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Wednesday, April 17, 2002

THE HONOURABLE DANIEL HAYS
SPEAKER

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THE SENATE

Wednesday, April 17, 2002

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

SENATORS' STATEMENTS

QUESTION OF PRIVILEGE

NOTICE

Hon. Lowell Murray: Honourable senators, the *Journals of the Senate* of yesterday indicate that the Honourable Senator Lavigne took and subscribed the oath prescribed by law. I wish to flag for honourable senators that at the first opportunity, which will be tomorrow, I shall raise this as a question of privilege.

I express my regret for having tried to involve the Leader of the Government on this matter yesterday during the Question Period. This is a matter for honourable senators to decide, and I shall raise it as a question of privilege at the appropriate time tomorrow.

[*Translation*]

NATIONAL VOLUNTEER WEEK

Hon. Marisa Ferretti Barth: Honourable senators, the week of April 21 to 27 will be National Volunteer Week. This year's theme, "Experience Matters," was selected to draw attention to the remarkable wealth of experience that volunteers, particularly older adults, bring to their community's organizations.

These seven days devoted to volunteerism raise public awareness of the essential contribution volunteers make to our society and give us an opportunity to thank them for it.

Volunteerism represents a very important social movement; the entire population benefits greatly from volunteers' contributions. In Canada, in the year 2000, over 6.5 million volunteers gave about 1 billion hours of their time. This is the equivalent of some 549,000 full-time jobs. Volunteerism is considered, and rightly so, the third pillar or third sector of society.

Given the huge contribution made by volunteers to the various sectors of society, the United Nations declared 2001 the International Year of Volunteers. In Canada, that year culminated with the signature of an agreement between the federal government and the voluntary and community sector.

The week is all the more significant because it enables many organizations to recruit new volunteers. According to the national survey on giving, volunteering and participating, fewer people volunteered in 2000, and most volunteers were seniors.

Honourable senators, what does volunteerism mean to you? To me, it is above all a gift of oneself, an act of loving kindness.

The beauty of volunteerism lies in the acts of loving kindness that go along with these gifts. The motto of Armand Marquiset, the founder of the Little Brothers of the Poor, which was "flowers before bread," holds true here. Every donation must go hand in hand with an act of loving kindness. In closing, I wish to thank all volunteers for their contribution to making this world a better place.

[*English*]

JUNO AWARDS, 2002

ST. JOHN'S, NEWFOUNDLAND—
CONGRATULATIONS TO ORGANIZERS

Hon. Ethel Cochrane: Honourable senators, I am delighted to rise to congratulate all those associated with the 2002 Juno Awards that were held Sunday night in St. John's.

This year's event was widely acknowledged to be the best Juno gathering ever and featured top international names in the recording industry. The talent alone made the Juno Awards remarkable, with performances by Diana Krall, Alanis Morissette and Nickelback.

What really set this year's Juno celebrations apart from previous years was the energy and excitement that surrounded them. I was there to help share in that. This point was noted time and again by the many industry people visiting the province.

David Usher, who won the best pop album award, said it best when he confirmed, "After you've been to a lot of Junos, you get used to it in a way. But people are so excited that I think it's feeding onto the artists and everyone is much more excited." Indeed, ticket sales alone illustrate the depth of local interest in the event. Initial tickets sold out in a matter of minutes, and when extra seats were available in the days before the show, people waited in line for more than 20 hours to try to buy them. In the end, an estimated 6,000 people attended the televised award show.

• (1340)

Another contributing factor to the success of this event was in the welcome that people offered our special guests. The legendary Newfoundland and Labrador hospitality was even noted by the award winners. In accepting his award for the best selling album, for example, international recording star Shaggy said, "I think what gets me the most here is the warmth of the people....They're just very, very warm people and that, I think, that's really nice."

The Junos also provided our province with an unparalleled opportunity to showcase homegrown talent. In fact, locals even picked up an award when our hometown favourites, the Ennis Sisters, were named best new country group. Of course, traditional Newfoundland and Labrador music was front and centre in the opening of the show when Great Big Sea led the crowd in a powerful rendition of *Rant and Roar*.

Honourable senators, this weekend proves that this type of large-scale show can be successfully executed outside of a major centre. This year was only the third time that the Junos were held outside of the Toronto area. St. John's is by far the smallest city to host the awards; yet, many people agreed that this year's celebration was the best.

WORLD HEALTH DAY

Hon. Yves Morin: Honourable senators, on April 7, Canada joined the 191 member nations of the World Health Organization in celebrating World Health Day. This year's theme is "physical activity for health."

[*Translation*]

Promoting physical activity may be an effective and lasting public health solution, particularly for our children and teenagers.

[*English*]

Between 1981 and 1996, the prevalence of overweight children increased by 92 per cent in boys and 57 per cent in girls. Today, health organizations estimate that one in six Canadian children are significantly overweight.

[*Translation*]

Consequently, children as young as three or four develop diseases that are generally associated with adults, including diabetes and hypertension.

[*English*]

Physical inactivity is a primary cause of this epidemic of childhood obesity. Instead of the recommended 30 minutes a day of physical activity, most Canadian school children receive only 60 minutes a week. More than half of our Canadian youth aged 12 to 21 do not engage in any physical activity. According to the Foundation for Active Healthy Kids, more than two thirds of Canadian children are not active enough to lay the foundation for basic health. These children and youth are missing out on the physical benefits of increased energy, stronger bones and muscles, a healthy weight, an improved immune system and the delayed onset or prevention of chronic disease. They are missing out on the social and psychological benefits of fitness.

I congratulate Health Minister Anne McLellan on releasing Canada's first ever physical activity guidelines for children and youth, recommending that they increase activity levels to 90 minutes a day and reduce their inactivity levels by the same amount.

[Senator Cochrane]

[*Translation*]

Honourable senators, this year, let us mark World Health Day by encouraging a young person to join us for a walk, a soccer game or a bike ride. Not only will this be good for your own health, it will also do a great service to these young people, who will surely benefit from it for the rest of their lives.

[*English*]

VIOLENCE AGAINST JEWS

Hon. David Tkachuk: Honourable senators, on Sunday, television stations in Saskatoon covered a memorial service that took place in a local synagogue. The service was the community's response to an act of vandalism and arson against a synagogue committed a few days earlier. In France, these have become regular occurrences, with acts of violence against Jews complementing acts of vandalism against Jewish places of worship. In Ukraine, a local mob attacked a synagogue and the people in it. Other countries in Europe are experiencing anti-Jewish acts of the same kind.

After September 11, I remember the care President Bush and other world leaders took to separate the Muslim religion from the acts of the terrorists on September 11 in New York and Washington. Our own Prime Minister took time to visit a mosque to show his tolerance and leadership. "It was not the Arabs," we said, "only the acts of a crazy few," although in many parts of the world the acts of September 11 were greeted with cheers and jubilation.

Our policy of supposed even-handedness, which ensures that even the most wretched of human behaviour receives a fair hearing, has not been modified with the proviso that "the actions of Israel are not an excuse to attack Jews in your own county." Jews, to their credit, are not branding me an anti-Semite because I come from Saskatoon and am of Ukrainian descent.

Currently, our foreign policy equally supports the Israelis and the Palestinians. It is the same as the European foreign policy of why can they not get along and why are the Jews obstructing — in some cases boycotting — potential export opportunities to all those oil-rich human rights abusers found in the Arab world?

We have risen in partial defence of the only real democracy in that part of the world which, even as I speak, allows domestic dissent to the war with Yasser Arafat and his terrorist administration, which sends teenage girls strapped with explosives to kill a few hundred civilian Jews shopping and drinking coffee.

In another nation, oil-rich Saudi Arabia holds a telethon, reportedly for humanitarian aid, but we know it is more likely for raising funds that will pay for more teenage girls and boys to strap on more explosives and wander around Israel looking for victims.

How can we even talk to these people? Is there something I am missing or do we have something in common with them? What has Israel ever done to Saudi Arabia, Egypt, Jordan and Syria, except fight for and win its sovereignty at times when these nations attacked with the object of annihilation?

Honourable senators, I urge the federal government to be unequivocal in the support of Israel and to condemn the acts of violence against Jews not only in Canada but throughout the world. I ask the Prime Minister to write immediately to the President of the Europe Union and condemn the impending trade actions against Israel that they are contemplating. I call on the Prime Minister to condemn the acts of violence that use young men and women as human bombs — men and women who are far too young and vulnerable to take their own lives and those of others. Talking about human rights violations, what about paying families huge amounts of money to sacrifice their children here on earth, promising them sanctuary and paradise in heaven? Israel is not the impediment to peace.

The criminal arson committed on April 5 in Saskatoon is testament to how close we always are to acts of anarchy within our society. A normally peaceful city has been disturbed by an act that we should find repugnant to our character and to our community.

FOOD SAFETY AND GENETICALLY MODIFIED ORGANISMS

Hon. Jim Tunney: Honourable senators, we are faced with the extremely complex issue of biotechnology and, more specifically, the introduction of GMOs, or genetically modified organisms.

An article in *The Western Producer* indicated that Monsanto Canada discovered a gene in one of its GMO canola crops that should not be there. It was found in Quest canola, marketed by the Saskatchewan Wheat Pool and Agricore, which has already been sold to approximately 3,000 farmers. According to a Monsanto spokesman, it was never intended to be in varieties for farmers. They conducted a voluntary recall and offered replacements. Monsanto is quoted as saying, "It has been caught. We saw it, we found it, and we dealt with it."

Honourable senators, I have extreme concerns regarding the lack of control of this technology. Genetically modified canola has already chased away our customer the Europe Union, which was a major buyer of our canola in the mid-1990s. It will certainly do nothing to assuage the fears of Japan.

• (1350)

I would like to emphasize that there are currently no transgenic varieties of wheat or barley registered for commercial use in Canada. There is a possibility that, by the year 2003, transgenic grain could be considered for registration. However, in all likelihood, it is much further away than that.

Honourable senators will know that Canada operates a supply management system for dairy and poultry, and will also know of the benefits of that program to producers, processors and consumers. The availability of food safety and consistency, at reasonable prices, marks the difference between Canada's producers and consumers, and those of other countries. These are features that Canada must support and protect. A good example of that is the rewards to producers and consumers that came with Canada's decision not to approve the use of rBST, the growth hormone that was never wanted or needed.

Governments and the general population must continue to insist that we never give in to the large pharmaceutical companies, in their efforts to win approval for the use of such practices.

[*Translation*]

ROUTINE PROCEEDINGS

AUDITOR GENERAL

REPORT TABLED

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour of tabling the report of the Auditor General of Canada for the year 2002, pursuant to the Auditor General Act, S.C. 1995, Chapter 43, section 3.

CANADIAN NATO PARLIAMENTARY ASSOCIATION

MEETING OF SUBCOMMITTEE ON FUTURE SECURITY AND DEFENCE CAPABILITIES OF NATO PARLIAMENTARY ASSEMBLY, MARCH 5-8, 2002— REPORT OF CANADIAN DELEGATION TABLED

Hon. Shirley Maheu: Honourable senators, I have the honour of tabling the report of the Canadian NATO Parliamentary Association, which represented Canada at the meeting of the Subcommittee on Future Security and Defence Capabilities of the NATO Parliamentary Assembly, held in Slovenia and Slovakia, from March 5 to 8, 2002.

[*English*]

BANKING, TRADE AND COMMERCE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE

Hon. E. Leo Kolber: Honourable senators, I give notice that at the next sitting of the Senate I will move:

That the Standing Senate Committee on Banking, Trade and Commerce have power to sit at 3:30 p.m. on Tuesday, April 30, 2002, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

[*Translation*]

PALESTINIAN TERRITORIES

HUMANITARIAN SITUATION—NOTICE OF INQUIRY

Hon. Marcel Prud'homme: Honourable senators, I give notice that on Tuesday, April 30, 2002:

I will call the attention of the Senate to the humanitarian situation in the Palestinian Territories.

I will undoubtedly have the pleasure, at that time, of commenting on...

[*English*]

— the statement of the Honourable Senator Tkachuk made earlier today and those of any other senators.

QUESTION PERIOD

PUBLIC WORKS AND GOVERNMENT SERVICES

PURCHASE OF CHALLENGER AIRCRAFT FOR GOVERNMENT FLEET

Hon. J. Michael Forrestall: Honourable senators, I have a question of the Leader of the Government in the Senate on commonality of services with regard to training and so forth.

So far, Canadians have been told by the Minister of Public Works and Government Services that the reason for the purchase by the government of the Challenger 604 aircraft was that our Challenger fleet was old, unreliable and could not take off from shorter runways, and that the purchase would produce savings through commonality with the existing fleet.

Is that a correct summary of the government's reasons for this purchase?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the honourable senator for his question. It is important to understand why the Challengers were purchased. It is true that they are old, though certainly not as old as much of our military equipment. They are 19 years old. The more precise reason is that they could not go the distance required in many of the trips that needed to be taken, and they could not land at a number of airports in this country due to the length of the runways.

I know of no statement made by any government official indicating that they were unreliable.

Senator Forrestall: Honourable senators, I have heard that suggested on a number of occasions.

