announced on February 15, has effectively replaced the IRDP in the Atlantic region. The ACOA Action Program has increased the eligible sectors. It has increased the kinds of assistance available to business and business-related activities and it has increased our flexibility to apply the program.

Senator Graham also criticized the fact that Bill C-103 does not contain a commitment to the provision of what he calls "basic infrastructure." Honourable senators, it is true that the emphasis of ACOA is on strengthening the private sector, on encouraging small and medium-sized enterprise and on increasing jobs and incomes in the Atlantic region. The emphasis will be on entrepreneurship, on innovation, on technology, on competitiveness and on productivity. I do not disagree with Senator Graham's statements about the impor-

tance of infrastructure, but that is not principally what ACOA and Bill C-103 are all about.

I do note, as he knows, that considerable sums have been spent by the federal government in the past 30 years on infrastructure. More will be spent. The infrastructure projects are, as he knows, largely within provincial jurisdiction, and the appropriate vehicle for these is a federal-provincial agreement such as an ERDA subagreement. As I have indicated, there are a number of ERDAs now in place in the four provinces and under some of these expenditures are made on various kinds of infrastructure, and that will continue to be the case.

Honourable senators, let me say a word about ACOA and about the action program that I announced on February 15, which will be considerably supplemented when this bill passes Parliament. The action program is a consolidation of the existing programs, particularly IRDP and the Atlantic Enterprise Program. It has increased assistance and provides it to a broader range of business and business-related activities; so we are helping not only commercial operations but non-commercial operations that provide support and services to business.

As an indication of the interest the program has solicited in the region, I should tell the honourable senator and others that from February 15 to May 13 over 2,000 applications were received by the agency under this program. Two hundred have been withdrawn or rejected and 492 have been approved, for a total authorized contribution of $48.1 million, making possible business investment in the region of over $166 million.

● (1530)

Honourable senators, what these investments involve is the creation of over 1,700 jobs—new jobs—in the Atlantic region and the maintenance of over 1,600 jobs.

As an indication of the interest in this program, during the month of April alone 865 new applications were received by ACOA compared to 85 applications received the previous year under the old IRDP and AEP programs.

From May 2 to May 6—just one week—ACOA received 200 new applications. We are now dealing with ten times the number of applications compared to the number that DRIE had to deal with a year or more ago. I was told the other day that as of May 20 there were 1,735 active applications in process. So, honourable senators, there is a great deal of interest on the part of the private sector in the Atlantic region. It is obvious to us that ACOA and the ACOA program is meeting the need there.

I want to pause just for a moment on those statistics. We had projected that we would be dealing with something in the order of four times the number of applications that our predecessors had dealt with; it turns out, as I said, that we are dealing with ten times the number. We pledged to improve the turn-around time in dealing with these applications, and we have kept our word. We have delegated authorities and done everything possible to honour that commitment; but I must appeal to the private sector and others for their understanding and patience. The response to this program has been far in excess of anything we had imagined. The staff are doing a

[Senator Murray.]

Herculean job in dealing with these applications, and their tremendous commitment to the success of this agency is preserving our credibility with the private sector, which is making applications in such unprecedented numbers; but we have to staff up in the next little while to deal with this vastly increased rate of applications from the private sector.

I don't know whether, when the time comes, Senator Graham intends to debate the motion of which he gave us notice today, but I suppose we can deal with the merits of it at that time if it is procedurally acceptable. However, I should, for the record, make a few comments in response to what he had to say about the Cape Breton Development Corporation and the proposed creation of the new Enterprise Cape Breton Corporation.

First of all, I think I should state for the record that it was the Donald report of the 1960s that led to the creation of Devco. That report had, in fact, recommended two crown corporations, as the honourable the Leader of the Opposition will recall. It had recommended one crown corporation to run the coal mines and one to promote industrial development. The government of the day decided otherwise. It decided to create one crown corporation, Devco, with a Coal Division and an Industrial Development Division, but essentially they have operated as separate bodies.

I am not sure whether Senator Graham would agree with that assessment. Indeed, at one point in his remarks he stated that they had operated as one, certainly with a single mandate, but my attention was drawn to an article, originally written in 1974 and updated in the 1980s, in a publication of the Institute for Research on Public Policy, by Roy George, which states:

> Although Parliament had set up a single Crown corporation to cover both mining and industrial development, contrary to Donald's advice, it prescribed that DEVCO should operate in some respects as if it were two organizations. The act directed that there should be two divisions: the "Coal Division" to be responsible for coal mining operations, and the "Industrial Development Division" to stimulate the non-mining sector of the Cape Breton economy. Each was to have its own vice-president, its own budgets (to be approved by the government), its own set of financial statements, and its own grants from government, and no financial switching between the two divisions was to take place.

Further in the same article, Mr. George states:

> Parliament created DEVCO as a monster with two bodies joined to a single head. Each was to have its own vice-president, keep its own accounts, and receive separate votes of money. This arrangement was Parliament's way of compromising between the forces that wanted, like Donald, two separate organizations (Robert Stanfield, then Premier of Nova Scotia, was in this camp), and those who wanted one organization (an arrangement supported by the United Mine Workers, among others).

> It was a strange arrangement and promised administrative friction and inefficiency. The situation was made worse because the accommodation initially available to DEVCO made a geographical split of the two divisions unavoidable; and since its life was expected to be limited, and it was reluctant to be seen to be squandering funds on building accommodation for itself, DEVCO did nothing to bring the two divisions together. Apart from having a common board and president, there has been little contact between the two divisions. Attempts have been made in the past to reduce this gap, and a very determined effort seems at present to be underway, but the gap between the two divisions remains. Almost certainly, this has mitigated against efficient administration (each division for instance has had its own accounting organization), though how serious this has been is difficult to assess.

Hon. Allan J. MacEachen (Leader of the Opposition): Could the minister identify Mr. George? I just do not know who the person is.

Hon. Henry Hicks: He is a Professor of Economics at Dalhousie University—

Senator Murray: I would add, "a respected Professor of Economics at Dalhousie University."

Senator Hicks: —and Dean of the Faculty of Administrative Studies.

Senator Murray: And, as Senator Hicks says, the Dean of the Faculty of Administrative Studies.

The article I have quoted appeared in a publication entitled "Public Corporations and Public Policy in Canada", Tupper and Dern. As I said, the original article was written in 1974, but it was updated sometime during the 1980s.

Senator Stewart: Can you provide copies?

Senator Murray: I can either photocopy this or obtain a copy of the book from the Library of Parliament or the IRPP.

Senator MacEachen: He is way off the mark, no matter where he is from.

Senator Murray: The honourable the Leader of the Opposition will have an opportunity to contradict, if he can, the statements made by Professor George.

Senator MacEachen: I shall!

Senator Murray: There are one or two more of them I should like to place on the record before I take my seat.

Senator McElman: Call him as a witness!

Senator Murray: Essentially, he says they operated as separate bodies. I must say that, listening to Senator Graham, I could not help but ask the question: What has the Industrial Development Division of Devco done under the Devco roof that it could not have done as a separate crown corporation? Indeed, what has it done under the Devco roof that it has been unable to do under this bill as the Enterprise Cape Breton Corporation? Contrary to what Senator Graham has said, there is nothing to prevent the new ECBC from becoming involved in downstream coal and coal-related activities, such as carbogel. The new ECBC may not get into the production of coal or into the coal mining business—that activity is reserved for the Cape Breton Development Corporation—but there is nothing to prevent its getting into downstream activities, and I hope it does encourage those kinds of resource-based activities.

Honourable senators, I do not for one moment deny the contribution that the Industrial Development Division of Devco has made and I appreciate the obvious support of confidence that this division enjoys among its clientele. I appreciate what the honourable senator and others have said about its sense of social responsibility. But social responsibility is not something that is legislated. Social responsibility is a function of the people who are setting the policy, sitting on the board and running the management of an organization. The honourable senator has no reason to believe that there will be any less sense of social responsibility under the new dispensation than there was under the old.

Like any similar organization, Devco and the IDD have had mixed reviews. Professor George, if I may come back to him, identified four phases in Devco's appoach to industrial development. He took the periods from 1967 to 1971, from 1972 to 1976, from 1977 to 1979 and then from 1980 onwards. The last three periods, he says, differ only in their emphasis and really could be seen as subdivisions of one major change. To summarize, Professor George says that Phase I:

> . . . must be judged a woeful failure. The corporation would certainly like to forget it.

As for Phase II and most of Phase III, he says:

> . . . the current achievement in terms of "steady" full-time jobs, or their summation in part-time equivalents, is under one thousand but probably not far short of it.

He adds:

> This is small compared with the hopes held by many people when DEVCO was established.

In this article I noted the following conclusion by Professor George, and I want to put this on the record because Professor George does give quite a balanced assessment of the record of Devco and of the Industrial Development Division. In reference to Devco, he says:

> By 1973, it had come close to the targets set for it in respect of the size of the mining industry, employment having been approximately halved and output reduced to about one third or one quarter.

Senator MacEachen: It had no target.

Senator Murray: The Leader of the Opposition says that it had no target—

Senator MacEachen: That is right.

Senator Murray: —but I suggest to him that there was certainly a target in the Donald report. I have the recollection—and perhaps it is faulty and the honourable senator can correct me if I am wrong—that the government of the day did establish some target as to the reduction of employment in the

coal industry. Well, we shall see. Continuing with the conclusion contained in Professor George's article, he states:

> It was therefore left with a small industry, but it was also an inefficient and high-cost one. Attempts to provide alternative employment for Cape Bretoners had come to nothing, the industrial firms that had been enticed into the Island with all the money Devco possessed having died without trace.
>
> Then the corporation got its act together. Aided by favourable markets for coal, it built up a mechanized industry with high efficiency measured in terms of output per man-shift, though it is still a high-cost operation, far from providing a commercial return on capital. And its industrial development programme, though not yielding the result originally expected of it (at least in part because those expectations were unrealistic), has caused the start-up of small, grass-roots activities that may build up to something worthwhile in the future and restore the long-lost confidence of Cape Bretoners.

Later, in the same article, he says:

> The corporation can certainly take some credit for the enviable position it is now in. Though it has not led Cape Breton "to an era of progress" as Donald thought possible if the government supported his recommendations, its achievements in coal seem quite good compared with what the public expects from a public organization. Since 1971, its industrial promotion activities have been imaginative and consistent with the spirit of the local community, and it has avoided the disasters to which Canadian public industrial promotion agencies seem to be prone.

That, as I say, is quite a balanced assessment of the work of the Cape Breton Development Corporation and of the Industrial Development Division, in particular, and I commend it to honourable senators for their reading.

I think I should also point out that the concept of separating the Industrial Development Division from the Coal Division originated not in Ottawa but in Cape Breton. I refer honourable senators to the report dated September 1985 of the Cape Breton Advisory Committee, chaired by Dr. Teresa MacNeil, who is now the chairperson and acting president of Devco. First, that advisory committee noted that one of the problems in Cape Breton was the barrier to the development caused by the confusion of the multiplicity of the development agencies. The advisory committee recommended, first, the establishment of a new development agency, Enterprise Cape Breton, independent in matters of policy, management and operations from the coal side of the corporation, Devco. The committee recommended, second, that the ECB should become a one-stop shop to the degree possible by encompassing the Industrial Development Division of Devco and DRIE.

In the event, honourable senators will be aware that at the time it would have taken legislation to create the crown corporation. The government was faced with the duty of closing the heavy water plants, as well as the problems posed by other economic reverses in the area, and wanted to act swiftly, so it was decided by cabinet order to create Enterprise Cape Breton as an agency of DRIE, to transfer to it various DRIE and DRIE-delivered programs and to make it the focus of economic development in Cape Breton.

I should say that Enterprise Cape Breton has been a successful agency. A good bit of the business it has done has been attracted to Cape Breton by the existence of the investment tax credit and other incentives. Indeed, the richest incentives that are available anywhere in Canada are available in Cape Breton. From June 6, 1987, to the end of April of this year Enterprise Cape Breton had approved 120 projects for an authorized contribution of over $51 million—and this to make possible business investment in the Enterprise Cape Breton area of over $153 million and involving the creation of more than 900 jobs. Again, the interest continues to be at a high level on the part of the private sector. In the month of April alone there were 79 new applications. The agency has some 124 applications now in process.

● (1550)

With the creation of ACOA, Enterprise Cape Breton was transferred to us from DRIE. To the government, it seems only logical that we should bring the Industrial Development Division of Devco, which is an organization involved in regional development, into the ACOA family as well.

I emphasize that IDD, which will be continued as Entreprise Cape Breton Corporation, is coming with its powers, its resources, its programming, its flexibility intact and its role in Cape Breton very well understood. We are seeking to rationalize the roles of Entreprise Cape Breton, the present agency, and the Industrial Development Division of Devco, which will be known as Enterprise Cape Breton Corporation. It has had, and will continue to have, powers that no other agency has. We seek to eliminate overlaps; to facilitate "one-stop shopping," as recommended in the report of the Cape Breton Advisory Committee; to improve services to Cape Bretoners; and to make federal economic development activities on Cape Breton Island more efficient and effective.

I repeat that nothing is being lost. I think it is possible for a great deal to be gained under this dispensation. The Honourable Senator Graham seems to fear the fact that the minister—I presume not this minister but a hypothetical future minister—might abuse his authority to direct the new Enterprise Cape Breton Corporation. The fact of the matter is that the Governor in Council has always had, under the terms of the Financial Administration Act, the power of direction of Devco.

Becoming part of the AOCA family will enable the IDD, as Enterprise Cape Breton Corporation, to exert a greater influence over government policies as they relate to Cape Breton. That is certainly my intention, and I believe that that intention can be better realized through this reorganization.

In conclusion, honourable senators, I believe firmly that Senator Graham and others will see that this is a positive step for Cape Breton. I ask for their cooperation and support in

ensuring that the reorganization of the federal economic development effort in Cape Breton pays dividends in terms of increased economic activity, increased employment and increased earned incomes in Cape Breton. That is the purpose of ACOA; it is the purpose of this legislation as it applies not only to Cape Breton but to the entire Atlantic region. I ask honourable senators for their support of this bill at second reading and I look forward to discussing it in more detail when I appear as a witness before the Standing Senate Committee on National Finance.

Hon. Charles McElman: Honourable senators, before the question is put I should like to ask the Leader of the Government in the Senate a question. I share his enthusiasm for ACOA. I hope, as he does, that it will be highly successful in its activities in the Atlantic provinces.

I notice in the media that there still appears to be a great misunderstanding in the Atlantic area, particularly with municipalities. The misunderstanding is that this is to be an agency that will involve infrastructure. My understanding is that it will not; that it is for industrial development. Is that correct?

Senator Murray: Honourable senators, the main thrust of the agency is to encourage the growth of the private sector in the Atlantic region, to encourage entrepreneurship, small and medium-sized business productivity, competitiveness, and so forth. The means at hand for assisting with various forms of infrastructure—highway construction, for example—is the use of federal-provincial ERDA agreements. It so happens that they also come under our responsibility. As the honourable senator knows, there are a number of such agreements now in force. We will, no doubt, negotiate others in the future.

The distinction I wish to make is between those federal-provincial agreements, on the one hand, and, on the other hand, the funds that have been allocated to ACOA with the express purpose of strengthening the private sector in the region.

Senator McElman: I am sure the Unions of Municipalities in each of the four provinces are apprised of the mandate and the terms of reference for giving assistance. In order to avoid, as has often been the case, misunderstanding, and indeed recrimination, particularly at the municipal level, may I suggest that more attention be given to emphasizing the purpose of this agency? It is in the interests of the area and of all of us that there be a good understanding, which does not yet appear to have gotten through in the Atlantic area.

This is merely a suggestion that I hope the minister will find acceptable.

