Debates of the Senate

1st SESSION • 37th PARLIAMENT • VOLUME 139 • NUMBER 33

OFFICIAL REPORT
(HANSARD)

Tuesday, May 8, 2001

THE HONOURABLE DAN HAYS
SPEAKER

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

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

Published by the Senate
Available from Canada Communication Group — Publishing,
Public Works and Government Services Canada, Ottawa K1A 0S9,
Also available on the Internet: http://www.parl.gc.ca

THE SENATE

Tuesday, May 8, 2001

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

Prayers.

SENATORS' STATEMENTS

NATIONAL PALLIATIVE CARE WEEK

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, May 7 to 13 is National Palliative Care Week. I am both privileged and honoured to rise today in this chamber to celebrate this special event.

Honourable senators, palliative care has always been, as many of you know, of particular interest to me. With each passing year, I am pleased to witness new developments taking shape in end-of-life care.

Delivery of palliative care in our country is becoming more available. It is important to recognize that this form of end-of-life care is heavily reliant on an extensive support system of medical staff, community workers, family members and volunteers.

Honourable senators, 2001 marks the International Year of Volunteers. Few endeavours rely more heavily on the work of volunteers than does palliative care. In recognition of the hard work and tireless efforts of the volunteers who make hospice palliative care a reality, I wish to extend my heartfelt thanks. Hospice palliative care volunteers are often the people who have the most direct contact with the families and recipients of palliative care. It is not an exaggeration to say that without them any hospice palliative care program might never get off the ground. We all appreciate how irreplaceable and valuable their assistance has been to families. It is impossible to express enough gratitude for their work and their contribution to the lives of others in this, their most serious time of need. No words in any language can convey the extent of the support they provide to others. They define our most human values and remind us that the most basic and important value in life is to care for each other.

There are few people who are blessed with the death they would wish for themselves, but with good end-of-life care we can benefit from more comfort, better family ties and better medical care than we would without these efforts.

As honourable senators know, palliative care is a multidisciplinary field. It is not just a matter of medications or medical procedures. A family is affected and their needs must be attended to. We need to return to allowing people a dignified, natural death instead of treating the process of dying as something unnatural that must be fixed and avoided at all costs.

WORLD RED CROSS DAY

Hon. J. Michael Forrestall: Honourable senators, today we celebrate the lives of thousands of unselfish Canadian women and men, young and old, who have dedicated themselves to the International Red Cross.

The International Red Cross emerged out of the desire to bring assistance without discrimination to the wounded on the battlefield. Today, the battlefields are not just those in which war has torn apart people's lives, but also those in which people fight against natural disasters and environmental catastrophes.

Honourable senators, it is important to set today apart from all other days to honour the work of the Red Cross and to appreciate the efforts of Canadians who volunteer for that service. To that end, I would ask all honourable senators to remember those volunteers in their communities who have stepped forward at times of flooding, of natural disaster and of serious devastation. I think of the floods in Manitoba, the tornadoes in Guelph, the wind storms in Ottawa, the flooding in Exeter, Ontario; Sydney, Nova Scotia; and Vanguard, Saskatchewan.

As I said, across the country Red Cross volunteers have been called upon frequently. It is fitting that today we recognize the anniversary of the Red Cross and pay tribute to the 70,000 volunteers Canada-wide who aid our communities and the people within them with their generous assistance.

[*Translation*]

NATIONAL NURSING WEEK

Hon. Lucie Pépin: Honourable senators, May 12 will be National Nursing Day. Every year, in the month of May, nurses celebrate their individual and collective accomplishments and reflect on their situation. Alas, it remains a precarious one.

I should like to take this opportunity to pay tribute to these health professionals, who are always in the front line and whose professionalism and devotion to duty, it cannot be said often enough, make them major partners in our health care system.

The theme, "Nurses, Champions for Health," speaks volumes on what the nurses want to see their national week stand for this year. They have decided to use it as an opportunity to make the public more aware of their role in health care delivery and to draw attention to the remarkable contribution Canada's nurses continue to make to the well-being of Canadians.

Over the years, the contribution of the nursing profession has undergone considerable transformation. More and more nurses now hold certificates of specialization and contribute their acquired skills as part of a specialized team. In a number of teaching or community hospitals, nurses are considered an integral part of the care delivery team, not simply secondary staff.

These few positive gains, however, do not change the fact that nurses continue to courageously shoulder a very heavy burden. They are the backbone of our health system. Without them, it would prove virtually impossible to contemplate the creation of a viable health care delivery system.

I trust that in the course of the studies carried out by the Senate and the Romanow commission, considerable attention will be focussed on the nurse shortage and the reasons for it.

There is a shortage of nurses everywhere in Canada. Unless something is done to change the situation, the shortage will get worse, not only because our ageing population will be in greater need of health care, but also because large numbers of nurses will be retiring within the next decade.

• (1410)

We have to look at the alarming conditions they work under. Governments wanted to revolutionize the health care system on their backs, and now nurses are exhausted.

There is no magic solution to resolve the situation. Only proper working conditions, where quality and safety are promoted, will help keep existing staffs and facilitate recruitment.

We must remember that a study and a major reform of the health care delivery system are underway. The nurses must be consulted. They must be part of the reform and decision-making process. The success and viability of the health care system so dear to Canadians fall on their shoulders. Let us give them their rightful place in this process, and our health care system will be the better for it.

[*English*]

THE HONOURABLE ROCH BOLDUC

CONGRATULATIONS ON RECEIVING BELLECHASSE AWARD

Hon. A. Raynell Andreychuk: Honourable senators, in the year 2000, the Regional Municipality of Bellechasse County in the province of Quebec instituted a new awards program to honour prestigious residents either in their lifetime or posthumously in an effort to restore a feeling of pride and of belonging in its citizens and to develop the Bellechasse identity by ensuring radiance on a regional, national and international level. It is with great pride that I and other colleagues congratulate Senator Bolduc, who has added this prestigious award to his long list of achievements.

In June 1980, Senator Bolduc was awarded the Vanier Medal from the Canadian Institute of Public Administration for exceptional and distinguished service. In 1982, he received a medal from the Premier of Quebec. In June 1983, Concordia University admitted him as Doctor of Laws. In 1984, he became an Officer of the Order of Canada; in 1998, he became a Knight of the National Order of Quebec.

These awards, I am sure, pale in comparison to the award Senator Bolduc received this past weekend. It is always an honour to receive an award on a national level, but often the community where we are born and raised is made up of our toughest critics. It is indeed a great testimony to Senator Bolduc's distinguished public service to receive this award in Bellechasse.

Hon. Senators: Hear, hear!

[*Translation*]

GREAT PEACE TREATY OF MONTREAL

TRICENTENNIAL

Hon. Aurélien Gill: Honourable senators, I should like to recall to mind a historical event that we should all find moving. This summer, in Montreal, the signing of the peace treaty of 1701 will be commemorated.

Three hundred years ago, 39 nations converged on one location, Montreal, to discuss the conditions of a longstanding and definitive peace treaty that would end a war, which had essentially lasted a century.

Today we must recognize the vital importance of these facts in the history of Canada and North America. We will draw on this commemoration in order to recall the importance of the First Nations' contribution to our history.

Iroquois, Hurons, Montagnais, Algonquins, Potawatomis, Illinois, Miamis, Menominis, Ottawas, Shawnees, Ojibways, Sauks, Fox, to name but a few, negotiated and signed with the French of New France a peace agreement that was a turning point in history.

When we look at the events of that summer in detail, and as the commemoration of that year will surely point out to us, the First Nations acted in a sovereign fashion, according to complex diplomatic protocols and expressing definite and instructive political visions.

The Wendat leader, Kondiaronk, who died during these negotiations, distinguished himself particularly. Governor Callière agreed to these protocols, which involved long hours of paying attention out of respect for the conditions of oral presentation and in accordance with the international Aboriginal rules of diplomacy governing the sessions.

[*English*]

The events must have been spectacular, as they were held outdoors with the knowledge of the population. The issue was about ending the violent turmoil that had long carried on in a vast territory that includes the Great Lakes, the St. Lawrence Valley, the Laurentians north of New York State, and the upper Mississippi. It explains why all the nations were involved and the magnitude of the meeting, which contributed to the opening of a new chapter in our history.

[*Translation*]

The idea was to settle old disputes related to the fur trade and to wars between the Iroquois and the French, and between the First Nations themselves.

The treaty signed in Montreal in 1701 did not concern Montreal. It was a defining moment in the destiny of North America as we know it today. It was also a striking illustration of the First Nations' innovative spirit and political strength.

Let us recognize a major historical event that has a profound meaning for all Canadians, and let us try to learn something from it for our own benefit.

[*English*]

We were many nations and we played a significant role in history.

[*Translation*]

The treaty signed in Montreal in 1701 was one of the most striking examples. I remind honourable senators that the Canadian Commission for Unesco supports these commemorative events, which have a great educational and cultural value.

[*English*]

In short, let us not forget such an important event. We need very much to remember who all of us in this country really are. History can teach, and when it is well taught, it can change the future.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of members of the State Duma of the Russian Federation. They are: Elvira Ermakova, Member of Parliament and Deputy Chair of the Committee on Labour and Social Policy, and Anatoliy Golov, Member of Parliament and an expert of the Committee on Labour and Social Policy. They are a delegation visiting Canada as part of the Women and Labour Market Reform project, which is a three-year initiative of the Canadian International Development Agency managed by Carleton University. They are guests of Senator Fairbairn.

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

[*Translation*]

ROUTINE PROCEEDINGS

ADJOURNMENT

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

[Senator Gill]

That when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, May 9, 2001, at 1:30 p.m.

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

Hon. Senators: Agreed.

Motion agreed to.

[*English*]

AGRICULTURE AND FORESTRY

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Thelma J. Chalifoux: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(*a*), I move:

That the Standing Senate Committee on Agriculture and Forestry have power to sit at 5:30 p.m. today even though the Senate may then be sitting and rule 95(4) be suspended in relation thereto.

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

Hon. Senators: Agreed.

[*Translation*]

• (1420)

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, both sides of the Chamber reached an agreement. Committees wishing to sit at the same time as the Senate will be granted leave to do so starting at 6:00 p.m., except when very important witnesses are scheduled to appear. We considered a very important witness to be a minister.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, it is important to emphasize that the opposition agrees with Senator Robichaud's position. If a committee wishes to sit at 6:00 p.m. on Tuesdays, we agree that it should be allowed to begin its work and sit at 6:00 p.m. According to the Senate rules, the Senate must adjourn at 6:00 p.m. and resume, if necessary, at 8:00 p.m. We can compromise and allow a committee to sit at 6:00 p.m. on Tuesdays.

On Wednesdays, we must be careful. Usually, we try to adjourn at 3:30 p.m. Senators will recall that, last year, when the Speaker was the Deputy Leader of the Government, he moved the adjournment motion for Wednesdays — as the Deputy Leader did earlier — and set the precise hour of the Wednesday adjournment. For instance, I know that the Standing Committee on Social Affairs, Science and Technology wants to meet Wednesday afternoon at 3:30 p.m. If the Senate sitting is not over, this committee cannot sit. It would be preferable to wait until 6:00 p.m. or, as was done last year, set the exact time of adjournment for the Wednesday sitting. We can find a solution to this problem.

However, with respect to the situation at hand, I agree with Senator Robichaud's comments.

[*English*]

The Hon. the Speaker: Honourable senators, when I asked for leave, Senator Robichaud, followed by Senator Kinsella, rose to make comments reflecting the discussion between house leaders and also putting a question to Senator Chalifoux as to why she requested this leave.