Earlier, the Minister of Public Works, the Honourable Don Boudria, cited commonality with the existing fleet of Challengers as justification for the recent sole purchase contract to buy the two new Challengers from Bombardier. Yet, last October 30, if my memory serves me correctly, Mr. Boudria's Assistant Deputy Minister, Jane Billings, told a Committee of the Whole of the Senate that such a transaction would not be allowed under the agreement on internal trade.

Ms Billings said at the time:

We cannot use commonality to support buying more of a major system.... We cannot use it to justify going out for a sole source.

Will the government now cancel the purchase of the Challenger and call a tender, or was Ms Billings wrong and this chamber given incorrect information? It cannot be both ways.

Senator Carstairs: Honourable senators, we are talking about two different purchases, as the honourable senator knows. The important issue is that of purchasing aircraft that will be used primarily by the Prime Minister, the Deputy Prime Minister and other members of the cabinet. Those people should, if at all possible, be flying in a Canadian-made aircraft.

NATIONAL DEFENCE

REPLACEMENT OF SEA KING HELICOPTERS— POSSIBILITY OF PURCHASING CORMORANT HELICOPTERS

Hon. J. Michael Forrestall: We could have built the Cormorant here in Canada. That was no problem.

Based on the fact that the government has on a number of occasions cited, in defence of its decision, commonality and the savings arising from that commonality, including flight training and parts, will the Leader of the Government in the Senate ask that cabinet immediately direct the purchase of the new Maritime helicopter to Cormorant in order to save some $500 million in the defence budget? That amount of money would procure at least six of the C130J Hercules tactical transport aircraft, in addition to the new Maritime helicopters, so that we could — to use a bad pun — kill two birds with one stone.

• (1400)

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as I understand the honourable senator's question, he is suggesting that I go to the government, interfere with the present process that has been ongoing now for several years to develop the best possible helicopter for the Canadian Armed Forces and identify just one helicopter, leaving everyone else out of the bidding process. My answer to that is no, I will not.

Senator Forrestall: Honourable senators, the leader would abandon her responsibilities to everyone in order to hide behind that argument.

The fact of the matter is that the Prime Minister of this country did precisely that. Was it all right for him and not all right for the minister?

Senator Carstairs: Honourable senators, I am not sure of the nature of the honourable senator's question. If the honourable senator is saying that we should not have bought the Challengers, then my answer to that is that we made a good purchase. They were purchased, for example, so the Prime Minister would have such a plane to travel all over Africa, as he did in his recent trip, a total of 25,000 kilometres. The Deputy Prime Minister used such a plane to travel northern, southern, eastern and western India representing the Government of Canada. I, for one, take great pride when a Canadian plane lands in those countries and is recognized as such.

Senator Forrestall: Honourable senators, whether the Prime Minister of my country should be able to fly conveniently and comfortably to places around the world on Canadian business was not my question.

My question is: When it was convenient, it was all right to step outside the rules. When it was not convenient for whatever reason, it was not all right. I would really appreciate knowing that reason. The frankness of it would be wonderful and easily accepted.

Why could the government step outside the rules in one case, and it could not do so with the Cormorant? Why have we wasted seven years? Why have we placed in danger's way unnecessarily the lives of men and women for seven years? That situation could be corrected tomorrow morning by the will of one man. Has the minister the courage to speak up?

Senator Carstairs: Honourable senators, with the greatest respect, I would like to speak up for those who fly our Sea King helicopters: Their families do not want to hear consistently from the senator on the other side that the flight crews are in danger.

Some Hon. Senators: Hear, hear!

Senator LeBreton: That is pathetic.

Hon. Gerry St. Germain: Honourable senators, I get disgusted when I hear such responses from the Leader of the Government in the Senate. The minister talked about the Prime Minister travelling to Africa and the Deputy Prime Minister travelling to India, this at a time when Western Canada is on its back from issues surrounding softwood lumber and agriculture. The minister said that the reason that the government is buying these planes, over the safety of our Armed Forces, is so that they can go the distance and get into certain airports. Would it be so bad if they had to stop and refuel somewhere?

I am a former military pilot, and I say that the Liberals have put the Armed Forces in jeopardy and in true danger by virtue of delaying the helicopter purchases to which Senator Forrestall referred. The minister has the audacity to come here and make the inference that flight personnel are not in danger when it takes 36 hours of service to fly the Sea Kings for one single hour.

I ask the Leader of the Government in the Senate this: Where does the rationale come from that these people are not in danger? Has the government sacrificed the safety of our Armed Forces so that the planes carrying the Prime Minister can go the distance and get into more airports? It does not make sense.

Senator Carstairs: As the honourable senator knows, the Maritime Helicopter Project is ongoing. Decisions will be made this year with respect to the basic piece of equipment. Decisions will be made early next year with respect to the mission potential of that particular plane. The issue that the honourable senator has raised is not a valid issue.

Senator Forrestall: Who is in danger?

Senator Carstairs: If one examines the work of the Sea Kings in the present war against terrorism, it has been first-class. It has been recognized by the United States as being first-class, and we have not put our airmen in danger at any time. To say otherwise does a great disservice, not only to those airmen but, more important, to the families who hear this kind of rhetoric and become seriously worried about the members of their family who are up in those planes.

Senator St. Germain: Honourable senators, I have a supplementary.

The Hon. the Speaker: Before proceeding, honourable senators, I remind all honourable senators that Question Period is for questions and answers and not debate. I also remind honourable senators that I have a fairly long list of senators who wish to ask questions. I am conscious that we should not spend too much time on one issue so as to allow others the opportunity to put their questions.

Senator St. Germain will have the final supplementary.

Senator St. Germain: Honourable senators, the Leader of the Government in the Senate speaks of rhetoric. Let us look at the situation realistically. Those of us who fly know that if an aircraft requires 36 hours of service to fly one hour, there is something wrong. There is either something wrong with the service, which I do not believe to be so, or there is something wrong with the aircraft.

I will mention another thing in regard to this particular issue. In Afghanistan our troops were on the ground because they could not be transported from one site to another. Now, the minister says that we have greater justification in purchasing new Challengers even though the existing Challengers are adequate. How does the minister justify this rationale to the general public? The people out there are wondering what is going on.

Senator Carstairs: Let me correct a couple of errors that the honourable senator has just made. First, it does not take 36 hours to maintain the plane.

Senator Lynch-Staunton: How much time does it take?

Senator Carstairs: Second, the honourable senator has credited me with saying that there was greater justification to buy the Challengers. I said no such thing. We did purchase two Challengers, and there is no question about it. We are ongoing in our developmental program with respect to the Sea King. The new replacement helicopters will be purchased, and those orders will be given relatively soon.

Senator Lynch-Staunton: When? How many hours will it take?

Senator Forrestall: Tell us how many hours.

INDUSTRY

MINISTERIAL ARRANGEMENT WITH GENOME CANADA

Hon. Donald H. Oliver: My question is for the Leader of the Government in the Senate. It relates to the Auditor General's report. The honourable leader will recall that yesterday senators from this side asked a number of questions about financial reporting and accountability for various agencies as discussed in the report by the Auditor General. Today, I would like to pose some questions in relation to governance problems with Genome Canada.

My questions relate specifically to the ministerial oversight provisions of this non-profit corporation. There is no provision for the Department of Industry to take corrective action if the ministerial oversight arrangement that it has with Genome Canada goes off track. Could the Leader of the Government in the Senate please explain why this is the case?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, with the greatest respect, I do not have that very specific information about the Genome project. However, I will ask officials to provide me that information and get it to the honourable senator as quickly as I can.

Senator Oliver: Honourable senators, in terms of transparency with respect to Genome, the Auditor General pointed out in her report that the existing provisions severely limit public access to information about that particular project. Genome Canada by-laws state that third parties, who are ordinary Canadians, cannot have access to any confidential information broadly defined as including any information or documents obtained by directors or officers in the course of their duties. That is extremely broad.

Could the Leader of the Government in the Senate please explain what public policy principles are being served by this arrangement of refusing to allow ordinary Canadians to have access to information that members of the board of directors would have?

• (1410)

Senator Carstairs: As the honourable senators knows, as do the other members of this chamber, Genome Canada is primarily a research project. I can only assume that is one of the reasons. It seems to me somewhat unusual that this information would be available to directors but not to the public as a whole, so I will obtain that information for the honourable senator.

[*Translation*]

UNITED NATIONS

SITUATION IN MIDDLE EAST—VOTE ON RESOLUTION

Hon. Marcel Prud'homme: Honourable senators, once again, I am completely confused about our government's foreign relations policy. Yesterday, in Geneva, Canada found itself alone with Guatemala on an important and innocent resolution.

I wonder what new criterion is driving the government to leave us suddenly with a new ally.

[*English*]

Recently it was the Marshall Islands and the Solomon Islands. Now, as I said yesterday, we are improving. We are alone with Guatemala. Could I kindly ask what is the rationale behind this policy? Are all the others so out to lunch that they make no sense and Guatemala, at long last, is standing up?

I am saying I know why. I double-checked and triple-checked on this issue. I was told by the Department of Foreign Affairs and others that we have to give in to the other side. I am ashamed. We stand for equality for all. If it is embarrassing politically, we should stand up. Could the minister explain to me the rationale, please?

Hon. Sharon Carstairs (Leader of the Government): I think the honourable senator has explained it quite well himself. We should stand for equality for all.

Senator Prud'homme: Honourable senators, Senator Fraser and others can applaud. I enjoy watching those who applaud. It gives me a good idea of what to expect in the future.

THE SENATE

FOREIGN AFFAIRS COMMITTEE—POSSIBILITY OF SPECIAL MEETING ON SITUATION IN MIDDLE EAST

Hon. Marcel Prud'homme: Honourable senators, my second question is to the Chairman of the Standing Senate Committee on Foreign Affairs, who is here today in this place. At this time, when the world is looking at the situation in the Middle East, when parliamentarians of all democracies are interested in this issue and are holding meetings, I kindly ask Senator Stollery if he would not consider having a meeting, as we used to have in the House of Commons on these issues? Would he not see fit to call a special meeting to hear as witnesses the Israeli ambassador, a very fine gentleman, and various other people, to explain the policy of Canada, where we are, what we can do. We could make suggestions. I am sure there is enough here to put forward some strong suggestions. My hope is that the committee chairman reflects on my suggestion and considers the possibility of holding a special meeting, if not a regular meeting, of his very senior committee.

Hon. Peter A. Stollery: Honourable senators, I take the question as a submission by Senator Prud'homme to the committee. I am not a member of the government, and I am never clear about the regularity of questions to committee chairmen.

As the honourable senator is aware, the committee has been actively engaged in a study of Russia and Ukraine, and we are about to complete our report. Certainly, we will listen to his presentation.

Senator Prud'homme: I used to be chairman of the Foreign Affairs Committee in the House of Commons, having the full confidence of the Right Honourable Pierre Elliott Trudeau for over 14 years. Very regularly, I would hold special meetings. We do not need an order of reference. Leaders of the world attended special committees of the House of Commons and the Senate, the Senate being led at that moment by the very distinguished Senator Van Roggen from Vancouver. Surely, there would be enough interest to have a special meeting.

Honourable senators, the situation in the Middle East is so dangerous that everything could explode. What more can I say? Do you not look at the television, honourable senators? Do you not see what is going on? The world could explode overnight, and we will have to send Canadian soldiers with helicopters and everything else. We will have to do our duty, although we are not armed to do so.

I kindly ask if the committee chairman will take the initiative of seeing if there is interest in holding a special meeting. He would be surprised at the interest that senators and members of the House of Commons would show for such a meeting.

Senator Stollery: Honourable senators, I repeat, I am not a member of the government. I am Chairman of the Standing Senate Committee on Foreign Affairs. I am quite aware of the difficulties in the Middle East and the tremendous tensions there, as I am sure every other honourable senator is here today. The Foreign Affairs Committee does have special meetings. We held one yesterday, as a matter of fact.

This issue seems to have gone very far. If we could be of assistance, of course we would be happy to be so. As I say, I have listened to the representations from Senator Prud'homme.

[*Translation*]

JUSTICE

AUDITOR GENERAL'S REPORT—COMPILATION OF STATISTICAL DATA ON PENAL SYSTEM

Hon. Pierre Claude Nolin: Honourable senators, my questions concern the report tabled yesterday by the Auditor General, more specifically chapter 4 on the criminal justice system.

The Auditor General has serious misgivings about the capacity and the desire of the federal government to put in place assessment mechanisms that will allow a comprehensive analysis of the overall impact of certain government policies on the criminal justice system. According to the report, and I quote:

> ...we doubt that such an assessment is possible with the national data and analytical capacity currently available.

As an example, the report points out that the Canadian Centre for Justice Statistics is unable to meet all requests for information.

My questions are as follows: How can we hope to collect comprehensive and recent data? How can we put in place strategies to integrate information in this area? How can we create effective assessment mechanisms in order to improve the effectiveness of the criminal justice system and the public's trust in it, if the primary federal agency responsible for collecting and analyzing data is underfunded? I am referring more specifically to funding for the Canadian Centre for Justice Statistics.