Senator Murray: Honourable senators, I appreciate the point made by Senator McElman. I have had occasion to meet and talk with several of the municipal leaders in the Atlantic region. I agree that a much more effective communications program needs to be undertaken in order to acquaint them and others who are interested and concerned with the precise mandate of this new agency.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Murray, bill referred to the Standing Senate Committee on National Finance.

CAPE BRETON DEVELOPMENT CORPORATION ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming the debate on the motion of the Honourable Senator Phillips, seconded by the Honourable Senator Macdonald (*Cape Breton*), for the second reading of the Bill C-127, An Act to amend the Cape Breton Development Corporation Act.—(*Honourable Senator Graham*).

Hon. B. Alasdair Graham: Honourable senators, Bill C-127 is a very brief bill designed to amend section 19(2) of the Cape Breton Development Corporation Act in order to raise the limit of the amounts of working capital that the government may advance to Devco. Under the bill's provisions, the existing limit of $25 million would be raised to $50 million or to such other amount as may be established by an Appropriation Act or other act of Parliament. I thank Senator Phillips for his introduction to this legislation.

The reasons for an increase in the limit on government advances to the corporation are not difficult to see. In fact, such an increase is arguably long overdue. The present limit has been in force since 1975. Inflation alone has more than halved its value over the intervening period.

As I mentioned in speaking to Bill C-103 in the Senate last week, the size and operations of Devco have grown quite dramatically over these years. To illustrate this fact, it is worthy of note that the assets of the Coal Division at the end of fiscal year 1975-76 were $108 million, and with the completion of the new Phalen Colliery those assets would be valued at close to $600 million. Coal sales have gone from approximately $50 million in the mid-1970s to an estimated $200 million in 1988.

• (1600)

Much tribute must be paid to the coal miners and management. Productivity in coal mining grew from 2.5 tonnes per man-shift in 1967-78 to 6.8 tonnes in 1986-87. At the same time preliminary estimates show that the Coal Division's operating losses in fiscal year 1987-88 were under $2 million and projections are that in the current year Devco will achieve an operating profit.

Currently the corporation is promoting the commercialization of technologies, such as circulating fluidized-bed processes, which make possible the clean burning of high-sulphur coal. Adoption of such technologies hopefully will open new opportunities for Devco and possibly enable it to reduce its heavy reliance on traditional markets.

Larger operations entail higher inventory levels, which, in turn, apply a need for higher levels of working capital. Moreover, in light of the possibility of unforeseen future require-

ments—given the nature of coal production and distribution and international market conditions—the provision in the bill to add some flexibility to the limit on capital advances by allowing the limit to be raised through parliamentary appropriations is a sensible one. Allocating funds through an appropriation vote is simpler and more direct than having to amend Devco's act every time the corporation's working capital requirements exceed the legislated limit.

Much has been said about the original mandate of Devco with respect to future coal developments on Cape Breton Island. As I recall, targets were never set with respect to either the reduction or the expansion of the work force or coal production. Indeed, those recommendations were left largely to the board of directors and the management of Devco.

As an example in this respect, I refer to the *House of Commons Debates* of June 15, 1967, at page 1553, at the time when then Minister Pepin was introducing the legislation covering the Cape Breton Development Corporation. I read from that page as follows. He said:

> On December 29, 1966, the government . . . following careful consideration of the Donald report and its recommendations, the receipt of views of interested persons and organizations, and discussions with the government of Nova Scotia, announced in consort with Nova Scotia certain basic points of policy. The Minister of National Health and Welfare—

who was Mr. Allan J. MacEachen—

> and I went down to the area to listen to the views of the people. We have received many views since then, just as other ministers had received many views before. As I say, on December 29 in consort with Nova Scotia we announced certain basic points of policy. May I spell them out?

I will refer to just one of those basic points, Point 10. He was referring to the possibility of a new mine opening, which had been discussed both in Cape Breton, Nova Scotia, and by those who were interested in this particular problem. It states:

> The opening of a new mine at Lingan has been a matter of much controversy. In view of the government undertaking of October, 1965 and of Doctor Donald's strong recommendation against it, the government agreed to allocate sufficient money to fulfil its own commitment but to leave to the crown corporation the decision as to how these sums can best be used in the interests of the community.

Devco has been in operation for 20 years. As was stated in the brief by the corporation to the legislative committee on Bill C-103 in Port Hawkesbury on March 8 of this year:

> Through its successes and its failures it has developed substantial institutional experience and has become very much part of the fabric of Cape Breton.

Devco's development mission has been difficult, and clearly much more needs to be done. Economic conditions in Cape Breton remain hard and the Island's development lags far behind that of the rest of the country. The labour force participation rate in Cape Breton last year averaged 54.7 per cent compared to 66.2 per cent for the country as a whole, reflecting the lack of adequate employment opportunities on the Island. Cape Breton's unemployment rate for April of this year was 17.5 per cent—more than twice the national average. The incomes of Cape Bretoners remain at less than four-fifths the national average. Devco's expanding operations are vital to the future development of that part of Canada.

It is important, therefore, that Devco's growth and competitiveness not be hobbled for lack of working capital. To this end, the bill's proposal to increase the limit on advances of working capital to Devco deserves to be supported.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

Hon. Orville H. Phillips: Honourable senators, I move that Bill C-127 be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The Hon. the Speaker: It is moved by the Honourable Senator Phillips, seconded by the Honourable Senator Roblin—

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, would it not be compatible to send it to the Standing Senate Committee on National Finance, in view of the fact that we have just sent the earlier bill there?

Senator Phillips: Honourable senators, I would have no objection to the suggestion made by the Honourable Senator MacEachen, but my understanding of the rules is that this is a corporate matter. Therefore, it would normally go to the Banking, Trade and Commerce Committee. However, I would be quite happy to have it go to the National Finance Committee if that is the wish of the Senate.

The Hon. the Speaker: Does the honourable senator wish to send it to the National Finance Committee or the Banking, Trade and Commerce Committee?

Senator Phillips: Honourable senators, I move that it be referred to the Standing Senate Committee on National Finance.

On motion of Senator Phillips, bill referred to the Standing Senate Committee on National Finance.

RAILWAY SAFETY BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming the debate on the motion of the Honourable Senator Spivak, seconded by the Honourable Senator David, for the second reading of the Bill C-105, An Act to ensure the safe operation of railways and to amend certain other Acts in consequence thereof.—(*Honourable Senator Turner*).

Hon. Charles Turner: Honourable senators, today I am in a charitable mood, and I wish to help out my good friend, Senator Doody, and get this bill, Bill C-105, out of the barn and on the rails—especially on the narrow gauge rails in his beloved province of Newfoundland.

Honourable senators, I wish to commend Senator Spivak for introducing Bill C-105, which, hopefully, ensures the safe operation of railways and amends certain other acts in consequence thereof.

Well, honourable senators, as far as it goes, Bill C-105 is a poor excuse for the type of legislation that the railway worker sincerely believed was in the mill. But, as my friends in the industry tell me, it is better than nothing. On Sunday I received a few phone calls and the comment I heard on the telephone was, "What else can we expect from this government?" The morale of the CNR employee is, once again, going down the tube. Three slices of bread may be better than the whole loaf at this time. This is the way the employees of the CN and CP are looking at this bill.

Mr. E.G. Abbot of the Canadian Railway Labour Association and Mr. Ron A. Bennett, the Canadian Legislative Director of the United Transportation Union, appeared before the minister and the House of Commons Transport Committee to express their general feelings on Bill C-105, the Railway Safety Bill. We all welcome the introduction of legislation which, on the surface, appears to address many of our concerns and the concerns that all railroaders have had with maintaining and improving rail safety in Canada. However, I am sorry to say that this bill will not do it. We, of course, have some concerns with respect to certain clauses of the proposed legislation, and the union officers look forward to being part of the consultative process.

● (1610)

In the meantime, we wish to congratulate the minister and the government on taking the first small step towards a safer railway industry in Canada. As members of the brotherhood—and I am still a member—we feel that the provisions of Bill C-105 represent a very small step forward for all concerned with the safe operation of the railway systems across our great country.

Honourable senators, we do not wish senators to conclude that the brotherhood does not fully recognize or appreciate the strength inherent in Bill C-105. However, it is very small and we wish there was more. We all hope that, through the consultative process and by means of constructive criticism by the railways workers through their union leaders, this safety bill can be improved even further in many ways and to the benefit of all the parties, the governments, the railways, the workers and the taxpayers who, after all, will pay the shot in future years.

Honourable senators, back in the year 1941, when I was hired on the CNR, I was sent to Toronto to write an examination on the rules during a five-day examination period. The examination lasted from 8 a.m. until 6 p.m. each day. This examination was held in the rule car, and when I returned to make my three trial trips, beginning with my first day for pay, the rule instructor, the master mechanic, the engineer, the conductor, the trainman and yardman, to my amazement, constantly impressed on each new employee that the name of the game on railroads was the word "safety." The idea was constantly expressed to me: "Don't make any mistakes in your railroad career and possibly lose an arm, a leg or perhaps your life." This was the word; this was the railroad bible.

After the depression years of the "dirty thirties", both railroads began hiring new employees, beginning in the summer of 1939. With the declaration of war by Canada on September 10, 1939, and with the gearing up of all industries in a total Canadian war effort, the railroads began to move the thousands of troops and war equipment across all the provinces of Canada. Even as each day dawned, crews on and off the jobs, and especially in the bunk houses, would discuss the problems of making their particular section of the railways a much safer place to work. Therefore, it was very easy to see that the companies and the workers had thoughts of safety uppermost in their minds. The word was: Move the troops and the war material the fastest way possible, consistent with the very magic word, "safety." We had "ship-by-rail" and safety committees which met each month. At those committees, safety was fully discussed and every employee was expected to attend.

The Canadian Railway Labour Association and the United Transportation Union have been in the forefront of promoting safety by working with the railway companies of Canada. The Canadian Railway Labour Association is comprised of 12 railway unions that collectively represent approximately 60,000 workers employed by the three major companies and a number of smaller short-line railways which operate freight or passenger trains from coast to coast in Canada. The unions represented by the Canadian Railway Labour Association are as follows:

The United Transportation Union
The Brotherhood of Locomotive Engineers
The Canadian Signal and Communications Union
The Brotherhood of Maintenance of Way Employees
The Transportation and Communications Union
The Brotherhood of Railway Carmen
The International Brotherhood of Firemen and Oilers
The International Brotherhood of Electrical Workers
Rail Canada Traffic Controllers
Canadian Brotherhood of Railway Transport and General Workers
The Sheet Metal Workers' International Association

Honourable senators, these are a great group of men doing a fantastic job day in and day out, 24 hours per day, seven days per week.

The policy direction of the Canadian Railway Labour Association is decided by the senior officers of all the aforementioned railway unions, after consultation with the various locals across Canada. The unionized railway employees subject

to the proposed Railway Safety Act are all represented by the member unions of the Canadian Railway Labour Association.

The Canadian Railway Labour Association supports the introduction of the Railway Safety Bill, Bill C-105. Our association, however, has some serious concerns with certain aspects of the proposed legislation.

As honourable senators are now well aware, the United Transportation Union represents men and women working in various positions in the running trades across our nation and in the U.S.A. In Canada we represent conductors, trainmen, yardmen and other classifications all across the Canadian railway system, including the two national railways which are, of course, the Canadian National Railway and the Canadian Pacific Railway.

We believe it is fair to state that the United Transportation Union is an organization which has, throughout its history, spent a considerable amount of time, effort and money promoting issues not only connected with the health, safety and comfort of our members but also for the benefit of all Canadians. Our union has large and sophisticated legislative and protective departments, which are headquartered in Ottawa, with branches and representatives in every local across Canada. The interests of the legislative department specifically include the promotion of issues, training and programs designed to enhance the safety of all railway operations. The legislative department, in conjunction with the protective departments in every local across Canada, encourages preventive programs designed to eliminate safety hazards before they become accidents, in fact, long before an accident can happen which would result in the loss of an arm, a leg or a life.

Furthermore, representatives of all of our brotherhoods participate in safety committees every month at each and every level in every railway company across Canada. We therefore believe it can fairly be said that our union has a sincere, demonstrated and long-standing commitment to safer railway operations across our country.

The philosophical thrust of this legislation is clearly reflective of the government's objective to deregulate transportation in Canada. That objective was already established by the enactment of the National Transportation Act, 1987, which became law on January 1, 1988. The major thrust of the National Transportation Act was to abolish the Canadian Transport Commission and to introduce a new, deregulated economic environment into Canada's transportation systems. Let me say, honourable senators, that it is not working very well. The philosophy which will apply to Canada's entire transportation system of rail, truck and airlines is that a competitive framework will be to the advantage of the users of the transportation systems and will ultimately result in the various modes of transportation becoming more effective as they strive to meet the competitive demands of the marketplace, both intermodally and intramodally. In sum, the survival of the fittest.

Honourable senators, I made similar remarks to these during the debate on Bill C-18 and Bill C-19, and I am sorry to say that my predictions are coming to pass. Last Saturday, in the *Toronto Star*, there was an article about what Bill C-18, the National Transportation Act, was doing to the trucking industry across Canada.

Unfortunately, in our opinion, the same basic philosophical assumption underpins the Railway Safety Bill. This assumption is that the railways will ensure an adequate level of operational safety in their own interest and that if there is any deviation from the broad safety objectives set out in the regulations introduced pursuant to the proposed Railway Safety Act, then the monetary fines set out in the act for such violations will ensure compliance. The motivation is self-interest and the deterrent is monetary fines. The government believes that the self-interest of the railways and the threat of monentary fines will ensure that the railways will operate at an acceptable level of safety. I am sorry, but it will not happen. The Canadian Railway Labour Association does not share this philosophy or belief. We believe that the level of railway safety will deteriorate over time and will be determined by the economic health of the railways. In our view, public and employee safety should not be in any way correlated with the economics of the railways at any particular point in time.

The Canadian Railway Labour Association is also deeply concerned about the concentration of power in the Minister of Transport by the Railway Safety Bill. A long-standing concern of our association with the Railway Act and the former National Transportation Act was the conflicts of interest created by the same Canadian Transport Commissioners legally seized with the power and authority to regulate the railways economically, to ensure public and employee safety by regulation and to conduct investigations into the cause of railway accidents.

● (1620)

In addition, our association held the view that, under the quasi-judicial structure of the Canadian Transport Commission, the Minister of Transport and Parliament were powerless to set policy direction for the suppliers of transportation in Canada. In our opinion, a quasi-judicial, non-elected body such as the Canadian Transport Commission should not have been given the power, either directly or indirectly, to shape transportation policy in Canada for the past 20 years. This was never the intent of the McPherson Commission, on whose report the National Transportation Act was based. We will also comment on the many clauses of the Railway Safety Bill dealing with the consultative committee, medical and optometric information, the amendments to the Criminal Code, the assessment of fines and imprisonment for violations of the act and the possible introduction of drug testing for certain railway employees.

You would think, honourable senators, by what the minister wants to do to us that we were all criminals. We do not believe that what he is trying to do is very conducive to morale problems on the railroads of Canada.

We have already stated that, in our opinion, a quasi-judicial body such as the Canadian Transport Commission should not have been isolated from the Minister of Transport and Parlia-

ment concerning the general policy direction of transportation in Canada. We also believe that the Canadian Transport Commission should not have had the responsibility for the regulation of railway safety and also the duty to conduct inquiries into the cause of railway accidents. The regulators could be indirectly called upon technically to investigate themselves, a clear conflict of interest. Though all our associations, however, have made this point, they cannot cite an actual case where this conflict of interest was demonstrated by the Canadian Tranport Commissioners. Also, some quasi-judicial body should not have been given the authority without policy direction from the Minister of Transport or, preferably, Parliament to shape the economic destiny of the railways. The pendulum has now swung completely in the other direction by the Railway Safety Bill and the National Transportation Act, 1987. These two pieces of legislation make all roads lead to Rome. The Minister of Transport will have more power than any of the Caesars in the history of the Roman Empire. Imagine the Honourable John Crosbie having all that power!

