CANADA

House of Commons Debates

VOLUME 138 • NUMBER 098 • 2nd SESSION • 37th PARLIAMENT

OFFICIAL REPORT
(HANSARD)

Thursday, May 8, 2003

Speaker: The Honourable Peter Milliken

CONTENTS

(Table of Contents appears at back of this issue.)

HOUSE OF COMMONS

Thursday, May 8, 2003

The House met at 10 a.m.

Prayers

ROUTINE PROCEEDINGS

● (1005)

[*Translation*]

INTERNATIONAL TRADE

Hon. Pierre Pettigrew (Minister for International Trade, Lib.): Mr. Speaker, pursuant to Standing Order 32(2), I have the honour to table in the House, in both official languages, the fourth annual report on Canada's international trade, entitled "State of Trade 2003".

* * *

GOVERNMENT RESPONSE TO PETITIONS

Mr. Geoff Regan (Parliamentary Secretary to the Leader of the Government in the House of Commons, Lib.): Mr. Speaker, pursuant to Standing Order 36(8), I have the honour to table in the House, in both official languages, the government's response to nine petitions.

* * *

LIBRARY AND ARCHIVES OF CANADA ACT

Hon. Don Boudria (for the Minister of Canadian Heritage) moved for leave to introduce Bill C-36, An Act to establish the Library and Archives of Canada, to amend the Copyright Act and to amend certain Acts in consequence

(Motions deemed adopted, bill read the first time and printed)

* * *

INTERPARLIAMENTARY DELEGATIONS

Mr. Benoît Sauvageau (Repentigny, BQ): Mr. Speaker, pursuant to Standing Order 34, I am pleased to present, in both official languages, the report of the Canadian branch of the Assemblée parlementaire de la Francophonie, and the related financial report. The report deals with the meeting of the APF Committee on Education, Communication and Cultural Affairs, held in Châlons-en-Champagne, from April 15 to 18, 2003.

COMMITTEES OF THE HOUSE

OFFICIAL LANGUAGES

Mr. Mauril Bélanger (Ottawa—Vanier, Lib.): Mr. Speaker, I have the honour to present, in both official languages, the seventh report of the Standing Committee on Official Languages.

Pursuant to Standing Order 108(3)(*d*) and its mandate to monitor the administration of the Official Languages Act, your committee has conducted a study on immigration and official language minority communities, and has agreed, on Wednesday, April 30, 2003, to report its observations and recommendations to the House. The committee also asks for a government response within the 150-day period provided for in the Standing Orders.

Essentially, the report invites the government to act on amendments to the Immigration Act to ensure that demographics in Canada are not negatively affected by immigration but, on the contrary, improved and made reflective of the reality of official language minority communities.

FINANCE

Mrs. Sue Barnes (London West, Lib.): Mr. Speaker, I have the honour to present, in both official languages, the fourth report of the Standing Committee on Finance on Bill C-28, the Budget Implementation Act, 2003.

* * *

[*English*]

PETITIONS

IRAQ

Mr. Werner Schmidt (Kelowna, Canadian Alliance): Mr. Speaker, I would like to present a petition on behalf of a few constituents in Kelowna. These constituents pray that the government denounce any further aggression against Iraq and declare Canadians' non-participation in such aggression. They further urge the United Nations to seek a peaceful solution that respects the charter of the United Nations and all other international law, including the sovereign equality of nations.

FREEDOM OF RELIGION

Mr. Darrel Stinson (Okanagan—Shuswap, Canadian Alliance): Mr. Speaker, I am pleased to present a petition for my constituents of Okanagan—Shuswap who feel that the addition of sexual orientation as an explicitly protected category under sections 318 and 319 of the Criminal Code could lead to individuals being unable to exercise their religious freedom, as protected under the Charter of Rights and Freedoms. They call upon Parliament to protect the rights of Canadians to be free to share their religious beliefs without fear of prosecution.

MARRIAGE

Mr. Myron Thompson (Wild Rose, Canadian Alliance): Mr. Speaker, I am pleased to present a petition on behalf of a number of residents from the city of Airdrie in my riding of Wild Rose who are calling on Parliament to pass legislation to recognize the institution of marriage in federal law as being a lifelong union of one man and one woman to the exclusion of all others.

● (1010)

IRAQ

Mr. Peter Adams (Peterborough, Lib.): Mr. Speaker, I rise to present two petitions from citizens of Ontario who were and still are concerned about the war in Iraq. They support the fact that Canada is not involved in that war.

* * *

QUESTIONS ON THE ORDER PAPER

Mr. Geoff Regan (Parliamentary Secretary to the Leader of the Government in the House of Commons, Lib.): Mr. Speaker, I ask that all questions be allowed to stand.

The Acting Speaker (Mr. Bélair): Is that agreed?

Some hon. members: Agreed.

Mr. Peter Adams: Mr. Speaker, I rise on a point of order. I in fact would like to seek unanimous consent to return to presenting reports from committees and also to motions. I will explain. I have the reports on the changes in riding boundaries in Manitoba and New Brunswick. I apologize that I was not here earlier. I need to table those reports, which were accepted unanimously in the committee, and I later need to seek concurrence in them.

The Acting Speaker (Mr. Bélair): Is that agreed?

Some hon. members: Agreed.

* * *

COMMITTEES OF THE HOUSE

PROCEDURE AND HOUSE AFFAIRS

Mr. Peter Adams (Peterborough, Lib.): Mr. Speaker, I have the honour to present the 29th report of the Standing Committee on Procedure and House Affairs regarding the report of the electoral boundaries commission for Manitoba. This report and related evidence will be forwarded to the commission for its consideration. I do not need concurrence in this motion. I was mistaken and I do not need to return to motions. I do not need concurrence in that report. I apologize for the confusion.

Mr. Dale Johnston: Mr. Speaker, I rise on a point of order. Since we are in a reverting sort of mood today I wonder if I could seek permission in the House to revert to presenting petitions. I have three petitions to present.

The Acting Speaker (Mr. Bélair): Is that agreed?

Some hon. members: Agreed.

* * *

PETITIONS

FREEDOM OF RELIGION

Mr. Dale Johnston (Wetaskiwin, Canadian Alliance): Mr. Speaker, I thank my colleagues for allowing me to revert to petitions. I have a petition signed by several hundred of my constituents in Wetaskiwin. They are concerned that the adoption of the explicit protection of homosexuals under Bill C-250 would imperil their religious freedoms. I would like to present that petition on their behalf.

● (1015)

MARRIAGE

Mr. Dale Johnston (Wetaskiwin, Canadian Alliance): Mr. Speaker, other petitioners have concerns with the definition of marriage. They want to make sure that the House of Commons maintains the present term of marriage, which is the union of a man and a woman to the exclusion of all others.

CHILD PORNOGRAPHY

Mr. Dale Johnston (Wetaskiwin, Canadian Alliance): Mr. Speaker, I have a petition to present from several constituents on the issue of child pornography. The petitioners call upon Parliament to protect our children by taking all necessary steps so that all materials that promote or glorify pedophilia are eliminated.

Mr. Peter Adams: Mr. Speaker, I rise on a point of order. I do apologize for this confusion. It is entirely my fault. I arrived here and I was a bit confused. I did present the House with the 29th report, which referred to Manitoba. I would now like to table in exactly the same way, if there is unanimous consent, exactly the same report for New Brunswick. I would be grateful, Mr. Speaker, if you would be patient with me once more and seek unanimous consent for me to table this report.