[*English*]

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the honourable senator for his question because the Auditor General did make some very serious comments about the lack of coordination of activities and the lack of statistical analysis. As the honourable senator well knows, the administration of much of the judicial system happens at the provincial level. An agreement is required to share that statistical data and information not only between federal and provincial governments, but also between provincial governments.

• (1420)

I am informed that the Minister of Justice takes this matter into grave concern and that he will be working with his officials to see if there are ways to further develop the sharing of data among the players in this endeavour.

[*Translation*]

Senator Nolin: Improved coordination between the federal government and its provincial partners, which are responsible for the administration of justice, is a step in the right direction. In her report, the Auditor General mentions the 2002-03 budget for the Canadian Centre for Justice Statistics, which will reach $5 million.

A detailed examination of the programs currently being provided by the Canadian Centre for Justice Statistics reveals that this leaves only $150,000 to respond to additional information requests and to develop new projects. The Minister of Justice no doubt knows that the Canadian Centre for Justice Statistics receives many very detailed requests during the course of the year.

Will the minister make a commitment to pressure the Minister of Finance to increase the centre's budget so that it can carry out its mandate to the fullest?

[*English*]

Senator Carstairs: Honourable senators, the honourable senator makes an excellent suggestion. I will bring it forward to the Honourable Minister of Finance as well as to the Minister of Justice. However, we should also examine the integrated justice initiative that is now taking place between the provinces, territories and the federal government. Hopefully, that coordination of information can be of advantage as well in ensuring that we have the most accurate information possible.

PARLIAMENT

AUDITOR GENERAL'S REPORT—OVERSIGHT OF GOVERNMENT AGENCIES—GOVERNMENT RESPONSE TO CONCERNS OF ACCOUNTABLILITY

Hon. Roch Bolduc: My question is for the Leader of the Government in the Senate. For several years now, both the Auditor General and those of us on this side of the chamber have been concerned about the increasing use of arm's length agencies to deliver government services. Leaving aside the issue of using various foundations as a way to magically transform a deficit into a surplus or a surplus into a deficit, parliamentary oversight has been placed at serious risk.

Three years ago, in 1999, the Auditor General told the government to clean up its act, calling for comprehensive remedial action, including stronger leadership. The Public Accounts Committee in the other place, a few months later issued a report echoing the Auditor General's concerns. Yet, since 1999, a further $6 billion has gone out of the door for new foundations and agencies, without any real thought to proper governance and parliamentary oversight.

I remember, during Mr. C. D. Howe's time, we talked about millions as peanuts, now billions are peanuts. Could the government leader advise the Senate as to why $6 billion has been given to arm's length agencies since 1999 without any attempt to address the serious deficiencies found by the Auditor General?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, first, we have somewhat of a philosophical difference. The government has used foundations. The opposition has consistently objected to those foundations. I do not expect that that philosophical debate will be resolved this afternoon in Question Period.

However, the honourable senator fails to make note of the Auditor General's acknowledgement that the government has made improvements in the governance structures and accountability of the arm's length arrangements in the most recent foundations that have been established. Does that mean we do not have to reach for more accountability? Absolutely not. There is still room for improvement in accountability, and I can assure honourable senators that the government is examining that.

Senator Bolduc: What bothers me a bit is that the Auditor General said the following of the government response. The government said we will do something about it. The French version of the report has a sentence that the minister might be interested in reading. I quote:

[*Translation*]

> The government recognizes the need to improve a certain number of elements from the governing framework, but it does not specify, in its response, to what extent it agrees or disagrees with most of our comments and recommendations to implement these elements in practical terms.

[*English*]

The Auditor General said in another paragraph:

> 1.5 Parliament is not receiving reports on independent, broad-scope audits that examine more than the financial statements of delegated arrangements, including compliance with authorities, propriety, and value for money. With a few exceptions, Parliament's auditor should be appointed as the external auditor of existing foundations and any created in the future, to provide assurance that they are exercising sound control of the significant public resources and authorities entrusted to them.

Indeed, not only does the Auditor General not audit these funds but also, in many cases, they are not even scrutinized by the sponsoring department once the money has gone out the door. Will the government respect this specific recommendation and put the Auditor General in a position to provide Parliament and the public with assurances that funds advanced to these agencies are spent with prudence and for the purposes for which they were intended?

Senator Carstairs: Honourable senators, I thank the honourable senator for his question. The honourable senator will acknowledge that modifications were made in those foundations that received their money in the December 2001 budget. Those changes and modifications were necessary to strengthen the accountability of those foundations, and I think that was well recognized on both sides of the chamber.

I want to assure the honourable senator that similar improvements will be made to the funding arrangements of the other older foundations. This is how we will respond to the way in which the Auditor General has spoken about the foundations.

As to the honourable senator's specific question on whether the Auditor General's office is the only one that can provide a form of auditing for these foundations, the honourable senator and I have a philosophical disagreement because, I think, there are external auditors who can perform that function very well.

[*Translation*]

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table two delayed responses. The first is in response to a question raised by Honourable Senator Nolin on March 19, 2002, concerning Canada Post and official languages, and the second is in response to a question raised by Honourable Senator LeBreton on March 19, 2002, concerning the Marketed Health Products Directorate of Health Canada.

OFFICIAL LANGUAGES

CANADA POST— OBSERVANCE OF STATUTE IN ATLANTIC CANADA

(Response to question raised by Hon. Pierre Claude Nolin on March 19, 2002)

As a federal Crown corporation, Canada Post is subject to the Official Languages Act and is fully committed to ensure that the workplace is conducive to the use of both official languages in bilingual regions in Canada.

In the province of New Brunswick, Canada Post has taken measures to maintain a supportive work environment. Jointly with the Office of the Commissioner of Official Languages, the Corporation held information sessions for all employees to increase awareness of their rights and obligations with respect to language of work.

Canada Post also took steps to ensure that all employee communications and work instruments are available to employees in their preferred official language.

Canada Post will continue to work diligently to ensure full respect of employees' language rights.

HEALTH

PROPOSED DRUG MONITORING AGENCY

(Response to question raised by Hon. Marjory LeBreton on March 19, 2002)

The new Marketed Health Products Directorate responsible for post-marketing surveillance will have a direct reporting relationship with the Assistant Deputy Minister of Health Canada's Health Products and Food Branch (HPFB). This change establishes an organization within HPFB focused on post-market surveillance of marketed health products and demonstrates the strengthening of this work within the Department.

The new Marketed Health Products Directorate will be responsible for post-approval surveillance and assessment of marketed health products. This will include:

- biologics;

- food interactions with other health products;

- medical devices;

- medication incident/error;

- natural health products;

- pharmaceuticals;

- radiopharmaceuticals;

- vaccines; and,

- veterinary health products.

As part of its responsibility to assess and coordinate the response to marketed health product safety matters, the Directorate will continue the Department's work on a range of activities including:

- monitoring and collecting adverse event and medication incident data;

- reviewing and analysing marketed health product safety data;

- identifying safety hazards;

- conducting risk/benefit assessments;

- communicating product related risks to health care professionals and the public; and,

- measuring the effectiveness of marketed products

The new Directorate will work towards assuring that HPFB programs take a harmonized approach across a range of health product lines to monitoring, assessing and intervening. Appropriate linkages with the pre-market review bureaux will also be maintained. It will cooperate and communicate closely with the other Health Canada Directorates, Offices and Regions. It will also contribute to and coordinate risk management activities related to marketed health products.

In addition, increased emphasis on involvement of external scientific and stakeholder advice and input concerning marketed health product safety and effectiveness will be implemented to address stakeholder concerns about the need for increased transparency.

The inspection and compliance function for health products is the responsibility of the HPFB Inspectorate and is a Branch level organization. The new Directorate establishes an organization within HPFB focused on post-market surveillance activities to monitor the risks and benefits of marketed products.

POINT OF ORDER

Hon. Marcel Prud'homme: Honourable senators, I really appreciate the new way of recognizing senators during Senators' Statements.

[*English*]

Honourable senators know that yesterday — His Honour was not here — I got up from the first moment but I did not get my chance. I accepted that, given that, in the old days, His Honour had a tendency to say, "I see there are three following whom I shall recognize, and after that it will be finished." That did not happen yesterday. I did not complain; I just made a remark to Senator Robichaud.

Today, His Honour had 11 names on the list. I appreciate that. At least that is orderly. I was number 11 even though I had given notice yesterday. I can take "no" for an answer. I do not expect to be recognized every time I feel like getting up and I do not feel like getting up every day anyway. I would like to know the rationale for the specific time reserved for Senators Statements. I assure honourable senators that I will come back here starting tomorrow with a clock to time the three-minute allocation. I have always said I am ready to abide by that rule if others do and the same thing goes for Question Period, three minutes, to give honourable senators many more chances.

What would be His Honour's current rationale for those who make statements? Who do we tell in advance? Is there a clock kept for those who come first, second, third or fourth? Until last week, His Honour saw fit to recognize everyone who got up, and the system worked very well. However, today there was a list of 11 senators. I was number 11, so I knew that I had no chance, and I abide by that. Is there a new procedure? I would like to be advised accordingly.

The Hon. the Speaker: Honourable senators, that is a good question. Let me give you the Chair's position when dealing with senators' statements. I usually receive from the Table a list of honourable senators who wish to make a statement, and it is in a certain order.

• (1430)

That list exists because senators have given notice that they wish to make a statement. I also receive notice of senators who wish to make statements by verbal communication to me or by standing in the chamber during Senators' Statements.

When the list appears to be longer than the allotted time will accommodate, it has been my practice — although I do not observe it on every occasion — to read the list so that senators will know when it is their turn to speak. For those senators remaining on the list at adjournment, I have tried to ensure that their names appear at the top of the list for the next sitting. I understand that did not happen for today's sitting and I will look into it.

Honourable senators, I also rise to present the list when there are senators standing during Senators' Statements because that indicates to me that they do not know whether their names are on the list. As a courtesy to those senators, the Chair should read the list.

There is no hard and fast practice as to the orderliness of the way in which the Chair proceeds.

Hon. Eymard G. Corbin: Honourable senators, I did not ask to speak but I would like to respond to some of His Honour's comments.

This is the first time that I have heard of a list. I do not believe that the *Rules of the Senate* provide for a list or even for notice. The Chair simply recognizes honourable senators rising in their places wishing to read statements.

The Speaker's exercise of discretion is such that there is recognition of the first senator on his or her feet. That has been the standard practice. I can certainly appreciate His Honour's position and I sympathize with him. When there are many senators rising, it would be a convenient practice to proceed on the basis of the list. However, that is a new approach in terms of the standard practices of the Senate.

The Hon. the Speaker: I appreciate the honourable senator's comments.

[*Translation*]

Hon. Pierre Claude Nolin: Honourable senators, I had not intended to speak, but since Senator Prud'homme raised the issue and since today you seemed to be much more strict on the use of time, I would like to know if you will deduct, from the time allotted during Senators' Statements and Question Period, the time that you take to read the list or fulfil your duties as Speaker?

[*English*]

The Hon. the Speaker: Honourable senators, I do not intend to comment on Question Period, because that issue has not been raised. The matter of order that Senator Prud'homme raised was in respect of Senators' Statements. I appreciate input from all honourable senators.

PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

The Hon. the Speaker: Honourable senators, I would like to introduce the pages who are visiting the Senate today from the House of Commons. Ms Megan Hayduk of Prince Albert, Saskatchewan, is studying at the Faculty of Arts of the University of Ottawa, and Ms Vanessa Cranston of Waverly, Nova Scotia, is studying communications at the Faculty of Arts of the University of Ottawa.

[*Translation*]

ORDERS OF THE DAY

NUNAVUT WATERS AND NUNAVUT SURFACE RIGHTS TRIBUNAL BILL

MESSAGE FROM COMMONS

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons returning Bill C-33, respecting the water resources of Nunavut and the Nunavut Surface Rights Tribunal and to make consequential amendments to other acts, to acquaint the Senate that the House of Commons has agreed to the amendment made by the Senate to this bill, without amendment.

[*English*]

FOREIGN MISSIONS AND INTERNATIONAL ORGANIZATIONS ACT

BILL TO AMEND—THIRD READING—
MOTION IN AMENDMENT—VOTE DEFERRED

On the Order:

> Resuming debate on the motion of the Honourable Senator Graham, P.C., seconded by the Honourable Senator Pépin, for the third reading of Bill C-35, to amend the Foreign Missions and International Organizations Act.

Hon. Terry Stratton: Honourable senators, while Bill C-35 was the subject of only two days of hearings in the Foreign Affairs Committee, I believe the evidence we received from both the Canadian Civil Liberties Association and from Amnesty International raised significant issues in respect of the propriety of this legislation.

Bill C-35's focus is the specific delineation of police powers during international meetings and broadening the means by which persons forming part of the foreign delegations attending meetings in Canada may enter Canada and receive diplomatic immunity. This bill must be placed in a contemporary context.

We have had experience in the last year, in Ottawa, with an attempt to abuse diplomatic immunity in relation to impaired driving by a Russian diplomat. Currently, a Japanese diplomat here in Ottawa is under investigation for drunk driving after a crash on March 23 that narrowly missed a carload of teenagers.