Almost all the delegated economic regulatory powers contained in the National Transportation Act, 1987, whether exercised by the National Transportation Agency or otherwise provided for, are all, by some legislative mechanism or other, under the direct or indirect control of or subject to control by the Minister of Transport—a lot of power to give one man. The same minister, the Minister of Transport, will also have all the unfettered power to regulate rail safety pursuant to the Railway Safety Bill. The word "minister" is referred to in the Railway Safety Bill in excess of 150 times, in addition to the powers delegated in the bill to the Governor in Council, which, in reality, is the Minister of Transport.

The government, pursuant to the National Transportation Act, 1987, advocates a lean and mean, survival-of-the-fittest transportation economic policy. The Minister of Transport is responsible for this legislation. Pursuant to the Railway Safety Bill, the same minister, the Minister of Transport, must also ensure that the railways show due regard for the importance of rail safety. In our respectful submission, even if the Minister of Transport had two heads, he would find great difficulty wearing these two conflicting hats.

Any conflict of interest in the structure of the Canadian Transport Commission previously referred to pales in the light of the untenable position the Minister of Transport will be placed in if the proposed Railway Safety Act becomes a reality as it now stands. Under the old Canadian Transport Commission, the Minister of Transport, when questioned in the House of Commons on rail safety, could simply avoid the issue by referring to the quasi-judicial body, the Canadian Transport Commission, seized with the responsibility for rail safety pursuant to the existing legislation. Under the new proposed Railway Safety Act, this defence will not be available to the Minister of Transport. Ministerial responsibility to Parliament will include the day-to-day effectiveness of the hundreds of regulations, directives, rules, orders, et cetera, concerning rail safety in Canada. Conflicts and questions not resolved or answered by the minister's staff responsible for railway safety will, no doubt, eventually find their way to the floors of the House of Commons and the Senate. In our opinion, this is not the way to run a railroad.

The floors of the House of Commons and the Senate are not the places to debate the day-to-day problems involved in the safe operation of Canada's transcontinental railways. This, unfortunately, in our opinion, will become the reality because of the way the proposed Railway Safety Act is structured. We can foresee the opposition parties calling for the resignation of the Minister of Transport every time there is a violation of a safety rule or a rail accident. This could well be on a daily basis. In sum, notwithstanding the obvious conflict of interest created by the economic objectives of the National Transportion Act, 1987 and the concept of rail safety, which, in our opinion, will be governed by the economic health of the railways under the proposed Railway Safety Act, the proposition that the same minister, the Minister of Transport, will be directly answerable for both pieces of legislation creates an untenable and unworkable situation.

Honourable senators, I move the adjournment of the debate in my own name.

On motion of Senator Turner, debate adjourned.

• (1630)

VETERANS AFFAIRS

CHANGE IN NAME OF SUBCOMMITTEE—INQUIRY WITHDRAWN

Hon. Jack Marshall rose pursuant to notice of Tuesday, April 19, 1988:

> That he will call the attention of the Senate to a change in the name of the Senate Subcommittee on Veterans Affairs to the Subcommittee on Veterans Affairs and Senior Citizens, approved by the parent Committee on Social Affairs, Science and Technology on Tuesday, December 1, 1987, and in order to make the mandate of the subcommittee compatible with the new responsibility of the Minister of Veterans Affairs as Minister of State for Senior Citizens.

He said: Honourable senators, authority was given to me by the Standing Senate Committee on Social Affairs, Science and Technology to expand the name of the Senate Subcommittee on Veterans Affairs to the Subcommittee on Veterans Affairs and Senior Citizens so that the committee's responsibilities would be compatible with the new responsiblities of the Minister of Veterans Affairs as Minister of State for Senior Citizens.

Under the mandate of the Social Affairs, Science and Technology committee, senior citizens are not specifically mentioned. However, I was under the impression that, since health and welfare, an element which covers a wide area, is mentioned, adding "senior citizens" would be in order.

The purpose of my inquiry is to glean some clarification as to where the committee stands in this regard. Indeed, the matter may be simplified if I simply remove this inquiry from the order paper. My discussions with Senator Molgat have

raised a problem which should be clarified in the chamber. I apologize for not speaking to the chairman of the Social Affairs committee beforehand.

Hon. Gildas L. Molgat: Honourable senators, I personally do not see any problem in the matter if the Senate agrees. The only difficulty which would arise would be when we come to the definition of what the responsibilities are in terms of various committees. "Senior citizens" do not appear directly as a responsibility of the Committee on Social Affairs, Science and Technology. Admittedly, when you seek to find where senior citizens might be dealt with, the logic would be, quite obviously, that their concerns should be the responsibility of that committee.

The question is really whether the Senate has any objections to the matter. It was brought to my attention and that is the only reason I mentioned it to Senator Marshall.

As we all know, no committee can give to a subcommittee any powers which it does not have itself. It can only extend to a subcommittee powers which it holds by virtue of a reference from the Senate. There is no specific mention of senior citizens, but, by logic, that is where this responsibility belongs.

[*Translation*]

Hon. Arthur Tremblay: Honourable senators, in an attempt to clarify the issue that was raised, I would like to point out that the list of subjects to be referred to the Committee on Social Affairs, Science and Technology is not restrictive. It says:

> . . . relating to social affairs, science and technology generally, including:

And then the list follows. That is my first point, which is basically what Senator Molgat said.

Furthermore, we have a Subcommittee on Veterans Affairs as an offshoot of the Committee on Social Affairs, and if we want to expand the name of the subcommittee, the Committee on Social Affairs, Science and Technology does not give the subcommittee new powers. It merely changes its name, which means that when a referral is made by the Senate to the Committee on Social Affairs, Science and Technology, any question concerning senior citizens may be referred to the subcommittee.

If I am not mistaken, that is the function of a Senate committee and the subcommittees under its jurisdiction. It has no powers except in so far as the Senate refers a question to the committee, whether it happens to be a bill or any other subject. In fact, it is not a question of power but of convenience, as Senator Marshall pointed out.

Personally, I don't see any problem, except that the Senate should say there is no problem. Substantially, I don't see any problem at all, either with the name or with the kind of powers that are implicitly conferred, since there are none.

Senator Molgat: Honourable senators, since I am not entitled to speak a second time, I want to ask Senator Tremblay a question.

[Senator Marshall.]

Does the subcommittee intend to conduct a special inquiry on senior citizens? If it does, then there might be a problem. In fact, I don't think the order of reference was made to the standing committee.

Senator Tremblay: Honourable senators, to answer this question I suppose we could go so far as to say that when the Senate referred the book it had a blue cover but was the equivalent of a kind of Green Paper—

Senator Molgat: They are all blue!

Senator Tremblay: —on child benefits and old age benefits. The entire document was referred by the Senate to the Committee on Social Affairs, Science and Technology about two or three years ago. One might say that in that case, the order of reference was implicit.

In fact, the Committee on Social Affairs, Science and Technology has submitted its final report on child benefits, which was discussed here in this Chamber. I quite agree that if Senator Marshall's plans include further study of the subject of senior citizens, I think the senator would have no objection to asking the Senate to refer this question for consideration. I think that would simplify matters.

I did point out, I may recall, that implicitly there had already been an order to refer the subject to the Committee on Social Affairs, Science and Technology.

[*English*]

Senator Marshall: I point out to Senator Molgat that the committee has already heard witnesses give evidence pertaining to matters relating to senior citizens.

The only issue, as I see it, is a requirement for a change in the name, and that would have to be dealt with by Standing Committee on Standing Rules and Orders, because this matter does not appear in the standing orders.

Senator MacEachen raised this matter in the first place and he probably has a valid point.

• (1640)

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, I noticed the decision of the Standing Senate Committee on Social Affairs, Science and Technology to create a subcommittee on veterans affairs, and then to add a further mandate, namely, senior citizens. The purpose of Senator Marshall's inquiry is to draw to the attention of the Senate the fact that the parent committee has created a subcommittee and has given it a new mandate entitled "senior citizens".

The Standing Senate Committee on Social Affairs, Science and Technology is established to deal with social affairs, science and technology generally, including veterans affairs, Indian and Inuit affairs, cultural affairs and the arts, social and labour matters, health and welfare, pensions, housing, fitness and amateur sports, employment and immigration, consumer affairs and youth affairs. The question that one immediately asks is whether it is within the power of the senior committee to strike a subcommittee on each of these subjects which are included within its mandate. That could lead to a

proliferation of 12 subcommittees all derived from a committee without any reference to or supervision by the Senate.

I think that is a mouthful in itself to one who is at all interested in some discipline in the operation of the Senate. Maybe one should not be interested in such an old-fashioned practice as maintaining discipline in the operation of any body in 1988, but, in addition to that, the senior committee has now added to its list of responsibilities the additional subject of senior citizens. Presumably there is no limit to what this senior committee can do in proliferating subcommittees and in adding new subjects, any one of which could possibly be strained to fit under the general rubric of health and welfare.

I just say: Draw it to my attention and permit me to forget about it as quickly as possible and never ask me to approve it, because I think I would have to oppose it on the grounds that there must be some order and discipline in the operation of a Senate committee, even though it has many subjects deriving from its mandate.

As Senator Hicks said earlier today on another matter, I do not feel deeply about this, but I feel somewhat irritated from the logical point of view that a senior committee can proliferate, without asking permission of the Senate, and then draw the fact to our attention. As I said, draw it to our attention and we will forget about it, but don't ask us to approve it.

Senator Marshall: Honourable senators, I do not want to belabour the point, but there was a special committee struck to consider a subject matter which fell under the responsibility of the Standing Senate Committee on Social Affairs, Science and Technology, and the Senate approved that. I am thinking of the Special Senate Committee on Youth. The responsibility for youth falls under the mandate of the Standing Senate Committee on Social Affairs, Science and Technology, but that subject was not referred to that committee; a special committee was struck with added expense and causing more people to cut themselves into pieces to attend all committee meetings.

Honourable senators, I ask unanimous consent to withdraw the inquiry and we will go back to the drawing board.

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

Hon. Senators: Agreed.

Inquiry withdrawn.

CANADA-UNITED STATES FREE TRADE AGREEMENT IMPLEMENTATION

MOTION TO AUTHORIZE FOREIGN AFFAIRS COMMITTEE TO STUDY SUBJECT MATTER OF BILL C-130—DEBATE ADJOURNED

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations), pursuant to notice of Thursday, May 26, 1988, moved:

> That the Standing Senate Committee on Foreign Affairs be authorized to examine the subject-matter of the Bill C-130, An Act to implement the Free Trade Agreement between Canada and the United States of America, in advance of the said Bill coming before the Senate or any matter relating thereto.

He said: Honourable senators, I shall be brief. The purpose of this motion and the occasion for my speech is to ask my colleagues to agree to a pre-study of Bill C-130, an act to implement the Free Trade Agreement signed with the United States, as far as Canada is concerned.

It is hardly necessary for me to take the time of honourable senators in speaking to the importance of this bill or of this subject matter. The Deputy Leader of the Opposition was heard to say a few days ago that this was one of the most important pieces of legislation to be presented in Canada since the Second World War, and he was right.

There has been no shortage of debate and discussion in the Senate and in its committees on the subject matter in general. Honourable senators will recall the monumental work of the Standing Senate Committee on Foreign Affairs, which began a study in March 1974 on our relations, particularly our economic relations, with the United States and which produced three volumes on the subject, Volume I in December 1975, Volume II in January 1978 and Volume III in March 1982. Those studies concluded by recommending in favour of a free trade treaty between Canada and the United States.

Prime Minister Mulroney announced on September 26, 1985, the intention of the present government to attempt to conclude a Free Trade Agreement with our neighbours to the south. Negotiations commenced on June 17, 1986. The elements of the Free Trade Agreement were agreed to on October 4, 1987, and the official signing of the legal document took place on January 2, 1988.

The elements of the agreement were tabled in this place on October 6, 1987, and referred to the Standing Senate Committee on Foreign Affairs on November 5. So the subject of free trade has a long history in recent years in this chamber, and in the Foreign Affairs Committee in particular.

With regard to the agreement presently under consideration, the Foreign Affairs Committee has met 34 times since last November for 62 hours. It has heard 71 witnesses. It has produced one report, or a quasi-report, and I am not sure yet who wants to acknowledge parentage of that report, but it has made a very valuable contribution, particularly to a discussion of the constitutional authority of the federal government in this regard.

So it seems to me, given that history, honourable senators, that nothing could be more logical than to send Bill C-130 to the Foreign Affairs Committee for pre-study. The government would like to see the Senate get a head start, as it were, on the parliamentary process by pre-studying this bill. Naturally, we are interested in that the pre-study could, and probably would, expedite the consideration of the bill, which, in turn, would expedite our preparations, as a government and as a country, for its implementation.

● (1650)

I understand that in the United States Congress the bill is expected to be voted upon by this fall at the latest. In view of

the study that is now being given to the Free Trade Agreement by our Foreign Affairs Committee, it seems to me that that committee is in an excellent position to give a thorough study to the provisions of this bill. I do not say that it is an unduly complicated bill, and some have argued that the important thing is the principle: Do you want a free trade treaty with the United States or do you not?

Nevertheless, the legislation to implement such an agreement is very far-reaching. If I am not mistaken, the bill would amend 27 existing statutes. It is not for me or for anybody here, I suppose, to comment on a debate that has hardly begun in the House of Commons, but I do observe that it has already taken on quite a partisan character. As we well know, one party in that place is opposed in principle to a free trade arrangement with the United States. Another has undertaken to tear up the agreement if it takes power. Consideration of the matter seems to be threatened by delays occasioned by various parliamentary tactics, procedural disputes and the like. When they will get to the substance of the bill and how they will deal with it, if and when they do, who knows?

Therefore, it seems to me, honourable senators, that the Senate can and should take up the substance of this free trade bill, do it now by way of a pre-study and perform a valuable service to Parliament and to the country.

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, I have listened with interest to Senator Murray's historical overview of the free trade negotiations, the activities of the Senate, comments in the House of Commons and the omission of the comments of the Minister of International Trade with respect to the Senate. I think he has raised an important point that requires, to some extent, a comment from me. I would like to adjourn the debate and return to the matter at an early opportunity.

Senator Murray: Well, he didn't say no!

On motion of Senator MacEachen, debate adjourned.

The Senate adjourned during pleasure.

At 6 p.m. the sitting was resumed.

EMERGENCIES BILL

CONSIDERATION IN COMMITTEE OF THE WHOLE ADJOURNED

Pursuant to order adopted by the Senate on Thursday, May 26, 1988, the Senate was adjourned during pleasure and put into a Committee of the Whole on Bill C-77, to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, the Honourable Senator Molgat in the Chair.

The Chairman: Honourable senators, the Senate is now in Committee of the Whole to consider Bill C-77, to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof.

Senator Doody: Honourable senators, I ask leave to invite the Honourable Perrin Beatty, Minister of National Defence, and Messrs. Snarr and Molot, his advisors, to participate in the deliberations.

Senator MacEachen: Honourable senators, before we ask the minister to come in I should like to make a suggestion regarding a method we have employed in the past which would facilitate the work of the Committee of the Whole on this particular bill.

Would it be agreeable if we asked our whips to establish a steering committee that could do some of the work required to plan for the meetings? For example, do we need other witnesses? If that is agreeable, we could have a smaller committee than we had for the Meech Lake hearings. In this case, five and three might be an appropriate number.

Senator Phillips: May I ask the Leader of the Opposition if he envisages the Committee of the Whole continuing for some time, or are we going to have one session only?

Senator MacEachen: Honourable senators, I have no way of knowing. It is not my intention to have a long set of hearings. However, I do think it might be worthwhile to have a steering committee consider whether or not we need additional witnesses and to plan the work of the committee. It proved useful in the case of Meech Lake and it might be useful in this case.

Senator Hicks: Honourable senators, perhaps I can add something that may be useful in coming to a decision on the suggestion of the Leader of the Opposition in the Senate.