The Acting Speaker (Mr. Bélair): Is that agreed?

Some hon. members: Agreed.

* * *

COMMITTEES OF THE HOUSE

PROCEDURE AND HOUSE AFFAIRS

Mr. Peter Adams (Peterborough, Lib.): Mr. Speaker, I am pleased to table the report of the Standing Committee on Procedure and House Affairs regarding the report of the electoral boundaries commission for New Brunswick. This report and related evidence will be forwarded to the commission for its consideration.

GOVERNMENT ORDERS

[*English*]

SUPPLY

ALLOTTED DAY—PARLIAMENT AND COURT DECISIONS

Mr. Vic Toews (Provencher, Canadian Alliance) moved:

> That this House call upon the government to bring in measures to protect and reassert the will of Parliament against certain court decisions that: (a) threaten the traditional definition of marriage as decided by the House as, "the union of one man and one woman to the exclusion of all others"; (b) grant house arrest to child sexual predators and make it easier for child sexual predators to produce and possess child pornography; and (c) grant prisoners the right to vote.

He said: Mr. Speaker, I am pleased to rise today to sponsor this motion on behalf of the Canadian Alliance.

The Canadian Alliance is concerned and Canadians across the country are concerned that recent court decisions do not represent the view of Parliament nor the values of Canadian society as a whole.

The three issues outlined in the motion are of particular importance to the constituents in the riding of Provencher and indeed to ordinary citizens across the country, citizens whom I speak to and whom I receive letters from on a daily basis.

Under the assumed authority of the Canadian Charter of Rights and Freedoms the courts have moved beyond their traditional role as arbiters of legal disputes and into the realm of policy making. Indeed, they have become politicians.

While it was anticipated that the charter would grant the courts new powers to review the constitutionality of Parliament's decisions, it has become clear that the courts have taken for themselves an authority that Parliament either expressly withheld from the courts at the time of the drafting of the charter or an authority that no reasonable interpretation of the provisions of the charter could support. Specifically, recent decisions of the courts such as those related to marriage, our laws governing the protection of children and prisoner voting rights are not decisions that are properly grounded in the constitutional jurisdiction granted to the judiciary by Parliament.

An unaccountable and unelected judiciary has simply and erroneously appropriated the jurisdiction to legislate by judicial fiat matters of social policy.

In the opinion of the Canadian Alliance, and indeed in my personal opinion, this was never intended to be the jurisdiction of the courts. Political decisions related to social policy must remain the exclusive jurisdiction of a democratically elected Parliament.

While Canadians enthusiastically support the charter they are becoming increasingly concerned about the political direction of the courts. Nevertheless, judges in Canada have taken on a greater role in shaping government policy, an area that was previously reserved for elected officials.

In many cases where the judiciary has confined itself to its proper constitutional role its decisions have had a positive effect. However in many other cases, such as the Sharpe child pornography case, the effect has had detrimental effects on our society and our ability to protect our children.

Whether or not ordinary Canadians agree with conclusions reached by the courts, it is apparent that Parliament's social policy leadership is becoming irrelevant since its choices are limited by the political choices of the courts as Parliament is ordered to comply with judicial policy directions in all existing and future legislation. As a law-making body, Parliament is becoming less relevant, less creative, less effective, and less vigorous as a result of this shift in power.

Recently, three provincial courts have ventured into the realm of social policy and have ordered Parliament to redefine the institution of marriage. It is important to note that Canada is the only country in the world whose courts have determined the issue of same sex marriage to be a rights based issue. The two countries that have legalized to some extent so-called same sex marriage, the Netherlands and Belgium, have done so as a matter of public policy through the legislative process, not on the basis of judicial compulsion.

In respect of this issue, this new wave of judicial activism appears to pay little heed to either Parliament or indeed the comments of the Supreme Court of Canada as set out in prior decisions. In the Egan Supreme Court decision in 1995, Justice La Forest, writing for four judges for a nine court panel, specifically rejected the idea that the traditional definition of marriage improperly discriminated against same sex couples. Rather, he concluded that Parliament was properly entitled to make a distinction between marriage and all other social units. In his words:

> ...the distinction made by Parliament is grounded in a social relationship, a social unit that is fundamental to society. That unit, as I have attempted to explain, is unique. It differs from all other couples, including homosexual couples.

● (1020)

The other five judges chose not to base their decision on this issue and in the result the decision of Justice La Forest, together with the judgment of Justice Sopinka who concurred in the result arrived at by Justice La Forest, forms the authoritative basis of the decision. Although both Justice La Forest, on behalf of those who addressed this issue, and Parliament have clearly expressed their support for traditional marriage legal challenges continue to mount.

Last week, when the British Columbia Court of Appeal ruled that prohibiting same sex marriage was discriminatory, it joined two other recent lower court rulings in Ontario and Quebec. I was surprised, perhaps I should not have been, but I was certainly disappointed to hear the justice minister suggesting the possibility that he may choose not to appeal the British Columbia decision, particularly since he along with the majority of his cabinet colleagues voted in support of a Reform Party resolution in 1999 that stated:

> ...marriage is and should remain the union of one man and one woman to the exclusion of all others, and that Parliament will take all necessary steps to preserve this definition of marriage in Canada.

The Liberals are now deserting their commitment that they made to the public of Canada. The former finance minister who hopes to be Canada's next Prime Minister has failed to articulate a clear position on this issue. He has said that he would support the decision of the courts and would not use the parliamentary override, the notwithstanding clause, to preserve traditional marriage.

This is astounding considering that he voted to take all necessary steps to do so four years ago. He is failing to show leadership. He is deserting the commitment he made to Canadians four years ago. Knowing that public opinion is divided on this issue, the Liberals may find it convenient to leave this hot potato with the courts in order to shift the responsibility for this matter onto the unelected and unaccountable judiciary that cannot be voted out of office.

However, if the Liberals decide not to challenge this court decision, as they have apparently done, they will have failed in their responsibility to demonstrate leadership on this important social issue.

As the chief law officer of Canada, the justice minister has a clear obligation to Canadians to appeal the B.C. Court of Appeal decision to the Supreme Court of Canada. If the Supreme Court then chooses to abolish traditional marriage by overturning the Egan decision in the comments of Justice La Forest, then the minister is obligated, in keeping with the promise he made to Canadians in 1999, to invoke section 3 of the Canadian Charter of Rights and Freedoms.

At this point the decision is properly back in the hands of parliamentarians and not in the hands of those who would improperly take this jurisdiction away from the elected representatives of the people. Those parliamentarians who choose to allow the courts to make these decisions, because they do not have the courage to make the decisions themselves, fabricate an excuse by saying it is the Constitution that makes us do this.

Let us make it perfectly clear that section 33 is, in fact, an appropriate mechanism by which Parliament retains supremacy in this country. Although the courts may successfully be pressured by interest groups into a position on marriage based on what may be new and fashionable, it is the duty of Parliament to await the test of time through rigorous debate. This is particularly true because these views and theories on marriage are so oddly out of step with the views of ordinary Canadians, and indeed historical and sociological precedents on marriage across the world.

● (1025)

In the case of John Robin Sharpe, our ability as Canadians to protect children from sexual abuse and exploitation has been seriously eroded by the courts. Parents breathed a sigh of relief after a January 2001 Supreme Court decision substantially upheld Canada's laws against child pornography. Unfortunately, the exception created for personal writings was defined in such a broad way that violent and anti-social text that glorified the sexual exploitation of our children by adults like Sharpe could be justified under the law.