Honourable senators, we have the context of the interim and final reports of the APEC Inquiry, both of which deal with the issue of undue influence being exerted on the RCMP by the Prime Minister's Office during meetings of international heads of state. This interference led directly to protesters having little or no access to those delegates attending the APEC meeting in Vancouver. We have the recommendation by Mr. Justice Hughes in his interim report on the APEC incidents that states:

> When the Royal Canadian Mounted Police is called upon in future to police public order events, the leadership of the force should ensure that:
>
> Generous opportunity will be afforded for peaceful protesters to see and be seen in their protest activities by guests to the event; and
>
> No attempt will be made to use a university campus as the venue for an event where delegates are to be sequestered and protected from visible and audible signs of dissent.

Honourable senators, Bill C-35 must be seen in the context of the fact that the G8 meeting this summer will take place outside Calgary, Alberta, in Kananaskis. I will refrain from commenting on the fact that crucial security information for this conference appeared in *The Globe and Mail* last week because that is a topic for discussion at another time.

In the hearings before the House of Commons Foreign Affairs Committee and the Senate Foreign Affairs Committee, those who questioned the efficacy of Bill C-35 concentrated on three main areas: the power given to the RCMP to limit public access to certain areas during international conference; the extension of diplomatic immunity to those representing non-treaty organizations who are meeting in Canada; and the change in the method by which the people in these delegations who might not otherwise be admitted to Canada can gain entry to Canada through a blanket approval obtained by Order in Council.

Professor Wesley Pue of the University of British Columbia, who gave evidence in the other place, and Mr. Allan Borovoy of the Canadian Civil Liberties Association, commented in a negative fashion on these powers given to the RCMP. Professor Pue, who has been particularly critical of the government's and the RCMP's lack of response to the APEC inquiry report, believes that this clause will legitimize the role of the RCMP during the APEC meetings.

Mr. Borovoy is concerned that the RCMP should not, on its own, determine the limitation of access by the public and by legitimate protesters to those attending international meetings. He believes that the minister in charge should be making the decisions in respect of the restriction of public access. I might be inclined to agree, were it not for our experience with the office of this Prime Minister and his interference with policing at APEC, as so graphically described in the APEC inquiry report.

• (1440)

The interference of Jean Carle, the Prime Minister's personal representative, in every aspect of security at APEC, especially his attempt to delineate an area to which protestors would not have access, undermines Mr. Borovoy's conclusions. Also, it is not good enough to respond, as did the Minister of Foreign Affairs, that the Charter of Rights and Freedoms applies. While it may apply to protect freedom of assembly and freedom of expression, it requires time and money to bring the full weight of the Charter to bear through intervention in the courts. By the time we determine how the Charter can apply to protect the rights of protesters, the event may very well have been held and the foreign diplomats returned home.

This whole area of legitimate protest at international events, policing powers and the possibility of political interference is one with which we as parliamentarians should be especially concerned.

The other aspects of this bill, raised in the appearance of Amnesty International before the Foreign Affairs Committee, deal with who gets into Canada, their immunity from prosecution while in Canada and the method by which they gain entry. Only time will tell whether people or groups will gain entry into Canada who might not have had Bill C-35 not been passed. Only time will tell whether diplomatic immunity will be abused by those who enter Canada under the provisions of Bill C-35.

The only way we will know if there are abuses under Bill C-35 is to require a full annual report to Parliament by the Minister of Foreign Affairs on all aspects of the operation of this bill. Only then will we be able to determine if people who would have possibly been denied a ministerial permit to gain entry were able to gain entry to Canada under the Order in Council blanket approval method set out in Bill C-35.

Concern was expressed by Amnesty International that under this new regime those who had committed or at least were accused of committing crimes against humanity could enter Canada. A full report on the operation of Bill C-35 should give us this type of information. Are we allowing potential terrorists into Canada, as suggested by Amnesty International, under the guise of being participants at international meetings?

Honourable senators, Bill C-35 is part of a trilogy of bills introduced by this government, after September 11 last year, that have the potential to give increased powers to the state and to the police. It is our role as parliamentarians to ensure that the use of these powers is monitored and that these powers are not abused. If the monitoring activity is to be carried out effectively, we need information.

MOTION IN AMENDMENT

Hon. Terry Stratton: Therefore, honourable senators, I move:

That Bill C-35 be not now read a third time but that it be amended,

(*a*) on page 8, by adding after line 35, the following:

"**9. The Act is amended by adding the following after section 13:**

ANNUAL REPORT

13.1 The Minister of Foreign Affairs shall, as soon as possible after the end of each fiscal year, cause a report to be prepared on the administration and enforcement of this Act for that year and shall cause the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives it."; and

(*b*) on pages 8 and 9, by renumbering clauses 9 and 10 as clauses 10 and 11 and any cross-references thereto accordingly.

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 "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators.

Honourable senators, is there an agreement on a time for the bells to ring?

Hon. Bill Rompkey: If we are deferring the vote to tomorrow, I suggest that we set an early time. Perhaps 2:30 p.m. is acceptable to honourable senators.

The Hon. the Speaker: Honourable senators, is it agreed that the vote on this amendment will take place at 2:30 p.m. tomorrow with a 15-minute bell?

Hon. Eymard G. Corbin: On a point of order, I have not heard and I have not received a French text of that amendment. It is important that we do receive it.

The Hon. the Speaker: Honourable senators, as is the practice, I have read the amendment. If it is the wish of the chamber, I can read it in French, although at this particular stage I have put the question. A vote is called for and the amendment will be distributed in both languages, having just been received by the Chair. As a matter of courtesy, I can read it now, or we can distribute in the two languages, as is our custom.

Honourable senators, is it agreed?

Hon. Senators: Agreed.

VISITORS IN THE GALLERY

The Hon. the Speaker: I wish to take this opportunity to draw the attention of honourable senators to the presence in our gallery of guests from the Russian Federation: Tatiana Yakovleva and Alexander Koval of the State Duma; Oleg Saenco of the Office of Prime Minister Kasyanov; and Tatiana Melnickova of the Ministry of Labour and Social Protection.

Welcome to the Senate.

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

MOTION IN RECOGNITION OF TWENTIETH ANNIVERSARY ADOPTED

Hon. Sharon Carstairs (Leader of the Government), pursuant to notice of April 16, 2002, moved:

> That the Senate take note of the 20th anniversary of the *Canadian Charter of Rights and Freedoms*.

She said: Honourable senators, I am delighted to speak in this debate on the twentieth anniversary of the Charter of Rights and Freedoms. Unlike many in this chamber, I was not engaged in a direct way in the development of the Charter, and I know that some of them will speak, and will speak most eloquently, later in this debate.

The question I would ask each and every senator in this chamber is: What were you doing in the early 1980s as the Charter was being evolved? Were you talking about it? Were you discussing it? Did you know what it meant? Did you know what they were trying to do? Some can say that very clearly; others perhaps not so clearly.

I want to reminisce personally today about what I was doing during those particular years. In 1981 and 1982, I was a high school history teacher, actively involved in the Liberal Party in Manitoba and proud to call myself a feminist. Therefore, while the entire Charter was of interest, the fight for section 15, the equality rights provision of all Canadians, but particularly women, was a battle in which I was actively engaged.

• (1450)

For me, the Charter is the most important achievement of the last 20 years. I was very proud of the Bill of Rights of 1960 that was championed by the Diefenbaker government. However, having been a student of not only Canadian but also American history, I recognized its limitations as a simple piece of legislation and not as an entrenched document and part of our fundamental law, as was the case of the Bill of Rights in the United States. Therefore, the entrenching of the Charter of Rights and Freedoms in the Canada Act represented a symbol of our coming of age to me.

My concern in 1982 was that Canadians, for the most part, would ignore this milestone because they would not know of the fundamental new direction that our nation was taking. Therefore, I believed I needed to do something personally, to teach Canadians about their new Charter.

To some degree, I must confess, my students became my guinea pigs. My experience with students, and I think Senator Cochrane will share that, is that they are very forgiving of teachers with pet projects, if their teachers are enthusiastic about that pet project and have earned their respect.

I went about my business obtaining 25 copies of the new Charter. I had the copies laminated so that they would not become all dog-eared while we went through this discussion in class. We read and discussed the Charter together.

Honourable senators, I shall refrain from reading the entire Charter to you this afternoon; however, I would like to set the stage for you. My students were in the ninth grade. They were 14- and 15-year-olds, a mix of boys and girls, many of Metis origin, and filled with the lack of attention that often occurs at this level when academic endeavours frequently take second place to raging hormones and the concept of socialization. It was in that atmosphere that we began our study.

I told my students that everyone has the following fundamental freedoms: (a) freedom of conscience and religion, (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; (c) freedom of peaceful assembly; and (d) freedom of association. Our discussion began.

I was asked many questions. Does freedom of association mean that I can have friends even if my parents do not like them? Does freedom of religion mean that I can have a different religion than my parents? Does freedom of thought mean that I can disagree with you — that is, me, the teacher — and not lose points for it on the next test? Does freedom of assembly mean that I can gather with my friends in the front of the 7-Eleven Food Store without being harassed by adults?

Clearly, their questions were the expression of a world seen through the eyes of a teenager. However, the discussions were thoughtful, and the students became quickly engaged.

The section on democratic rights and mobility rights were not as easy to deal with nor as interesting to the students.

However, when we began to discuss legal rights, the discussion was scintillating. Young people in this country often feel discriminated against. They resist authority. That is a natural activity of most teenagers, and they see the police as the most powerful of authority figures. Therefore, I invited a local police officer to meet with them. They described the law through his eyes, and they discussed it through his eyes, and then they discussed it through their eyes. They did find common ground.

The equality rights section was clearly applauded by the young girls in the class, but the boys felt a little bit threatened. The visible minority members of the class were fascinated that there was a clear recognition that the discrimination that many had experienced was not only wrong but also now was against their Constitution.

It is necessary to remember that, at the time of this study, Manitoba was engaged in the French-language debate. Therefore, the sections on official languages and minority language education rights came under careful scrutiny. Many of my students in the town of St. Norbert were francophones. Most did not speak French, however, although many of their parents and grandparents did. Finally, I think they understood why they had rights as francophones living outside of the province of Quebec and exactly what those rights were. The others in the class who did not have that background accepted it, although I have to say, sometimes grudgingly.

And so our study ended. Did they learn what I hoped they would learn and would they remember it beyond the test day? I will never know for sure, as teachers never do.

My only satisfaction came from the comments from students when I resigned after being elected leader of the Liberal Party in Manitoba a year and a bit later. Their comment was: "We will miss you because you made our history interesting." For all teachers, that is the ultimate compliment.

Hon. Senators: Hear, hear!

[*Translation*]

Hon. Gérald-A. Beaudoin: Honourable senators, the twentieth anniversary of the Canadian Charter of Rights and Freedoms is worthy of note. According to former Chief Justice Dickson, it is the major event in our constitutional history since the adoption of federalism in 1867.

I have decided to make a dozen very brief observations on the Canadian Charter of Rights and Freedoms.

I will begin by saying that it would be a mistake to limit debate to the Supreme Court. Parliament and the Government of Canada, and the parliaments and governments of each of the provinces, are also involved. They must keep the Charter in mind as they go about their duties.

As a legislator, I have seen firsthand the relations that must exist between the legislative and judicial arms. A certain "dialogue" has arisen between the two, a dialogue which is not over and which must continue. It is true that a legislator may be tempted in difficult cases not to follow his or her duty through to the end and to leave the problem to the courts. In my view, a legislator must never be afraid to legislate. If the issue is very difficult, it will end up before the courts, but at least the legislative arm will have done its duty.

The Canadian Charter of Rights and Freedoms can co-exist with federalism. Courts of justice are now accustomed to verifying whether legislation respects the division of powers and the Charter. We have a number of Supreme Court decisions concerning the constitutionality of legislation in both regards at the same time.

The court has handed down 450 Charter rulings in 20 years. The division of powers has also given rise to several hundreds of rulings of the Supreme Court and the Judicial Committee of the Privy Council between 1880 and 1954, but this was over a much longer period.

In our system, the Constitution is supreme. This must be affirmed and the Constitution does just that. It is the law of laws. Now all we have to do is interpret it.

• (1500)

Of course the Supreme Court has a very important role to play. The legislative and the executive branches must also interpret the Charter before they act. The three branches of government, the legislative, the executive and the judiciary, must establish a certain harmony in applying the Charter.

Canada is a country that has entrenched the equality of men and women with respect to rights and freedoms more solidly in its constitution than any other country. Section 28 of the Charter establishes that the rights and freedoms apply equally to men and women, notwithstanding any other provision of the Charter.

In a September 1985 interview, given to the Southam News Agency, Chief Justice Dickson stated that the Supreme Court, based on individual Charter cases, would build a "cathedral" of jurisprudence.