On the assumption that the bill might have been referred to the Special Committee on National Defence, as was Bill C-76, the national office of the Red Cross organization have written to me and submitted a brief. I have not known how to reply to them. I now propose that I shall write and tell them that the bill is being dealt with in Committee of the Whole of the Senate and that I have handed their correspondence over to the chairman of that committee. It may well be that we will have to hear these people, who, I think, are anxious to come before a committee.

Senator Doody: Honourable senators, that is a slightly different vision of the activities of this committee than I had believed was the intention of the Senate when I discussed this matter with my counterpart. I thought the minister would be the witness for this committee and that there would not be a parade of witnesses. That may very well still be the case, and perhaps a smaller committee would be necessary to talk to the Red Cross and others. Toward that end, I see nothing wrong with having the whips and chairman meet to discuss the forming of a subcommittee or a steering committee, or any other committee.

At this point I can say that I did not envisage a parade of witnesses through the Committee of the Whole on this particular piece of legislation.

Senator MacEachen: I do not personally envisage a parade either. There may be a number of witnesses. For that reason it occurred to me that the task of discussing the question of witnesses could be delegated to a steering committee. Consequently, I was suggesting that the whips be empowered to select the members from each side under the chairmanship of the chairman of the committee.

Senator Doody: Agreed.

The Chairman: Is there any further discussion? Is that a motion you are making, Senator MacEachen?

Senator MacEachen: I would make it a motion.

The Chairman: It is moved by Senator MacEachen that a steering committee be established, being five and three, and that the whips be empowered to select the members. Is there any further discussion? There being no further discussion, are you ready for the question?

Some Hon. Senators: Question!

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

Some Hon. Senators: Yea.

The Chairman: Will those honourable senators who are against the motion please say "nay"?

Some Hon. Senators: Nay.

The Chairman: In my opinion, the "nays" have it. Would you like to have a standing vote?

Senator Bosa: Why don't you call the vote again?

The Chairman: I am not empowered to call it again unless that is the wish of the committee.

Senator Barootes: Mr. Chairman, I have a suggestion to make. Why don't we entertain the minister, receive his thoughts and then make the decision that the honourable senator wishes following that? If we have satisfaction from this level, we may not need a vote. If we do not have satisfaction, perhaps, then, that would be the appropriate time to say we will form a steering committee or subcommittee.

Senator Doody: Honourable senators, that is what I had in mind. We may be heading into a procedural wrangle or a vote that may not be necessary. I am not suggesting it will not be necessary. It may well be that we will have other meetings and other witnesses in this forum or another forum, but perhaps we could forestall the vote, or the confrontation or whatever, until after we hear the minister. Then we could decide what course of action the committee should take.

Senator MacEachen: Mr. Chairman, that is agreeable to me. I understood that the deputy leader had agreed previously to the notion of a steering committee. It was a surprise to me that a number of "nays" were uttered from the other side.

Senator Doody: I had, honourable senators, and then I heard that the numbers were back to five and three and the steering committee was to be the same sort of committee that would be preordained and preorganized. As I say, it may not be necessary to take a vote on the numbers and on the times and so on, but if it is the wish of the committee to do that, then that is what we will do. However, we would be better served by asking the minister to come before us now and then deal with the procedural aspects later.

Senator MacEachen: It is the government that wishes this bill. Therefore, it might begin to show some cooperation in accommodating the committee rather than taking this attitude.

Senator Doody: I do not think the government is taking an attitude. The government is trying to accommodate the committee. We have tried to accede to the requests of the Senate in asking the minister to attend before us at the earliest possible opportunity. That he has done. He is now waiting outside the chamber. He wants to answer any questions that senators may have. Whatever the Senate wishes to do, obviously history and tradition point in the direction the Senate should take.

The government is not trying to be uncooperative. I thought we were trying to be most accommodating. I cannot quite understand what the problem is. If it will facilitate the movement of this bill through the Senate, then it will be three and five or eight and three or whatever. I just do not think it is necessary to get into that phase of it right now.

The Chairman: Is it your wish, honourable senators, to defer the matter for now and return to it later?

Some Hon. Senators: Agreed.

• (1810)

Pursuant to rule 18 of the Rules of the Senate, the Honourable Perrin Beatty, P.C., Minister of National Defence, Mr. W. Snarr, Executive Director, Emergency Preparedness Canada and Mr. H.J.L. Molot, General Counsel, Advisory and Administrative Law Section, Department of Justice were escorted to seats in the chamber.

Senator Doody: Honourable senators, I would like to welcome the Minister of National Defence to our chamber this evening, the Honourable Perrin Beatty, and his officials, Mr. Snarr and Mr. Molot.

In the event that honourable senators wish to ask questions directly of the officials, it will be necessary to have leave of the Senate to do so. If so, then I request that leave at this point. Certainly the minister is prepared to answer any or all questions honourable senators might have.

The Chairman: Thank you very much, Senator Doody.

Mr. Beatty, I want to add my words of welcome on behalf of the committee. I believe it is your first visit to the Senate. Following our normal procedure, we will hear your opening statement, if you have one, and then proceed to questions, if that is agreeable.

Hon. Perrin Beatty, Minister of National Defence: I thank you very much.

The Chairman: You have the floor.

Mr. Beatty: Thank you very much, honourable senators. It is indeed my first opportunity to appear in Committee of the Whole in the Senate. Those of us who sit in the House of Commons often eye covetously seats in the Senate. This one is a temporary gift from the Senate which I will be glad to surrender back to you later this evening, but I am honoured to have the opportunity to be here.

It is a tremendous pleasure for me to be able to be before you today on Bill C-77, the Emergencies Bill that is designed to replace the War Measures Act with comprehensive and properly safeguarded emergencies legislation.

I was saddened to learn that the Canadian people, and, more especially, the Canadian Forces, lost a good friend last Friday. Senator Paul Lafond had served his country with great distinction both in the RCAF during World War II, when he won the Distinguished Flying Cross, and in the Senate of Canada. Never forgetting his military service and the need to improve Canada's defence capabilities, he chaired the Special Committee of the Senate on National Defence and guided the committee through four studies, with one yet to be completed on Canada's Land Forces, leaving his mark on Canadian history.

[*Translation*]

The recommendations of his distinguished committee are very familiar to me and as Minister of National Defence, I was guided by their wise proposals in preparing the White Paper.

My wife, the Department of National Defence and the Canadian Forces join me in offering Mrs. Lafond and the members of his family our most sincere condolences.

[*English*]

Honourable senators, I read with considerable interest the record of the debate which took place in this chamber on second reading of the bill. Honourable senators have raised a number of points which merit careful consideration, and I will do my best to respond to these concerns during this evening's deliberations.

Permit me to summarize briefly what I consider to be the major features of the bill.

The Emergencies Act will enable the federal government to fulfil its constitutional responsibility to provide for the safety and security of Canadians during "national" emergencies. This responsibility stems from the "peace, order and good government" clause of the Constitution and the so-called "emergency doctrine," which has been elaborated by both British and Canadian courts since Confederation.

The bill will provide the government with appropriately safeguarded authorities to deal with four types of national emergencies: public welfare emergencies; public order emergencies; international emergencies and war emergencies. It will enable the government to act quickly to minimize injury and suffering in a national emergency and, at the same time, ensure that the exceptional powers acquired are no greater than those absolutely necessary to deal with the situation. In other words, there will be proportionality between the severity of the emergency and the response of the government.

[The Chairman.]

The bill will enable the government to mount a national response when a major disaster or situation involving public disorder either extends beyond the boundaries of the single province or exceeds the capacity of the province to deal with it effectively.

It will enable the government to react to a serious international emergency by instituting, in concert with our allies, appropriate and gradual pre-emptive and preparative measures designed to stabilize the situation and prevent further deterioration. Under current legislation, the only option open to the government would be the much more provocative step of invoking the War Measures Act.

The Emergencies Bill will remove the need to deal with national emergencies by hastily introducing *ad hoc* legislation during the confusion and disruption, which is characteristic of the early stages of a national emergency.

Finally, it will help to improve the national standard of emergency preparedness by stimulating emergency planning within the federal government and in cooperation and consultation with the provinces.

[*Translation*]

I would like to take a moment to review in more detail some of the federal-provincial aspects of this bill. In a federal state where jurisdiction is divided between two levels of government, each vested with its own area of jurisdiction and exclusive responsibilities, the cardinal principle in normal times must be that neither shall infringe upon the rights of the other; that is, that each shall respect the boundaries of its own jurisdiction.

The emergency doctrine affirms that in times of national crisis the federal government may, on behalf of the country as a whole, act in areas which are normally within the legislative competence and jurisdiction of the provinces. The problem, then, is how best to centralize control while achieving the close degree of federal-provincial cooperation necessary to integrate responsibilities and coordinate efforts to provide for the safety and security of Canadians.

[*English*]

The absence of any legal requirement to consult with the provinces before exercising federal powers under the emergency doctrine has been the subject of some comment by several groups which have examined the issue in the broader context of constitutional reform. Studies such as the Task Force on Canadian Unity, the 1976 "beige paper" of the Quebec Liberal Party, the report of the Canadian Bar Association Committee on the Constitution, and a report of the Standing Committee of the Senate, the Goldenberg report, reached a common conclusion, namely, that federal-provincial cooperation and consultation is a vital factor in designing any new approach for dealing with national emergencies in Canada.

Bill C-77 has been carefully drafted in close consultation with the provinces. It represents a consensus of the views of the territorial, provincial and federal governments. The bill that has flowed from that consensus will, I believe, protect and respect legitimate provincial interests, while allowing the fed-

eral government to fulfil its responsibility to deal effectively with national emergencies.

Under Bill C-77, the provinces must be consulted before a national emergency is declared. Subsequently, the federal government must exercise its emergency powers with a view to achieving concerted action with the provinces. In the case of a public welfare or public order emergency in which the effects of the emergency are confined to a single province, the federal government may declare an emergency only after the province concerned has indicated that its capacity to cope has been exceeded.

In response to a point raised by Senator Hicks, let me reassure honourable senators that the consultation provisions will not impede the federal government in responding in a timely manner to emergencies requiring a national response. For international or war emergencies, areas which are of clear federal jurisdiction, the bill calls for consultation only "to the extent that is appropriate and practicable to do so in the circumstances." Even for peacetime emergencies there is nothing resembling a provincial veto, except where the emergency is confined to a single province and where the sole ground for federal intervention is the inability of the province to cope with the situation. In these circumstances, the act defers to the judgment of the province as to its capabilities. Even here, however, if the effects of the emergency have national implications, the federal government could intervene in spite of provincial objections.

Perhaps even more important than the federal-provincial dimension of emergencies legislation is the question of the balance between adequate authorities, on the one hand and the preservation of fundamental rights and freedoms, on the other. A large portion of Bill C-77 is devoted to provisions that construct a comprehensive regime of both judicial and parliamentary safeguards against the misapplication or abuse of emergency powers. The act will be subject to both the Canadian Charter of Rights and the Bill of Rights and must have regard to the International Covenant on Civil and Political Rights. The balance between authorities and safeguards which has been struck in Bill C-77 represents the product of extensive public consultation and thoughtful recommendations from public interest organizations. In particular, I might mention the contribution made by the Canadian Bar Association, the Canadian Civil Liberties Association, the National Association of Japanese Canadians and the Ukrainian-Canadian Committee.

● (1820)

Several of the organizations which presented briefs expressed their satisfaction with the process that permitted their views to be heard and, in very many cases, to be acted upon favourably.

[*Translation*]

The mainstay of the protection of fundamental rights and freedoms is the Charter, and under C-77 the normal mechanisms for applying Charter protections will be upheld.

Section 33, the notwithstanding clause of the charter, has not been used in the bill and cannot be invoked by Order-in-Council. The added protection of the Bill of Rights is of particular significance since some provisions of the bill are not duplicated by the Charter, for example the protection of the right to the enjoyment of property and the provision for a fair hearing for the determination of rights and oblilgations.

[*English*]

Bill C-77 is subject to both judicial and parliamentary sanctions. Any limitation of Charter rights which a government might consider necessary in a national emergency would be subject to at least two channels of judicial review. In the first place, the Governor in Council could be challenged in court to demonstrate that there were reasonable grounds for declaring an emergency, as well as reasonable grounds for each of the orders or regulations made pursuant to the declaration.

Second, under section 1 of the Charter, the government could be challenged to demonstrate that Charter limitations imposed were "reasonable and demonstrably justifiable in a free and democratic society". It is difficult to imagine a government going ahead with measures if there were any doubts about its ability to justify its actions in court.

There are many features of this emergencies legislation that will ensure that the government will be accountable to Parliament and, through Parliament, to the people of Canada for its use of emergency powers. The list is long, but if you will bear with me I would like to summarize the key ones *ad seriatem*:

—application is confined to "national emergencies" which are precisely defined in the bill;

—specific powers are set out for four types of national emergency, each of which is also precisely defined;

—following invocation of the legislation, the government must come before Parliament without delay, with an explanation of the basis for its action and with a report of its consultations with the provinces, and seek Parliament's confirmation of the declaration of emergency;

—if Parliament is not in session, it must be recalled, and, if dissolved, must be called at the earliest opportunity to consider the government's emergency actions;

—both houses must approve the declaration;

I might just depart from my text here, honourable senators, to say that it was a matter of some contention when this bill was before the House of Commons committee as to whether or not we should include a veto on the invocation of the legislation for the Senate. One can easily see circumstances where a majority in the House of Commons would be in favour of proceeding and the Senate might not. We took the decision that we were protecting civil liberties of Canadians; that this double veto was defensible and necessary and that the refusal by either house—either the Senate or the House of Commons—to approve the declaration would result in its being struck down. It is a double parliamentary protection for the rights of Canadians.

To continue the list:

—all orders and regulations must be promptly tabled in Parliament;

—a review committee of both houses, with all-party representation, must be struck to continuously monitor the government's use of the legislation;

— either house can initiate a motion to revoke or amend the declaration, or any order or regulation;

Again, honourable senators, let me depart here from my text. Let us visualize a situation where both houses of Parliament have approved the invocation and then, after that, it has been tested in the courts and the courts have found that what was being done by the government was legal and proper and that the government was capable of justifying the fact that an emergency existed and was able to demonstrate that in all cases what it was doing was consistent with what was acceptable in a free and democratic society. Let us go one step further and say that, even if there had been an attempt, for example, to have it struck down in the House of Commons and the House had voted to leave the measures in the legislation in force, the Senate would be capable of putting down a motion to revoke or amend the declaration or any order or regulation—again, giving that double scrutiny.

—the government must have the continued support of both houses for its actions, since a revocation or amendment motion is effective if passed by either house;

—the declaration automatically expires after a set period unless renewed by Parliament;

—on continuation of a declaration, all active orders and regulations must be confirmed by Parliament;

—the review committee must report regularly to Parliament, and in any case must report whenever a motion to revoke or continue a declaration is tabled;

—there is no automatic closure on debate of motions of confirmation, revocation or continuation of a declaration;

—if there is a need for secret orders or regulations, they will be subject to review and possible revocation or amendment by the review committee meeting *in camera*.

Honourable senators, this might apply in cases where action had to be taken about specific installations that were essential in wartime, for example, where it would not be possible to indicate publicly where those installations were.

—a comprehensive inquiry must be conducted following the termination of an emergency, and reported on within one year.

Honourable senators, if, in spite of this exhaustive system of constraints and safeguards, anyone suffers loss or damage as a result of the government's use of its special powers, that person will be able to obtain compensation. The legislation provides for a compensation process which the government is obliged to put in place and which includes an appeal process overseen by a federal judge acting as an "assessor." If someone is not satisfied with the compensation provided by this administrative process, then he or she is free to seek redress through the more formal, judicial route under the Crown Liability Act.