We would never tolerate that kind of abuse of minorities in this country. We would not tolerate that kind of abuse of women in this country. Yet the Liberal government is prepared to tolerate the abuse of the most vulnerable people in our society, our children. We did not see this immediately, but a year later, when Sharpe was re-tried in the B.C. Supreme Court, the judge interpreted Sharpe's pornographic works involving children, the sexual abuse of children, as having artistic merit. It is shameful.

Not surprisingly this was the same judge who had originally struck down the law as unconstitutional in 1999. Clearly, what he could not do by declaring the law unconstitutional, he simply did by applying an absurdly broad definition of artistic merit. Sharpe's writings are not art by any reasonable standards. His writings depict sexually explicit material that glorifies the violent sexual exploitation of children by adults. The loophole of artistic merit remains in the new Liberal bill, Bill C-20.

Although the Liberal government has used smoke and mirrors to pretend that it has made the loophole disappear, a prominent Liberal lawyer, David Matas, who represented Beyond Borders, has in fact said the new Liberal legislation would create a larger loophole than artistic merit. Yet these members opposite claim that they have addressed the problem. They have not done anything in Bill C-20 that purports to abolish the defence of artistic merit. They are misleading the public when they suggest that the defence of the public good is a satisfactory answer.

The other issue of importance is the law that allows convicts, including child sexual predators, to serve their terms in the community, otherwise known as house arrest. The Liberal government instituted this policy in 1996 in order to reduce incarceration rates. Whatever happened to the overriding concern about the protection of society?

The Liberals have become bureaucrats who say that we need to reduce incarceration rates. What about the protection of children, people in the streets, our cities, towns, and rural countryside? Serious criminals who still pose a risk to the community have abused these sentences and the government has done nothing to take steps to prevent that.

For example, in 2001 a New Brunswick man was handed a six month conditional sentence and 18 months probation after he pleaded guilty to possession and trading of child pornography on the Internet. The pornographer dealt in pictures involving children between the ages of 10 and 12. Although the law directs the courts to impose the sentence only in those circumstances where serving the sentence in the community would not endanger the safety of the community, that principle appears to have been long forgotten by the courts.

The courts have ignored the federal justice minister's stated intention that these house arrests would not apply to violent crimes. Even the concept of imposing a prison sentence to deter others no longer seems to be applied as a result of the Liberal law.

In another more recent case the supreme court overturned a 1993 law passed by Parliament prohibiting prisoners serving a sentence of two years or more from voting in federal elections.

● (1030)

In another more recent case the Supreme Court overturned a 1993 law passed by Parliament prohibiting prisoners serving a sentence of two years or more from voting in federal elections. It was found that the law infringed section 3 of the Charter of Rights and Freedoms, which gives Canadians the right to vote. As a result, the motorcycle gang member and convicted murderer who challenged the law won the right to vote. In the days and weeks following the ruling, polls showed that the overwhelming majority of Canadians disagreed with the decision.

In the upcoming May 12 byelection in Perth—Middlesex, a prisoner has been placed on the voter's list who recently was convicted of stabbing his wife to death while their children watched. Canadians are outraged that murderers and violent criminals can take part in the democratic process for which they have shown contempt.

By the court substituting its political opinion, and I emphasize it is a political decision on the part of the court, this is not a legal decision, for that of elected parliamentarians, Canadians have no reason to believe in the legitimacy of democratic government and the rule of law. Unfortunately, although the Canadian Alliance introduced a motion last year that would end prisoner voting, the Liberal government refused to support it, suggesting that it would deal with the problem in some other mysterious way. In actual fact the constitutional amendment, as outlined in the motion, is the only way by which Parliament can reverse the effects of this damaging and ill-conceived court decision.

If a member of Parliament makes laws with which Canadians do not agree, that member of Parliament may not be re-elected. However Canadians do not have the opportunity to remove judges who make significant decisions that do not reflect the values of our citizens and our country.

Once the Prime Minister appoints a judge, by virtue of our Constitution a judge may remain in his or her position until age 75. Because of the important decisions our judges are called upon to make, many people in Canada believe that the closed door process for choosing judges, controlled by the Prime Minister, should be changed. In fact Canadian Alliance policy specifically calls for Supreme Court of Canada judges to be chosen by a multi-party committee of the House of Commons after open hearings. Others would like to go further. A recent survey taken by the polling company Environics suggested that two-thirds of Canadians believe that Supreme Court judges should be elected.

Regardless, I believe the closed door process for choosing Supreme Court and Court of Appeal judges is in need of review. Although the Prime Minister consults with interest groups such as law societies, bar associations and individual members of the legal associations and the legal community including judges, as well as the justice minister himself when making appointments, given the significance of court decisions since the advent of the charter, it is increasingly necessary for these appointments to come before Parliament in some fashion so that a broader spectrum of Canadians are involved in this decision.

I dare say there are not many members of the House who could name the nine Supreme Court judges who have so much power over the lives of individual Canadians and our democracy. I doubt if one person could stand in the House and name all nine. At the very least, Canadians have indicated that judicial appointments must allow for greater direct input by citizens to help ensure that those we appoint as judges properly reflect the values of Canadians rather than simply the political interests of a particular Prime Minister.

My time is drawing to a close, but I would direct the readers or the listeners to go back to some of the earlier Supreme Court of Canada decisions where the courts said in very lofty terms that these rights and freedoms were not to be interpreted in a vacuum, but they needed to be interpreted in the context of our historical and cultural roots. The courts have cut off those roots. They have gone on a frolic of their own. It is time that it stops. Ultimately it is the duty of Parliament, as a federal legislative body, to bring our public policy and our laws into line with the views and values of Canadians, and so I encourage all members to support the motion.

● (1035)

[*Translation*]

Hon. Don Boudria (Minister of State and Leader of the Government in the House of Commons, Lib.) Mr. Speaker, we have just been hearing comments about the need for Parliament to protect itself against certain court decisions. I must say that, having heard my hon. colleague's speech, it is my impression that we should instead be having a motion to protect society against speeches such as the one we have just heard.

Some members of the House have suggested that the courts are assuming a role that is not contemplated in the Constitution. That is close to ridiculous. Such comments may cause people to question the legitimacy of the courts. In a society where we value the law, comments like this coming from parliamentarians run totally contrary to the principles we are called upon to defend in this Chamber, collectively and individually.

Of course criticism and debate are necessary elements in a healthy democracy. That is what gives members the right to make statements, but is certainly not an excuse to make statements that are neither informed nor responsible.

The impression created by the speech we have just heard is misleading and could risk damaging the credibility of the institution of the Canadian courts and the public's confidence in our system of justice as a whole.

[*English*]

It is clear that the power of judicial review has always existed under the Constitution. It is not as if the Prime Minister three weeks ago kicked out the former Supreme Court justices and appointed a fresh batch of them with a new mandate under a new Constitution. That power of judicial review has existed since 1867.

In first year university we were taught issues such as Russell v. Regina. It had to do with who had the authority to dispense liquor licences. I studied that a long time ago. I even had a different haircut then. This is to say how long that right of judicial review has existed. The boundary between Ontario and Manitoba was decided that way several years later under Premier Mowat.

The hon. member across the way refers to the right to vote of women and I am glad he made that point. Maybe he could talk about the right of women to sit in Parliament, namely in the Senate. In fact it was part of our judicial system that eventually gave them that right. The judicial committee of the Privy Council made that decision.