The Charter is entrenched in our Constitution, as is the case in the United States with the *Bill of Rights*, which Thomas Jefferson, U.S. ambassador to France at the time, had suggested to his friend James Madison, secretary of the constitutional convention in Philadelphia in 1787. Some Canadians have said that there has not been an in-depth debate on the scope of the constitutional charter. They regret that the public did not get the opportunity to express itself. This is a mistake. This overlooks the work of the Hays-Joyal parliamentary committee, which sat for four and a half months and did very good work; it also overlooks the debate over the *Drybones* and *Lavell* decisions, and the *Lovelace* case that followed at the United Nations. The debate lasted for years.

Today, when asked about the 1982 Charter, a vast majority of Canadians support it: 91 per cent in Quebec and 88 per cent across all of Canada.

We often hear that interpreting a constitution is as important as its wording. Justice Louis-Philippe Pigeon often wrote this in his work, and in the United States, Justice Hughes went as far as saying that the Constitution is what judges say it is.

[*English*]

The Constitution is what the judges say it is. I know that we could have a long debate on this. However, I agree with Mr. Justice Pigeon that the interpretation of the Constitution and the interpretation of the Charter, which is at the heart of the Constitution, is as important as the drafting of the Constitution.

[*Translation*]

The judges overall showed reserve. They brought down 450 judgments. Some 40 or so statutes or provisions within statutes were declared unconstitutional, or about 10 per cent. That cannot be described as activism. It is more a form of judiciary dynamism, having enabled the Supreme Court of Canada to determine the scope of the Charter and to bring some new life into its interpretation.

Former Chief Justice Antonio Lamer was fond of differentiating between "activism" and "dynamism." He did so in his appearance before the Senate Committee on Human Rights on Monday, April 15, 2002, when he clearly distinguished between a Charter with an activist interpretation and one with a dynamic interpretation.

I am very much in favour of a Charter of Rights. It is necessary in a true democracy, as has been said by many. Montesquieu said that power should be checked by power.

In conclusion, I would describe the century through which we have just lived as a violent one, probably the most violent of all centuries. Fortunately, however, it was also the century of the Universal Declaration of Human Rights in 1948 and of many international instruments relating to rights and freedoms. The 20th century was also a century of rights charters, which compensates for its violence.

Some Hon. Senators: Hear, hear!

[*English*]

Hon. Jack Austin: Honourable senators, I have a question for the Honourable Senator Beaudoin, if he would agree to respond to one.

The Hon. the Speaker *pro tempore***:** Will Honourable Senator Beaudoin accept a question?

Senator Beaudoin: Yes.

Senator Austin: Honourable senators, I very much welcome the remarks of Senator Beaudoin. I wish to ask him a question to which he may be uniquely able to respond.

As Senator Beaudoin knows, the living tree doctrine of the Constitution predated the Charter. In the last day or two, Senator Beaudoin may have noticed, Chief Justice Beverley McLachlin referred to the living tree doctrine as applying to the Charter. Is that a doctrine that the honourable senator believes is well established in Canadian constitutional practice?

Senator Beaudoin: The living tree doctrine, as established in 1930, is certainly a very good thing. It is a good doctrine. It was created by the Privy Council at the time of the division of powers between the provinces and the federal government. It is still in place.

However, in my opinion, it is not enough because, in 1867, we adopted the British system. We stipulated in the Constitution that our Constitution is like the British Constitution. Of course, in addition, we have federalism, which is very important. Evolution is great, and we are all in favour of evolution. Because of that argument, in 1929, the Famous Five won their case before the British Privy Council, and now the word "person" includes women. It was evolution. We need more than that.

• (1510)

Saskatchewan passed a Bill of Rights in 1947. The Diefenbaker government passed a quasi-constitutional Bill of Rights because he was not able to have the consent of the provinces and the federal authority. We had the *Drybones* case but it was an isolated one. We had the *Lavell* case, which was a terrible case in my opinion because it obviously was discrimination against women. Madam Lovelace won that case before the United Nations, and of course it precipitated the adoption of a real constitutional Charter of Rights binding, in all cases, all governments and all Parliaments. Therefore, to me, the living tree is a good one. The tree is still standing and growing. It must be very tall by now. We made a very good decision when we finally entrenched a constitutional Bill of Rights in the Constitution.

Hon. Michael Kirby: Honourable senators, it is always with some trepidation that I rise to comment on the Charter of Rights and Freedoms since I am not a lawyer. Following someone like Senator Beaudoin puts me somewhat ill at ease. A few minutes ago Senator Beaudoin talked about what the framers thought they were doing at the time and how it is equally as important as the words in the Charter. My usual response to that comment has been that a Constitution is simply a political document that we have asked lawyers to put in legal language, as opposed to a deeply-thought-out legal document, from the legal perspective.

Honourable senators, it was 20 years ago today, some 30 or 40 yards from here, at the centre of Parliament Hill, at the foot of the main steps, following the signing of the Charter by both Her Majesty the Queen and the Prime Minister, that the Prime Minister made a few remarks to the assembled throng who, in the process, were getting soaking wet. Many of you will recall that it was about as miserable an April day as one can have. He made two observations in terms of explaining why we were introducing the Charter: first, to protect minorities from the tyranny of the majority; and, second, to remove the fear of minorities as to what the majority would or, more likely, would not do for them. These were the goals of the Charter.

Honourable senators, I will make some comments in a few minutes to indicate why I think these goals have been reasonably well met, although there is more to do. It is certainly true that Canadians believe they have been met. I never cease to be amazed by the level of support that the Charter gains from Canadians. Recent polls have shown that the numbers still run in the 88 per cent range.

At the time when the Charter was proclaimed and, indeed, if one goes back to the year before that when the federal and provincial governments were fighting continuously over whether or not there would be a Charter, it was interesting to note that in every single province of Canada, including Quebec, 80 per cent or more of the population were in favour of the Charter. That is one reason — and I say this parenthetically — why a number of the premiers were reluctant to have a referendum in which they would be opposing the Charter.

The reality is that the popularity of the Charter at the time of its proclamation and its popularity 20 years later has not abated, nor has the image of the judiciary, in spite of what one hears about judicial activism. The fact is that the support for the judiciary has never been stronger. On any question which essentially asks, "Who do you trust more, judges or politicians, judges or governments, the Supreme Court, provincial legislatures or the federal Parliament?", the support for the judiciary runs well over 70 per cent versus under 30 per cent for the elected people. It is very clear that Canadians are strongly supportive of the Charter and that it has become part of the Canadian identity, the Canadian culture.

I want to point out something that has frustrated me over the years. While we hear all the comments and criticisms about judicial activism and judges taking power that they were not given, et cetera, frankly, nothing could be farther from the truth. First, if you go back to the two observations as to the purpose of the Charter, which are to protect minorities, how else could that be done if judges were not to use power to exercise the protective right?

That notion was clearly present from the beginning, that judges would have the power to do things, to overturn legislation and so on, if that was what was required. That issue was debated ad nauseam in the closed-door meetings of first ministers, which took place over the course of the year leading up to the ultimate agreement on November 5, 1981. The issue of whether or not there should be a Charter and the relationship between the courts and elected officials was very clearly debated.

It was interesting that two of the premiers were particularly articulate in arguing against the Charter on the grounds that it would usurp the power that ought to rest with elected officials. These two premiers were Sterling Lyon, the Progressive Conservative Premier of Manitoba, and Allan Blakeney, the NDP Premier of Saskatchewan. They argued the same point from two totally different perspectives.

Premier Sterling Lyon's concern was that the courts would be far too progressive and would have a tendency to give people rights that they were not intended to have. Indeed, just to show you that his mind has not changed much, in a recent interview he is quoted as saying the following:

> We weren't just being ill-tempered. It all goes back to a grade school understanding of the hierarchy of power in a parliamentary system. I said time and time again to the Prime Minister, "You're taking power from Parliament, the representatives of the people, and giving it to nine people. What you are doing is importing an alien appendage into our parliamentary system."

That is a statement Sterling Lyon made in an interview published a week or so ago. Interestingly enough, his big concern was that the courts would be too progressive.

On the other hand, Premier Allan Blakeney of Saskatchewan was concerned that the courts would throw out progressive social legislation. It is often forgotten that, when we signed that agreement on November 5, 1981, the so-called "equality rights" clause was not included. It was not included because Premier Blakeney refused to support it. We wanted to get all nine provinces — clearly we would not get Quebec — and the federal government to agree. The one clause in the Charter that Premier Blakeney objected to, and therefore it was not included in that original signed agreement, was the equality rights clause.

Many of us were almost incredulous at the notion that an NDP premier would oppose equality rights. The reason for his opposition, as he gave it, was that he thought the courts would interpret equality rights far too narrowly. Subsequently, the pressure on him over the following 48 hours was such that he changed his mind, and therefore the equality rights section was included.

In those debates, from both the right and the left, the issue of what power should be given to the court and how the court would exercise that power was hotly debated and clearly articulated by people who had thought through the issues. Therefore, while it is legitimate at this point in time in history to decry the Charter in the sense of the supremacy it has taken away, in some ways, from elected institutions, it is absolutely wrong to criticize the court for in some sense usurping power that no one ever intended they would have. We absolutely knew at the time the power that they were being given and, indeed, what they have done is exercised that power. While I will totally accept that one may not like the structure of the Charter, it seems to me to be wrong to attack the judges for using power that we knew they were being given.

Let me make an observation about how effective the Charter has been in protecting minority rights. Looking at some of the major decisions over the last several years, one sees the case of the *R. v. Big M Drug Mart Ltd*, which was essentially a religious freedom case that tossed out the federal Lord's Day Act. I look at the so-called *Morgentaler* decision and the decision of *Vriend v. Alberta* in which Mr. Vriend was fired by a small Christian college in Edmonton. He was prevented from using the Alberta Rights Commission to fight his firing. However, the Supreme Court ultimately read into the Alberta Human Rights Act that gay rights should be on the list of rights that are protected. We have a similar situation in the case of *M. v. H.*, which was in respect of a lesbian couple and whether the rights to alimony and the division of property should apply. Of course, there was the case involving Donald Marshall in which Aboriginal treaty rights were protected.

• (1520)

Honourable senators, we need to ask ourselves whether we really believe that the politicians of the day would have weighed in on those cases to support the minorities. In every case, the minority position was relatively unpopular. For instance, "no Sunday shopping" laws were still popular, and there was no swell of support 15 years ago for gay and lesbian rights. Even today, there is not as much support for Aboriginal rights as many of us believe there should be. If one of the objectives of the Charter was to protect minority rights from the so-called tyranny of the majority, that has been accomplished by examining 10 or 15 of the major cases that the Supreme Court has ruled upon.

The second observation one must make about the Charter is that it is one of those wonderfully classic political compromises that only Canadians seem to be capable of pulling off. At the time, there was real concern about the Charter becoming far too rigidly interpreted, not having enough flexibility and not being able to use the "living tree" view of the world. Section 1 of the Charter states that we have rights, which is what the rest of the Charter says, but those rights must be just and reasonable within the nature of a free and democratic society. In other words, they are not absolute rights or extreme rights; they are rights that have some element of boundaries to them. Therefore, judges are not actually bound by an absolute literal interpretation of the rights because the rights must be taken in the context of section 1.

Early on, the federal government sent lawyers to court to argue that they are not required to take into account the intent of the framers of the document. Parenthetically, it is interesting that people, after the fact and although they had never participated in the negotiations at all, felt that they were able to go to court to state that they clearly understood the intent of the framers of the document. In any event, it was fortunate that the court decided that that is somewhat irrelevant. At any rate, section 1 is part of the Canadian compromise because it does not make the rights absolute; rather, it puts some constraints upon them.

Second, we have the notwithstanding clause, which is interesting because it is effectively the last item agreed to before consensus. When the agreement was announced, the left absolutely decried the notwithstanding clause on the grounds that it would be used repeatedly by all to prevent any real progress and, in effect, take away the real value of the Charter. Many of us involved in the negotiations had a somewhat different view: The political risk to any government that invoked the notwithstanding clause to supersede the power of the Charter would be such that very few governments would be prepared to take that risk. The Charter was so popular that taking away the rights, which is how that would be perceived, would be extremely unpopular. Looking back 20 years, the reality is that that is exactly what happened, except for the Péquiste governments in Quebec that used it routinely as a sign of protest against the Charter. The notwithstanding clause has only been used once on a piece of labour legislation in Saskatchewan, and it was agreed after the fact that it need not have been used at all.

Honourable senators, all of the people who thought that the notwithstanding clause would do away with some of the real benefits of the Charter have been shown to be absolutely wrong. Indeed, I would argue, after 20 years, that the difficulty of any government using the notwithstanding clause is now a virtual political impossibility. I would argue that given those two elements — section 1 and the notwithstanding clause — the impact of the Charter in that sense has been profound on minority rights and that it has been a classic Canadian compromise.

One hears arguments today that many social and economic rights, such as affordable housing, guaranteed annual income and adequate healthcare, should have been included in the Charter 20 years ago. The reality is that those issues were explicitly discussed and rejected by all of the governments of the day. It was believed that social programs were not part of any legal claim under the Charter and should not be part of any legal claim under the Charter. That issue, just as the issue of whether we should have a Charter at all, was thoroughly discussed.