I take it from the comments that if Senator Chalifoux changed her request to allow the committee to sit at 6:00, rather than at 5:30, leave might be granted, based on what I heard the deputy leader say, unless of course, as Senator Robichaud suggested, the committee intends to hear a minister or some witness of extraordinary importance of whom they are not yet aware.

Senator Chalifoux: It is my understanding, honourable senators, that the Agriculture Committee will be listening to Brian Gray, Director of Conservation Programs for Ducks Unlimited, from Winnipeg. If it pleases the Senate, I would ask leave to change the motion to read 6 p.m.

The Hon. the Speaker: Honourable senators, is it agreed that the motion of Senator Chalifoux be varied to read, instead of 5:30 today, 6 p.m. today?

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

Motion as amended agreed to.

FOOD AND DRUGS ACT

BILL TO AMEND—WITHDRAWAL FROM SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE AND REFERRED TO ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES COMMITTEE—NOTICE OF MOTION

Hon. Jerahmiel S. Grafstein: Honourable senators, I give notice that tomorrow, Wednesday, May 9, 2001, I will move:

> That Bill S-18, An Act to amend the Food and Drugs Act (clean drinking water), which was referred to the Standing Senate Committee on Social Affairs, Science and Technology, be withdrawn from the said Committee and referred to the Standing Senate Committee on Energy, the Environment and Natural Resources.

HUMAN RIGHTS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY ISSUES RELATED TO HUMAN RIGHTS

Hon. A. Raynell Andreychuk: Honourable senators, I give notice that at the next sitting of the Senate I will move.

> That the Standing Senate Committee on Human Rights be authorized to examine issues relating to human rights, and, *inter alia,* to review the machinery of government dealing with Canada's international and national human rights obligations; and
>
> That the Committee report to the Senate no later than Wednesday, October 31, 2001.

[*Translation*]

SITUATION OF OFFICIAL LANGUAGES IN ONTARIO

NOTICE OF INQUIRY

Hon. Jean-Robert Gauthier: Honourable senators, I give notice that, on Thursday next, May 10:

> I will call the attention of the Senate to current issues involving official languages in Ontario.

[*English*]

ACCESS TO CENSUS INFORMATION

PRESENTATION OF PETITION

Hon. Lorna Milne: Honourable senators, I have the honour today to present 1,394 signatures from Canadians in the provinces of B.C., Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Prince Edward Island, Newfoundland and Labrador, and Nova Scotia who are researching their ancestry, as well as signatures from 116 people from the United States and 17 from Great Britain who are researching their Canadian roots. A total of 1,527 people are petitioning the following:

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

So far I have now presented petitions with 9,734 signatures to the Thirty-seventh Parliament. The numbers are climbing. I have presented petitions with over 6,000 signatures to the Thirty-sixth Parliament, all calling for immediate action on this very important matter of Canadian history.

QUESTION PERIOD

NATIONAL DEFENCE

REPLACEMENT OF SEA KING HELICOPTERS—INDEPENDENT LEGAL ADVICE ON DISPUTE BETWEEN EH INDUSTRIES AND GOVERNMENT

Hon. J. Michael Forrestall: Honourable senators, my question is for the Leader of the Government in the Senate, following on questions that I had asked back on April 25 and 26.

The Leader of the Government in the Senate confirmed at the time that a retired justice of the Supreme Court had been retained by the government to offer independent advice on the Federal Court of Appeal's decision with regard to EH Industries and the conduct of the Maritime Helicopter Project.

Can the minister tell the chamber if it is retired Justice Charles Dubin who has been retained by the government? If not, who is the person who was retained? Would the leader tell us, at the same time, when that person was retained by the government to offer legal opinions on the Maritime Helicopter Project?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as always, the information to which the senator refers is accurate. Yes, he does have the justice's name correct. As to when exactly the announcement and the appointment were made, I must get back to him.

REPLACEMENT OF SEA KING HELICOPTERS—SPLITTING OF PROCUREMENT PROCESS

Hon. J. Michael Forrestall: Honourable senators, on a related but somewhat parallel subject, I was somewhat perplexed by the leader's answer to an oral question on April 25. She stated that the Maritime Helicopter Project was split into two so that Canadian companies could compete.

As you know, Sikorsky is American; Eurocopter is French; Westland/Augusta is British-Italian; Lockheed Martin is American; Boeing is American. I could go through all the names of those involved in the helicopter project.

• (1430)

The only company that seemingly fits the leader's description of Canadian company is Canadian Marconi, now BAE Systems Canada Limited. BAE Systems was bought largely by a firm known as ONCAP in February of 2001, ONCAP being a subsidy of Onex Corporation of Mr. Schwartz' fame.

My question for the minister is this: Which Canadian company was the Maritime Helicopter Project split in two in order to aid? Was it split to aid Onex in the competition?

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for his question. As I explained in earlier questions, the contract has essentially been divided between the airframe — that is, the basic helicopter, for which he is correct that there are no Canadian companies — and the integrated missions system, for which there are many companies in Canada. Some may include Thalis, Lougheed Martin, Boeing, Raytheon, Computing Devices Canada, Litton Systems, BAE Systems and most other helicopter manufacturers.

Senator Forrestall: Surely, honourable senators, the Leader of the Government is not suggesting to me or to any other Canadian that the companies she has just mentioned are in fact Canadian companies. I asked about Canadian companies. She will understand "Canadian" in the sense of Computing Devices Canada being a Canadian company. Who is the splitting in aid of? Is it Onex? If the minister does not have an answer, that is fine. However, sooner or later I will plod my way to the weary end of this matter, not to my dissatisfaction but to the government's embarrassment.

Senator Carstairs: The honourable senator and I can have a debate on semantics as to whether these companies are 100 per cent Canadian owned or whether they are companies that operate in Canada. Many companies in Canada could, in fact, bid on the second part of the contract, the integrated missions system. As to the other part, the airframe, the basic helicopter, my understanding is there are no companies either Canadian owned or located in Canada.

Senator Forrestall: Then, of course, the final question is: Who will be the prime contractor?

Senator Carstairs: There will be two contractors, one for the aspect of the airframe and one for the aspect of the integrated missions system.

Senator Forrestall: Who will be the prime contractor?

[*Translation*]

AUDITOR GENERAL

APPOINTMENT PROCESS

Hon. Roch Bolduc: Honourable senators, my question is for the Leader of the Government in the Senate.

Sheila Fraser has been appointed Acting Auditor General. Could the leader provide a few explanations with respect to the process of appointing the Auditor General? The Auditor General is an important officer of Parliament and is one of our principal public servants, working directly with both Houses of Parliament.

[*English*]

Hon. Sharon Carstairs (Leader of the Government): I thank Honourable Senator Bolduc for his question. Before I begin, let me join with Senator Andreychuk in congratulating him on yet one more honour that is richly deserved, as have been the honours of the past.

Through the translation of the honourable senator's question, the interpreters referred to the Auditor General's compensation. I do not think that was the intent of the senator's question. I believe he wanted to know about the monies needed to adequately staff the Office of the Auditor General.

Senator Bolduc: My question is about the appointment process. This is one of the most important offices we have, and the Auditor General is an officer of Parliament. Actually, I believe we currently have an Auditor General. I would like a better understanding of the appointment process. This is an important job, and we should know a little more about it.

Senator Carstairs: I thank the honourable senator for that question. I assume he is asking when a permanent Auditor General will be appointed and what exactly that process will be. As I understand it, there is an ongoing search and competition at the present time. If I can find more details as to when the actual appointment is expected to be made, I will get back to the honourable senator.

CAPE BRETON DEVELOPMENT CORPORATION

REQUEST FOR UPDATE ON SALE

Hon. John Buchanan: Honourable senators, I have a question for the Leader of the Government in the Senate regarding the continuing saga of the Cape Breton Development Corporation.

As the leader is aware, the negotiations with the Florida company to take over the assets of Devco have totally failed. There are no negotiations at the present time. However, an offer has been made by the Cape Breton Cooperative Group, which composed of local Cape Breton citizens of every stripe, to take over the full assets of the Cape Breton Development Corporation. Could the minister give us a report as to what is going on with Devco, the offer made by the Cape Breton Cooperative Group, and if any answer has been given by the Government of Canada to that group?

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for his question. My understanding is that there are negotiations with an additional company in addition to the Cape Breton Cooperative Group. When these negotiations come to a conclusion, an announcement will then be made.

Senator Buchanan: The minister is saying that at present two groups are negotiating with the federal government to take over the assets of the Cape Breton Development Corporation; is that correct?

Senator Carstairs: That is the last information that I received.

Senator Buchanan: Does the minister know that one of the groups is the Cape Breton Cooperative Group? Could the minister inform the members of the Senate who the second group is and where the second group is from?

Senator Carstairs: My understanding is that such information is confidential at the present time. However, if there is any way that I can share it with members of the Senate, I will do so.

HUMAN RESOURCES DEVELOPMENT

EMPLOYMENT INSURANCE ACT—RULING ON CONTRAVENTION OF CHARTER OF RIGHTS AND FREEDOMS

Hon. Lowell Murray: Honourable senators, last week I asked the Leader of the Government about the intentions of the government with regard to a judgment brought down by a tribunal in Winnipeg which found that the employment insurance regulations contravened the equality provisions of the Charter in that they are unfair to women. The minister at the time suggested that we canvass the issue in the Social Affairs Committee where Bill C-2 is under consideration. We tried that. The Minister of Human Resources Development was not in a position to say what the government intended to do.

Does the Leader of the Government in the Senate have more up-to-date information? I ask the question because the 30-day deadline must by now have passed or be very close to expiry. Surely, the government will have decided whether it intends to appeal to the Federal Court of Appeal or, alternatively, to take steps to change the law in accordance with the judgment of the tribunal.

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for his question. Regrettably, I do not have up-to-date information, like the Minister of HRDC, but Senator Murray is correct when he says that we are getting close to the 30-day deadline. I will attempt to get the correct answer for the honourable senator.

[*Translation*]

ANSWERS TO ORDER PAPER QUESTIONS TABLED

GOVERNOR IN COUNCIL APPOINTMENTS—
UNDER-REPRESENTATION OF VISIBLE MINORITIES

Hon. Fernand Robichaud (Deputy Leader of the Government) tabled the answer to Question No. 3 on the Order Paper—by Senator Oliver.

CUSTOMS AND REVENUE AGENCY

Hon. Fernand Robichaud (Deputy Leader of the Government) tabled the answer to Question No. 5 on the Order Paper—by Senator Oliver.

HERITAGE—FOREIGN PUBLISHERS
ADVERTISING SERVICES ACT

Hon. Fernand Robichaud (Deputy Leader of the Government) tabled the answer to Question No. 8 on the Order Paper—by Senator Lynch-Staunton.

[*English*]

BLUE WATER BRIDGE AUTHORITY ACT

BILL TO AMEND—MESSAGE FROM COMMONS

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons returning Bill S-5, to amend the Blue Water Bridge Authority Act, and acquainting the Senate that they have passed this bill without amendment.

[*Translation*]

FEDERAL LAW-CIVIL LAW HARMONIZATION BILL, NO. 1

MESSAGE FROM COMMONS

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons returning Bill S-4, to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law, and acquainting the Senate that they have passed this bill without amendment.

• (1440)

[*English*]

ORDERS OF THE DAY

EMPLOYMENT INSURANCE ACT EMPLOYMENT INSURANCE (FISHING) REGULATIONS

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

Hon. Jane Marie Cordy moved the third reading of Bill C-2, to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations.