During second reading debate, several honourable senators raised questions about the powers which Bill C-77 grants to the government during a war emergency and, in particular, how these powers differ from those of the War Measures Act. I can understand these concerns, since a simple comparison of the bare statements of the powers in the two pieces of legislation—clause 40 in Bill C-77 and clause 3 in the War Measures Act—suggests that there is not much difference. Let me assure you that the difference between the two pieces of legislation is very great indeed, and in fact represents much of the reason why Bill C-77 is a longer, more complex piece of legislation.

The War Measures Act incorporates almost no safeguards. Bill C-77 includes a structure of safeguard upon safeguard which taken together render misuse of the legislation virtually impossible. Let me review some of these.

[*Translation*]

First, with regard to the definition of a war emergency, C-77 removes application to "insurrection", and by incorporation of the general definition of national emergency, confines application to situations which seriously threaten the ability of the government to preserve the sovereignty, security and territorial integrity of Canada. In addition, the latter definition adds the important provision that the situation must be such that it cannot be effectively dealt with under any other law of Canada.

Thus the field of application of Part IV of C-77 is narrower than that of the War Measures Act. Under the War Measures Act, the declaration is conclusive evidence that the invocation is necessary; under C-77 the government must justify invocation to Parliament, and furthermore, its action is challengeable in the courts since there must be "reasonable grounds" for invocation. Under the War Measures Act, the only constraint on specific measures is the Charter.

Under C-77, there must be "reasonable grounds" for the necessity of all measures taken, and they are put under continuous scrutiny by Parliament with specific procedures for amendment or revocation of the orders or regulations on which the measures are based.

The War Measures Act has no time limit. C-77 limits the duration of war powers to 120 days, and they can only be renewed if Parliament is pursuaded that renewal is necessary.

Both the War Measures Act and C-77 are subject to the Charter, but only C-77 is subject to the additional protection of the Bill of Rights.

[*English*]

Under the War Measures Act, one could conceive of the government claiming in a particular case that the discriminatory internment was "reasonable and demonstrably justifiable in a free and democratic society," arguing that the terms of section I of the Charter were met. But Bill C-77 rules out this loophole unequivocably.

Honourable senators, I stress that point in particular. Never again in Canada will we have the travesty where Canadian

citizens are incarcerated in internment camps based upon their country of origin or their racial and ethnic heritage. It is specifically forbidden under the terms of this legislation, unlike the case with the War Measures Act where the rights of hundreds of Canadians have been abrogated in the past.

The War Measures Act makes no provision for compensation for losses suffered by individuals as a result of the application of the act. Bill C-77 includes a compensation regime. Thus, while the bare engine under the hood of Bill C-77 may look a lot like the War Measures Act, the vehicle has vastly improved steering, brakes and speed controls and operates at all times under the watchful eyes of parliamentary and judicial traffic cops.

Let me respond briefly at this time to a few specific points raised during debate by Senator Stewart, although I suspect that honourable senators may want to explore these important matters in more detail later. The senator raised three questions, all in relation to measures taken by order in council during a war emergency. These were: conscription, internment and the imposition of new taxes. First, with regard to conscription, our advice is that this would be legally possible by order in council under Part IV of Bill C-77, but whether it would also be politically feasible is a question that can only be answered at the time. In addition to the various constraints on such action which I have already touched upon, there is additional Charter protection which forbids forcing Canadian citizens to leave the country. Thus, to send conscripted troops overseas, the test of section 1 of the Charter would have to be met. Internment by order in council would be possible in a war emergency under Bill C-77, but, again, only if reasonable grounds for its necessity were present and the Charter conditions were met. *Habeas Corpus* would continue to apply and continued detention would be challengeable under section 1 of the Charter. As I mentioned earlier, discriminatory internment would not be possible under Bill C-77 under any circumstances, since clause 4 specifically rules out the use of Bill C-77 for internment on the basis of race, national origin and so on.

Finally, with regard to taxation, I am pleased to say that I can give a short, unequivocal answer. Taxes cannot be imposed by order in council. The Constitution sets out quite specific procedures for levying taxes and a bill is always required. I think, honourable senators, that that is all I need say about the detail of Bill C-77. I am sure that you will want to explore more deeply specific areas of the act's purview.

I conclude, before inviting any questions or comments from honourable senators, by offering one other personal note. The last time the War Measures Act was invoked, October 1970, it was a case of considerable concern for members of Parliament on all sides of the house. It was an instance, as well, where there was great agonizing among all Canadians. Each one of the political parties represented in Parliament gave a good-faith commitment to Canadians that they wanted to see that odious act, the War Measures Act, scrapped for all time, and to ensure that in future, while the government would have the powers to respond in an effective way in times of emergency, the basic civil rights of Canadians could never again be abrogated in the way they were taken away in the past under the War Measures Act. That was October 1970. It is now 1988, some 18 years later. I believe that all political parties, all parliamentarians have an obligation to deliver on that commitment and to do so in good faith and with expedition. I think Canadians have a right to expect that we will pass this legislation and a right to expect that we will put in place a regime which will give the government the powers it needs to protect the integrity of Canada, our survival in times of crisis and individual safety in cases where individuals might be put in jeopardy and ensure that we will have at all times adequate protection of the civil liberties of every Canadian. If we can pass this legislation, and do so before more time elapses, then we will have done credit to Parliament and we will have honoured the commitment made in good faith by each of the political parties so many years ago.

Thank you, Mr. Chairman. If honourable senators have any questions, I would be pleased to receive them.

Senator Stewart (Antigonish-Guysborough): Mr. Chairman, I am sure we appreciate the minister's exposition of the bill and his emphasis on safeguards. First, I would like to ask: Is it not true that the Canadian Charter of Rights, the Canadian Bill of Rights and the International Covenant apply now in the case of the War Measures Act?

Mr. Beatty: Mr. Chairman, it is not true. The Canadian Charter of Rights applies in the case of the War Measures Act, but the Bill of Rights does not apply. However, the Bill of Rights will apply in the case of Bill C-77 .

Senator Stewart (Antigonish-Guysborough): Where is that provided outside the preamble?

Mr. Beatty: Subsection 6(5) of the War Measures Act excludes the Canadian Bill of Rights.

Senator Stewart (Antigonish-Guysborough): And you are contending that without explicit provision in the operative clauses of this bill the Bill of Rights will prevail?

Mr. Beatty: Yes. I am sure that the honourable senator is aware that there is in the preamble specific reference to the Bill of Rights, which specifically ensures that it will apply. However, without specific exclusion the Bill of Rights would apply in a statute such as this.

Senator Stewart (Antigonish-Guysborough): You have emphasized at considerable length and in detail the safeguards in this bill, and you have talked about wiping out the odious War Measures Act. In what particulars do the powers delegated to the Governor in Council under this legislation differ from the powers of the Governor in Council under the War Measures Act when a declaration has been made in the situation contemplated under clause 38 of this bill, other than those protections afforded under the Charter of Rights, the Bill of Rights and the International Covenant?

Mr. Beatty: Mr. Chairman, Senator Stewart is referring to the declaration of a war emergency. I mentioned some cases where there are substantial differences between Bill C-77 and

the War Measures Act. For example, under the War Measures Act, it was legally possible to incarcerate Japanese Canadians based on their racial origin.

Senator Stewart (Antigonish-Guysborough): I have already set that aside. I accept that point; indeed, I mentioned it in my speech on the motion for second reading.

Mr. Beatty: That is specifically excluded in this bill.

Senator Stewart (Antigonish-Guysborough): What I am asking is: Aside from those exclusions, how do the powers differ?

Mr. Beatty: It would differ as well because of the application of the Bill of Rights, which does not apply in the case of the War Measures Act.

Senator Stewart (Antigonish-Guysborough): In other words, what you are saying is that simply by enacting that the Bill of Rights and the Covenant would apply as limitations on the War Measures Act you could have achieved virtually the same result.

Mr. Beatty: Not at all. The most disgraceful application ever of the War Measures Act was the incarceration of, for example, Japanese Canadians. Simply applying the Charter of Rights and—

Senator Stewart (Antigonish-Guysborough): The Covenant.

Mr. Beatty: —the Bill of Rights—

Senator Stewart (Antigonish-Guysborough): And the Covenant.

Mr. Beatty: —and the Covenant would not necessarily guarantee that that sort of incarceration based on ethnic heritage could not take place.

● (1840)

Senator Stewart (Antigonish-Guysborough): But you can incarcerate Canadian citizens on any ground other than those specified in clause 4(*b*).

Mr. Beatty: Could you repeat the question?

Senator Stewart (Antigonish-Guysborough): Incarceration on grounds other than those specifically excluded in clause 4(*b*) would be permissible under the proposed legislation, is that correct?

Mr. Beatty: Yes.

Senator Stewart (Antigonish-Guysborough): Does that include internment?

Mr. Beatty: Yes, for example, internment of prisoners of war.

Senator Stewart (Antigonish-Guysborough): What about Canadians suspected by the Governor in Council or, perhaps, the Minister of Justice—as during the Second World War—of being security risks?

Mr. Beatty: It would depend, obviously, on how it was defined. In the case of the Second World War, the security risk was based on the individual's ethnic heritage.

[Mr. Beatty.]

Senator Stewart (Antigonish-Guysborough): I am not talking about that. I am talking about Canadian citizens who are not Japanese but ordinary Canadian citizens born in this country, such as the Mayor of Montreal. Could the Mayor of Montreal have been interned under this proposed legislation?

Mr. Beatty: You would have to, Mr. Chairman, establish reasonable cause and it would be testable as well under the Charter in the courts.

Senator Stewart (Antigonish-Guysborough): You are saying seriously that, under this provision, all those persons interned, incarcerated or detained—whatever term one wishes—could bring their cases to trial in court on the facts of their particular cases.

Mr. Beatty: Absolutely, and that is the least they have the right to expect.

Senator Stewart (Antigonish-Guysborough): I am not arguing the point, I am just trying to contemplate the situation in the courts.

Mr. Beatty: When you look on the deprivation of an individual's liberty as incarceration in an internment camp, we, as parliamentarians, must bend over backwards to ensure that the rights of the subject are protected.

Senator Stewart (Antigonish-Guysborough): I do not think you are confronting my question directly. As I see what would happen, there would be the declaration of an emergency and then an order in council would be made authorizing defence-of-Canada regulations, or whatever the term would be, and under those regulations, in turn, there would be other regulations. One of those other subordinate regulations might say that the Minister of Justice or his deputy could utter an order authorizing the internment of a particular person on security grounds. The interned person then would have a right to a writ of *Habeas Corpus*. He would get that writ and go into court. At that point the agent of the Minister of Justice would appear and display the order. The question is: Will the person who is challenging his own detention be able to require the government to disclose the facts on the basis of which the detention order against him had been made?

Mr. Beatty: To the court, yes. What is more, if you had a sweeping regulation of some sort that purported to allow classes of individuals to be swept up, as opposed to one individual, that very regulation itself could be tested before the courts.

Senator Stewart (Antigonish-Guysborough): I should like to ask the minister if he has asked his officials specifically about the kind of situation to which I am now referring, or is he just answering out of what seems to be common sense?

Mr. Beatty: In the preparation of the bill, we have gone over every single clause of the bill. I have pursued the question of how we can build in protections for individual Canadians throughout, and what we have in the legislation before the Senate today is the most comprehensive set of protections for civil liberties that has ever existed in this sort of legislation.

Senator Stewart (Antigonish-Guysborough): You can say that, but I am trying to find out just what the protections really are.

Mr. Beatty: Absolutely, and that is why, senator, I went to considerable pains in my opening remarks to respond to some of the misapprehensions you have.

Senator Stewart (Antigonish-Guysborough): Pehaps we are getting too defensive. You have told us that conscription could be introduced without a decision by the Parliament of Canada, but you question whether conscripted persons could be sent outside Canada. Is that correct?

Mr. Beatty: That is right. Of course, a decision based on any regulation which the Governor in Council makes under the bill is testable on a number of grounds before the courts and also in both houses of Parliament. If there were an attempt to use this legislation to avoid putting in an ordinary bill dealing with conscription, members of either house, the House of Commons or the Senate, could put a motion to nullify the order.

Senator Stewart (Antigonish-Guysborough): But the presumption is reversed. In the situation your bill will create, the Governor in Council will bring in conscription. Later, perhaps many weeks later if Parliament is dissolved, Parliament will have a chance to review what the government has already done, but by then the boys and girls will already be in uniform in camps. It is going to be difficult to unscramble that situation.

Mr. Beatty: As a former joint chairman of the Standing Joint Committee on Regulations and Other Statutory Instruments, I have some considerable sensitivity to the abuse by government of delegated legislation. Having had a good deal of experience over the years, I can tell the honourable senator that I am not aware of a single instance which came before the committee while I was joint chairman in which the protections were as sweeping as they are here, and, indeed, if one looks at the powers we have today under the War Measures Act, the powers that are here are considerably more circumscribed or restrained. In the case of the War Measures Act, one might ask oneself why governments would not have used the old War Measures Act for conscription.

Senator Stewart (Antigonish-Guysborough): We are not here to defend the War Measures Act; rather, we are trying to do what was not done in the case of the War Measures Act in 1914 or in 1939.

Mr. Beatty: Absolutely.

Senator Stewart (Antigonish-Guysborough): That is why I suggest we should not be defensive. Would you repeat the grounds on which you asserted that military personnel could not be sent overseas.

Mr. Beatty: It is because of the provisions of the Charter.

Senator Stewart (Antigonish-Guysborough): Specifically what section?

Mr. Beatty: Section 6(1).

Senator Stewart (Antigonish-Guysborough): What does that state?

Mr. Beatty: It states:

> Every citizen of Canada has the right to enter, remain in and leave Canada.

The emphasis, as is pointed out to me, would be on the word "remain."

Senator Stewart (Antigonish-Guysborough): You have legal advice that section 6(1) does not mean, simply, that ordinary Canadians—those who are not in the special status of members of the armed forces—have the right to remain in Canada? Does section 6(1) refer to members of the Canadian Armed Forces?

Mr. Beatty: It is absolutely inclusive. That is the advice I have received.

Senator Stewart (Antigonish-Guysborough): You say that new taxes could not be imposed, but, of course, the government has a continuing right to tax, not to impose new taxes, so new money will be going annually into the Consolidated Revenue Fund. That would not be the case in the United Kingdom where they have to re-enact their finance bill each year.

Let us turn to appropriations. Under what situations could the Governor in Council authorize appropriation from the Consolidated Revenue Fund, without prior resort to Parliament, if this bill were to become law?

Mr. Beatty: That would occur in reasonable circumstances which would have been provided for by Parliament.

Senator Stewart (Antigonish-Guysborough): When you say "reasonable circumstances," do you mean there has to be a *prima facie* case.

Mr. Beatty: Yes. The government has the power now to reallocate funds within the funds provided for by Parliament.

• (1850)

Senator Stewart (Antigonish-Guysborough): Yes, I understand that.

Mr. Beatty: But you could not simply divert the funds from one particular vote of Parliament to something that was totally unrelated to it without violating the law.

Senator Stewart (Antigonish-Guysborough): We know that; but what you seem to be saying now is that under this proposed act there could be major new appropriations without specific parliamentary authorization and quite aside from the provisions of the Financial Administration Act.

Mr. Beatty: Let us take a look at what in fact we are saying. Senator, you suggested that we would be able to impose the right to tax by order in council. That is wrong.

Senator Stewart (Antigonish-Guysborough): I am not asserting that.

Mr. Beatty: You did previously.

Senator Stewart (Antigonish-Guysborough): No, I did not; I asked that question.

Mr. Beatty: You asked it rhetorically, and the answer is that you cannot do that.

Secondly, with delegated legislation, yes, you do have the ability—with all sorts of delegated legislation—to create new organisms or to create bodies which need to be funded. That exists in statute after statute in our law. There is nothing novel about that at all. To suggest that there is something somehow peculiar in the case of Bill C-77 is simply wrong.

Senator Stewart (Antigonish-Guysborough): You are saying that with this new act on the statute books Appropriation Acts of the kind that are now required would be necessary in every circumstance?