In light of the work being done by the Standing Senate Committee on Social Affairs, Science and Technology, it is interesting to observe what is happening in the area of health care with respect to the Charter. There are a number of cases working their way through the courts that will ultimately lead to the Supreme Court ruling on the issue of whether reasonable, timely access to health care is a right guaranteed under section 7 of the Charter, which guarantees life, liberty and the security of the person. As an example, one case has already been heard at Trial Division in the province of Quebec, in which an individual in Quebec was not able to obtain a heart bypass in what he regarded as adequate time. Therefore, he travelled to England where he had the procedure done and billed the provincial government, which refused to pay. When the court heard the case, they ordered the provincial government to pay on the grounds that there was a threat to both the individual's life and the security of the person — if one takes good health as part of the security of the person — as a result of the government not providing timely adequate health care given the fact that the government was a monopoly supplier.

In the last report of the Social Affairs Committee entitled "Issues and Options," we asked: Is it just and reasonable that someone should be denied the right to purchase the service if they want to do so? That is the other side of the coin. With Senator Beaudoin's help, the committee had an interesting discussion with some constitutional lawyers, including Senator Beaudoin, on the issue.

The Hon. the Speaker *pro tempore***:** Honourable Senator Kirby, I apologize for the interruption, but your time has expired.

Honourable senators, is leave granted to allow Senator Kirby to continue?

Hon. Fernand Robichaud (Deputy Leader of the Government): For one minute.

Senator Kirby: That issue will frequently come before the courts over the next few years.

Honourable senators, I should like to leave you with two thoughts on this issue, both of which stem from the closed-door portion of the meetings of the first ministers, and which have always struck me as most interesting responses to the question about judicial activism and the role of the courts. The first is from the first minister who said the following: "Given how poorly Canadian politicians have performed on occasion with respect to protecting individual rights and freedoms, how can judges possibly do worse?'' That is an interesting and poignant statement that I have often reflected on over the years.

The second is a statement that was made by Prime Minister Trudeau in those closed-door sessions. He asked one of the premiers opposed to the Charter the following question: "Why shouldn't the minority who is adversely affected be able to call government and legislatures to account in front of the courts?"

Honourable senators, if you reflect on those two questions, you will begin to understand why, certainly in my view, the Charter of Rights is probably the single most significant legislative achievement that Canada has made in my lifetime.

[*Translation*]

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, it is Wednesday, when we normally endeavour to end the sitting at around 3:30 p.m. in order to allow the committees to sit. Today we find ourselves involved in a very important debate in which a number of senators wish to take part. Some committees will be hearing witnesses.

With leave of the Senate and notwithstanding rule 58(1)(*a*), I move:

> That the Senate committees scheduled to sit today have power to sit while the Senate is sitting, and that rule 95(4) be suspended in relation thereto.

The Hon. the Speaker *pro tempore*: Honourable senators, is leave granted?

Hon. Senators: Agreed.

Motion agreed to.

[*English*]

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

MOTION IN RECOGNITION OF TWENTIETH ANNIVERSARY ADOPTED

Hon. Sharon Carstaris (Leader of the Government), pursuant to notice of April 16, 2002, moved:

> That the Senate take note of the 20th anniversary of the *Canadian Charter of Rights and Freedoms*.

Hon. Nicholas W. Taylor: Your Honour, I had a question to ask of Senator Beaudoin, but I could not get your attention.

• (1530)

The Hon. the Speaker *pro tempore*: I am sorry. Senator Beaudoin's time has expired and so has Senator Kirby's.

Senator Taylor: Your Honour, one leaves the chamber and you will not recognize me to ask a question. It is a short question.

[Senator Kirby]

The Hon. the Speaker *pro tempore*: I am sorry, but I cannot give permission.

Senator Taylor: Can I appeal?

The Hon. the Speaker *pro tempore*: I will recognize the Honourable Senator Andreychuk.

Hon. A. Raynell Andreychuk: Honourable senators, I take this opportunity, with respect to the Charter of Rights and Freedoms, not to go into detail about the Charter and its consequences, but rather to take this opportunity to celebrate that the Charter of Rights and Freedoms was, in fact, entrenched in our law.

Twenty years ago, on April 17, 1982, Parliament was witness to an event that was to substantially shape the future of Canada's legal system and, more generally, Canadian society itself. When Her Majesty Queen Elizabeth II signed a proclamation to enact the Constitution Act, 1982, the Canadian Charter of Rights and Freedoms was born.

In celebrating the twentieth anniversary of the Charter, we pay tribute to this fundamental instrument by recognizing that it is important to Canadians and particularly individual Canadians. The people of this country strongly believe in our Charter. We are all no doubt familiar with the recent opinion poll that reveals that three quarters of Canadians believe that individual rights and freedoms are better protected under the Charter than they were before it was enacted. Charter rights are now seen by the majority of Canadians as basic rights from which we cannot stray.

As former Chief Justice Antonio Lamer so aptly expressed at a recent meeting of the Standing Senate Committee on Human Rights: "The Charter has contributed to the elaboration and improvement of the human rights culture that exists in Canada." This observation is bolstered by the support that Canadians give to the Charter. In celebrating its twentieth anniversary, we realize that the Charter is not a static instrument, nor is it the only human rights instrument that is available to Canadians or should be available to Canadians in the future. The scores of Charter-related court decisions that have shaped the Canadian legal landscape over the past two decades are tangible proof of its dynamic nature.

In celebration of the Charter's twentieth anniversary, the Standing Senate Committee on Human Rights held a round table this Monday, April 15, in which distinguished experts shared their ideas concerning the role of Parliament in dealing with the issues of human rights and how the Charter has affected this role. Some very interesting ideas came out of this meeting, and I would commend the minutes of the standing committee to all members of this chamber. If honourable senators wish to know the consequences of Canadians having the Charter for 20 years, I would commend the committee evidence given by these expert witnesses and also the evidence of senators who contributed to this round table. We learned that the Charter is not just a legal document; it resonates throughout Canada with social and political consequences.

Some interesting ideas came out of that meeting. One of the panellists, Professor MacKay, President and Vice-Chancellor of Mount Allison University, observed as follows:

> ...the dialogue between the courts and legislators on Charter issues has been healthy for producing better legislation.

Our role as parliamentarians and partners in the evolving relationship with the Charter therefore cannot be ignored.

What does the Charter's maturing process hold in store for the future, and in an increasingly borderless world. What effect will globalization have on the future evolution of the Charter? We can only hazard a guess as to what the answers to such questions may be.

One area that represents a particularly interesting challenge to the evolution of the Charter concerns the Charter and Canada's international obligations. For example, to what extent will the Charter be a tool for implementing Canada's international obligations? The Canadian Charter of Rights and Freedoms represents fundamental values shared by the people of Canada. The challenge for parliamentarians is to intergrate, into their thinking and actions, the culture of human rights in their legislative constituency and public work. That is the challenge of the Charter for the next 20 years.

The courts have set the framework for the Charter of Rights and Freedoms. As former Chief Justice Antonio Lamer said, they dusted off some of the cobwebs still around at the time of the Charter and set a framework for us to think about Charter issues.

Honourable senators, the Charter will rest not only with the courts because it does not speak to the courts alone. It speaks to parliamentarians at both the federal and provincial level. Parliamentarians must take the Charter into account, not after the fact by court analysis, but as a tool before we pass legislation. We must integrate into our work the need to reflect upon what the Charter says about the rights and freedoms of Canadians.

Until parliamentarians take the Charter into account as the essence and the essential fabric of our work, the Charter will not resonate fully with Canadians. Therefore, I look to this chamber to follow the work of the Standing Senate Committee on Human Rights, where we will elaborate on the role of parliamentarians with respect to human rights. I trust that each and every one of the parliamentarians in this room will contribute positively to the extension of the Charter in the next 20 years.

Hon. Senators: Hear, hear!

[*Translation*]

Hon. Serge Joyal: Honourable senators, I understand that Senator Jaffer must be absent from the Senate chamber later and I am prepared to let her use my time.

[*English*]

Hon. Mobina S. B. Jaffer: Honourable senators, it is my privilege to participate, today, in the special debate on the Canadian Charter of Rights and Freedoms, on the day of its twentieth anniversary since coming into force.

On September 11, 2001, as we watched the second plane strike the South Tower of the World Trade Center on television, our whole nation went into shock. People across the country opened their hearts and their doors to welcome stranded travellers. We all walked in a daze for a few days.

Then there was anger, such anger that anyone who looked like the terrorists was a suspect. In some parts of our community, there was absolute fear of reprisal. Why fear reprisal? In part, there was a revival in the country's memory of the Japanese internment during World War II.

• (1540)

Japanese internment began on December 7, 1941, with the arrests of over 22,000 people of Japanese ethnicity, most of whom made their homes in British Columbia, and the vast majority of whom were naturalized or native-born Canadians. These people were rounded up, arrested without cause and their property seized because of superficial or cultural similarities with the people of Japan. Their fishing boats and homes — their very livelihoods — were taken from them. Perhaps most horribly, Japanese-Canadian men were separated from their families and moved across the country, to a prisoner-of-war camp in Ontario.

It was not until 1949, years after the war had ended and four years after the surrender of Japan, that most of these people were allowed to return to British Columbia. They could not, however, return home, as their property had long since been sold at a fraction of its value.

The question that arises in peoples' minds, especially for those of us who are members of visible minorities, is this: Could people today be rounded up and sent to camps as they were in 1941? The answer is "No."

On April 7, 1982, the Charter became law. The Charter represents the values of Canadians, harnessed and put into words that have been embedded in this country's Constitution. This is significant not only because it gives Canadians a written expression of what this country stands for upon the world stage, but also because it means these values will be respected in all the laws of our land.

Those who have been privileged to serve in this chamber have been greatly aided by the presence and force of the Charter. The need of Canadians to be assured that their government will respect their rights and values, even in the face of great pressure, is well served by the Canadian Charter of Rights and Freedoms.

Under the heading of "Equality Rights" section 15(1) states:

> 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...

Furthermore, it gives all Canadians legal rights to life, liberty and security of the person. This prevents Canadians from being subjected to any form of unjustified arbitrary detention, which is exactly what happened to Japanese-Canadians, as then Prime Minister Mackenzie King acknowledged in 1944 when he said:

It is a fact that no person of Japanese race born in Canada has ever been charged with any act of sabotage or disloyalty during the years of the war.

[*Translation*]

Today, we can all stand united as a nation, knowing that, thanks to the Canadian Charter of Rights and Freedoms, a situation such as the internment of the Japanese will never again be repeated.

[*English*]

Lessons have been learned from that experience, such as the danger of assuming that anyone who looks like our enemy becomes our enemy.

[*Translation*]

Thus it was that, after September 11, most Western democracies moved quickly to adopt more stringent measures to protect themselves against the exceptional risks of world terrorism and to protect their way of life.

[*English*]

Canada was no exception, and Canada's Anti-Terrorism Act — then known as Bill C-36 — was drafted to respond effectively to the problem of international terrorism and the related security concerns. Great pains were taken in the drafting of Canada's Anti-Terrorism Act, and again in ensuing debate on the bill, to ensure that Canadian ethnic groups were not victimized as Japanese Canadians were. Our Prime Minister attended many gatherings, including a mosque, to reassure all Canadians.

Canadians respect the values of harmony and multiculturalism and have learned to give space to multicultural communities, in which they are free to practice their religious beliefs without discrimination. Canadians therefore need assurances that what happened to the Japanese people of this country during the Second World War cannot be repeated. The Charter of Rights and Freedoms ensures this will never happen again. Canadians from all walks of life today can celebrate because the Charter of Rights and Freedoms has strengthened our country. We can all work and play without fear.

Today, we have much to celebrate because of the Charter of Rights and Freedoms in our great country. As a result of the rights and freedoms today, minorities are very much a fabric of our country. We are all citizens of our great country. I thank those who had the vision and strength to create the Charter of Rights and Freedoms and the fortitude to have it proclaimed law on April 17, 1982.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I wish to participate in this debate on the Charter of Rights and Freedoms. It is important not to hesitate to pose questions as to what the Charter is and is not. First, today is not the twentieth anniversary of the coming into force of all sections of the Charter. As honourable senators know, section 15, alluded to by the honourable senator who spoke before me, has been in force and effect under the Constitution for only 17 years.

Reference made by other honourable senators to section 33, the notwithstanding provision, and also section 1, raises for me what I consider to be a fundamental failing of the Government of Canada and, indeed, the government of many of the provinces as well. This is not a federal statute that we are dealing with, nor a provincial statute, but rather a constitutional instrument. The failing that I speak of in relationship to those two particular sections, section 1 and section 33 — more particularly section 33 — is the failure in Canada to provide adequate public education on the content of our Charter, what it is and what it is not.

The point needs to be underscored — and Senator Kirby alluded to it in his remarks — that the happy fact of history is that so few governments across Canada have used section 33 of the Charter, the notwithstanding clause, and the reticence by governments, legislatures or Parliament to use that section lies in the fact that the public would not stand for it. We are secure in the knowledge our Charter rights will not be abrogated by provinces passing laws invoking section 33 because the public would respond negatively to those legislatures. However, the government will not receive any response if the Canadian public is not aware of the content of the substantive rights that are in the Charter and of the fact that legislatures can pass laws invoking the Charter. Unless one is a Cartesian and believes we are born with innate ideas, one has to ask where would we learn about the real nature of our Charter. That will be in our formal educational system as well as the informal educational system, through trade unions and other civic organizations across the land.