She said: Honourable senators, like many Canadians, I am pleased to see this bill before the Senate for third reading. The changes introduced in this bill will strengthen the Employment Insurance system and bring about fairness and equity for all who use it.

Having said that, I also acknowledge some of the concerns that were raised at the committee stage by my colleagues on the other side. Although I do not believe the criticisms were germane to this bill, that does not mean that they are not valid concerns.

I would hope that all honourable senators will continue this debate in the future. Only through meaningful debate will parliamentarians ensure that this important public policy remains fair and equitable for all Canadians. The government is committed to monitoring and assessing the impact of the Employment Insurance bill until 2006.

Hon. Lowell Murray: Honourable senators, I do not know that I can quite match my honourable friend for the brevity of her presentation, but I will make an effort not to be as long today as I was when I spoke at second reading on this bill.

I intend to propose, on behalf of Her Majesty's Loyal Opposition, an amendment to this bill at third reading. In order that honourable senators are not held in suspense, the effect of the amendment would be to delete clause 9 of the bill.

Honourable senators spent one day on this bill at second reading. There was one speech from either side of the chamber, which was entirely appropriate for the bill. We then went to the Standing Senate Committee on Social Affairs, Science and Technology, where we also spent one day hearing testimony. I am always somewhat uneasy about trying to deal with a bill on an important subject, which this is, in the course of one committee meeting. Nevertheless, we did put in a good three hours under Senator Kirby's chairmanship last Wednesday night. We heard from four witnesses who, unlike the 60-odd intervenors before the House of Commons committee, actually spoke mostly about the bill. The witnesses before the Commons committee spoke mostly about the need for a more thorough reform of the Employment Insurance regime. While I agree that the need for reform is great and urgent, and while I spoke to those issues at some length at second reading, they are issues that can only be addressed in the future.

Nevertheless, even after the bill had passed through the House of Commons, representatives from the Barreau du Québec wanted us to know of their concerns with at least one provision of Bill C-2 and three other provisions of the EI law as it stands. I will say a word or two about their representations now.

[*Translation*]

I received that letter the day after the only meeting that our committee had on this bill. I assume that other members of the committee also received it.

This letter, dated May 1, 2001, is from the Quebec Bar Association and is addressed to the Minister of Human Resources Development. Since it was too late to invite Bar officials to appear before the committee, I thought I should briefly tell you about the concerns expressed in that letter.

The letter is signed by the leader of the Bar, Ronald Montcalm, Q.C., and states that the Bar supports the analysis made by the Auditor General of Canada on the surpluses in the Employment Insurance account and on clause 9 of Bill C-2. It asks Parliament to correct certain other problems or injustices in the Employment Insurance program.

First, the Bar Association reminds us that, since 1993, it has been opposed to the total exclusion of workers who "voluntarily" quit their job. Before 1993, the jurisprudence had established a distinction between a worker who "quits with just cause" and a justification under the act. According to the Bar, there are situations where an employee has shown just cause for voluntarily quitting his or her job, rather than a justification under the act, and the idea was to impose a minimal penalty.

> Similarly, in connection with dismissal, the penalty change makes it possible to acknowledge extenuating circumstances relating to the worker's misconduct.
>
> It is hoped that such acknowledgement of the extenuating circumstances relating to the voluntary departure or dismissal (of the worker) will be reinstated in the legislation...

The Bar deems section 5(2)(*i*) and (3) of the present legislation discriminatory and calls for its abrogation. According to this section, a person working in a family business must prove that his or her conditions of employment are the same as for an outsider, or else is ineligible for Employment Insurance.

Lastly, the Bar believes that making the conditions for eligibility for Employment Insurance more stringent in cases where there has been a violation of the law should be reviewed. In particular, it feels that the notice of violation should be appealable, and that the various appeal levels should be empowered to quash a notice of violation or reduce it to a mere warning, as the evidence dictates.

That is the end of the concerns expressed by the Quebec Bar Association.

• (1450)

[*English*]

With regard to the amendment to delete clause 9, to which I spoke earlier, I believe that the committee's report on the bill, tabled here last Thursday by the committee's deputy chairman, Senator LeBreton, states very succinctly the background to this amendment. Clause 9 effectively suspends for two years the operation of section 66 of the Employment Insurance Act. Thus, it would, as the committee's report says:

> ...circumvent the premium rate-setting objectives outlined in section 66 of the Employment Insurance Act which require the premium rate to be set annually so as to ensure that there is enough revenue over a business cycle to cover the costs of Employment Insurance and to ensure that the premium rate is relatively stable over the same period.

Therefore, clause 9 of this bill would circumvent the criteria by which the premium rate is supposed to be set. It would also circumvent the process set out in section 66 of the EI Act whereby the Employment Insurance Commission, which consists of representatives of labour, management and the government, sets the rate in accordance with the criteria I have just quoted, subject to cabinet approval.

Honourable senators, there is no doubt that if that process were to remain in place for the years 2002-2003 there would be a significant reduction in premiums. It is, in fact, inconceivable that the commission could recommend otherwise given the criteria set out in section 66 that I have just quoted. The Chief Actuary of the account says that $10 billion to $15 billion would be a sufficient reserve to guarantee the stability of premium rates through a business cycle including an economic downturn. The surplus at present is $36 billion, heading for $43 billion next March 31, three to four times what the Chief Actuary says is needed.

As for premiums, the Chief Actuary said that for 2001 there would be little risk of setting a rate of 2.10 per cent per $100 of earnings and that it is likely that a rate as low as 1.75 per cent could also be set for 2001 and kept for the indefinite future. Although this rate would contain a smaller margin of safety, the current surplus would make it a reasonable option. I observe simply that the present rate is 2.25 per cent per $100 of earnings.

At the committee hearings, the Acting Auditor General, Sheila Fraser, repeated the observation of her predecessor, Denis Desautels, to the effect that at the present level of the EI surplus she would be hard-pressed to conclude that the intent of the law is being respected. Instead of applying the law, the government, through clause 9, is suspending the law in order to avoid the premium reduction that is indicated.

At the committee the witnesses, except for the Minister of Human Resources Development herself, were unanimous in condemning clause 9. In addition to the Acting Auditor General, we also heard from the Canadian Restaurant and Food Services Association and the Canadian Labour Congress.

The minister's defence is that "a review of the premium setting mechanism" is needed, that it will take place over the next two years driven, she told us — although that was not her word — by the Department of Finance, and meanwhile, "to ensure predictability and stability in premiums," the EI Commission will be cut out of the process and the cabinet alone will set the rate.

The need for a review of how rates are set is not at issue here. It has been emphasized by, among others, the House of Commons Standing Committee on Finance and by the Auditor General. The Acting Auditor General stated that the result of the review should be a process of greater transparency, due process and clear reference points. She added that such reference points "are necessary to ensure the fiscal integrity of the EI program."

Honourable senators, the problem is not that a review of the rate setting mechanism is to take place. I think we all agree that such a review is necessary. Suspending the process, however, is not necessary. What is the problem with simultaneously conducting a review while respecting section 66 of the act? The answer is that there is no problem with allowing the Employment Insurance Commission to continue to recommend the rate to the Governor in Council based on the criteria. What is happening here is that the government is suspending the process in order to prevent the decrease in premiums which is required by law, is demanded by fairness, and is long overdue.

It is somewhat ironic that we should be debating the issue and this section of the bill, which is so manifestly driven by the Department of Finance, a couple of days after the *Ottawa Citizen*, in a column by Lawrence Martin, trumpeted the great democratic reforms, including decentralization and diffusion of power, that will be promoted by Paul Martin in the coming Liberal leadership campaign.

Honourable senators, in that spirit, here is an opportunity for us at once to stay Paul Martin's hand from the neutering of the EI Commission and to strike a blow for participatory democracy by leaving this tripartite process in place. I am sure that the temptation will be irresistible for at least some honourable senators opposite.

MOTION IN AMENDMENT

Hon. Lowell Murray: Honourable senators, I move, seconded by the Honourable Senator Stratton:

> That Bill C-2 be not now read a third time but that it be amended in clause 9 on page 4 by deleting lines 14 to 20.

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

Hon. Terry Stratton: Honourable senators, I rise to speak in support of Senator Murray's amendment to delete clause 9 of Bill C-2. Clause 9 proposes to give cabinet the unilateral power to set EI premiums for the next two years.

• (1500)

The amount of money in the EI account would not matter. Premiums will be paid based on whatever premium the Minister of Finance decides. EI premiums are a tax on working Canadians and those who employ them. They are supposed to cover the costs of paying benefits to those who are legitimately out of work. They were not intended to be another tax that finds its way into general revenues or a tax to pay for some of the HRDC fiascos that we have seen in recent years.

Why do we have clause 9? If you listen to the HRDC minister, it is because the current law needs to be suspended for two years while the government reviews the way in which premiums are set.

What does the current law say? First, it says that the rates are to be set by the EI Commission on the approval of cabinet and with the recommendations of the ministers of HRDC and Finance.

Honourable senators, the EI Commission includes representatives of business and labour. Clause 9 not only ends whatever safeguards did exist, but it also removes any say in what the premiums will be from those who pay them. EI premiums are not just another tax. They are supposed to be tied to benefits. That is the reason that we have the EI Commission.

Second, clause 9 suspends the need to look at any criteria when rates are set. The guidelines currently set out in law for the commission are fairly straightforward. There must be enough money to cover the program's costs, and the premium rates should be relatively stable over a business cycle.

Honourable senators, the program actuary tells us that these criteria would be met and a surplus of $10 billion to $15 billion would be created. The surplus on March 31, 2001, was $36 billion, more than twice the amount needed. The Auditor General has looked at this and has said that he would be hard pressed to say that the current law is being respected.

That, honourable senators, is the only reason that we have clause 9. There is a real risk that if the law were respected, premiums would fall faster and be lower than the Minister of Finance would like. Imagine, the government would lose all that extra money.

How low could these rates go? Last fall the Chief Actuary's report on Employment Insurance premium rates for 2001 noted that, "for 2001, there would be little risk in setting a rate of approximately 2.1 per cent."

Honourable senators, the Chief Actuary, Michel Bédard, went on to say that it is likely that a rate as low as 1.75 per cent could be set for 2001. He noted that that rate could be kept for the indefinite future.

Is the government trying to avoid a premium rate that would fall to $1.75 per $100 of earnings — some 50 per cent below this year's level? Think about it. A single mother working as a secretary in Winnipeg earning $20,000 a year is paying $100 more a year for EI than she should pay. The man or woman who writes her pay cheque is paying $140 more than he or she should.

Honourable senators, that example is based on the rate offered by the Chief Actuary. In good years, rates could be even lower.

The same report notes that "a premium rate of 1.46 per cent, the lowest recorded since 1972, would have been sufficient to cover the costs of the program in 2000." Given that a rate of 1.46 per cent could have been set, that same secretary paid $188 more in EI premiums last year than was needed to run the program. Her employer paid $263 more than necessary.

Honourable senators, what are the odds of our ever again seeing a 1.46 per cent premium rate? The chances are probably next to nil so long as the EI account is being used to pad the surplus. I say that we should stop the padding. There should not be a revenue surplus in EI.

Honourable senators, we are promised that premiums will fall by 25 cents over the next three years. That is not in the bill.

If the Finance Minister said tomorrow that he wanted an extra $25 billion from the EI fund, there is nothing in this bill to stop him from hiking premiums to $5 per $100 of earnings. Another $7 billion would be added to the cumulative EI surplus this year, which would bring the total surplus to $43 billion by March 2002. That surplus of $43 billion is more than the amount that the government collects in EI premiums in a year. It is more than three times the cost of operating the program.