Mr. Beatty: The same rules would apply in the future that apply now.

Senator Stewart (Antigonish-Guysborough): Are you saying that there is no change in the—

Mr. Beatty: Pardon?

Senator Stewart (Antigonish-Guysborough): I want to make sure I am not interrupting, because I want you to get the best information that is available to you from your officials.

I want to know what difference this measure would make with regard to the appropriation of funds by the Governor in Council. We know there are certain circumstances, such as with Governor General's Warrants, under which this can be done. What new abilities will the Governor in Council have to appropriate funds if this bill becomes law?

Mr. Beatty: None that is novel in any way.

Senator Stewart (Antigonish-Guysborough): Then why is it provided in the bill that in the case of an international emergency there can be appropriation?

Mr. Beatty: What clause are you referring to? Are you referring to clause 36?

Senator Stewart (Antigonish-Guysborough): Would you look at clause 30(1)(*j*), which states:

> the authorization of expenditures for dealing with an international emergency in excess of any limit set by an Act of Parliament and the setting of a limit on such expenditures;

Mr. Beatty: That is simply the ability to top up things like revolving funds and so forth.

Senator Stewart (Antigonish-Guysborough): Oh come! It states:

> the authorization of expenditures for dealing with an international emergency in excess of any limit set by an Act of Parliament—-

That is a little more than topping up.

Mr. Beatty: I am advised that the only case where such limits are placed is in acts dealing with revolving funds, for example. It does not say "appropriation," incidentally, in that clause.

Senator Stewart (Antigonish-Guysborough): I would be interested in hearing the distinction.

Mr. Beatty: An example, senator, would be that the Export Development Act or the Defence Production Act may have limits in terms of the amounts of money that can be spent under those acts, quite apart from any amounts of money that might have been voted and appropriated by Parliament. This would allow one to waive the limit, but would be consistent with the appropriation powers of Parliament. Parliament would have appropriated the funds for that purpose.

Senator Stewart (Antigonish-Guysborough): Clause 40(1) states:

> While a declaration of a war emergency is in effect, the Governor in Council may make such orders or regulations as the Governor in Council believes, on reasonable grounds, are necessary or advisable for dealing with the emergency.

Would appropriation be possible by order or regulation under that clause?

Mr. Beatty: No, because there is a constitutional requirement that there be a bill to appropriate funds. The Constitution supersedes the provisions of the bill.

Senator Stewart (Antigonish-Guysborough): I understand that, but surely a government—not a government in which you were a member, of course—would argue that an order made under this clause would be adequate.

Mr. Beatty: That is a novel construction, senator; you are right that I would not argue that. I would be very surprised if anyone else did.

Senator Stewart (Antigonish-Guysborough): A similar argument was made during the First World War, not with regard to the appropriation of money but in relation to putting aside the provisions of a statute.

Mr. Beatty: I missed World War I, and my memory may be faulty there, but, as a parliamentarian, one thing I know is that the development of parliamentary democracy stemmed in large part over the issue of control of the purse. Precedents are well established in jurisprudence, and the long struggle for the development of parliamentary democracy would forbid precisely that.

Senator Stewart (Antigonish-Guysborough): I want your word on the record, and that of reliable authorities, that, in fact, we are not setting aside the great tradition to which you referred.

Mr. Beatty: Absolutely not, senator.

Senator Stewart (Antigonish-Guysborough): All right. When I say "All right," I am thanking you for what you have said; I do not mean I necessarily agree.

I was pleased when you were explaining the measure that you said candidly that in many of the situations contemplated

it would be necessary to rely upon the peace, order and good government clause. As we know, this is a clause which has been used to take over matters which normally are under the exclusive legislative jurisdiction of the provincial legislatures.

Would it be possible under clause 40(1) to forbid provincial borrowing in foreign money markets?

Mr. Beatty: The advice I receive is that it may be.

Senator Stewart (Antigonish-Guysborough): Can we get a definitive answer? I ask that question because that was an important constitutional question in the fall of 1939.

Mr. Beatty: I suppose if one were to look at hard cases, and if a province wanted to borrow money from a country with which Canada was at war—

Senator Stewart (Antigonish-Guysborough): Something of worry to the Government of Canada would be the matter of foreign exchange controls. It might want to intervene to prevent Nova Scotia, for example, from disrupting its emergency planning with regard to the control of foreign exchange.

I am asking if the Governor in Council could intervene under this provision to say that a provincial government could not borrow U.S. dollars or British pounds.

Mr. Beatty: I will seek legal counsel on that, senator.

Senator Stewart (Antigonish-Guysborough): I think it would be helpful if we had an answer to that question.

Let me ask you this—

Mr. Beatty: I can convey that advice to you rapidly. The advice I have received is that it would be possible.

Senator Stewart (Antigonish-Guysborough): Thank you for that answer.

You say that you have examined all of the possibilities. You assert that you believe that this bill would be adequate to permit the Government of Canada to do what would be necessary in the case of an international emergency or a war emergency. You have extolled planning. Does the government have an emergencies book? Have you starting drafting orders in council under this bill?

Mr. Beatty: Work in this area, senator, has been in place for the last 20 or 25 years.

Senator Stewart (Antigonish-Guysborough): So, in a sense, you do have a war book or an international emergencies book?

Mr. Beatty: Yes, senator, we do have the elements of it, I gather.

Senator Stewart (Antigonish-Guysborough): That is why you are convinced that this bill provides you with an adequate foundation for any order or regulation that you might need.

Mr. Beatty: I am convinced, because my advisers from the Department of National Defence and Emergency Preparedness Canada have looked at what the needs would be in a time of crisis and have satisfied themselves that powers that would be essential to them to carry out their responsibilities would be there.

Senator Stewart (Antigonish-Guysborough): When he was speaking to us on April 28, Senator Kelly made reference to what he called "the 1970 incident," and he said:

> I think the best that can be said of the events in 1970 is that when the government went to the cupboard, the only thing available was the War Measures Act, a very blunt instrument designed, as its name suggests, for wartime use.

You have just told us that you tried to anticipate every requirement. Do you have draft orders or regulations for the kind of situations to which Senator Kelly referred?

Mr. Beatty: You are referring to a situation analogous to the October 1970 crisis?

Senator Stewart (Antigonish-Guysborough): I am referring to whatever the situation was about which Senator Kelly spoke when he moved second reading.

Mr. Beatty: One would like to be privy to all of the information that the Government of Canada then had at hand. On the strength of what I have seen, senator, it was the usual criminal processes that were used that were helpful in terms of dealing with the killers of Pierre Laporte and the kidnappers of James Cross. I think the invocation of the War Measures Act in that instance was unjustifiable. I agree with the late Don Jamieson that, on the strength of anything that I have seen, the justification for the invocation was not there. I believe that in a similar circumstance the ordinary provisions under the Criminal Code and ordinary police procedures would have been adequate to deal with such a crisis.

Senator Stewart (Antigonish-Guysborough): You are saying, therefore, that this bill really would not apply in a case of insurrection, real or apprehended. Do you think that this bill would not apply to a genuine case of insurrection, real or apprehended?

Mr. Beatty: I am saying that, if there were a public order emergency, the bill specifically applies such that essential services could be restored or restrictions could be placed upon freedom of assembly. We could provide protection for vital points in cases where there was civil disorder. The question you asked previously related to the October 1970 crisis. I cannot comment on what information was available to the government at the time. Mr. Turner then said he hoped that one day all Canadians would know the basis on which the government took the decision it did. I do, too, but, on the strength of what I have seen to date, I could not have justified to cabinet or to the Canadian people the invocation of the War Measures Act.

Senator Stewart (Antigonish-Guysborough): We talked earlier about the delegation in an emergency to the Governor in Council of matters that normally fall under the jurisdiction of provincial legislatures. Have you consulted with the government of the province of Quebec, for example, on the matter of censorship or control of provincial borrowing?

Mr. Beatty: Throughout the whole of the writing of the bill, which literally extended over a period of years, there was close consultation with all of the provinces. Indeed, we received

representations from the Province of Quebec that I believe were made public before the House of Commons committee.

Senator Stewart (Antigonish-Guysborough): You are telling us that the government of the province of Quebec is completely satisfied with the provisions of this bill relating to situations in which the Governor in Council would be exercising powers that are normally under provincial jurisdiction.

Mr. Beatty: Yes. What I am saying, senator, is that we invited from each of the provinces an expression of any concerns it had. A number of concerns were expressed by a number of different provinces, the vast bulk of which concerns were dealt with through modifications to the initial draft of the bill. My understanding is that the Government of Quebec is satisfied with this bill, as are the other provincial governments.

Senator Stewart (Antigonish-Guysborough): Is the government of the province of Quebec satisfied with the specific provisions for dealing with what was thought of in 1970 as insurrection, real or apprehended? Does the Premier of Quebec think that this will give you an adequate legal regime for dealing with that kind of situation?

Mr. Beatty: I personally met with the minister responsible from Quebec. A succession of meetings have been held at the officials level. We have received official correspondence from the Government of Quebec, and it was not the Premier of Quebec who responded to the letter but the appropriate minister. He was speaking on behalf of the Province of Quebec, indicating the satisfaction of the Government of Quebec with the sort of changes we were looking at.

Senator Stewart (Antigonish-Guysborough): I am sure, Mr. Chairman, that other senators want to ask questions. May I ask one more?

The Chairman: All right.

Senator Stewart (Antigonish-Guysborough): I wanted to ask a question concerning the Parliamentary Review Committee. Subclause 62(1) makes a provision for a committee of both houses. Then, subclause 62(2) states:

> The Parliamentary Review Committee shall include at least one member from each party that has a recognized membership of twelve or more persons in the House of Commons.

Reading those two subclauses together suggests that the participation of one senator would be adequate to constitute a joint committee. There is no rule, either here or elsewhere, with regard to the proportion of members on joint committees. This matter was debated when the joint committee on Meech Lake was being set up. We thought that the present government was very unreasonable in the stand it took with regard to the number of senators who would be members of that committee. One member from the Senate would suffice to make a committee qualify as a joint committee. In the present Parliament, that could be a Conservative senator. Perhaps in another Parliament, a Liberal senator—or even, possibly, an NDP senator, if the NDP had a majority in the House of Commons. I do not want to distract you with that—

[Mr. Beatty.]

Mr. Beatty: It tantalizes me, senator, when you mention an NDP senator.

Senator Stewart (Antigonish-Guysborough): Let us think of the problem without having particular parties in mind. It seems to me that something might be done to this part of the bill to ensure that both sides of the Senate would be represented on that committee.

Mr. Beatty: Senator, in designing this particular provision of the bill, we did not attempt to fix what would be the absolute number of members from the House of Commons, for that matter. We did try to provide that there would be representation from each of the political parties in the House of Commons. It would also be possible, presumably, that representation of the Senate might involve independent senators. One would hope that reasonableness would apply in any case where the two houses are called together to meet with one another.

When you say, senator, that you felt that the government of the day was unreasonable in terms of the number of senators included in the Meech Lake committee, I could say that members of the NDP probably felt that the government was unreasonable, too, in terms of the number of senators included, but for different reasons.

Senator Stewart (Antigonish-Guysborough): You make my point, namely, that reasonableness is a highly subjective test. It seems to me that to plead reasonableness is almost as unreliable as pleading goodwill as a basis for procedure.

• (1910)

Mr. Beatty: Senator, as long as you are here, I am sure there will be goodwill and there will be no difficulty with that.

Senator Stewart (Antigonish-Guysborough): Come now!

Mr. Beatty: In many elements of parliamentary and constitutional procedure in the past we have resisted setting up very rigid structures which are not capable of being adapted to particular circumstances. I do not think it is unreasonable to expect there would be goodwill in a national crisis or that reasonableness would apply.

In the provisions of this bill—many of which I mentioned to you earlier—we have built a panoply of protections for civil liberties, a structure which ensures involvement by members of the House of Commons and senators that is unprecedented. I cannot think of a single piece of legislation that has come before Parliament in my 16 years as a member of Parliament which has built in so many checks and balances to protect civil liberties, using both the courts and Parliament.

Senator Stewart (Antigonish-Guysborough): You are pleading that the provisions for parliamentary surveillance here are sweeping and, indeed, highly detailed. You do not rely upon reasonableness when you come to other major provisions in that same clause. The bill says, "within three sitting days" and "within seven sitting days." There the bill is very specific. However, in subclauses 62(1) and (2), you rely on reasonableness.

Mr. Beatty: Senator, we could write all sorts of additional rules for the committee and constrain the committee much more than we have done. We have tried to stick to the essentials here. I believe we have struck a formula which ensures proper parliamentary scrutiny and involvement, but also gives sufficient flexibility to deal with the specific circumstances of the day.

Senator Stewart (Antigonish-Guysborough): Our differences have been adequately recorded. Therefore, Mr. Chairman, I will not pursue this point.

The Chairman: The next senator on my list is Senator Marsden, followed by Senator Neiman.

Senator Marsden: I would like to deal with the public welfare emergency sections. I do not bring to the question the kind of knowledge or parliamentary experience that Senator Stewart does. However, I am interested in how this might apply to a number of situations. As I am sure you know, one has to imagine what might occur in order to understand how this will apply.

In responding to Senator Stewart about the internment situation, you referred specifically to subclause 4(*b*) and the basis on which people can no longer be interned—race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. I believe those items cover all grounds in the Charter.

There are a number of grounds that are not covered in the Charter. How do you think this bill would apply in a situation which is currently facing the country in relation to disease in human beings, and that is the current ferment on the subject of AIDS? There are people who take very extreme positions about what ought to be the situation of those who are HIV positive or, in fact, have the disease. Would it be a correct interpretation of this section to suggest that, should a government accept that kind of argument, people might be interned, and, given that AIDS affects all kinds of people from all classes, but is heavily concentrated at the moment in homosexual people—and sexual orientation is not a protected ground under the Charter, nor is it in this bill—that such people might be detained or interned? Paragraph 8(1)(*g*), for example, would allow the government to establish emergency shelters and hospitals. We are not necessarily talking about internment camps. Would detainment in that case be possible as a public welfare emergency?

Mr. Beatty: Senator, you are referring to the public welfare provisions. There is no power of internment whatsoever, and that sort of situation would not apply. You would indeed have the ability to establish emergency shelters or hospitals.

In a case where a natural disaster destroyed the housing of hundreds of thousands of people—because of an earthquake, for example—you would be required to set up immediately provisions to provide for shelter, for hospitals and so on for the people who are affected. That is what this provision is designed to deal with.

Senator Marsden: Does not paragraph 8(1)(*a*) say that the Governor in Council might regulate or prohibit travel to or from a specified area where necessary for the protection of the health or safety of individuals? As I said, we are not talking about internment camps, but this would allow the government, I assume, to confine people to these hospitals or emergency shelters when it considered the situation to be a public welfare emergency, or am I misinterpreting that? In other words, could the unprotected grounds in the Charter be the basis for this kind of action on the part of the government?

Mr. Beatty: Paragraph 8(1)(*a*) is designed to deal with a situation where, for example, a natural disaster took place, where public safety would be jeopardized by people moving into the area which was struck by the event, and we would be able to proscribe travel into that area.

Senator Marsden: I understand that. The whole point of this discussion is to think of situations to which it might apply. Clause 5 clearly says that a public welfare emergency means an emergency that is caused by a real or imminent disease in human beings, animals or plants. AIDS could be an imminent disease in human beings.

One examines the failure of other nations to protect the civil liberties of people who are affected, and, in fact, to cause them a great deal of harm. One wants to be sure that nothing of that nature would be possible in this country.

Mr. Beatty: Indeed, and I fully share your concern. The courts would find that such a stretching of those provisions would go well beyond the intent of Parliament. Even if you attempted to claim that you were setting up a quarantine of some sort for people smitten by disease, if you were able to get around the provisions that specifically proscribe internment based on mental or physical disability, you would still collide with the provisions of the Charter—section 1 of the Charter and the mobility provisions in the Charter.