I believe active Canadian citizenship is terribly important in the system of governance that we have, and our system does have an enviable record, notwithstanding many blemishes. It is necessary that we ensure that the Canadian public understands our Charter values and understands that unique provisions such as section 33 and section 1 can override them.

• (1550)

With reference to section 1, I draw the attention of honourable senators to another weakness in our Charter, a weakness which is seen so glaringly when we compare our constitutional Charter of Rights with the standard that we Canadians adopted when, with the written consent of every jurisdiction in Canada, Canada ratified the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. That occurred in 1967, with the written consent of every government in Canada in response to the request of then Prime Minister Pearson.

During the constitutional preparation years in the late 1970s and early 1980s, I often wondered why we were unsuccessful in getting across the point that there was a common agreement and common standard, agreed to by all the jurisdictions, in those two international covenants which have force and effect in terms of international treaty law for Canadians. Indeed, Canadians individually and collectively have utilized provisions of the international covenants.

Reference was made by Senator Beaudoin to the *Lovelace* case where, under the optional protocol, an individual communication was filed, one in which I had a hand in the drafting, to the United Nations because of section 12(1)(*b*) of the Indian Act, which discriminated against Indian women. As we all recall, that case had a direct tie to the case of *Bedard* and *Laval*, who attempted to achieve Indian rights for Indian women by going to the Supreme Court of Canada and utilizing the then 1960 Canadian Bill of Rights. The Supreme Court of Canada decided, in a five to four decision, with the then chief justice writing the minority opinion, that section 12(1)(*b*) of the Indian Act was fine because that was what Parliament had decided to do.

The *Lovelace* case had a tremendous impact on the drafting of our Charter. Indeed, I recall Sandra Lovelace accompanying a small delegation from New Brunswick, of which I was a part, to appear before our colleague Senator Joyal who was a co-chair, along with the father of our honourable Speaker, Senator Harry Hays, of the joint committee of the House of Commons and the Senate that heard evidence on the then proposed Charter of Rights and Freedoms.

I wish to make a point about the international standard which, frankly, honourable senators, is far superior, in my opinion, to the standard of human rights provided for in our Charter. One example is that even in times of national emergency, when the life of a nation is threatened, there is no derogation from certain human rights. In our Charter, however, in times of national emergency, as we saw with the anti-terrorism bill, there are circumstances when, in the interest of the security of the nation, certain rights can be abrogated. It was argued by the Minister of Justice and the proponents of the bill that it was satisfactory that it did not offend the Charter. It might not offend the Charter, but it would offend the higher standard found in the international covenants.

In addition to that weakness in our Charter, there is the weakness in some of the areas that are not covered. There was a great concern at the time, and in some quarters there continues to be to this day, that property rights are not a constituent, articulated right in our constitutional Charter.

Honourable senators who have spoken before me have drawn our attention to the whole area of economic, social and cultural rights. I am one of those who support the view that we should find a way in which to entrench a charter of Canadian social rights. The intellectual philosophy of Canadian values that the Charter presents us provides the foundation upon which, perhaps one day, there could be an amendment to the Charter of Rights and Freedoms that would include an economic, social and cultural rights code or bill.

One argument that is advanced against having a social charter is that those rights cannot be made justiciable, such as, for example, the right to education. You cannot take such a case to court. There is a whole array of economic, social and cultural rights to which we are bound under international human rights law and to which we could very well be bound if they were put in our Constitution. That is where the role of Parliament would, without doubt, be primordial in determining the effectiveness of the manner in which Canadians would enjoy economic, social and cultural rights.

I see a tremendous opportunity for Parliament to become more involved in the promotion and protection of human rights through the growth of the Charter and, hopefully, the growth that will lead to constitutional amendments to make more explicit economic, social and cultural rights. I believe that is where the human rights agenda of the next decade lies. However, I also believe that those who are not at all offended by having a dynamic judiciary — because the judiciary is a tremendously important institution for the promotion and protection of rights — will look to Parliament and legislatures as tremendously important institutions for the promotion and protection of rights. Hopefully, Parliament will become more dynamic as a defender and promoter of human rights. I have always been very satisfied with the manner in which colleagues in this house have examined legislative proposals and tested those proposals against our Charter values. Although we have our intense debates across the aisle, I have been impressed with the sobriety with which all honourable senators bring their Charter analysis to a bill that is before the house at any given time.

I am glad we have the Canadian Charter of Rights and Freedoms in the heart of our Constitution, as Senator Beaudoin put it. I hope that all governments will become more proactive in facilitating civil society and the education system in making the values of the Charter better known, because of the important role that that knowledge plays in holding in abeyance any attempt by governments to use the notwithstanding clause.

With those reflections, honourable senators, I am happy to participate in this debate.

[*Translation*]

Senator Joyal: Honourable senators, 20 years ago today, Canada became a sovereign country. Twenty years ago today, Canada became a country whose basic tenet would be to recognize and guarantee the same measure of freedom for every individual, regardless of origin, race, language, differences. But this new sovereignty would first serve individuals. The winners of this initiative 20 years ago would be Canadians themselves. The birth of a new Canada would fundamentally alter the kind of society that we were going to be called upon to build in the future. This peaceful and humanist revolution did not come about by chance.

• (1600)

It came about, I recall, following the Quebec referendum of May 20, 1980, and the initiative taken by Prime Minister Trudeau to patriate the Canadian Constitution, enshrining a Charter of Rights and Freedoms in it.

Canadians were right. Twenty years later, the Canadian Charter of Rights and Freedoms has become the founding document of modern-day Canada. So much so that we wonder how we could live without the protection of rights and freedoms that are guaranteed in the Canadian Charter of Rights and Freedoms. What would be of the recognition of Aboriginal peoples, the Metis in particular, if they did not have the protection of their treaty and ancestral rights granted under section 45? What would be of the equality of men and women today, were it not for the guarantee contained in section 28? And what would be the situation of the rights of anglophone and francophone minorities to live and grow in their own language, and to run their own schools? Yes, honourable senators, Canadians were right. They saw in the Charter the essential element of what it means to be Canadian. The Charter has made a difference in Canada. There is a direct link between the effectiveness of this Charter and the responsibility of the highest courts in the land to ensure that it is respected and that wrongs be righted in cases where the Charter has been violated.

Take the bold ruling by the Supreme Court in the case regarding official languages in Manitoba, a ruling that invalidated all Manitoba statutes since 1890. Canadians were right. Because of the fact that the courts have the ultimate power and responsibility to ensure that their rights are respected effectively, Canadians value the Charter and recognize its real value.

Quebecers, as much as other Canadians, have come to see the Charter and the courts as their best defence against the excesses of politicians, who are always influenced by the majority view at any given time.

[*English*]

The Charter, as was said earlier, is a living tree. That expression was taken from the judgment of Justice Dickson in one of the first cases interpreting the Charter, the *Hunter v. Southam* case in Manitoba. Justice Dickson restated essentially that which Viscount Sankey had said in 1929, when he interpreted the famous Persons Case.

What did Viscount Sankey say? He said:

> The British North America Act planted in Canada a living tree capable of growth and expansion within its natural limits.

Those are the same words used by Justice Dickson in 1985, in one of the first Charter cases in Manitoba. Senator Stratton certainly remembers the famous case of *Hunter vs. Southam*. Justice Dickson said that our Charter is a living tree. Being a living tree, it is capable of growth and expansion within its natural limit. In other words, the Charter is essentially the expression of our own rights that live and grow in a country that fundamentally allows a culture of rights.

We as Canadians are just at the beginning of a human adventure that is unique because it is based on the respect of the dignity of every person, not because that person is a Canadian citizen. This differentiates us fundamentally from the American Bill of Rights that has been quoted here. Americans are protected because they are American, because they belong to a country. Canadians are protected not because they belong to a country but because they are human beings.

Honourable senators, this is a very fundamental difference between our two countries. That is why we are described as being a humanist society in Canada. Over and above any political distinction of nationality, our first recognition are the rights and freedoms of a person. This is the living tree that Justice Dickson described in 1985.

Honourable senators will understand that when many of us start thinking and reflecting upon the Charter and the patriation adventure, many memorable souvenirs are brought back in our memory. I remember very well Senator Arthur Tremblay and the late Senator Maurice Lamontagne, who along with Senator Austin sat for more than 300 hours for a total number of 106 meetings, always under television spotlights, listening to more than 314 witnesses. Among them were premiers of four provinces and the two territories and an array of representatives of Canadians coming from all over the country. The most compelling witnesses were representatives of the Aboriginal people of Canada.

Honourable senators, it was the first time in Canadian history that Aboriginal people were present as witnesses in front of the Canadian Parliament. It was the first time that we had received representatives of the Inuit people and from the Indian treaty groups.

For the first time, we received representatives of Indian people who had never been recognized in Canada — the Metis people. They had not been recognized as Indian or as descendants of Indo-European people either. They fell in between, into a kind of no man's land with no rights. Today, we have among us a representative of the Metis people. We would never think that the Metis people should not be considered as full participants in the great adventure of defining Aboriginal rights.

We received a representative of the National Action Committee on the Status Of Women, coming to plead to get the recognition that, as Senator Beaudoin said, is one of the best in the world for the recognition of the status of the equality of women.

Honourable senators, we spent 300 hours in meetings almost cloistered like Trappists in a monastery. We came out of that marathon session with 58 amendments to the original draft of the Charter, including amendments recognizing the treaty rights of the Aboriginal people and the Metis, and the equality of status of men and women over and above everything in our country. The amendments recognized fundamentally all those minorities that had been excluded in our history.

The Jewish people who had been barred from immigrating to Canada during the last world war were recognized. The descendants of the 20,000 Japanese people — 75 per cent of whom were born in Canada — who were interned in the concentration camps during the last world war, were recognized.

Those Canadians came to tell us that if we were thinking of establishing the basis of a more respectable society for rights and freedoms, think of those who have been left aside during the course of our centennial history.

• (1610)

When we reflect upon that initiative, it is a living adventure for which we do not see the boundaries. The Quebec government of the day did not sign the patriation package, as we called it at the time. There is not a single Quebecer or single Canadian who does not have to question himself or herself about the outcome of that. It was not because the patriation package was devised against the province and singularly against Quebec. In fact, the package, 20 years ago, contained many provisions to address specific concerns expressed by Quebecers.

The provisions of the Constitution provided that if there were to be any constitutional amendment to education and culture — that, of course, being of specific interest to Quebec — the Quebec government would be financially compensated.

There was recognition of the full control of the provinces over natural resources. If there is a province where natural resources and, singularly, energy is of paramount importance, it is in Quebec.

There was in the same package the recognition that three Quebec judges would be appointed to the Supreme Court of Canada and would be entrenched forever, without the capacity for a federal government to amend the Supreme Court Act. The package gave to Quebec a veto on the three judges of the Supreme Court.

There was in the same package recognition of linguistic rights and the Canada clause — that is, the right of a person who has been educated in English in Canada to be educated in English and in French and the privilege given to the Quebec government to expand, when it so wishes, to other groups at the moment that the Quebec society feels secure enough to move in that direction.

There were provisions in the package to constitutionally entrench the equalization payments, the obligation that the federal government has to pay the provinces, those who do not have a comparable level of resources, to match the richest province. Certainly Quebec profited from that. Indeed, 48.5 per cent of the equalization payments are given to the Quebec government, which represented more than $5 billion last year. Many provisions in the original package were devised to address specifically the Quebec government's concerns.

History tells us that for political reasons the Quebec government and, very legitimately, some members of the National Assembly and some members of the Liberal Party of Quebec thought that the package should not have proceeded. It is always the same problem: You are damned if you do and damned if you do not.

Honourable senators, there must be a starting point whereby the legitimate request of the Quebec government, which is to maintain its capacity to protect the language and to protect the specific need that the province has in maintaining its identity, should be addressed.

Honourable senators, this is what is left on the drafting table.

The Hon. the Speaker *pro tempore*: Honourable Senator Joyal, I am sorry to interrupt, but your time has elapsed.

Is leave granted?

Hon. Senators: Agreed.

Senator Joyal: Thank you, honourable senators. I will be brief.

The second challenge deals with judicial activism, which seems to be a buzzword today. When there is a decision that is not liked by a majority of public opinion, it is seen as judicial activism. I think that politicians in Canada have a responsibility. When a decision of the court specifically raises an issue that is not popular among the majority, the government must seek redress of that wrongdoing.

Some provincial governments adopt remedial legislation, but they like to title the legislation "An Act to Amend Certain Statutes" as a result of the Supreme Court of Canada decision in *M. v. H.* In other words, governments shift the responsibility of unpopular decisions to the realm of the Supreme Court. There are situations that have to be addressed by politicians, and there is the fact that we seem still to wrestle with constitutional reform in Canada. Since we are in a position of not addressing, on a constitutional basis, the rights of the Aboriginal people, it is the court that defines, through various groups of cases, one case after the other, what is meant by self-government.