I wonder at that time, had it been left to people who think the same way as we just heard in the speech a moment ago, whether that right would have been achieved then. To ask the question is almost the same as answering it. It probably would not have existed today.

● (1040)

[*Translation*]

As I have said, the courts have always played a significant role in reviewing government legislation. This is a longstanding principle of the common law. There is no question that the role of the courts in interpreting the Charter has given them a higher profile and a more direct effect on the daily lives of Canadians.

However, even though the courts exercise considerable influence on the shape or the interpretation of Canadian law, they do so in accordance with well-established rules of constitutional and statutory interpretation, and not in a vacuum. Decisions are not reached on the basis of any personal bias on the part of judges, be they in the Supreme Court or in the other courts of Canada.

[*English*]

Where the courts signal to a legislature that the Charter of Rights is not being protected, as is the case with some of the things that were raised today, and that does not cover everything that was raised this morning, elected legislatures are free to choose how to respond within the framework of the Constitution. Case in point is the issue of child pornography. It is not as if Parliament did not respond to that issue. We passed Bill C-20 over the objections of some people in the House who claim today to be defending our children in the case of Bill C-20.

Mr. Myron Thompson: It does not do it.

Hon. Don Boudria: The law improves the state but does not improve it enough, and that was the excuse for voting against it. This is what the member across the way are telling me. Canadians will be free to judge that one.

I want to deviate a bit from my text and speak to the other issue that was raised about inmate voting. Here is how the logic across the way works. Members across the way claim that the Charter of Rights goes too far in giving authority to judges but we do respect what is in the Constitution. The member who spoke just before me said that. However in the case of inmate voting, which is outside the Charter of Rights but within the Constitution, he does not like the Constitution. Does the logic of this escape some members? It has escaped me.

The hon. member has said that we must override the Charter of Rights while respecting the Constitution, except when something is adjudicated upon that is in the Constitution and the decision rendered is not liked. This is like a double notwithstanding clause. If we do not like that notwithstanding clause, we amend the Constitution and create a new notwithstanding clause. That is ridiculous.

[*Translation*]

For years, centuries even, people—philosophers and others—have talked about the rule of law and the importance of the judiciary being separate from the legislative branch. This has been a part of our traditions since the very beginnings of this country.

Earlier, we heard an argument in favour of electing Supreme Court judges. What western democracy has this kind of structure? I do not know of any.

Of course, there may be municipal judges in some American cities that are elected. That may be the case in some states. However, this is not universally true, nor is it true when it comes to judges in the U.S. Supreme Court. They are most certainly not elected.

The independence of the judiciary is fundamental. Judges' independence must be respected, both individually and collectively. When there are problems with a judge, due to personal conduct or something of that nature, there is a judicial council that deals with the case.

However, with respect to creating a parliamentary appeals court that could overturn the Supreme Court in cases where we did not like constitutional judgments, I am not game for that. I am the minister responsible for our country's electoral laws. Did I like the Sauvé decision? Of course not, and we appealed it. However, in the end, it is the Supreme Court that decided. The Supreme Court decided, as was its right, instead of doing what the minister responsible for the Canada Elections Act would have liked.

Of course the minister would have liked something different, otherwise, we would not have appealed the decision; that is obvious. That was the position of the minister, being myself, and the cabinet, because the decision to appeal is up to the cabinet. We did appeal it, and the result was the Sauvé ruling.

Now the members opposite are saying, "We respect the Canadian Charter of Rights and Freedoms, but there is a legitimate procedure to overturn decisions under the Charter".

Except that it does not apply to the Sauvé case, and the hon. member himself said so earlier. He is suggesting that, because it would not apply to the Sauvé case, therefore the entire Constitution should be overturned, just to deprive one person of a right. To overturn the Constitution is ridiculous to begin with, and to want to do so to take away a right is even more ridiculous.

Those who have the right to vote are not necessarily the ones we like best, individually or collectively. There are many people I do not like as much as others. There may even be some I do not like at all. I might prefer that some of them did not vote. However, this is not the same as saying that this allows us, individually or collectively, to deprive them of the right to vote, especially after they were given this right by the Supreme Court of our country.

[*English*]

Mr. Kevin Sorenson: Yes, we can.

● (1045)

[*Translation*]

Hon. Don Boudria: The member said, "Yes, we can".

[*English*]

Mr. Kevin Sorenson: The Constitution changed.

[*Translation*]

Hon. Don Boudria: There, he just said it. We are going to overturn the Constitution to deprive them of a right.

[*English*]

Mr. Kevin Sorenson: The Constitution changed.

[*Translation*]

Hon. Don Boudria: He just reiterated it. Let the people decide. They can decide whether they want to live in a country where we are protected by our Constitution or in a country where the Constitution can be overturned when decisions handed down by the courts are not to our liking.

One can wonder in what kind of country we would be living if that were the case. I prefer the protection of the Constitution to that of the people who would make arbitrary decisions to overturn a court ruling every time it did not suit them.

[*English*]

That being said, it is not as if the government had not taken its responsibility in regard to election laws. Indeed, I answered questions on the floor of the House at every occasion after that decision was rendered. Then I referred the issue to the Standing Committee on Procedure and House Affairs, formerly called the committee on procedure and elections. It is the committee which reviews legislation dealing with election laws in this country. Any input that colleagues have can be made there.

Did that member or any other one from his party make a contribution in that regard? Of course not.

This has nothing to do with protecting Canadians. How does what has been proposed today protect anyone? The Alliance produced a motion that is not even votable. That really gives a lot of protection to Canadians, does it not?

This has everything to do with a byelection that will occur next Monday. It has everything to do with it and the hon. member knows it. Even over the last couple of days the Alliance members have been invoking in this line of questioning the name of every offender they have been able to find, with the goriest of scenes from the constituency in question.

We are not crazy. Canadians know perfectly well what the opposition is up to over there. In order not to be ridiculed because the motion is so out of step with reality, the Alliance members deliberately chose not to make it votable in order not to look too foolish at least with the proposition that they have brought before the House.

We all know what that is. I am the leader of the government in the House. Do I know if they have votable supply days left? Of course they have supply days left that are votable. The Alliance members deliberately decided to make this one non-votable, even though they had a votable day left. As a matter of fact they have two votable days left.

It was a deliberate choice on their part. They probably could not even get this motion voted on by the totality of their own caucus, let alone the humiliation that such an extremely worded proposition would have had for the membership of the House.

In summary, we have before us a proposition that says that they want to override the Charter of Rights and Freedoms because it is claimed there is authority to do so and in any event, when there is not authority to do so, then they want to override the Constitution.

● (1050)

Mr. Brian Fitzpatrick: Mr. Speaker, I rise on a point of order.

The member said something about making the motion votable. I would ask for the unanimous consent of the House to make our motion votable.

The Acting Speaker (Mr. Bélair): Is there unanimous consent to make the motion votable?

Some hon. members: Agreed.

An hon. member: No.

Hon. Don Boudria: Mr. Speaker, a deathbed repentance on the other side will not do any good for the member. The Alliance thought this out—

Mr. Vic Toews: Mr. Speaker, on a point of order. I want the record to reflect that the member speaking is in fact the one who now opposes making this a votable motion.

The Acting Speaker (Mr. Bélair): That is not a point of order, but the message has been made.