Senator Marsden: Are you telling me that sexual orientation, for example, is protected under the Charter?

Mr. Beatty: I did not think the argument you were making was that a government would attempt to claim that sexual orientation is *ipso facto* a threat to public health in some way. If you were claiming that you were trying to maintain a quarantine of some sort and trying to stretch the provisions of a law to provide for that, it would be more likely you would be trying to apply it in cases where somebody had been demonstrated to be infected. Even in that case I do not believe that would be permitted.

Senator Marsden: In fact, the argument you say I was not making is the one I was making. If someone was clearly infected and a danger to the public, that is covered under existing law, provincially and federally.

Who would have thought that Canadians would intern other Canadian citizens of Japanese origin? I am trying to think of a situation we would not anticipate. Suppose a government decided that there was an imminent problem because of the spread of a terrible disease, and it decided that certain categories of people should be detained. Then let us suppose that those categories were so classified on grounds that you have

not mentioned in subsection 4(*b*). What would follow from that, in your view?

• (1920)

Mr. Beatty: The advice that I received is that we would be going through such a legal gyration and stretching of the legislation in an attempt to avoid the provisions of the Charter that it would be thrown out by the courts. That is the best advice that I have received. If I can offer my non-lawyer's legal opinion—it is worth what you pay for it—the patent absurdity of an attempt by a government to use such provisions in that way would be turned back by the courts very quickly.

Senator Marsden: Let's hope so.

Can you tell us briefly where, in the last few years in Canada, you think a public welfare emergency might have been declared and where, therefore, this clause of the bill would have been useful?

Mr. Beatty: Yes, I certainly can give an example. You will recall the Mississauga derailment, where there was a potential for a chemical spill which could have seriously damaged the health and threatened the lives of individual Canadians. Say that that had taken place in Prince Edward Island and the resources of the province were stretched so thin that it was impossible for them to respond. It might be necessary for us to use the federal authority to bring in resources from other provinces. That would be an example of a situation where this legislation would be put in place.

Another example would be if there were a serious earthquake in the lower mainland of British Columbia devastating that area, and the consequences were such that it was too acute for the Government of British Columbia alone to be able to deal with. The federal government could intervene and bring in resources from other provinces as a result.

Virtually every other developed country has emergencies legislation to deal with natural disasters and other emergencies like this. Canada, for some reason, simply has a lacuna in the law. If that sort of devastating disaster were to take place in Canada today, our choice would be either not to respond and allow the suffering and loss of lives, or to act illegally and attempt retroactively to validate illegal actions.

Senator Marsden: So that the discussions which your colleague, the Minister of Agriculture, has been having about the possible removal of animals suffering because of the drought could presumably be a situation where the federal government would step in, if necessary?

Mr. Beatty: You would have to look at the definition of "national emergency." First, you would have to demonstrate that it was a national emergency. It would have to meet that test.

Second, you would have to look at the definition of "public welfare emergency." Certainly "drought" applies there; "disease, accident or pollution" is mentioned there also. It states:

> —and that results or may result in a danger to life or property, social disruption or a breakdown in the flow of essential goods, services or resources, so serious as to be a national emergency.

You are asking me to give you an opinion in a hypothetical case. I would be surprised if it were to apply in a case like that.

The sort of case where it would be far more likely to apply would be in the case of an incident, similar to the one in Bhopal, taking place in, say, the province of New Brunswick, where you desperately need to bring resources in quickly; the lives of people are in jeopardy; and the immediate effects of a disaster may be confined to one province, but that province may not itself have the ability to respond with the resources within the province itself. In that case, the federal power would have to be used on an emergency basis without wasting time, and you would be able to commandeer resources in other parts of the country and bring them in as necessary to restore conditions and protect people.

The Chairman: Next is Senator Neiman.

Senator Neiman: Mr. Minister, you have reassured me with regard to many of the questions I had respecting Bill C-77, but I have a couple more on which I would like to hear your comments.

In your list of the most important features within the bill, you mentioned that, if Parliament is not in session at the time the emergency is declared, it will be recalled at the earliest possible opportunity.

I have been looking through the bill and I do not see a time specified with respect to recall. Have I missed it?

Mr. Beatty: Let me just find the appropriate section, and I would be pleased to respond.

I believe what you are referring to is clause 58(2), which states:

> If a declaration of emergency is issued during a prorogation of Parliament or when either House of Parliament stands adjourned, Parliament or that House, as the case may be, shall be summoned forthwith to sit within seven days after the declaration is issued.

Senator Neiman: In the definition of "public order emergency" it specifies that it arises from "threats to the security of Canada", and that, in turn, is being given the meaning assigned by section 2 of the Canadian Security Intelligence Service Act.

I do not have a copy of that act before me, but I wonder, on the one hand, how broad that definition may be or, on the other hand, how secretive it may be. There are criteria that deal with such matters as subversion or foreign influenced activities, but how specific can we consider this particular definition?

Mr. Beatty: We are searching now for a copy of the CSIS Act, because it was incorporated by reference. If I can find it, I would be pleased to put it on the record.

As a former Solicitor General, I have had a good deal of experience with the CSIS Act. One of the things that was specifically provided for there, for example, is the right to

legitimate dissent, and that is specifically protected by Parliament.

We incorporated by reference this definition because it represented the most recent time that Parliament had been engaged with the issue of what in fact represents a threat to the security of Canada. The CSIS Act was the product of extensive deliberations both in committee and in both houses.

There is also a provision within the CSIS Act which sunsets the act and brings it back for reconsideration by Parliament next year. Any changes which are made by Parliament to the definition of threats to the security of Canada and the CSIS Act—whatever Parliament deems at that time to be appropriate in dealing with the whole issue of counter-terrorist and counter-subversion, and so on—would be automatically incorporated by reference in this legislation as well. We did not want to attempt to refight the battles of the CSIS Act with emergencies legislation, but say that whatever is decided by Parliament with regard to the statute which is most designed to deal with this whole issue would be incorporated by reference.

Let me put the definition on the record. It states:

> "threats to the security of Canada" means
>
> (*a*) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,
>
> (*b*) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,
>
> (*c*) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political objective within Canada or a foreign state, and
>
> (*d*) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada,
>
> but does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (*a*) to (*d*).

One of the distinctions I would stress here is that while the CSIS Act may give to CSIS the responsibility, if you look at subversive activities or if you are dealing with the issue of foreign directed activities within Canada, the scope is relatively broad as it relates to the generation of intelligence by CSIS.

● (1930)

Where it would differ in this bill is that you must demonstrate the fact that a situation is so grave as to constitute a national emergency. It may well be that, in instances where there is foreign-directed activity in Canada, it is appropriate for the government to keep an eye on it to make sure they know what is happening. However, one would have a very hard time indeed, in many instances, in demonstrating that such activity constituted a national emergency, which is defined in clause 3 as being:

> . . . an urgent and critical situation of a temporary nature that
>
> (*a*) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or
>
> (*b*) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada
>
> and that cannot be effectively dealt with under any other law of Canada.

So, senator, that definition of "national emergency" again tempers and constrains the definition under the CSIS Act.

Senator Neiman: Mr. Minister, you mentioned that the provisions of the Canadian Charter of Rights and Freedoms and of the International Covenant on Civil and Political Rights and of other federal statutes, such as the Bill of Rights, will override and safeguard the various provisions of this bill. However, the bill, as it is presently drawn, leaves the reference to the Charter and to the Covenant and the other statutes solely in the preambular clauses of the bill. I know that the Canadian Bar Association, which is one body to which you referred, and I think perhaps the Attorney General of Alberta, recommended very strongly that you put those references into the body of the statute. This has been done with respect to other statutes; for instance, the Freedom of Information Act and the Young Offenders Act.

It would seem to me that this particular bill is of more importance and significance than those other statutes, and I wondered why it had been decided not to incorporate reference to those protective, overriding rights in the body of the bill itself.

Mr. Beatty: Senator, owing to the fact that, as Solicitor General, I amended the Young Offenders Act, I am searching my memory as to whether there was a provision therein that specifically incorporated the provisions of the Charter of Rights. I accept your word that there was, although I do not recall it at this time.

Senator Neiman: That was my advice, and I stand to be corrected on that also, Mr. Minister.

Mr. Beatty: The advice that we had in drafting the bill was that it was not necessary to do that; that the provisions of those protections to which you referred would apply to this bill without further reference to them anywhere in the bill. In the case of the War Measures Act, provisions of other statutes were excluded from applying in that case.

The Charter of Rights, for example, would apply and take precedence over other legislation unless precluded from doing so. The same would apply in the case of the Bill of Rights.

Senator Neiman: Mr. Minister, even under section 1 of the Charter itself exceptions can be made, and it is my under-

standing that the Charter provisions in any case, if they are included in the preamble to a bill, simply serve as a guidepost, whereas, if they are incorporated into the bill itself as part of a definition—for instance, of "national emergency" or whatever the case may be—they then become an essential ingredient of the definition.

Mr. Beatty: Senator, in the case of the Charter of Rights, it specifically states within the Charter itself that it applies to other statutes. The power of the Charter of Rights to apply to this particular bill stems from the provisions in the Charter itself. You say that there are provisions under which one could suspend, if you like, the powers of the Charter. I understand that it would make no difference whether or not we made specific reference to the Charter in a separate clause of the bill. The ability to suspend the powers of the Charter, or to circumscribe the powers of the Charter, is provided for in the Charter itself.

The same applies here. The best legal advice that I can get from the Department of Justice—and I, as a non-lawyer, transmit it to you—is that it would have been, at best, redundant to include those provisions and in any event totally unnecessary. The provisions apply unless it is specifically stated that they do not apply.

Senator Neiman: Very well. That, in itself, is reassuring, Mr. Minister. If I may conclude by perhaps supporting an observation of Senator Stewart's with respect to clause 62 regarding the composition of the parliamentary review committee, I would certainly much prefer to see that clause stipulate that all parties—and even independent members, as you yourself suggested—be represented from both houses, because, on the one hand, I see that you have said that in the House of Commons the membership will be drawn from a party having at least 12 members, whereas you made the comment yourself that within the Senate you might choose an independent member. I have no problem with that whatsoever, but I do think that, in both houses, whatever parties there are—or independent members as the case may be—should be represented on such a committee.

Mr. Beatty: Senator, in the past you and I have served on joint committees together and certainly the experience has been an edifying one for me. As a member of the House of Commons, I felt that it was a useful experience to serve on a joint committee. Certainly, the reason that, over opposition from some quarters in the House of Commons, I wanted to build in the double veto, for example, to give the Senate the power to nullify a decision of the House of Commons to allow us to invoke this legislation was that I am convinced that the integrity of this place should be maintained and that it has an important role in terms of protecting the civil liberties of Canadians.

The real issue here, I suppose, is whether it is necessary to write down in minute detail all of the structures of the committee or whether we should expect that, as Senator Stewart was saying, good will and common sense should apply.

[Senator Neiman.]

During my years in Parliament I suppose there have been instances when I may have questioned whether or not good will and common sense applied in all cases. However, for the most part, I think the two houses have worked well and in close collaboration, and I would expect that any other member of the House of Commons who assumed my responsibility at a different time as Minister responsible for Emergency Preparedness would also feel that the Senate had something to offer on this committee and would draw on the resources available to it.

Senator, the legitimacy of the process—the fact that we are asking Canadians to entrust us with extraordinary powers which affect their civil liberties—requires that we demonstrate to them that we are operating in a way that is open, aboveboard and proper. Therefore, a procedure which was clearly designed to circumvent the spirit of the legislation itself, which was designed to ensure a joint parliamentary committee, would, by its very nature, damage public support for anything the government was doing. I think it would be self-defeating if the government attempted to do that.

By the same token, however, it would be possible for the Senate, acting irresponsibly, to strike down the will of the majority of the elected representatives in the House of Commons. The best protection against that would have been to exclude the Senate, and that was argued to me by members of the NDP. I do not believe that senators will act irresponsibly. I believe that we have a responsibility to show goodwill to one another, and I am confident that, if such a committee were set up, both houses would consult with one another and would set up a committee that was fully representative of both bodies.

Certainly, I am quite prepared to leave on the parliamentary record that that was my intention at the time the bill was passed.

Senator Neiman: Thank you, Mr. Chairman.

• (1940)

The Chairman: At the moment there are no other questioners on my list, but Senator Stewart has indicated that on the second round he would have a question.

Senator Stewart (Antigonish-Guysborough): Mr. Chairman, it develops now that I have one question more than I anticipated. But first I wonder if I could have the assurance from the minister that he would check the blues and correct what I am sure he did not intend to say, that I was advocating that it was sufficient to rely on reasonableness and goodwill when delegating these enormous powers. I think he said exactly the opposite of what he intended to say. I am sure he will want to correct that remark.

I would like clarification on two points. First, when talking earlier about conscription the minister told us that it would be legally possible under this act to introduce conscription by order in council. As I understood the minister, he said that it would not be possible under an order made under this act to send conscripted persons outside Canada to Norway or Alaska, for example, because of section 6(1) of the Charter, which

says, "Every citizen of Canada has the right to enter, remain in and leave Canada." Did I understand that point correctly?

Mr. Beatty: Section 6, yes.

Senator Stewart (Antigonish-Guysborough): Does that mean that Parliament itself by statute cannot authorize that conscripted persons or persons in the armed forces be sent outside Canada?

Mr. Beatty: Parliament would have to demonstrate that the conditions of section 1 of the Charter were being met.

Senator Stewart (Antigonish-Guysborough): Then why couldn't the same demonstration be made in the case of persons being sent outside Canada by order in council under this statute?

Mr. Beatty: One would have to demonstrate that the conditions were being met. If one could demonstrate that the conditions were—

Senator Stewart (Antigonish-Guysborough): Then you are saying that by law there would be no difference, that provided the demonstration was made in each case, an order under this statute would have the same effect as a statute explicitly and directly authorizing the government to send armed forces personnel overseas.

Mr. Beatty: You would be required in either case to meet the provisions of section 1 of the Charter. I believe that during World War I we used the powers of the War Measures Act in order to conscript. Of course, the provisions of the Charter did not exist at that time, but, if it had applied, you would have had to meet the provisions of section 1. Under Bill C-77, there is the additional requirement of reasonable grounds.

Senator Stewart (Antigonish-Guysborough): So what you are saying is that, when this bill becomes law, the power of the Governor in Council will be the same as the power of Parliament with regard to sending persons outside Canada. In other words, the test is the same in both cases.

Mr. Beatty: If the provisions of the Charter are met, yes.

Senator Stewart (Antigonish-Guysborough): So we are giving to the Governor in Council all the power that the Parliament of Canada itself has, both with regard to conscription and to sending persons outside Canada?

Mr. Beatty: Provided that reasonable grounds can be demonstrated by the Governor in Council for doing so.

Senator Stewart (Antigonish-Guysborough): The answer is that the powers are the same because the limitation is the same in both instances.

Mr. Beatty: Except that there is the additional constraint under the provisions of Bill C-77 of demonstrating the necessity. That constraint on Parliament would not exist if it were passing a conscription bill.

Senator Stewart (Antigonish-Guysborough): You say "demonstrate the necessity." Where is that explicitly required in this bill?

Mr. Beatty: It is required under subclause 40(1), where it says, "... believes, on reasonable grounds, are necessary or advisable for dealing with the emergency."

Senator Stewart (Antigonish-Guysborough): In other words, that subclause applies if there is a *prima facie* case, but that is quite a different thing from what you are talking about. It does not mean that a court must find that it is necessary. It means simply that if the minister of the day believes that he has reasonable grounds—

Mr. Beatty: There must be an objective test with the very invocation of the statute in the first place. The invocation of Bill C-77 itself is contestable in the courts.