The fact is that we seem unable to assume our responsibility, to give way to the growth, to the living tree that is the Charter. In the case of the Aboriginal people, that responsibility has been left to the courts. Then, when the courts define the right, we say, "Well, that is judicial activism." I feel that judicial activism is our own responsibility when we study legislation. Honourable senators know very well that for every piece of legislation that comes in front of this house, which is the house responsible for the federal principle and for balancing minority and linguistic rights, we have a special duty to test that legislation to the scale of the Charter of Rights and Freedoms and to the scale of other rights included in the other instruments that have been mentioned during our debate today. This is one of the other challenges that we will have to address on a daily basis, especially on this day, when we celebrate the full sovereignty of Canada and the rights and freedoms of each and every Canadian.

[*Translation*]

Hon. Pierre Claude Nolin: Honourable senators, it is quite appropriate that I should be speaking after Senator Joyal, because two issues were raised and I intend to discuss them.

First, he raised the issue of why Quebec did not ratify the agreement and, second, he raised the issue of activism. Former Chief Justice of the Supreme Court, Antonio Lamer, talked about the dynamism of the courts. I would rather use the expression "active constitutional democracy."

Why did Quebec decide not to ratify the agreement? To find the answer to this question, we must look at the whole history of Canada. Remember that, in 1763, the King made concessions to the French majority. He did so for very pragmatic and reasonable reasons, since there were 60,000 francophones and a British English minority of about 4,000.

It is obvious that the King and the military governor did not wish to continue hostilities. In 1763, the war in Europe had already been over for three years. It is very costly to be at war, and resuming hostilities was out of the question. Therefore, Canada would live in peace. How? By granting rights to its francophone majority. These rights were recognized in the Royal Proclamation, 1763, and then the Quebec Act, 1774.

• (1620)

What are these rights? The rights to teach in French, to practice Catholicism and to use the civil law. At the time, it was not called the Napoleonic Code but, as was the custom in Paris, it was known as French civil law. British authorities maintained all that was required to ensure the respect of the traditional rights of the francophone majority, because they recognized that it would be impossible to give satisfaction to this majority without recognizing these rights.

These rights were recognized from the moment there was a British government on Canadian soil. They were recognized throughout the constitutional history of Canada, and therefore of Quebec.

Quebecers are not at all opposed to the existence of a Charter. Quebec has had a Charter of Rights since 1974. We had a Charter eight years before Canada did. Quebec was not the first. Other provincial governments adopted their own. Quebecers and the governments of Quebec support a Charter of Rights. This is not an argument. French-speaking Quebecers have collective rights, which were recognized by the British kings. These collective rights have been maintained in the various constitutional documents. When the constitutional amendment of 1982 was introduced, we were not against the existence of these individual rights recognized in the charters, but we wanted recognition of our collective rights, a coexistence of these collective and individual rights. That is why the successive governments of Quebec have been in agreement. Unless I can be shown that my collective rights no longer exist, I will always be in agreement, as will many Quebecers and the 24 senators from Quebec in this chamber. Our collective rights must be recognized in any constitutional document when we also recognize Quebecers' individual rights. I would risk this interpretation. I think that it echoes that of many Quebecers.

The issue of constitutional democracy may surprise some. One of the important achievements of this constitutional amendment was to propel Canada into a new era of constitutional democracy.

There will always be a need for arbitration when it comes to the rights recognized by these documents. In Canada, we have managed to maintain an independent system of arbitration. This is an achievement we should treasure. The Canadian judicial framework is held up worldwide as a model. This arbitration is necessary.

[Senator Nolin]

In the years since 1982, certain constitutional experts, and we have mentioned them here, have come up with this dialogue theory. Since we now live in a constitutional democracy, Parliament no longer has the last word. Nobody has the last word. If Parliament wants to have the last word, it must use section 33, the notwithstanding clause.

Senator Kirby explained to us why parliaments have always been very reluctant to use the notwithstanding clause. By the way, it is important to set Senator Kirby straight. Quebec has already used the notwithstanding clause, not just Saskatchewan.

No one has the last word. The courts arbitrate, interpret, read between the lines. Often constitutional law has nothing to say on it. The courts go beyond interpretation and often establish the law. This power to interpret, to go beyond interpretation, even to establish law, has been recognized in connection with the Canadian judiciary structure.

As for Parliament's part in this dialogue, it follows the recommendations of the courts, or it does not. If it decides not to, it can use the notwithstanding clause and exclude itself from the arbitration for reasons of its own and decide not to follow the dialogue on this.

Since 1982, Canada has created its own birth certificate, as Senator Joyal has said. Setting aside my opinion and that of a number of Quebecers on the co-existence of our collective and individual rights as recognized by the Charter, I acknowledge that the constitutional amendment of 1982 comprises some very positive elements for the future of Canada.

Some might still ask: What was our situation prior to that time as far as fundamental rights are concerned? My mentor, Senator Beaudoin, has spoken at some length of the quasi-constitutional instruments that went before, the various items of case law from the Supreme Court, which, when necessary, created a whole fabric of principles of law which ensured that Canadians did not lack fundamental rights prior to 1982.

However, since 1982, Canada has benefited from a highly pertinent constitutional text, one with a decidedly Canadian flavour to it. Some may say that our constitutional instruments are not very airtight. I feel they meet our needs. In my opinion, the past 20 years have been a marked improvement, and augur well for the future.

[*English*]

Hon. Lorna Milne: Honourable senators, I am pleased, but frankly a little nervous, to rise today to log the twentieth anniversary of one of Canada's most important democratic achievements — our Charter of Rights and Freedoms. In 1982, I was standing soaking wet at the back of the crowd when the Charter was signed by the Queen and by Mr. Trudeau, and I am still at the back of the crowd, after such a knowledgeable group of speakers today on the issue.

Today, 20 years after the advent of the Charter and 18 months after Mr. Trudeau's passing, we can confidently say that the Canadian Charter of Rights and Freedoms is an achievement that truly defines us as Canadians.

• (1630)

The success of the Charter is rooted in the fact that it is an active, living document that has real impact on the day-to-day lives of Canadians and their relationship with their government. Certainly, as Senator Beaudoin pointed out, we had the Bill of Rights for over 20 years before the Charter was put into place, but since that law was not rooted as part of our Constitution, its influence was not significant. Nothing of the sort could be said about the Charter of Rights and Freedoms.

It has often been said that the measure of a democracy is not how well it responds to the wishes to have majority, but how it treats the interests of the minorities. Time and time over the last 20 years, Canadians have used the Charter in our courts to break down the walls of discrimination, exclusion, mistreatment and stereotyping. Canadians know full well that they have rights that are enforceable, have real meaning and cannot be usurped on the whim of some government. In a world where dictatorships, money and fear still rule increasing dozens of countries and billions of people, that is a noble achievement.

The strength of the Charter is rooted in the fact that ordinary people can crash through the most immense barriers to create social change. It has created changes that have become so firmly rooted in our society that we almost forget how things used to be. If you do not believe me, just look at three ordinary people who have made extraordinary contributions to Canadian society because they chose to stand up for their Charter rights: Justine Blaney, Harbhajan Singh and Robin Eldridge.

All Justine Blaney ever wanted to do was play hockey as well as she possibly could. She could skate rings around all the girls in her age group in the early 1980s. If she were a boy, everyone would have been calling her the next Wayne Gretzky. However, the Ontario Hockey Association did not approve of her playing for a local boys' team. No one doubted she was good enough, but the OHA had a rule that stated that only boys could play on boys' teams. The Ontario Human Rights Commission was not much help because the Ontario Human Rights Code at the time allowed for discrimination on the basis of sex when it came to sports.

With nowhere else to go, Ms Blaney turned to the Charter for protection. In 1986, the Ontario Court of Appeal agreed that it was discriminatory for the OHA to prevent her from playing on a boys' team.

You can trace the recent success of Canada's women's hockey team back to that single case. Can you imagine where women's hockey would be today if women could not compete with men in those early years to build their skills? Would we be seeing women's hockey at the Olympic Games if it were not for Justine Blaney? Would we all have had a chance to rejoice in seeing our women with gold medals around their necks in Salt Lake City this past winter if it were not for Justine Blaney and the protection the Charter gave her? I think not.

What was novel and widely frowned upon in 1986 has turned into a moment of national joy only 16 years later. I should add that four of those young female athletes who were playing hockey down in Salt Lake City are members of my Brampton home team.

Harbhajan Singh wanted to make Canada his home. In 1984, he left his home in India because he believed he was being persecuted for his political beliefs. He wanted to start a new life in Canada.

When he arrived here, Canadian authorities denied his claim of refugee status. The procedure at the time did not allow Mr. Singh to hear the government's reasons as to why they decided he was not a refugee, nor was he allowed to present his case.

The Charter guarantees that all who deal with Canada's government will be afforded Charter protection. As a result, the court ordered that Mr. Singh be treated with proper respect and that he have a full and fair hearing of the matter. The court refused to allow our government to act arbitrarily with one set of laws for Canadians and another for non-Canadians.

Canadians understand that all human beings deserve human rights, including legal rights, and the Charter protects one and all. That is one of its many great strengths.

Finally, I want to talk to you about Robin Eldridge. Ms Eldridge was born deaf, and she suffers from a number of medical conditions, including diabetes. In order to keep on top of her health, Ms Eldridge saw her doctors on a regular basis. Her doctors, however, did not understand sign language. Ms Eldridge asked the Government of B.C. to pay for an interpreter to go with her to the doctor in order to ensure that the doctor understood what she needed to tell him, and that she understood the doctor's orders. The B.C. government said no, it was too expensive.

Once again an ordinary Canadian, Robin Eldridge, found protection in our Charter of Rights and Freedoms. Ms Eldridge argued that since the government was providing health care to all of its citizens, it has an obligation under the Charter to provide it equally to her. This meant that the government should provide an interpreter for her visits and cover it under the health insurance plan.

The Supreme Court found that the government does have an obligation not only to pass laws that are constitutional, but also to act constitutionally in all of its dealings with Canadians. The B.C. Health Act was not unconstitutional, but that was not relevant. The mere fact that a government treated a person with a disability unfairly was more than enough reason to trigger Charter protection.

Honourable senators, I am very proud of Justine Blaney, Harbhajan Singh and Robin Eldridge, three ordinary people, all of whom fought for their rights and won because of our Charter. They are just three of thousands of ordinary Canadians who have won battles because of this Charter.

Each time new ground is broken because of Charter rights, I believe Canada becomes stronger. Each time a government thinks twice because of the Charter, Canada becomes stronger.

However, the Charter does not supersede the Indian Act. The Charter is a living document, but it still does not protect all Canadians, so it still has some severe challenges ahead.

Long may our Charter live and thrive. We should be very proud of this Charter of Rights and Freedoms, and may it rise to the challenge of the future.

[*Translation*]

Hon. Lise Bacon: Honourable senators, I feel compelled to speak today after having heard the speeches made by Senators Joyal and Nolin. Senator Nolin set some things straight, and I would like to set some others straight as well.

On this day, as we celebrate the twentieth anniversary of the Charter of Rights and Freedoms, I am concerned to hear people making value judgments without knowing all of the details of the discussions that took place. Heaven knows I am the only one here now to have lived through those difficult and painful discussions. Unfortunately, I cannot tell you what transpired in caucus. Federal officials may have heard 300 hours of evidence, but I can assure you that the hours spent in the Liberal caucus of Quebec at the time were difficult, even agonizing hours. I do not like it when people make value judgments without having been present for those discussions, or taken part in them.

What happened then can easily be summed up: the survival of the Quebec Liberal Party was at stake. Discussions were so intense that there would not have been a Quebec Liberal Party after the discussions and the vote. Difficult and painful decisions had to be made. Some of us accepted, others did not.

I would ask Senator Joyal to read the speeches made at the time, particularly mine. This will explain many facts and might alter his views. Judgments are often made here on Quebecers without any knowledge of what is going on and what went on. It might be appropriate to look at what was said and done.

• (1640)

I should add that I came to celebrate the Canadian Charter of Rights and Freedoms on Parliament Hill with some of my colleagues, at the risk of being repudiated by the leader of the party at the time. I want to remind my colleague, Senator Joyal, of this, and I thank Senator Nolin for setting the record straight.

[*English*]

The Hon. the Speaker *pro tempore***:** Honourable senators, it was moved by the Honourable Senator Carstairs, seconded by the Honourable Senator Robichaud, that the Senate take note of the twentieth anniversary of the Charter of Rights and Freedoms.

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

Hon Senators: Agreed.

Motion agreed to.

[*Earlier*]

VISITOR IN THE GALLERY

The Hon. the Speaker *pro tempore***:** Honourable senators, please join me in welcoming one of our Canadian heroes who is the guest today of Senator Mahovlich, Mr. Paul Henderson.

Welcome to the Senate, Mr. Henderson.

[*Translation*]

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I believe that if we were to seek it, leave would be granted to have all the items on the Order Paper that have not been dealt with stand in their place. I move that the Senate do now adjourn.

The Senate adjourned until Thursday, April 18, 2002, at 1:30 p.m.

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