Honourable senators, we could have a three-year premium holiday and still not spend the entire EI surplus.

Let me return to my example of the single mother in Winnipeg earning $20,000 a year. Her contribution to that cumulative EI surplus would be approximately $1,000. The Minister of Finance does not think that she has finished doing her share to pad or create the surplus. Her employer would be paying 1.4 times this amount to the EI surplus. That employer would be making a contribution of $1,400. That secretary and her employer would make a combined total contribution of $2,400 to that surplus.

Let us imagine that the accountant in that same office earns $39,000 a year, the maximum insurable earnings. The accountant's contribution to the cumulative EI surplus over the last three years would be a mere few dollars shy of $2,000. The employer would have contributed almost $2,800 to the surplus. The combined total contribution for the accountant and the employer would be $4,800. Think about it.

Honourable senators, taking an amount of $2,000 per year from the pocket of a person earning $39,000 per year makes a major dent in their standard of living. Taking $2,800 per year per worker from the business hurts the investment in jobs.

It is a stretch of the imagination to call these "premiums" when only half of what Canadians pay into this is returned to them as income support. This is a tax, and only a tax.

We are told that the government wants to review the way in which rates are set. We are told that we will have a discussion paper in the fall. We are told that the government will be consulting.

Honourable senators, the government should need no more than several months to write a paper for consultation discussions. The government should need no more than several months to hold consultations and to study the issues. This is nothing more than a stall tactic in my opinion.

Let me suggest one scenario that could easily unfold. The government's fiscal framework assumes a $2 premium during the year 2004. The Chief Actuary says the EI program is sustainable over the long term with a stable premium of $1.75, given the interest that the current law says must be credited to the EI account.

However, the government has hinted that it would like to end the practice of paying interest on the EI account, which would add 20 cents to the break-even rate bringing it to $1.95. The government has also hinted that it would like to end requirements that the amount of the surplus be taken into account when setting premiums.

Let us suppose that they bring in a bill next year to do just that? Fast forward to the year 2003, when the power to set rates reverts back to the EI commissioners. There is not a big difference between $1.95 and the $2 rate for the year 2004 as set by the Minister of Finance.

Honourable senators, when this entire charade has been studied and consultation has been played out, the government will have kept EI premiums artificially high for another two years. The EI surplus will have been driven up to well over $50 billion, including the surpluses of the years of 2002 and 2003.

How long will we allow this to happen? It should not continue. The EI surplus has taken enough money out of the pockets of working Canadians and those who write their pay cheques. Clause 9 must be stricken from this bill.

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

Hon. Senators: Question.

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

• (1510)

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

The Hon. the Speaker: Would 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. Is there an agreement between the Whips as to the allotted time for the ringing of the bells?

Hon. Norman K. Atkins: The proposal is that there be a vote tomorrow, May 9, at 3:30 p.m.

The Hon. the Speaker: Is it agreed, honourable senators, that the vote be deferred until tomorrow, Wednesday, May 9, at 3:30 in the afternoon?

Hon. Senators: Agreed.

Vote deferred.

[*Translation*]

JUDGES ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Grafstein, seconded by the Honourable Senator Cook, for the second reading of Bill C-12, to amend the Judges Act and to amend another Act in consequence.

Hon. Pierre Claude Nolin: Honourable senators, I rise to make a few comments in connection with Bill C-12.

The purpose of this bill is to legislate commitments made by the government in its response to the first report of the Judicial Compensation Benefits Commission, dated May 31, 2000.

Right off, I would remind you that judicial independence is a pillar of the Canadian political system. Furthermore, this principle underlies the existence and the operation of the Commission.

That said, my speech will be divided in two parts. Initially, I will discuss the principle of judicial independence in our parliamentary system. Then, I will make a few comments on the provisions of Bill C-12.

Without further delay, I should like, in the next few minutes, to address the notion of judicial independence in Canada. Under section 96 of the Constitution Act, 1867, the federal government appoints the judges of the superior courts. Section 99 of this text provides that these judges shall hold office during good behaviour to the age of seventy-five. Section 100 of the Act provides that the salaries, allowances and pensions of the judges appointed under section 96 shall be set and provided by the Parliament of Canada.

While these provisions do not make specific reference to the concept of judicial independence, the late former Chief Justice of the Supreme Court of Canada, Brian Dickson, said in *The Queen v. Beauregard*, and I quote:

> The preamble to the Constitution Act, 1867 states that Canada is to have a Constitution "similar in Principle to that of the United Kingdom." Since judicial independence has been for centuries an important principle of the Constitution of the United Kingdom, it is fair to infer that it was transferred to Canada by the constitutional language of the preamble.

Subsection 11(*d*) of the Canadian Charter of Rights and Freedoms also refers to judicial independence. It provides that any person charged with an offence has the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.

Today, judicial independence is the subject of a significant debate in Canadian society, a debate that is echoed in this house. Some say that the courts, more particularly, the Supreme Court, have been involved in legal activism, contrary to the principle of the primacy of the legislative branch in the drafting of laws.

Honourable senators, this is a fascinating debate, which goes to the heart of our parliamentary system. Last week, some of you were talking about judicial activism. I remind you that our chamber is considering a bill whose only purpose is to improve the salary and benefits of federally appointed judges. I therefore do not intend to spend too long on the issue of judicial activism.

However, I should like to help my fellow senators better understand this phenomenon by taking a brief look at the theory of the dialogue between the legislative assemblies and the courts.

As a result of the adoption of the Canadian Charter of Rights and Freedoms in 1982, the courts can determine the compatibility of legislation passed by the Parliament of Canada, the provinces and the territories with the provisions of the Charter. In the second edition of *Droit constitutionnel*, Henri Brun and Guy Tremblay, both professors at Laval University, point out, and I quote:

> On the whole, legislative supremacy has been tempered by the passage of the 1982 Charter.

Given the very vague nature of several provisions of this text, the judges had to rule on the validity of several legislative provisions.

With reference to judicial activism and the impact of the Charter on Canadian society, the former Chief Justice of the Supreme Court, the Honourable Antonio Lamer, said in an interview with *Le Devoir* on January 11, 2000, and I quote:

> The Court was told by the people's elected representatives to interpret it for what it was, a constitutional document. It was only doing what it was told.

For close to 20 years, the Canadian courts have taken a stand on highly emotional issues involving the moral values and political aspirations of many Canadians. I am thinking here of abortion, the rights of same-sex couples, euthanasia, Quebec's right to secede, the language used on commercial signs in Quebec, the rights of linguistic and cultural minorities, the ancestral rights of Aboriginal peoples, and the sentencing regime.

Honourable senators, although hotly debated, the courts' power to review legislation is fully justified under the principle of the rule of law. It is not contrary to the principle of the separation of powers and does not threaten the principle of the supremacy of Parliament.

I agree that some legal decisions may seem to go against the legislator's intentions or the moral values that take precedence in society. However, I believe that we must interpret this based on a "dialogue" between the legislative assemblies and the courts.

In Canada, the division of powers is not airtight. The division between the executive, legislative and judicial branches is not nearly as strict as it is under the U.S. republican system. It is true that, in most cases, we may have the impression that the legislative power is subordinate to the courts. This is because certain court decisions force parliamentarians to amend provisions of acts or policies that they had previously examined and passed.

However, any court decision can be overturned, amended or even ignored by the legislative assembly that is targeted by the courts. After consultation, the legislator can decide whether to keep the legislation that has been deemed unconstitutional, amend it, or simply forget about the objectives pursued by that legislation.

There are numerous examples confirming the existence of this dialogue. For example, on April 7, the Minister of Health, Allan Rock, introduced draft regulations to better monitor the implementation of section 56 of the Controlled Drugs and Substances Act. This section gives to the minister the discretionary power to exempt an individual from the provisions of the act for medical or scientific reasons, or for reasons of public interest.

• (1520)

In June 2000, the Ontario Court of Appeal ruled that this exemption was unconstitutional, because it was too vague and not properly defined. I want to point out that the court had demanded a legislative, not a regulatory, amendment to ensure respect of the rights of Terry Parker, an epileptic who uses marijuana for medical reasons. As you can see, it is possible to maintain this dialogue.

Honourable senators, in order to overturn a court decision that goes against a decision made by Parliament, the legislative branch can also use the notwithstanding clause under section 33 of the Canadian Charter of Rights and Freedoms, or refer to section 1 of that same text. Section 1 provides that the charter guarantees the rights and freedoms set out in it, subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

In 1988, in the *Ford* decision, the Supreme Court ruled that the provisions of Quebec's French language charter, better known as "Bill 101," prohibiting the use of English on commercial signs in Quebec were unconstitutional.

Following on this decision, the Liberal government, under Robert Bourassa, invoked the notwithstanding clause to protect the provisions of Bill 101 and thus ensure the protection of the French language within Quebec society. Five years later, the Government of Quebec enacted Bill 86, which authorized the use of English on commercial signs, provided the French language was predominant.

Back in 1988, the Supreme Court had ruled in *Ford* that such changes would guarantee the constitutionality of the law under section 1 of the Canadian Charter of Rights and Freedoms.

Thus, the National Assembly appears to have waited for the emotional debates stirred up by the decision by the highest court in the land to subside before changing its legislation.

These are some fine examples of how important a dialogue between parliaments and the courts is. Its existence is, moreover, recognized by Professor Peter Hogg of York University and Allison A. Thornton of Blake, Cassels and Gordon, in their essay "The Charter dialogue between courts and legislatures," which appeared in *Policy Options* in April 1999. They wrote as follows:

[*English*]

> Judicial review is not a veto over the politics of a nation, but rather the beginning of a dialogue as to how best to reconcile the individualistic values of the Charter with the accomplishment of social and economic policies for the benefit of the community as a whole.

[*Translation*]

Honourable senators, I should now like to address the specific provisions of Bill C-12. In 1985, Justice Le Dain, defined in *Valente* the independence of the legislature with the following three characteristics: security of tenure, financial security and institutional independence. Financial security is an important element, not just in order to preserve judges' independence, but also to attract the most qualified and experienced candidates to the magistrature.

In 1986, in *Beauregard,* the Supreme Court stipulated that Parliament could not threaten the financial security of judges, which was guaranteed under the 1867 and 1982 Constitution Acts, by placing magistrates in a situation of objective vulnerability with respect to potential material advantages.

However, in the event of an economic recession or a marked deterioration in the situation of public finances, Parliament could reduce judges' remuneration. Under these circumstances, the legislator must, however, avoid discriminatory treatment of justices compared to other citizens.

On September 18, 1997, the Supreme Court of Canada gave an opinion on the independence of judges in provincial courts of Alberta, Manitoba and Prince Edward Island, in a reference entitled *Reference Regarding the Remuneration of Judges of the Provincial Court of Prince Edward Island*. The highest court in the land held that certain statutory provisions governing the benefits, services and places of residence of judges appointed by the governments of these three provinces were incompatible with the principle of judicial independence referred to in subsection 11(*d*) of the Charter.

Thus, in its opinion, the court defined new constitutional requirements with the aim of strengthening the principle of the independence of all the judiciary in the country. The provincial and federal governments are obliged to set up independent, effective and objective bodies. These are charged with the responsibility of examining the remuneration and benefits of judges and of formulating appropriate recommendations to their respective governments.