Hon. Don Boudria: Mr. Speaker, let the record show, and I will gladly state, that the opposition party, having deliberately made its motion non-votable and embarrassed for having done so, on the floor of the House of Commons deliberately tried to change it and get our cooperation to get itself out of the embarrassment. No way, José. It does not happen that way. We are not going to do it. Alliance members can live with the decision that they made in regard to this motion. They can live with it. Not only is the motion just awful in the way it was structured, but they can live with the condition that I just described.

In a few minutes we will be at the questions and comments period, but we should remind people of the historical fact that the charter was adopted in our country after broad public debate and culminated in receiving widespread support. It enjoys the support of Canadians. While perhaps the impact of the charter was obviously not anticipated with every single court decision, we were all aware that the role of the courts would evolve as a result of conferring on them additional responsibilities. We conferred on the courts additional responsibilities. We should not be shocked that the courts have conferred responsibilities. That was decided at the time.

As a member of Parliament and as a cabinet minister, I believe that we have a duty to dispel the notion that judicial review is anti-democratic. It is not. It is a protection of democracy. This is a notion that is often preferred when individual or minority rights have been protected against majority excesses.

There is a great need for all of us to acquire a better understanding of the challenges that each of our democratic institutions, and our courts is one such institution, present the other in the development of laws that balance complex and competing public interests. This new understanding can only be achieved when these challenges are properly understood and the debate surrounding them is informed and responsible and that people do behave responsibly.

● (1055)

[*Translation*]

I want to take this opportunity to respond to critics of this alleged judicial activism on behalf of prisoners.

As members know, on October 31, 2002, the Supreme Court of Canada handed down its decision on the Canada Elections Act which had, of course, restricted inmates from voting. The fact that the decision was split five to four demonstrates how complex decisions about this kind of protection can be.

This was the second time in the past decade that the court had considered the constitutionality of restrictions on prisoners' right to vote. In 1993, the Supreme Court of Canada had ruled that denying all inmates the right to vote was overly restrictive. After this decision, a second piece of legislation was enacted containing the restriction that existed until a short time ago.

Once again, the courts have ruled, and Parliament must respect their decision.

[*English*]

We will respect these decisions and we will do what is right. We will do what is right because it is right, not because some people found an issue to be raised this week, thinking somehow that it would increase their popularity in a riding where they are probably running around 10% or 15% in the public opinion polls. People earn the respect of the people in that constituency and elsewhere by doing the right things, not by further damaging themselves by making outrageous statements on the floor of the House of Commons. That is the way by which we will earn the respect of Canadians.

Mr. Richard Harris (Prince George—Bulkley Valley, Canadian Alliance): Mr. Speaker, the hon. House leader is talking about doing what is right and says that they will do what is right. What sheer hypocrisy. The member has been in the House as long as I have been here, and even longer, and since 1993 he has continued to stand in the House and crow about the vast majority of Canadians who elected him and his government.

When it comes to the Liberals being elected to form the government, it is okay, but when a vast majority of Canadians are asking the government to remove all the loopholes that would allow any form of child pornography to exist, they will not. When the vast majority of Canadians are offended by the fact that prisoners, murderers, rapists and child molesters have the right to vote because some level of court said so, and the vast majority of Canadians want that fixed, the government will not do it. All of a sudden the majority does not count any more.

When the government can use the majority, it is okay, but when the majority of Canadians want it to do something that is against its philosophy, it says that it will not.

I have a question. Just where does the House leader believe the ultimate decision on how to run this country should be, in this Parliament, the Parliament of Canada, or at some court around the country? Who has the supreme—

● (1100)

The Acting Speaker (Mr. Bélair): The hon. the government House leader.

Hon. Don Boudria: Mr. Speaker, it depends on what the hon. member is asking. If he is asking whether the Supreme Court is supreme in rendering judicial decisions, I think its name answers that question. It is called the Supreme Court because it is the supreme court. If it were not the supreme court, it would not have been called the Supreme Court. People made that decision long before I or the hon. member sat here.

Was it at one point appealable? Yes, it was appointed to a judicial committee of the Privy Council. The decisions of the Supreme Court were not appealable to the House of Commons. I do not know if that is what he is suggesting today. I do not ever recall, in my limited knowledge of constitutional history, that there ever was an appeal to the Canadian House of Commons of Supreme Court decisions. That has never existed.

Is he asking that we restore the system that was there before, which means that we could appeal in England the decisions of the Canadian Supreme Court? I do not think that is what he is advocating. If he is saying that something was changed to create this and he wants to restore the condition that was there before, that is in fact what he would be asking to restore, which of course would not even do that which he is asking anyway, as I indicated.

I want to respond to the second part of his question, regarding the Sharpe case.

The legislative package, in other words Bill C-20 and other legislation, responds to the concerns about the defence of artistic merit and the definition of written child pornography. The defences that were there before have been reduced to a single defence of public good. As well, the definition of written child pornography would be expanded to cover material that was not even covered under the previous legislation, and would include material that contains written descriptions of prohibited sexual activity and all those kinds of things. That is all included in the legislation which the hon. member says he did not want, even though that was the legislation for which they asked.

What does the public good mean? The public good defence means that any material or act in question must serve the public good and not exceed what serves the public good. That means that unlike the defence of artistic merit, the one that was there before, the new subclause (6), I believe, the public good defence would require a two stage analysis: Does the material serve the public good on any of the recognized areas and, if so, does it go beyond what serves the public good. In other words, no defence would be available where it does not serve the public good or it poses a risk of harm that exceeds what serves the public good.

I believe I have answered his questions.

Mr. Loyola Hearn (St. John's West, PC): Mr. Speaker, I listened with interest to the House leader for the governing party. I am a little mystified myself, I must say. I wonder if he could explain to me, first , how we can honestly debate three distinct topics where there might be varying views, particularly when one of them is before a committee that is travelling the country and is having a real problem trying to find a common solution with which most people will agree.

The other issue is in relation to prisoners voting. When we talk about murderers, rapists and child molesters, that is one thing, but what about the fellow who is serving some time for being a little rowdy? It may have been the first time in his life that he got into trouble or the first time he had perhaps one drink too many and was thrown into jail for a few nights. Are we lumping everyone into the same boat?

To try to debate these issues in such a forum, there has to be some other reason for it rather than just trying to find some solution here among us today.

Hon. Don Boudria: Mr. Speaker, I think the issue of the motive behind all this is an interesting one, which obviously is what the hon. member is asking.

On the first part of the hon. member's question, the propositions, if they are related at all they are very far stretch. They are largely unrelated, that is true. I suppose the motivation of the hon. members who put the motion is probably to describe that all these things may be examples, in their view, of a role they think is too big for the judiciary. Maybe that is their argument but they can make it themselves. Maybe that is what they are invoking.

Obviously the propositions are very unrelated. One of them, as the hon. member, the House leader, has just raised, is an issue being studied by a committee of parliamentarians obtaining and soliciting opinions of Canadians. Another one is an issue that involves a decision made by the Supreme Court within the parameters of the charter and to which the House has already responded by way of legislation, Bill C-20. The third one is completely outside of the Canadian Charter of Rights and Freedoms and goes beyond that. Therefore they are very unrelated propositions.