Senator Stewart (Antigonish-Guysborough): Mr. Chairman, we can go on digging this well for a long time, but I do not know that we will get much more water. I want to turn to another question. It is one that I raised when I spoke on second reading of the bill. Bill C-77 provides that an order in council made under it could not be used to change the terms of Bill C-77. We know that it was decided by the Supreme Court of Canada during World War I that an order in council made under the War Measures Act could be used to set aside the provisions of statutes, not just orders or regulations but statutes made by Parliament itself. According to subclause 4(*a*), an order or regulation may not be used to set aside part of this statute. However, that subclause implies that an order or regulation could be made to set aside the provisions of other statutes. Is that a correct deduction?

Mr. Beatty: I am told that it might be possible in instances where it was directly relevant and necessary to deal with the emergency provided for under this statute.

Senator Stewart (Antigonish-Guysborough): So your answer is yes, by an order in council or a regulation made under this act, statutes enacted by Parliament could be set aside. You are asking for that power?

Mr. Beatty: The advice I have received is that there was during World War I an instance in which the courts found it appropriate under the War Measures Act to extend powers and to alter the provisions of the statute law using an order under that act. Under this proposed statute, anything done would have to be directly relevant to the purposes of the statute, would be contestable in terms of the various checks and balances provided in the statute, and would be subject to scrutiny by Parliament and could be nullified by Parliament at any time. I am advised that it is far from certain that even under those circumstances the courts would, today, with the provisions of the Charter and the other provisions that have been put in place since World War I, find that such an action would be possible.

● (1950)

Senator Stewart (Antigonish-Guysborough): I do not think anyone would argue that what was done during World War I with regard to military exemptions was not relevant. Your answer seems to imply that you would be content to accept, for greater certainty, an amendment to clause 4(*a*) so that it

would read: "... altering the provisions of this or any other act." You would be happy to accept that?

Mr. Beatty: I would not be prepared to see amendments made which would delay the progress of this bill.

Senator Stewart (Antigonish-Guysborough): So, delay would be the only ground on which you would object to that amendment?

Mr. Beatty: There may be specific instances where it is necessary for the Governor in Council to use such powers, properly safeguarded by Parliament and by courts as provided for in the statute. But, at this point, reopening the bill and going in, as you say, for greater certainty, if that is the concern, would, I think, do a disservice to Canadians. The bill has been before Parliament now for almost a year. The time has come for Parliament to deliver on the commitment it made some 18 years ago to repeal the War Measures Act and to put modern legislation in its place.

Senator Stewart (Antigonish-Guysborough): You seem to imply that if we take, say, half the time that you took in the other place it will be reasonable, and I would be prepared to accept that.

Mr. Beatty: I do not know, Mr. Chairman, whether Senator Stewart was simply throwing that comment out facetiously or whether he intended to have a serious reply from me.

I think the members of the House of Commons took their responsibility very seriously as, indeed, did the government. The government tabled the bill at the end of June. I announced my intention to have such a bill on June 5 in the defence white paper. I tabled it before the summer recess. I left it out for public scrutiny and invited public commentary. We had extensive hearings in the parliamentary committee. A large volume of amendments were made to it. The elected representatives of the people, I think, did their job exceptionally well.

The real question comes down to whether we, as members of Parliament, both houses, are prepared to honour a commitment that was made in good faith and to act, or whether we are prepared to delay the progress of this bill and to have opened up the possibility that Canadians could either be forced to deal with a crisis for which there is no appropriate authority on the part of the government to deal with, or that the civil liberties of Canadians could once again be abrogated in the way they have been abrogated in the past by using this odious War Measures Act which is on the books today.

Senator Stewart (Antigonish-Guysborough): I do not want any misunderstanding. You say that the government introduced the bill in June of 1987. It was passed by the House of Commons on April 27, 1988. It is now just a little over the month later; yet you seem to be suggesting that we are already delaying the bill.

Mr. Beatty: No, I was not suggesting that, senator. Certainly, I would not try to put words in your mouth and I know you would not try to put them in mine. I am not suggesting you are trying to delay the bill. I am suggesting that you should not delay the bill.

[Senator Stewart (Antigonish-Guysborough).]

Senator Stewart (Antigonish-Guysborough): That seems to be not war, invasion or insurrection apprehended, but delay apprehended. I suggest that it is unreasonable to apprehend.

Mr. Beatty: Any delay, senator, would be unreasonable. We should proceed.

The Chairman: Since there are no other questioners, Mr. Minister, it is left for me to thank you very much on behalf of my colleagues for the time you have spent with us, which is now almost two hours. We very much appreciate that you made yourself available to appear along with your officials. I hope that you have found your first venture into the Senate a pleasant one and we look forward to having you with us again on some other occasion.

Mr. Beatty: Thank you very much, Mr. Chairman.

Hon. Senators: Hear, hear!

The Chairman: Honourable senators, we should now clear up the matter that was before us and put into suspended animation prior to the minister's entering the chamber. There had been a discussion regarding the establishment of a steering committee. We became involved in the beginning of a vote and then it was my understanding that there was no need for a vote and that the matter could be settled by agreement.

Senator Doody: I gather from speaking with Senator Stewart that there is a desire to have at least one more and perhaps other witnesses appear before the committee. To that end, I think the suggestion of Senator MacEachen is a sensible one and we should ask the two whips to set up a steering committee. The numbers involved in the committee and so on will be the same as they have always been in this place. I see little point in pursuing the cause of justice and equity. I will let it go at that.

The Chairman: I suppose that depends on how one defines "justice and equity."

Senator Doody: We had a discussion a moment ago about fairness and reasonableness and I do not want to plough all that up again.

Senator Petten: Mr. Chairman, the numbers are five and three.

The Chairman: The suggestion is five and three.

Senator Stewart (Antigonish-Guysborough): Mr. Chairman, I think we have had an example of how dangerous it is to use figures in this place. Senator Doody has implied that I indicated that there would be at least one more witness. Technically, he is correct, but the implication is that one, perhaps two more witnesses will be heard. I did not wish to convey that impression.

What I have in mind, honourable senators, with regard to this bill is that, since the government is asking for such extreme powers, such great powers, we ought to know precisely what powers we would be giving the government if the bill passes. We can satisfy ourselves on that by hearing a reasonable number of witnesses. I do not want to say "at least one,"

because that seems to imply that later this week the minister's impatience will be satisfied.

Senator Doody: I did not mean to imply that "at least one" meant one; nor did I try to define the word "reasonable."

The Chairman: Is it agreed, honourable senators, that we will ask the two whips to establish a steering committee, to put forward the names of the members and that the numbers will be five and three?

Hon. Senators: Agreed.

Senator Doody: Mr. Chairman, I move that the committee adjourn, report progress, and ask for leave to sit again.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Acting Speaker: Honourable senators, the sitting of the Senate is resumed.

REPORT OF THE COMMITTEE OF THE WHOLE

Hon. Gildas L. Molgat: Honourable senators, the Committee of the Whole, to which was referred Bill C-77, to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, reports progress and asks for leave to sit again.

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

Hon. Senators: Agreed.

The Hon. the Acting Speaker: Honourable senators, when shall this committee have leave to sit again?

Hon. C. William Doody (Deputy Leader of the Government) moved that the Committee of the Whole be given authority to sit again at the next sitting of the Senate.

Motion agreed to.

The Senate adjourned until tomorrow at 2 p.m.

APPENDIX "A"

(*See p. 3508*)

THE ESTIMATES, 1988-89

REPORT OF NATIONAL FINANCE COMMITTEE ON SUPPLEMENTARY ESTIMATES (A)

TUESDAY, May 31, 1988

The Standing Senate Committee on National Finance has the honour to present its

TWENTY-FIRST REPORT

Your Committee, to which Supplementary Estimates (A) laid before Parliament for the fiscal year ending March 31, 1989, were referred, in obedience to the Order of Reference of Thursday, May 19, 1988 submits its report as follows:

The Committee heard evidence from the following witnesses:

From Agriculture Canada:

Mr. Frank Claydon, Assistant Deputy Minister, Policy Branch;
Mr. Dan Fenety, Director General, Priorities and Strategies Directorate Grains and Oil seeds Branch;
Mr. Terry Pender, Administrator, Special Canadian Grains Program.

Supplementary Estimates (A), 1988-89 totalling $113.9 million is a special estimate to augment the budget of one program only, the Special Canadian Grains Program (SCGP). This program was first announced by the Prime Minister two years ago for the 1986 crop year and later extended by the Minister of Agriculture for the 1987 crop year. The program is intended to cushion Canadian farmers as a result of falling world prices brought on by actions of the United States and the European Community.

When the program was first announced, $1 billion was allocated to cover losses for the 1986 crop year; $300 million through Supplementary Estimates (B), 1986-87 and $700 million through Supplementary Estimates (A), 1987-88.

For the 1987 crop year, $1.1 billion has been allocated: $800 million through Supplementary Estimates (D), 1987-88, and an additional $300 million through the Main Estimates, 1988-89.

The reason for Supplementary Estimates (A), 1988-89 is that $113.9 million of the $800 million appropriated last fiscal year, for the 1987 crop year, was not spent and therefore lapsed. In order to spend the money this fiscal year, it must be reprofiled or shifted to the current fiscal year, and this requires Parliamentary approval.

This meeting of the National Finance Committee represents its fourth review of the Special Canadian Grains Program through the supplementary estimates. The meeting dates and report numbers are shown below:

December 18, 1986: Supplementary Estimates (B), 1986-87 - Fourth report of the Committee.

March 12, 1987: Supplementary Estimates (A), 1987-88 - Sixth report of the Committee.

January 27, 1988: Supplementary Estimates (D), 1987-88 - Sixteenth report of the Committee.

In each report, the Committee commented on aspects of the program and how it changed from its coverage for the 1986 crop year to coverage for the 1987 crop year.

In requesting the current supplementary estimates, there is no change to the program since the request is simply to reprofile the amount from the last fiscal year to the current fiscal year.

When questioned with respect to differences between the actual and anticipated outlays, officials stated they were due to delays in the development of computer software to operate the program and concerns that overpayment might be made to Ontario soybean producers because of the considerable difference in prices between the 1986 and 1987 crop year. The department continues to expect to make all payments by the end of June 1988.

Officials indicated to the Committee that in 1987-88, the Department was allocated $4 million for administration but used only $3.2 million. They also indicated, however, that there is a chance the department may have to request the additional $800,000 through final supplementary estimates to cover these administrative expenses.

Respectfully submitted,

FERNAND-E. LEBLANC

Chairman

APPENDIX "B"

(*See p. 3509*)

COPYRIGHT ACT

BILL TO AMEND — REPORT OF STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE ON MESSAGE FROM COMMONS AND MOTION FOR NON-INSISTENCE UPON SENATE AMENDMENTS

TUESDAY, May 31, 1988

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

TWENTY-FIFTH REPORT

Your Committee, to which was referred the motion of the Honourable Senator Doyle dated 18th May 1988 and the Message from the House of Commons dated 17th May 1988 relating to certain amendments to Bill C-60, An Act to amend the Copyright Act and to amend other Acts in consequence thereof, has, in obedience to the Order of Reference of Tuesday, 24th May 1988, examined the said motion and Message and now reports as follows:

Background Information

On 24th March 1988, the Standing Senate Committee on Banking, Trade and Commerce presented to the Senate its report on Bill C-60, An Act to amend the Copyright Act and to amend other acts in consequence thereof. The report, which recommended that the Bill be amended in clauses 2 and 26, was formulated after hearing evidence from 22 groups of witnesses and receiving written submissions from 40 groups in addition to letters and telegrams from interested parties.

The weight of evidence received from those groups with concerns about Bill C-60 revolved around two main issues: the introduction of a new right for visual artists called an exhibition right and the lack of provision in the Bill for further exceptions from copyright.

With respect to exhibition rights, art exhibitors were concerned about the potential inhibition of curatorial freedom that could be exercised by rights holders. Exhibitors were also concerned about the administrative burden connected with determining and locating the owner of the exhibition right to a work of art. The Committee also heard evidence concerning failure to reach an agreement between artists and exhibitors on a new form of the exhibition right. The Minister of Communications, the Honourable Flora MacDonald, noted before the Committee that a revised definition of "artistic work", a term used in the exhibition rights clause, would be included in the second phase of copyright amendments.

Thus, a majority of the Committee believed it was advisable to recommend the withdrawal of clause 2 respecting exhibition rights.

Regarding the lack of provision for user exceptions from copyright in phase one of copyright reform, the Committee heard evidence from a number of user groups. Among them, those representing educators and librarians were concerned about their ability to negotiate equitable fees for use of copyright material without knowledge of what specific exceptions the Government intended to introduce in phase two of copyright reform.

Pending determination of what specific exceptions would be provided to users of copyright material, a majority of the Committee recommended postponement of the provisions of Bill C-60 providing the statutory foundation for the establishment of the collective administration of copyright. It was, therefore, recommended that clause 26 of the Bill be amended to provide such postponement.

The Committee's report was accepted by a majority in the Senate and Bill C-60 was sent back to the House of Commons with the Senate's suggestions for amendments. The House of Commons rejected the Senate amendments. It adopted a motion moved by the Honourable Flora MacDonald, Minister of Communications, that a message be sent to the Senate to this effect. The motion and the message were referred by the Senate on 24th May 1988 to the Standing Senate Committee on Banking, Trade and Commerce.

The Committee decided to hear evidence from the Minister of Communications, on the Message from the House of Commons.

Evidence

In her appearance before the Committee, the Minister indicated that the Department of Communications has been holding consultations with creators and users of copyright material regarding possible exceptions for educational use of copyright materials. She further noted that draft provisions had been discussed and consensus seemed to have been reached on all but one issue. Consensus was reached on: manual copying of works; the use of copyright materials in exams; the use of live performances for educational purposes; playing a radio or television in the classroom; collectives giving teachers and students

permission to use copyright material; and use of material outside a collective's repertoire. The outstanding issue that remained was that of taping off-air of radio and television programs.

The Minister stated that consultations have also been taking place between creators and users of copyright materials to discuss possible exceptions for library uses of copyright materials. Consensus has reportedly been reached on the following issues: library liability for photocopies made on self-service machines and by librarians on behalf of patrons; copying of damaged library material; copying of special works; copying of out-of-print works; copying of sheet music and the application of fair dealing to commercial research.

The single copy exception remains the only major outstanding exception and discussions on this matter are continuing, according to the Minister.

With respect to an ephemeral recording exception, the Minister indicated that there is agreement between creators and broadcasters on the need for such an exception but that the conditions for this have yet to be worked out. Another meeting on the matter between interested parties is scheduled for 2nd June 1988.

When she appeared before the Committee, the Minister also indicated that officials of her department would be willing to consider an alternative form of the exhibition right clause for stage two of copyright reform that was agreeable to both artists and exhibitors. The Minister gave a commitment that consultations between artists and curators and managers of museums would be undertaken with the purpose of arriving at some agreed upon exhibition right for stage two of copyright reform.

The Minister further stated before the Committee that stage two of copyright reform would likely be introduced in September or October of the current year.

Conclusion

The evidence presented by the Minister of Communications to the Committee indicated that progress has been made toward resolving outstanding issues between users and creators of copyright material. This includes agreement on most of the exceptions from copyright to be provided to users in stage two of copyright reform. The lack of information regarding such exceptions was cited by the majority of the Committee in its recommendation in its previous report regarding the postponement of the establishment of collectives.

In light of the Minister's evidence regarding agreement on copyright exceptions, and in view of the short time horizon before stage two is introduced, the Committee no longer feels that this postponement is necessary and therefore recommends that the Senate not insist on amendment 2 of its report on Bill C-60.

Further, given the commitment by the Minister to allow consultations between officials and artists and curators and museum managers to arrive at an agreed upon exhibition right for stage two of copyright reform, the Committee recommends that the Senate not insist on amendment 1 of its report on Bill C-60 which called for the deletion of clause 2 respecting exhibition rights.

Respectfully submitted,

IAN SINCLAIR
Chairman