While the recommendations are not binding on the executive branch, governments are nevertheless required to act on the reports of these independent bodies. As the former Chief Justice of the Supreme Court, Antonio Lamer, expressed it in paragraph 180 of this reference, and I quote:

> ...if after turning its mind to the report of the commission, the executive or the legislature, as applicable, chooses not to accept one or more of the recommendations in that report, it must be prepared to justify this decision...The reasons for this decision would be found either in the report of the executive responding to the contents of the commission's report, or in the recitals to the resolution of the legislature on the matter.

The reasonable nature of the action taken by the legislature in respect of the report in question may be subject to judicial review and must meet the legal standard of "simple rationality." This is measured according to the reasons and evidence adduced by the government in the justification of its decision. If the executive or the legislature justify the decision to change or freeze judges' salaries and thus reject the recommendations of the commission, it shall be considered legitimate. In addition, it shall not be interpreted as being contrary to the principle of judicial independence.

Although this may be interpreted as an attack on the supremacy of Parliament, it can still be said that the highest court in the land wanted to encourage dialogue between the judiciary, the executive and Parliament on the issue of judges' compensation. Between 1981 and 1999, a commission similar to the present one met to study the salaries and benefits received by judges. However, during this period, neither the government nor Parliament was obliged to justify its refusal to implement certain recommendations made by the commission of the day.

Honourable senators, on May 3, Senator Cools expressed concern about the fact that the Parliament of Canada seemed unable to fix the salaries of judges as provided under section 100 of the Constitution Act, 1867. I remind her that the Senate, the other place, and Parliament as a whole may refuse to pass certain provisions of Bill C-12 or to amend the content substantially. Theoretically, this can be done by passing a resolution which sets out clearly in its preamble the reasons we believe such an action is justified.

The passage of Bill C-37 in December 1998 established the federal Judicial Compensation and Benefits Commission. Under section 26 of the Judges Act, this body is responsible for determining whether the compensation and benefits judges receive under the act are satisfactory. In addition, the law requires the Minister of Justice to follow up publicly on the commission's report six months at the latest after receiving it. As in the past, the government's response has taken the form of a bill.

The new commission began its work on September 1, 1999. On May 31, 2000, it submitted its report to the Minister of Justice, Anne McLellan. In her official response, Ms McLellan accepted most of the commission's recommendations concerning salary increases for federally appointed judges and improvements to the annuities scheme.

However, the government justified the refusal not to follow up on the proposal to increase the number of supernumerary judges, as well as its refusal to meet 80 per cent of the costs of judges' representations before the commission.

As I have said, Bill C-12 sets out certain amendments to the pension plan under the Judges Act. Although the Minister of Justice is prepared to implement the commission's recommendations on this, the government response reads as follows:

> The government continues to believe that there is a need for a thorough re-examination of the ... judicial annuity scheme. Properly framed, this comprehensive review would include all aspects of pension policy. In addition to the range of annuity proposals made by the judiciary in the Joint Submission, the review would revisit earlier amendments to the *Judges Act* scheme.

Honourable senators, you will agree that it would be interesting to know the reasons that now prompt the government to bring in changes to the pension plan with Bill C-12, even before the commission looks into the matter.

At first glance, the changes proposed by Bill C-12 may seem minor, but we need to ensure that they are compatible with other federal legislation. In 1998, the members of the Standing Senate Committee on Legal and Constitutional Affairs had eliminated several of the provisions proposed in Bill C-37 concerning the judicial annuity scheme.

These changes had not been proposed by the Scott commission, which was mandated in 1995 and 1996 to look at judges' remuneration. The committee also indicated that they were contrary to the practice of family law in a number of Canadian provinces. Finally, there were court challenges to similar changes that had been made to other federal legislation.

Honourable senators, in conclusion, we have a significant role to play in the examination of Bill C-12. We need to ensure that this legislation respects the principle of judiciary independence while conforming to the rules of law that apply to all other Canadians. I am convinced that, in coming weeks, the committee will address these two questions seriously.

[*English*]

The Hon. the Speaker *pro tempore***:** Honourable Senator Bryden, do you have a question?

Hon. John G. Bryden: Yes, if Senator Nolin agrees.

Senator Nolin: Yes.

Senator Bryden: The question relates to the judiciary acting under the Charter of Rights and Freedoms to interpret and sometimes second-guess what has been passed by both Houses of Parliament. In virtually every case, my honourable friend has said that Parliament has the opportunity to amend legislation and to fix it.

In a situation where the government or Parliament were to vary the terms of the recommended increase in salary and benefits for judges or say that this cannot be done at all, if the judges did not accept that position, presumably a judge would take an action that Parliament, in passing that act, was in violation of the Charter sections requiring an independent and impartial court. This would be added to the cases which state that to be independent, one has to be permanent and financially secure. If the decision found that this bill, if it were different, violated the Charter of Rights and Freedoms, would that not be differ from the normal situation because in this instance the judges are acting in their own case?

Second, while it probably is the case that the judges could not substitute their decision for the decision of Parliament, they could ask Parliament to try again. Is there not a built-in conflict when the judges are the final arbiters of whether or not to accept the commission's increase or modification by Parliament?

Senator Nolin: I should like to deal first with the concept of dialogue I referred to in my speech. Since 1982, the Charter has given the judiciary the power to talk to us, to tell us that we may be wrong, to tell us to change this or that, or to suggest that wording be drafted differently so that it properly conveys the intent of the legislation. The dialogue is there.

What is different? First, there is a perception of conflict, someone looking in from the outside and saying that the judiciary will deal with and arbitrate its own interests. It is up to us, not only as parliamentarians, but as a nation, to put in place the protection to ensure that our judiciary is not only impartial and independent but also credible and respected. If we are able to do that, the perceived conflict will be dealt with in a respectable and reasonable way.

With respect to the P.E.I. reference, Chief Justice Lamer forced the dialogue. It is not only the Supreme Court of Canada talking about the interpretation of the independence of the judiciary; now there is a recipe. If one does not agree with these commissions, one is allowed to disagree, but an explanation must be given. The government said exactly that in its report. It said that it agreed with this and this but not that, and it gave its reasons. The government respected the decision.

In a proper reading of the decision of Chief Justice Lamer, it is perhaps *obiter* when he states that if they do not do that, they could be questioned in front of the court. That I doubt. I do not think one can question the legislature before the court. However, one can question an act of the legislature in front of the court. That is the principle; that is the system.

If we look at the principle in the P.E.I. reference, we see a forced dialogue, which is fine. It is the next step in that dialogue, established by both Parliament and the judiciary in the evolving tree of our Charter.

Senator Bryden: My honourable friend did not hear Senator Lawson, who is, as we know, a long-time teamster organizer. I suggested in jest that he might do some organizing amongst the judiciary.

• (1540)

The concern I have is this: When the judiciary says that the reasons given in this bill, for example, or the reasons for rejecting certain provisions the commission has recommended are not sufficient to guarantee the independence required under the Charter, then who is the final interpreter?

Let us say that this bill is rejected on the basis that it does not do what the courts have said. Therefore, we must try again. Instead of 80 per cent, we say, "We will not give you 80 per cent, but we will give you 70 per cent." We then send the bill back. However, it may not be quite enough.

We can amend certain bills and send them back to the House of Commons. The House of Commons can say that the amendments are not acceptable and send the bill back to us. We can amend it again. If the House of Commons says no again, we can delay and amend the bill again; but, finally, the House of Commons can pass the legislation.

Is this a situation in which the Supreme Court has the final word? After all, this has occurred in many areas since 1982 with the passage of the Charter of Rights and Freedoms. If such a hypothetical scenario were to develop whereby there is disagreement on two or three occasions, at some point Parliament would say, "This is it." The final word on the compensation of judges would then rest with the elected members of Parliament in the House of Commons, as opposed to the final word resting with the people who, rightly or wrongly, are perceived in that situation to be judging in their own interest.

Senator Nolin: There is no negotiation. The P.E.I. reference does not pretend to say that. It states that at the end of the day, Parliament, the government and the executive have the right not to agree with one, two or many recommendations of the commission. However, if they do not agree, they will have to say why they do not agree. The reference does not state that we are going to negotiate through the dialogue.

[*Translation*]

Parliament has full and fundamental right to disagree with the recommendation.

In order to respect judicial independence or, in other words, to ensure Parliament's decision does not appear arbitrary, the courts have said: "You will explain your reasons" in a case purely of salary increase.

In committee, we will examine in detail the salary of judges. Explanations will certainly be provided. Why did the Chief Justice of the Supreme Court of Canada earn $254,000 last year? Why will her salary be increased this year? We can all have an opinion on this. However, explanations will be have to be given.

The government has accepted that. It must have thoroughly examined the recommendations of the commission, which must surely explain the reasons for a salary increase, which, in the end, is fairly significant.

If it had not done so, the government would have had to provide reasons. I find that reasonable, but in the end Parliament may decide to not accept the recommendations and explain why.

In his decision, Mr. Justice Lamer provided: "Write a preamble to the bill and decide what you want, but explain the reasons in the preamble."

In this decision, Mr. Justice Lamer and the Supreme Court forced a dialogue. They did not simply wait for a reaction from Parliament. I hope this answers the first part of the question, as concerns the justices and the requirement for them to explain the reasons.

At the time, the government of Mr. Bourassa had decided to use the notwithstanding clause of the French language charter to indicate that it was apprised of the Supreme Court decision. It was paralleling the Charter for a five-year period.

Five years later, they decided to return to a curative approach provided in *Ford.* The courts said: "If you agree to a smaller proportion of English, this would meet our evaluation criterion." That is what they did, but to calm political pressure, the National Assembly decided to use the notwithstanding clause, and it was completely within its right to do so.

I think we must accept this dialogue. To have a dialogue is a very good thing. Your question, however, has more to do with determining who has the final word in the dialogue. In principle, Parliament has the final word, as long as it explains why. Then the courts will accept its position. Must there be a final word? I do not think so.

As I mentioned at the end of my text, it is an evolutionary process. What was a social value 50 years ago — or in 1982 — may evolve over 50 years. The jurisprudence established 20 years ago may be less relevant in 50 years. It will then be the role of Parliament to ensure that this dialogue is maintained.

In Canada, we have a British type of parliamentary system that allows this connection between the executive and legislative branches.

[*English*]

Senator Bryden: I take from what the honourable senator is saying that if there has to be a last word, then that last word rests with Parliament. It is helpful to have the opinion of the honourable senator.

Let us say that the commission's report recommending a $50,000 increase is not accepted and that the government and Parliament, having acted on the bill, say "No, $5,000 is all we will give for the next two years and, what is more, here are our reasons." It could be one sentence, three sentences or a paragraph. From what the honourable senator has said, having done that, that is the end of it. The increase will be $5,000.

Both the honourable senator and I are lawyers. That is almost what happened in the P.E.I. case. There was a decision that there should be an increase of a certain amount. Because every other public servant received no increase or a small increase, the Government of Prince Edward Island decided that it would not follow the recommended increase.

My concern is that some judge might say that such a figure is not adequate. Surely, the court had adequate reasons when it said that an explanation must be given.

• (1550)

These reasons are not adequate. Parliament, therefore, had no justification in not taking the recommendation of the commission and substituting the $5,000 for the $50,000.

Perhaps judges are not as litigious as lawyers; I don't know. We work through the system and we are back in the Supreme Court. Once again, the Supreme Court must make a decision: Does this meet the criteria laid out in the cases that serve as precedents?

That is my comment, basically. If parliamentarians provide a reasonable explanation of why the commission's recommendations cannot be adhered to and that explanation is universally acceptable to the court, then that is satisfactory. What if, on the other hand, the argument goes back and forth, not as a negotiation but perhaps by several responses of "Try again," until the public begins to ask why Parliament is not paying these underpaid judges an extra $50,000?