On the issue of inmate voting, to be totally fair it does not go quite as far as what the hon. member has just said. The original Supreme Court decision of some years ago, the one that said that everyone who was incarcerated could not vote, was thrown out. However that is not the one that was thrown out lately. Following that first effort, Parliament re-enacted the law but put in the provision, I believe it was two years, so those who were short term incarcerations, overnight and something like that, perhaps even wrongfully charged or whatever, those people were not covered by the law; only those who were in penitentiaries and longer term incarcerations. That in fact was the decision that was eventually given for which the government appealed all the way to the Supreme Court and lost in a five to four decision. However it did not involve at that point the short term stays in incarceration, only the long term ones, the other one having been disposed of several years earlier.

● (1105)

Mr. Brian Fitzpatrick (Prince Albert, Canadian Alliance): Mr. Speaker, I want to remind the House, since we are speaking on voting matters, that it was a Conservative government led by John Diefenbaker that gave aboriginal people the right to vote in this country, not a Liberal government.

The notwithstanding clause, section 33, is part of our Constitution. The premier of Manitoba, Sterling Lyon, a Rhodes Scholar; Allan Blakeney, the premier of Saskatchewan and a Rhodes Scholar; and Peter Lougheed, a very distinguished premier of Alberta, saw the problem, the conflict between the will of the public and an elitist court system when decisions were clashing. They insisted that the supremacy of Parliament had to be the rule. Everyone agreed to that, including Prime Minister Trudeau. That amendment was made to the Constitution. It is part of our Constitution and part of our charter.

Why does the Liberal government refuse to recognize that section 33 is part of our Constitution and charter of rights?

Hon. Don Boudria: Mr. Speaker, I believe most people who have read the Constitution know that section 33 exists. I can confirm that for the hon. member.

[*Translation*]

Mr. Richard Marceau (Charlesbourg—Jacques-Cartier, BQ): Mr. Speaker, I usually begin a speech by saying that I am pleased to speak on a certain subject, but today, I must admit, I am not pleased with the motion. In fact, I find it rather ridiculous. I think it is unfortunate and I will explain why, that we are spending so much time—a whole day—on a motion that is not even votable.

First, it is obvious that my political party is not a great admirer of the Canadian Constitution. Not only are we sovereignists, who want to get out of the Constitution rather than amend it, but also, most importantly, we believe that the Canadian Constitution, especially in its 1982 form, is illegitimate. It was imposed on Quebec. We remember the "night of the long knives". No Quebec government since 1981 has wanted to sign this Constitution which was imposed by a conspiracy involving the federal government and the governments of nine Canadian provinces. I think that is the first essential point we wish to make.

My second point—and I will speak to the three points raised by the hon. members of the Canadian Alliance—is the following. In the motion, we are asked to bring in measures to reassert the will of Parliament. I then have the following question: where do the will and business of committees come in?

Let us begin with the first point, the definition of marriage.The Standing Committee on Justice, of which I am a member, is working very hard on this issue, and has been doing so since January. We have heard witnesses in Ottawa, Vancouver, Edmonton, Moose Jaw, Steinbach, Sudbury, Toronto, Montreal, Iqaluit, Sussex, New Brunswick, and Halifax. We are working on it.

So, what is the Alliance trying to do? It is trying to set aside the work of the committee by presenting such a motion. The Alliance, which prides itself on being very democratic, and which commended the democratic process chosen by the committee in going to consult the people across Canada, now comes here with this motion, saying in effect, "Never mind the hundreds of witnesses we have heard; never mind the hundreds of briefs they have submitted; never mind the honourable work done by all the hon. members from all political parties who sit on this committee; none of them matter".

I am a bit frustrated that the House is being told today that the adopted definition and other things are being threatened, when the Standing Committee on Justice is addressing this very issue. I am sorry to have to say this, but this is an obvious example of the Alliance's lack of respect for this committee's work. By presenting this kind of motion today, it is showing a lack of respect.

On the definition of marriage, the government has said, given the three decisions by the lower courts, that Parliament must address this issue. A discussion paper has been provided to the members and is available to the general public. The public has been asked to tell us what it thinks about the four options.

It will not come as a surprise when I say that, of the four options presented by the government, two are unconstitutional due to the division of powers.

● (1110)

One of the four options is allowing civil unions. However, I would remind members that, under section 91.26 of the Constitution Act, 1867, the federal government has jurisdiction over marriage and divorce, and the provinces and Quebec have jurisdiction over all other matters relating to family law. This means, for example, that anything Parliament wants to do relating to family law, if it does not concern marriage or divorce, falls outside this Parliament's jurisdiction. For marriage, Parliament has jurisdiction only over its basic conditions. So, the idea of civil unions must be set aside based on the division of powers.

The other option is for the state to withdraw from marriage and leave this up to organized religion. Persons solemnizing marriages in the provinces get their licence from the provinces. For example, in Quebec, priests, rabbis or imams solemnizing marriages are officers of civil status. Consequently, it is not up to Parliament to tell Quebec and the provinces who has the power to solemnize the union of two people. So, these two options must be set aside given the division of powers.

The committee therefore has to choose between keeping the current definition of marriage—in other words, the union of one man and one woman, to the exclusion of all others—or changing the definition. On this, I would simply like to point out that the courts, such as the British Columbia Court of Appeal most recently, have ruled that the current definition is discriminatory and that this is not justifiable in a free and democratic society.

People can complain as much as they want, they can criticize this idea of judicial review, they can do whatever they want. The fact is that the principle of judicial review forms the very foundation of how our democracy operates. I will remind the House that this idea in Canada goes back to an old principle adopted by Chief Justice Marshall of the U.S. Supreme Court, in 1835. Canada could not use the example of the British Constitution because it is unwritten, so this notion of judicial review came from the United States.

As I was saying, they can complain about it and criticize it, but the fact is that today our society operates this way. This is the constitutional arrangement that we have set up. Being a sovereignist, I hope that when Quebec becomes independent, we will also have some way of protecting minorities from decisions of the majority. I also hope that the constitution of an independent Quebec will contain a judicial review process. This a key element for the rule of law and one of the fundamental elements for healthy democracy.

That was the first point. The second point refers to house arrest for child sexual predators, which allows them to produce and possess child pornography. Obviously, as a father of young children, I completely agree with all those who defend children as our greatest resource and say that we must protect them. That seems quite obvious to me. I think it is unfortunate that they would play politics on this by accusing other member of the House of not having the interests of children at heart.

I have been in politics for 15 years now, and I was elected almost six years ago now. I have no hesitation whatsoever in saying that there is not one person in this House, from any of the five different political parties here, that does not have the interests of children at heart. No one can say that.

● (1115)

It is all right to criticize the government's approach, for the opposition parties to criticize each other, but to say that someone in this House does not have children's interests and protection at heart is bad faith and demagoguery. In politics, I believe demagoguery always backfires on the one who uses it.

We are all aware that this part of the motion by the Canadian Alliance refers to the Supreme Court judgment in *Sharpe*, with which the members of this House are rather familiar. Apparently, the Alliance was upset by two particular aspects of this judgment. First, the Court's interpretation of the defence of artistic merit. In fact, a large part of the decision was taken up with this. The court interpreted this defence as follows:

> I conclude that "artistic merit" should be interpreted as including any expression that may reasonably be viewed as art. Any objectively established artistic value, however small, suffices to support the defence. Simply put, artists, so long as they are producing art, should not fear prosecution under s. 163.1(4).

This judgment indicates that two types of material must be excluded from the definition of child pornography:

> (1) written materials or visual representations created and held by the accused alone, exclusively for personal use; and (2) visual recordings created by or depicting the accused that do not depict unlawful sexual activity and are held by the accused exclusively for private use.