That is still my concern. I hope what you say is correct and that any reasonable explanation would be accepted.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I should like to proceed further on the line of questioning of Senator Bryden, but from a different point of view.

The Supreme Court of Canada's decision in *Haig*, which was written by the then chief justice, addresses the requirement of the Human Rights Commission under section 15 to receive a complaint on a ground which is not in the Human Rights Act. The court found that the Human Rights Act, by excluding the prohibited ground of discrimination based on sexual orientation, was discriminatory, thus contrary to section 15 of the Charter. The court then was faced with the question of what remedy to apply. Should they declare null and void the Human Rights Act? They decided, instead, to read into the legislation.

On this question of the power of the court to read into legislation, looking at the *Vriend* case in Alberta, the legislators in their debates on the statute explicitly said that, no, they would not add that particular prohibited ground of discrimination in the Inidividual Rights Protection Act of Alberta.

If the court is able to use the same "read in" remedy in the case of this bill, then the court, if it does not like what Parliament decides, can read in a different salary.

This is my question. In your concept of the dialogue that must occur between the courts and the legislature, does the court not really have the upper hand because it can read into the legislation whatever it wants to read in?

Senator Nolin: The question of reading in is completely theoretical, because Bill C-12 is very simple.

[*Translation*]

Let us continue this interesting theoretical reasoning. The Supreme Court could not do that because it would have to recognize that it was itself unconstitutional. Section 100 of the Constitution Act provides that it is Parliament that sets and pays salaries. In other words, we would not set salaries; the court would do it. All we would do is pay these salaries. The court would not do that. This is going too far.

First, the "reading in" is a measure which, in my opinion, is used by the courts when a normal ruling would result in chaos, for instance if a whole act was ruled inappropriate because its objective goes against the Charter. That would not be reasonable. At this point, the courts will use a scheme to fill a void. Parliament can always take note of the decision and decide not to do anything, or decide to correct the act. If it does not do anything, it means that it agrees with the "reading in" that the Supreme Court made.

As for setting judges' salaries, I do not see how the Canadian judiciary branch could decide to "read in" from the recommendation, set the salary of judges and ask Parliament to pay. This is fiction. It is interesting to discuss it, but I do not think it can work like that.

Hon. Gérald-A. Beaudoin: Honourable senators, Bill C-12, to amend the Judges Act and to amend another Act in consequence is the federal government's response to the report of the 1999 Judicial Compensation and Benefits Commission. This commission, which is responsible for examining the compensation and benefits of judges, was established following the decision of the Supreme Court in the reference on judges' remuneration, which I will come back to later.

Bill C-12 amends the Judges Act to increase judicial salaries and allowances, improve the annuities scheme by making it more flexible, and put into place a separate life insurance plan for federally appointed judges.

This bill seems to me to respect the legal situation. More particularly, Bill C-12 seems consistent with the spirit and the letter of the *Reference Regarding the Remuneration of Judges*. Incidentally, in this decision, the Supreme Court expressed the view that respect for the independence of the judiciary required the establishment — both at the federal and the provincial levels — of standing judicial compensation and benefits commissions. In fact, it should be noted that judges' salaries can be reduced, increased, or frozen, as part of a general economic measure or a measure aimed at judges in particular. However, this may only be done through the special process of a judicial compensation and benefits commission. This commission must be independent, effective and objective. Its recommendations are not binding on the executive or the legislature, but they may not be set aside lightly. Decisions in this regard must be justified, before a court of law if necessary, failing which they will be declared unconstitutional.

The purpose of the commission is to depoliticize the issue of judges' remuneration, and I quote:

> The imperative of protecting the courts from political interference through economic manipulation is served by interposing an independent body — a judicial compensation commission — between the judiciary and the other branches of government. The constitutional function of this body is to depoliticize the process of determining changes or freezes to judicial remuneration. This objective would be achieved by setting that body the specific task of issuing a report on the salaries and benefits of judges to the executive and the legislature, responding to the particular proposals made by the government to increase, reduce, or freeze judges' salaries.

• (1600)

Given these principles, Bill C-12 strikes me as a reasonable response to the report by the Judicial Compensation and Benefits Commission.

We are, of course, going to look at these principles in detail in the Standing Senate Committee on Legal and Constitutional Affairs. I would be sorely tempted to list all the areas raised by Bill C-12, but I have limited myself to the obvious purpose of this bill.

I should also like to take advantage of this opportunity to state in closing that our legal system in Canada is a strong one. It is independent and impartial. It rigorously monitors the constitutionality of legislation, both federal and provincial.

It is clearly separated from the executive and legislative branches. I say this because, since 1982, there has often been criticism of certain Supreme Court decisions, since we now have a Canadian Charter of Rights and Freedoms in the Constitution. This is of interest not only to jurists, parliamentarians, politicians and all those involved in the public service and public affairs, but to everyone else as well.

The Charter of Rights and Freedoms is of interest to everyone. This is why, for the first time in our history, people are very carefully and eagerly reading the decisions of the Supreme Court of Canada. No one can ignore the decisions of the Supreme Court of Canada. Since the Act of Settlement of 1701, the juduciary in England may be considered totally independent.

We Canadians have taken the same route in Canada. This is one of the bases of our state. I always say that one of the most important bases of a great democracy is the legal system. Our jurisprudence indicates clearly, in my opinion, that our legal system in Canada performs its functions very well. We could talk for hours and hours about these very interesting and very difficult problems, but Bill C-12 has a very specific aim, as I mentioned.

In closing, I should like to add that we have an excellent judiciary, and I underscore that, at a time when constitutional law is taking on increasing importance in Canada. Obviously, I am prejudiced, but the fact is that, in a free and democratic society, an independent judiciary is essential, as is an independent bar. Canada is certainly one of the most fortunate countries in this regard.

On motion of Senator Robichaud, for Senator Cools, debate adjourned.

• (1600)

[*English*]

CANADA ELECTIONS ACT
ELECTORAL BOUNDARIES READJUSTMENT ACT

BILL TO AMEND—SECOND READING—
DEBATE ADJOURNED

Hon. Wilfred P. Moore moved the second reading of Bill C-9, to amend the Canada Elections Act and the Electoral Boundaries Readjustment Act.

He said: Honourable senators, thank you for the opportunity to speak to this bill, which proposes a number of amendments to the Canada Elections Act and one to the Electoral Boundaries Readjustment Act.

The modifications are twofold. First, we must bring changes to the electoral legislation to respond to the Ontario Court of Appeal's decision in the case of *Figueroa*, which concerned the identification of political parties on the ballot. Second, we would like to take the opportunity to bring some technical corrections in order to make the Canada Elections Act and the Electoral Readjustment Boundaries Act clearer and easier to apply.

I know that all of us are committed to safeguarding our electoral system and making it work even better. We take pride in our system and the way it has evolved over the years. This pride is shared by Canadians no matter where they live and what their circumstances.

[Senator Beaudoin]

Over the years, our electoral system has proved itself a reliable, fair and efficient vehicle, which enables Canadians to express their democratic will by casting their vote for the candidate of their choice. As such, our electoral law has been an inspiration for many emerging democracies that have drawn on Canada's experience in developing their own electoral procedures and laws. However, ensuring that our electoral system does the best possible job of serving Canadians has not always been easy. The fact that ours is a very dynamic country means our electoral system must continue to evolve if it is to keep pace with the needs of our citizens.

Therefore, honourable senators, we have had to revisit our electoral laws occasionally with an eye to implementing those changes required to keep our electoral system in step with trends in society. Sometimes this has meant introducing new legislation, as occurred recently with passage of the new Canada Elections Act. At other times it has meant simply "fine-tuning" existing laws to make them work even better, as is the case with the bill before us today.

While the impetus for change often comes from the public or Parliament, it can also come from the courts. A good example is the *Figueroa* case, heard recently by the Ontario Court of Appeal, which resulted in the legislation before us today. In that case, the plaintiff, a representative of the Communist Party of Canada, challenged the constitutionality of those provisions in the Canada Elections Act dealing with the registration of political parties. It was argued that requiring a party to nominate 50 candidates before it could be declared a registered political party, entitled to the benefits provided under the act, violated section 3 of the Canadian Charter of Rights and Freedoms. Mr. Figueroa's concern was that smaller parties, which find this threshold hard to achieve, are denied the financial benefits accorded to "registered parties."

Second, Mr. Figueroa objected to provisions requiring parties to have 50 candidates before their party name can appear on the ballot, on the grounds that having a candidate's political affiliation on the ballot provides voters with information they need to make an informed choice. In its response, the court ruled that requiring parties to have 50 candidates before they can qualify for financial benefits is reasonable and so justifiable under the Charter. Thus, this provision remains in force.

However, the court was more sympathetic to Mr. Figueroa's second challenge. Here the court ruled that requiring a party to nominate 50 candidates before its name could appear on the ballot represented an unjustifiable limitation on the rights of voters to make an informed choice, since it denied them important information about candidates. The court found the 50-candidate threshold unnecessarily high in light of the objective of ensuring informed choice by electors. As such, the ballot identification provision violated section 3 of the Charter and was not saved by section 1 of the Charter.

In particular, the court concluded that party affiliation could play a role in the choice made by the elector and that, consequently, it is important to identify party affiliation clearly on the ballot in order to respect the right to vote.

• (1610)

That being said, the court recognized that Parliament was justified in imposing limits as necessary to prevent voters from being confused or misled.

Voters could be misled if a ballot indicated that a candidate was affiliated with a political party that was in fact not a political party in any real sense of the word; so we need a legislative requirement for a political party to nominate a minimum number of candidates. To remedy this, the court gave Parliament until August 16, 2001 to correct this situation, which makes it imperative that we act as quickly as possible.

Honourable senators, the bill before us seeks to address the court's concerns by lowering the threshold for including party affiliations on ballots to just 12 candidates, less than a quarter of what was required beforehand. This is a complex issue requiring a balanced approach. What number would be reasonable to respect the right to vote and to prevent voter confusion?

These modifications to the Canada Elections Act would allow political parties with a minimum of 12 nominated candidates to have their party name on the ballot, provided they comply with certain administrative requirements such as the full name and abbreviation of the party, the name and address of the leader of the party, and the address of its office.

The number 12 is already found in various functions of our parliamentary system and has historical significance and a clear tradition of use. As you all know, the number 12 coincides with the number of members required to obtain recognition as an official party in the House of Commons.

The number 12 implies a participation in the electoral process at an organized level by a significant number of candidates who share a common goal. We believe it would then be fair to speak of a party without misleading the electorate.

Honourable senators, this bill represents a balanced approach to respond to the Ontario Court of Appeal ruling. It avoids the confusion that could result from having too low a threshold, and it avoids making the threshold so high that it would discourage the development of smaller parties, which often have limited resources.

Once passed, it would allow political parties with at least 12 candidates to have their name appear alongside those of their candidates.

As to the other provisions in this bill, they are, by and large, small technical matters. They include minor technical amendments designed to correct a few anomalies that have become apparent since the new Canada Elections Act came into force; terminological changes in making the English and French versions consistent; corrections to internal references within the Canada Elections Act; and finally, an amendment to the Electoral Boundaries Readjustment Act.

In conclusion, honourable senators, this bill represents a balanced approach that will address the court's concerns, while at the same time safeguarding our electoral process from the abuse and confusion that could arise were a threshold not in place. As such, it will protect the rights of all Canadians while maintaining the integrity of our electoral system.

For that reason, I support the bill, and I urge my Senate colleagues to give it their support.

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

ELDORADO NUCLEAR LIMITED REORGANIZATION AND DIVESTITURE ACT PETRO-CANADA PUBLIC PARTICIPATION ACT

BILL TO AMEND—SECOND READING—
DEBATE ADJOURNED

Hon. Tommy Banks moved the second reading of Bill C-3, to amend the Eldorado Nuclear Limited Reorganization and Divestiture Act and the Petro-Canada Public Participation Act.

He said: Honourable senators, I am pleased to speak at second reading of Bill C-3. The amendments proposed in this bill will allow two of our nation's major players in the natural resource sector, Cameco Corporation and Petro-Canada, to continue their growth and their good management by removing restrictions that currently constrain their ability to attract new investment and to forge new strategic alliances.

Cameco was once well known to us all as Eldorado Nuclear, and at one time both Cameco and Petro-Canada were Crown corporations. By 1995, the Government of Canada had sold all of its shares in Cameco, and although the people still hold an interest of about 18 per cent in Petro-Canada, the government takes no active role in its day-to-day management.

At the time of their privatization, certain ownership restrictions were placed on both of these companies; while those restrictions were appropriate at the time, things have changed. Some of those restrictions have outlived their usefulness and practicality and are now in fact preventing these companies from taking advantage of new business opportunities.

Specifically, Bill C-3 proposes to modify the ownership restrictions on the ownership of shares and on the disposal of assets in the Petro-Canada Public Participation Act, and it proposes to amend the share ownership provisions of the Eldorado Nuclear Limited Reorganization and Divestiture Act, which is the act that governs Cameco.

In the case of Petro-Canada, Bill C-3 will increase the limit of individual ownership of shares from 10 to 20 per cent. The 25 per cent limit on the quantity of shares that can be collectively owned by non-residents of Canada will be eliminated. In other words, there will be no foreign ownership restrictions on Petro-Canada, only a restriction that no shareholder, regardless of his or her or its origin, can own more than 20 per cent of the company's shares.

Although the foreign ownership restriction will be eliminated, Petro-Canada is likely to remain majority owned by Canadians and will certainly be controlled by Canadians. First, the 20 per cent limit on individual share ownership precludes the possibility of an outright takeover by a large multinational. Second, there is a much higher level of investor interest among Canadians in Petro-Canada than among foreigners. Although the current legislation allows ownership by foreigners of up to 25 per cent, it does not exceed 16 per cent today. Eighty-four per cent of Petro-Canada is owned by Canadians. Third, the Canada Business Corporations Act will continue to require that Petro-Canada have a majority of Canadian directors.

To provide Petro-Canada with greater flexibility to manage its assets portfolio, the existing prohibition on the sale, transfer or disposal of all or substantially all of the company's upstream or downstream assets will be replaced by a broader and similar prohibition that will not distinguish between those two types of assets. Retaining a variant of the original asset disposal restriction will prevent the company from winding up its activities by the means of the outright sale of its assets.

In the case of Cameco, Bill C-3 will ease, but not eliminate, the current foreign ownership limits. The limit of individual non-resident share ownership will be increased from 5 per cent to 15 per cent, and the ownership for an individual Canadian shareholder will stay at 25 per cent. Foreign shareholders will be restricted to 25 per cent of the total number of votes cast by shareholders at any meeting of the corporation.

Although the foreign ownership restrictions will be eased, Cameco will always be controlled by Canadians and will most likely always be owned by Canadians. First, the 15 per cent limit on individual share ownership prevents multinational takeovers. Second, the 25 per cent limit on non-resident voting rights ensures that the control of Cameco will always be in Canadian hands. Third, there is a much higher degree, as in the case of Petro-Canada, of Canadian investor interest in Cameco than there is of interest by foreign shareholders. Foreign ownership only amounts to about 6 per cent at the moment in Cameco. Fourth, the Canada Business Corporations Act will continue to require Cameco to have a majority of Canadian directors.

This bill, honourable senators, has the support of both companies, which view the current restrictions as inappropriate given the fact that they do not apply to other companies that are involved in their businesses. I believe that the bill and its provisions will be welcomed warmly by the investment community, both in Canada and abroad. At the same time, it preserves the Canadian control of both Cameco and Petro-Canada. Their headquarters will remain in Canada, and the majority of their directors will remain Canadian.

• (1620)

Honourable senators, the changes in the Cameco legislation will not alter in any way Canada's commitment to nuclear non-proliferation and safety; that will be maintained. In addition to the safeguards already in place, and in addition to requiring that all trading partners in nuclear material ratify the treaty, the Government of Canada exercises further control through nuclear cooperation agreements with its trading partners. The Government of Canada continues to believe in the need for restrictions on foreign ownership of uranium development. Although Bill C-3 increases Cameco's ability to raise foreign capital and to enter into new strategic alliances, Canadian control of Cameco will be maintained.

Honourable senators, I should like to point out that the Province of Saskatchewan is a shareholder in Cameco. That government has indicated that it fully supports this bill and the legislative amendments that are contained in it.

This is a bill of good governance, and I therefore ask all honourable senators to join me in supporting Bill C-3.

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

RECOGNITION AND COMMEMORATION OF ARMENIAN GENOCIDE

MOTION—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Maheu, seconded by the Honourable Senator Setlakwe:
>
> That this House:
>
> (a) Calls upon the Government of Canada to recognize the genocide of the Armenians and to condemn any attempt to deny or distort a historical truth as being anything less than genocide, a crime against humanity.
>
> (b) Designates April 24th of every year hereafter throughout Canada as a day of remembrance of the 1.5 million Armenians who fell victim to the first genocide of the twentieth century.—(*Honourable Senator Bacon*).

Hon. Lorna Milne: Honourable senators, I wish to speak to this issue that was raised by Senator Maheu, and I congratulate her for bringing it to the floor of the Senate. However, I would urge caution and sober second thought before we leap into the middle of what seems to be a controversial and hotly contested issue.

There are hundreds of thousands of Canadians of Armenian, Turkish and Russian descent. All of these historic groups played a role in what happened in Anatolia between 1912 and 1922. These groups all have very strong and, indeed, properly emotional opinions on what exactly transpired. I believe this issue deserves study from many perspectives before any pronouncement should issue from this place.

First, I have absolutely no doubt whatsoever that hundreds of thousands of innocent people died in and around Anatolia, that troubled area of the world, between 1912 and 1922. Estimates of the dead range from just under 600,000 to, more recently, 1.5 million Armenian Christians and up to 2.5 million Anatolian Muslims. We may never know exactly how many died or what happened to each of those lost millions of individuals, but by any measure the loss of human life was staggering and heartbreaking.

Senator Setlakwe has told us how two generations of his own family were decimated by the slaughter. I have heard from members of the Turkish-Canadian community whose families were also destroyed.

Was this awful slaughter/genocide committed by the Ottoman Empire in its death throes, or was it serious and bitter inter-communal warfare between warring groups of Christians and Muslims that resulted in incredible suffering and relocation of and by both groups, in eastern Anatolia, particularly? I do not know.

The term "genocide" was coined towards the end of World War II to describe an official government policy of systematic killing of a group of people defined by race, religion or ethnicity.

As Senator Maheu pointed out, the United Nations, in 1948, set up the Convention on the Prevention and Punishment of the Crime of Genocide. This convention is now recognized by most of the nations of the world, including modern Turkey. Does this awful slaughter of both Armenians and Turks meet the very strict "minimum standards of proof," required under the UN convention? Again, I do not know. This is clearly a matter for scholars and historians with more knowledge and more resources than we have in this place to decide.

I do know that there is an enormous amount of disagreement between present-day Turks and Armenians over the historical facts of the matter. The two sides disagree vehemently on many of the precise charges that both Senator Maheu and Senator Wilson raised in their speeches on this controversial subject. Furthermore, these disagreements extend to many peaceful groups of Canadian citizens.

As I noted at the outset, there are many Canadians of Armenian and Turkish descent who have diametrically opposed views on what happened during those 10 horrific years. There is even disagreement over whether or not that monster Hitler did say those horrifying words, "Who, after all, today speaks of the annihilation of the Armenians?" Apparently even several contemporary Nazi records of that speech do not include the word "Armenians," and the Nuremberg trials were unable to authenticate it. The speech was actually a diatribe against Poland and the Polish people.

I am compelled to ask: What would be the value of inflaming the disagreements between groups of Canadians on such a complex and deeply emotional issue by taking a stand without hearing fairly and dispassionately from both sides?

I believe we would all agree that for thousands of years people living in that area have had great difficulty living together in peace, as members of so many different ethnic, religious and nationalist groups have fought to find a way to live and to coexist. There have been dozens of wars fought in this broader region in just the last 200 years as a result of these ethnic, religious and nationalist tensions, each more complex than the last.

A study of the bloody history of that area of the world seems to suggest that leading up to, during and after World War I, as the Ottoman Empire disintegrated, times were even more chaotic and passions were perhaps even more inflamed. I do not believe that it is advisable for this place to make a pronouncement on who was right and who was wrong during those woeful years without some serious study on both sides of the issue.

Honourable senators, I should like to shed a rather different light on a few points that may help to illustrate the fact that there is another view of what happened during those years. Some evidence seems to suggest that wherever the Ottomans still held firm control during that time, such as in and around Istanbul, no mass killing occurred. The Armenian population of those areas not only survived in great numbers, but their churches remained open throughout the period. We do know that as the Ottoman Empire crumbled, groups of Armenians wished to form their own homeland and that some who held that view organized militarily to destabilize the remnants of the empire in the hopes of creating that homeland.

Finally, I have been told that, after the Russian revolution, many Armenians from the area were supported by the Russian army and even armed by the Russian army and encouraged to rebel violently against Ottoman control of Anatolia.

• (1630)

I freely admit that I cannot confirm any of the information that I have just given you, but I can safely say that many do believe it to be fact and have researched at length to prove its veracity. I have seen some of the research and some of it is pretty compelling.

Honourable senators, perhaps a bit of information about modern Turkey would be of use in our thought processes on this matter. Turkey straddles the Bosporus with territory in both Europe and Asia. This extremely strategic location places it right at the crossroads of the world. It controls the southern sea access to Russia and to five other European and Asian countries through the Bosporus and the Black Sea. It controls the historic land routes from Europe to the Middle East and beyond to Africa, India, and even to China.

Turkey is a member of the Council of Europe but has been unsuccessful so far in gaining admittance to the European Union, I believe mainly because of its — to be polite — somewhat mixed record on human rights. In fact, currently there are about 500 prisoners in the jails of Turkey who have been on a hunger strike for the past five or six months over conditions within the prisons. Twenty of them have died, including three women.

However, I believe that Turkey is the only predominantly Islamic nation in the world with a secular, democratically elected government. It is our ally in NATO. Like Canada, Turkey has a strong separatist movement — the Kurds — but their separatists have been very violent in the recent past.

Unlike Canada, Turkey is surrounded by neighbours, some with historically expansionist ideas, who many Turks believe still covet portions of this strategically located country.

I ask honourable senators once again: Should the Senate of Canada be inserting itself into such a controversial issue without at least hearing from both sides and without hearing from independent scholars and historians? That is not the way we in this place deal with even the least controversial of bills from the other place.

Should we be inserting ourselves into an issue between two other countries, both of which I feel have themselves an obligation to open their archives to independent researchers to try to settle this matter? In fact, I have even heard it suggested that this is not only a historical matter arising from the bloody massacres of the early 1900s but could also be a weapon to be used in a potential future political issue between Turkey and Armenia dealing with reparations and boundaries.