We presume that the text of the motion refers to one of the above two points, although I cannot read the minds of our Alliance colleagues. Since I have trouble understanding the intervention by the Alliance, however, I must base my intervention on a premise, and this is the one I have chosen.

We have trouble understanding how the Alliance could apparently overlook the fact that the government introduced a bill last December 5 that was specifically aimed at amending the Criminal Code as it relates to child pornography. The amendments proposed by the government address precisely those two aspects. They are the focus of the bill.

First, there is a proposal for a new public good defence and, moreover, the bill tightens up the definition of child pornography, which will cover aspects it did not use to cover.

While we in the Bloc Quebecois question the constitutionality of such a change to the definition of child pornography, we intend to do serious work in committee, considering the proposed changes and listening to testimonies in this regard.

I think much greater respect for parliamentary procedure and for Parliament per se would have been shown, had committee work taken place before such a motion were put forward. The Standing Committee on Justice and Human Rights should have been given an opportunity to hear testimony from victims, lawyers, constitutional experts, peace officers, and artists before such a motion was put forward.

We believe that studying Bill C-20 in that environment will allow a much more serious and intelligent consideration of the issues raised in part (b) of the motion with respect to child pornography than the present debate does.

I will now address conditional sentences. Naturally, we deal with many things, and cannot deal with everything at once. But again, I would like to remind the House that the Standing Committee on Justice and Human Rights is considering conditional sentences and that we are not done putting our recommendations together.

Once again, for the third time in as many points, if the Canadian Alliance wants to be respectful of the legislative process and Parliament, it should do a good job in committee.

● (1120)

The Alliance should make sure it does its work in committee thoroughly, seriously and studiously, instead of presenting a motion such as this.

The Alliance motion is probably referring to the Supreme Court decision in R. v. L.F.W. In that case, the Attorney General appealed a conditional sentence of 21 months given to an offender convicted of indecent assault and gross indecency.

In this case, the offences were committed between 1967 and 1973 and the complaint was filed in 1995. At the time the offences began, the victim was six years old and the accused was 22.

The Supreme Court was divided in its decision but the Attorney General's appeal was rejected.

The Bloc is of the opinion that trial judges and courts should have all possible latitude in determining sentences for each case they hear, on a case-by-case basis.

They are in the best position to determine sentences. Any given sentence does not have the same impact on everyone; the impact varies from one person to another. In committee, I raised certain other questions—sometimes by questioning the witnesses—that we will continue to raise and to examine as part of the committee's business. Instead of holding a debate here on a non-votable opposition motion, a motion that is all over the place and serves as a sounding board for the Canadian Alliance, it would have been more appropriate to do this work in committee, and do it more seriously.

I see that I have only three minutes left. I have so much to say in such a short time. To conclude, I will talk about granting prisoners the right to vote.

In the case of Sauvé v. Canada (Chief Electoral Officer)—a 2002 decision—the Supreme Court of Canada was asked to rule on the constitutionality of section 51 of the Canada Elections Act, which disqualifies persons imprisoned in correctional institutions serving sentences of two years or more from voting in federal elections.

The issue the Court considered in this case was the following: does this provision infringe the rights guaranteed by section 3, namely the right to vote, and section 15, equality rights, of the Canadian Charter of Rights and Freedoms?

The court, and this is important to remember since it is obviously a difficult subject for both parliamentarians and judges alike, overturned the previous decision by five to four. The majority opinion, signed by Justice McLachlin, ruled that the right to vote is fundamental in our society and cannot be lightly set aside.

The court found that to deny prisoners the right to vote is to lose an important means of teaching them democratic values and social responsibility. That is the purpose of sending people to prison, to tell them, “You have done something wrong. We want to rehabilitate you so you do not stay in prison for the rest of your life”. At least, I hope that no one in this House wants to see anyone remain in prison for life without any chance of getting out and becoming a full-fledged, law-abiding, responsible citizen who will find a job and contribute to society.

The government's novel political theory that would permit elected representatives to disenfranchise a segment of the population finds no place in a democracy built upon principles of inclusiveness, equality, and citizen participation.

The court adds that the argument that only those who respect the law should participate in the political process is unacceptable. Denial of the right to vote on the basis of attributed moral unworthiness is inconsistent with the respect for the dignity of every person that lies at the heart of Canadian democracy and the Charter.

The court ruled in the Sauvé decision that the Canada Elections Act provision denying the right to vote to inmates serving a sentence of two years or more infringed section 3 of the Charter and was not justified under section 1.

The Bloc believes that it is not appropriate to seek to amend this decision. Furthermore, it should be noted that inmates already had the right to vote in provincial and municipal elections in some provinces, including in Quebec.

In closing, I think that this is a waste of time, that this motion is badly structured, and that it shows a lack of respect for the committees, particularly the justice committee, which is working on three of the four issues mentioned in the Alliance motion.

● (1125)

[*English*]

Mr. Myron Thompson (Wild Rose, Canadian Alliance): Mr. Speaker, I have a short question for the member. I am sure the member would agree with me that Canadian children deserve nothing less than a total ban on child pornography. If we were looking for the Canadian people to be behind one issue, I do not think we would have any problem in finding well over 95% of them who would say that child pornography has totally detrimental results for the children of our land.

Pornography has become an industry. It is growing in leaps and bounds and by billions of dollars through all kinds of technology. What I fail to understand is the fact that there is no serious effort on the part of the government to fight this problem. Police departments all across the country are begging for resources and help to contend with this problem, which was magnified to a great degree because of the decision in the Sharpe case. Every piece, item and article of pornography has to be looked at to determine if it has any artistic merit, and in the future it looks like it will be to determine if it has any public good. There is an urgency here when thousands of young children are being victimized by the terrible disease of child pornography.

Does the member agree with me that child pornography should be banned in its totality? Does he agree that we in the House should do everything in our power to see that this happens, not through hours and weeks of committee work, but immediately? We must immediately address this problem that Canadians are obviously asking us to address through the thousands of petitions that have been tabled.

● (1130)

[*Translation*]

Mr. Richard Marceau: Mr. Speaker, I would like to begin by thanking the member for White Rose for his question and to tell him that I have absolutely no doubt of his desire to protect children. This is an issue that is very close to my heart, being the father of a 5-year-old boy.

In order to show where our opinions diverge, however, let us look at the following example. A psychiatrist or psychologist is trying to study pedophiles' attraction to children. To do so he needs written or pictorial material created by a pornographer in order to provide care to the mentally ill persons involved in pornography and in order to investigate what make this sexual deviant a danger to the children in our society.

Would what the hon. member is proposing—and this is what I want to question in committee as well—deprive researchers and scientists of the possibility of studying this phenomenon in order to combat it?

We can, of course, fight the spread of child pornography, via the Internet in particular, with the help of law enforcement officers and specially developed technologies. This is being done, of course, but it is also important to get to the source of the problem, not just the causes. Not only must the symptoms be addressed, but work must also be done directly with the dangerous offenders that are the source of the problem. If they are to be able to do this, our researchers, our doctors, psychiatrists and psychologists must have access to the tools required.

As a result, this will be an issue I will be wanting to pursue when the bill is debated in committee, so that our children will be protected today and in the future. There may be a way to provide these people with the treatment they so badly need, and thereby to provide our children with the protection they also need.