Canada has a very hard-won reputation in that area of the world as a peacekeeper, as an impartial broker between warring factions. I would certainly want to take some time in sober second thought before voting for anything that might erode that reputation or that might put some peaceful and entirely innocent groups of Canadian citizens, of either Turkish or Armenian ancestry, at odds with each other.

Honourable senators, I repeat that I do not believe we should be taking a stand on this deeply troubling issue until historians, unbiased researchers and scholars have had full access to any archives that may hold documents about that terrible time. I call urgently on the governments of Turkey, Armenia, Syria and Russia to open their archives to these independent researchers and to let the scholarly light of history shine in.

Honourable senators, I cannot support this motion. I believe the world has yet to hear the full story and so I urge you to vote against it.

[*Translation*]

On motion of Senator Robichaud, for Senator Bacon, debate adjourned.

[*English*]

UNITED STATES NATIONAL MISSILE DEFENCE SYSTEM

MOTION RECOMMENDING THAT THE GOVERNMENT NOT SUPPORT DEVELOPMENT—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Roche, seconded by the Honourable Senator Finestone, P.C.:
>
> That the Senate of Canada recommends that the Government of Canada avoid involvement and support for the development of a National Missile Defence (NMD) system that would run counter to the legal obligations enshrined in the Anti-Ballistic Missile Treaty, which has been a cornerstone of strategic stability and an important foundation for international efforts on nuclear disarmament and non-proliferation for almost thirty years.—(*Honourable Senator Kenny*).

Hon. Sheila Finestone: Honourable senators, since February 8 of this year, when our honourable colleague Senator Douglas Roche rose in the chamber to draw our attention, through a motion recommending that our government refuse to support the development of a proposed U.S. missile shield called the National Missile Defence system, or NMD, much media attention has been paid to this issue. Last December, during Russian President Putin's visit to Canada, our two countries took the unusual step of issuing a joint statement in which we agreed that the 1972 ABM treaty was a cornerstone of strategic stability and an important foundation for international efforts on nuclear disarmament and non-proliferation. Our two countries hoped for far-reaching reductions in strategic offensive weapons while preserving and strengthening the ABM treaty. I add my support to this view.

Who here has seen the film *Wag the Dog* with Robert De Niro and Dustin Hoffman? For those who have not, there is an important scene in the film in which the U.S. President's spin doctor, played by Robert De Niro, is arrested by an American intelligence service officer and then grilled about his role in the fabrication of a threat proposed to the United States by Albania. The De Niro character points out that, while the Albanian threat may indeed be a fabrication, the intelligence officer needs to recognize that the greatest threat to security will not come from an exchange of intercontinental ballistic missiles between the two super powers but from a lone terrorist walking into Grand Central Station with an attaché case containing a small nuclear device or vial of some deadly biological germ.

I draw this chamber's attention to this example to illustrate a point. We need to stop fooling ourselves about where defensive resources need to be allocated when it comes to global security. It is not in nuclear weapons, and it is certainly not in rocketry. You need not be a rocket scientist to know that.

Rockets do not come cheap, especially long-range rockets. To be honest, very few countries can afford the tremendous expense involved in developing intercontinental missiles. When rockets are developed, given their size it is hard to keep them a secret. With today's spy satellite capabilities, both their detection and destruction before launch is more than likely.

Any poor country intent on giving one of the big boys a bloody nose knows that rockets are not the way to go. Rather, the weapon of first choice is more likely terrorism. When it comes to terrorism, biological weapons are the poor man's nuclear bomb. Why else did we have UN weapons inspectors scouring Iraq in the way they did?

Biological or chemical weapons do not have to be delivered by missiles in order to be effective. Because they are portable they can be concealed in innocuous looking containers and shipped by air over long distances through conventional commercial means, and then delivered to their final targets in a hundred different ways. Therefore, the claim that NMD — or Star Wars as those of us familiar with the Reagan era used to call it — is designed to negate threats from so-called rogue states is simply not reasonable.

• (1640)

I believe that that is why Lloyd Axeworthy, Canada's former Minister of Foreign Affairs, in the *Globe and Mail* on May 2, 2000, raised the question of whether the so-called rogue state rationale is not a code phrase like that in *Wag the Dog*. The purpose is to camouflage the true intent of the National Missile Defence initiative. That intent is to neutralize Russian and Chinese ICBM capability.

Honourable senators, if this is so, and I believe it is, it raises at least two important questions. One, will it increase Russian and Chinese fears about their own defence capabilities? Two, will the response to NMD lead to joint efforts to devise effective countermeasures or lead to an increase in intercontinental ballistic missile numbers?

Engineers believe that every problem has a solution, but to every solution there is a problem. No matter the series of solutions the National Missile Defence System claims to provide, it creates an equal series of problems, not the least of which is the false sense of security it purports to afford the population that lives beneath its technically shaky shield.

The Massachusetts Institute of Technology, MIT, report stated:

> Any country capable of deploying a long-range missile would also be able to deploy countermeasures that would defeat the planned NMD system. Biological and chemical weapons can be divided into many small warheads called sub-munitions.

These could be "released shortly after boost phase" and would "overwhelm the planned defense."

It is quite an interesting article. Those who wish to follow this topic may wish to read the article.

The report goes on to say that "China has already indicated it would take steps to penetrate the planned NMD system by deploying more long-range missiles with numerous on-board countermeasures."

In this sense, I think that the perceived need for a National Missile Defence System is like trying to build another Maginot line; and what defence analysts failed to consider when they built the Maginot line was a new strategy of war called "Blitzkrieg." It, too, was a strategy designed to overwhelm an opponent's defences, which it did with unfortunate consequences to millions of people.

On May 1, 2001, U.S. President Bush gave a major address at the National Defense University on NMD. He made reference to the need to intercepting ICBMs in their initial boost phase in an effort to address the countermeasure problem. However, for this to be possible, the laws of physics would dictate that ICBMs would have to be both detected and intercepted from orbital space.

Honourable senators, do we really want to see any country militarize orbital space with defensive weapons, knowing that these could one day be replaced with offensive weapons? Do we want a sword of Damocles hanging over our head from space?

What should Canada do regarding the NMD question? There are numerous political, economic and social dimensions to the NMD question. As we are moving into an era of a global economy, we also need to be thinking in terms of a common global security, a security where consultations are de rigueur. This is not a time for unilateralism by any country, let alone by our closest friend and ally.

Let us face it. NMD raises questions and issues that need to be examined from many perspectives. As such, this august body may wish to consider a more formal public debate.

I was saddened to hear President Bush say that the 1972 ABM treaty "enshrined the Cold War past," and that it "failed to recognize the present or point us to the future." I believe that the treaty engendered a tremendous level of stability between the superpowers and would continue to do so if the parties adhered to it.

First and foremost, the parties should continue to live up to the spirit of all non-proliferation commitments; for the rule of law, whether it be domestic or international, is integral to building a peaceful society. Anything less could send us into a dangerous tailspin.

Second, our notion of global security needs to integrate the human security agenda into its makeup. This is an area that focuses on preventive measures such as the development of democratic institutions around the world. It is an area where Canada has been a particularly strong player, especially within the United Nations. If a gram of prevention is worth a kilo of cure, then, by the same token, initiatives addressing the human security agenda will deliver the dividends of peace and security that we seek for ourselves.

Honourable senators, imagine what would happen if democratic nations insisted that, for every new dollar of the trillion or more dollars needed to develop the NMD, the U.S. government had to spend an equal sum on various peace building initiatives around the world? If we are prepared to do one, why should we not be prepared to do the other? For every sword, there should be a ploughshare. Maybe this matching dollar approach is the one Canada should insist on when courted by NMD advocates.

We see an example of this kind of approach with the declaration made at the recent Summit of the Americas. Thirty-four nations recognized that a commitment to democracy and open trade goes hand in hand with the investment of billions of dollars in the health, education and connectivity infrastructure of participating countries.

No less is true when it comes to global security, for where there is development, we are more apt to gain peace.

One of the key elements of development is addressing the digital divide. As Foreign Affairs Minister John Manley put it, "The digital divide is more than a deficit of wealth — it is a deficit of knowledge." It is a deficit that translates into a deficit of opportunity.

Less than 1 per cent of world's population has access to the Internet. How can we possibly grow a healthy global economy unless we also grow equal access to the digital revolution? How can we expect to foster democracy? In short, global security is an integrated proposition. Yet, if global security is to become a plausible reality, we need to continue working within the framework of existing alliances and existing laws.

Honourable senators, as members of both NATO and NORAD, we need to establish, in the most objective way possible, those threats that pose the greatest risk to global security and to prioritize expenditures on that basis. No nation is an island in a global economy; nor should any nation be lulled into believing its security depends on a similarly narrow approach.

We need to work together. We need to be realistic when looking at this entire question. The survival of humanity may well depend on it.

MOTION IN AMENDMENT

Hon. Sheila Finestone: Honourable senators, I wish to make a motion in amendment. I move, seconded by Senator Bacon:

> That the subject matter of this motion be referred to the Standing Senate Committee on Defence and Security for study and that the committee report back to the Senate.

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

• (1650)

Hon. Lois M. Wilson: Honourable senators, I rise to support the amendment. The *Manchester Guardian Weekly* of March 15, 2001 had an interesting editorial on the national missile defence that is being promoted by the U.S.A. It said, in part, that President George Bush has highlighted the threat to the U.S.A. posed by "rogue nations." To qualify as such, a nation must actively support terrorism by building nuclear or other weapons of mass destruction, or be busy exporting the same to suspicious customers. At the top of Mr. Bush's list are North Korea, Iran, Iraq and Libya. On the shifty shoulders of rogue nations rests the entire reason for national missile defence. Those missiles are essential to deter the rogues. The distorting effect of this thinking was recently displayed when Mr. Bush told South Korea's President Kim Dae-Jung that he was ending the policy of engagement and negotiation with Pyonyang.

Even though Mr. Kim, a key U.S. ally, is desperate to advance the dialogue begun at last year's summit with the Democratic People's Republic of Korea, and even though the future of that deprived, half-starved nation depends upon his success, Mr. Bush said he did not trust North Korea and pulled the plug.

There is another way, honourable senators. Ten countries, including Canada, have established diplomatic relations with the DPRK since 1995. Most are working hard also to develop links with Iran and Libya. Iran's internal struggle between reformers and clerical reaction offers a guarded opening to the West. Most Western countries agree that endless, thoughtless isolation of Iraq is no longer a viable policy. So why not start serious talks? Because Mr. Bush is set on missiles, and to get them, he needs rogues.

It is a Catch-22 situation. Construction of a national defence system provokes other states to take countermeasures in order to protect themselves and thus raises the possibility of a renewed nuclear arms race. The proposed NMD system would violate the 1972 Anti-Ballistic Missile Treaty, which forbids a nationwide missile defence system. There is a real danger that construction of the NMD would provoke other states to take countermeasures, thus leading to a renewed arms race. Is it not time to recognize that nuclear weapons do not and cannot provide lasting security?

The choice, honourable senators, is between nuclear arsenals, missile defence systems, space-based weapons or even pre-emptive wars on the one hand and disarmament, non-proliferation, rapprochement and serious talks on the other. I am proud that Canada has chosen to declare diplomatic relations with the DPRK, and I think this approach is more creative than isolating this country and thereby escalating tensions.

The Prime Minister has recently stated that he thinks Canada will not be confronted with a decision on the NMD very rapidly. I therefore support full debate on this issue and I look to the input of more senators on the motion before Canada makes the decision. This can be done through the appropriate Senate committee.

On motion of Senator Kinsella, debate adjourned.

The Senate adjourned until Wednesday, May 9, 2001, at 1:30 p.m.

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