[*English*]

Mrs. Elsie Wayne (Saint John, PC): Mr. Speaker, I have to say that when I look at the bill I am absolutely shocked. As a member of Parliament I am asking myself what has happened here in Canada such that we no longer protect children, that we no longer protect marriage.

As the hon. member has stated, he is a father. I am sure he wants to protect his children and their future. The police came here from Toronto and we had a meeting with them; I could not look at the pictures being shown. It was horrendous what was happening. I have to say that the psychiatrists, in my opinion, do not need the pedophiles to see that. These people are mentally sick.

I ask the hon. member, as a father how could he possibly even support allowing any of this pornography to take place in Canada? We will find another way. We will all work together to find another way when it comes to these pedophiles. I ask the member to please not support pornography in any manner whatsoever.

● (1135)

[*Translation*]

Mr. Richard Marceau: Mr. Speaker, I hope this is a translation problem, because to suggest that I could condone pornography in any manner whatsoever is very dangerous; it is a very slippery road to go down. I do hope the problem is with the translation, and that the member did not say or suggest, whether directly or indirectly, that I condone child pornography in any way. I think it must be made clear.

I think that child pornography is wrong. I think that we must fight it any way we can. I think that one way we can do it is indeed to through the police and technological means. I will repeat, and the member said so herself, these are sick individuals; if they are sick, let us try to heal them. Let us look for a cure like we do for cancer, through research. But the fact that we do research on cancer does not mean that we are for cancer. Similarly, studying child pornography, its causes and deviances, does not mean that we are for child pornography, far from it. Just the opposite.

I hope that I made myself clear this time, be it in French or in English, translation or no translation.

[*English*]

Mrs. Betty Hinton (Kamloops, Thompson and Highland Valleys, Canadian Alliance): Mr. Speaker, I have listened very carefully to the speech made by my colleague from the Bloc. I have a very serious concern about some of the things he said today.

Yes, it is a sickness. I would agree completely that it is, but it is a mental sickness. It is not a sickness like cancer or diabetes or something that is curable. This is an incurable disease and we need to keep children safe from these kinds of people.

I would ask the member if he could answer just a very simple question for me. Does he believe that there is any artistic merit in child pornography?

[*Translation*]

Mr. Richard Marceau: Mr. Speaker, my answer to the second question is that, personally, I see no artistic merit in child pornography. The question is pretty simple indeed.

Also, once again, I do hope that the hon. member is not suggesting that mental sickness is not curable. There are thousands of Canadians with mental diseases and who can be treated. I am not talking about those with a dependence on pornography.

I repeat, and I want to make it very clear, I am against child pornography. I believe we must do everything in our power to fight it and that our action can take many forms.

However, to make it an issue, as I have heard suggested, borders on demagoguery. I would have so much more to say but, unfortunately, I am out of time. People may not necessarily support this particular motion put forward by the Canadian Alliance to fight child pornography, but to accuse these people or suggest directly or indirectly that these people condone such horrors is something that should never be done in this Parliament.

[*English*]

Ms. Wendy Lill (Dartmouth, NDP): Mr. Speaker, it is my pleasure to make some comments on this opposition day motion today. I will be splitting my time with the member for Halifax.

First I would like to say that I wish the opposition had taken this important and rare opportunity to have a debate in the House, a public trust, to raise an issue that the public actually cares about. Frankly, my constituents do not come to my office or call to complain about judges. They are concerned about real problems for real people.

I have spoken to people this week about issues around disability and around the high costs of insurance, car insurance, and pharmaceutical drugs. They care about the fisheries; we are facing a crisis in the fisheries in the east. They care about the environment. There are many issues that they care about and I do not see why we cannot be looking at those issues here today.

Instead, opposition members have decided to debate this motion. They have decided that their political future depends on retreating into a campaign of divisiveness, of playing on misunderstanding of and bigotry against gays and lesbians and of preying on parents' fears for their children by attacking the courts, the one institution unable by law to defend itself. It is sad that the opposition has descended to this level. Let us look at the motion:

> That this House call upon the government to bring in measures to protect and reassert the will of Parliament against certain court decisions that: (a) threaten the traditional definition of marriage as decided by the House as, "the union of one man and one woman to the exclusion of all others"; (b) grant house arrest to child sexual predators and make it easier for child sexual predators to produce and possess child pornography; and (c) grant prisoners the right to vote.

That is the justice agenda of the opposition. In fact, it is an agenda of creating fear, spreading misinformation, preying on maternalistic and paternalistic fears for children, and opposing equality. Opposition members seem compelled to find a murderer behind every bush in spite of a falling crime rate. They are compelled to take away the historical rights of first nations communities and generally be opposed to individual equality rights enshrined in the Charter of Rights and Freedoms. This motion shows how they have shrunk in the polls. They have been reduced to attacking the one group that cannot talk back: the judiciary.

Frankly, I think it is a good thing the NDP is in Parliament so that Canadians have a real opposition voice here, one that talks about real and important issues like health care. The NDP is the only party raising the fact that the government has continued to underfund health care and is not implementing the Romanow report. We are the only party keeping the government accountable for the fact that it is still underfunding the health system by over $5 billion, according to Romanow. We are the party raising the alarm about endangered public health policy across the country and how this mess has shown itself in the haphazard responses to SARS and the West Nile virus. A plan could have stopped SARS, but we have to rely on the brave doctors and nurses to risk their lives in a policy vacuum.

The NDP is also spending its time talking about the smog crisis that is covering our country every spring and—

● (1140)

The Acting Speaker (Mr. Bélair): I am sorry to interrupt. The Chair certainly hopes that somehow the hon. member will tie up her remarks on health and SARS, being the last one in the debate at hand. We are anxiously awaiting her comments.

Ms. Wendy Lill: Mr. Speaker, raising the issues that we are bringing to the floor is to make the point that we too believe the House of Commons is a place where issues that Canadians care about should be addressed. We are saying that we have to reassert the power of the House of Commons and we are doing that with bringing the issues of Canadians into play.

I will get back to some of the issues that are being addressed here. I think the official opposition is bringing forth in this motion somewhat of a shopping list on rights that it wants to remove from the Constitution. In the motion it complains that the courts have said that all Canadians are equal, including gays and lesbians. Because the Alliance is opposed to equality rights for gays and lesbians, it attacks the courts which are simply doing their jobs as told to them in the Constitution.

This shows that the Alliance believes in the *Animal Farm* approach to equality. It says that all Canadians are equal, but some should be more equal than others. The motion says that if someone is gay or lesbian, that person should not be equal and the law should sanction bigotry against those Canadians. The only problem with this narrow-minded concept of heterosexual superiority is that as soon as we say some Canadians can be legally allowed to have fewer rights, then in reality all Canadians have fewer rights.

I recall reading *Animal Farm*, the excellent short story by George Orwell. If anyone remembers George Orwell's *Animal Farm*, the farm was the attempt at the creation of a utopia represented by the animals driving humans off the farm. While the notion of self-government by the animals was great for a time, eventually some of the animals took over and decided that they were more important than all the other animals. They therefore changed their basic slogan that all animals are created equal to some animals are more equal than others.

Another premise of this motion is that judges are out of line. Judges interpret laws passed by this place. That is their job. Parliament and nine provincial legislators passed the Constitution, including the Charter of Rights and Freedoms. Judges have started interpreting this law passed by this place.

If the official opposition has problems with the equality provisions of the charter, it should say that and not hide behind attacking the judiciary. I support maintaining judicial independence. It is fundamental that judges be able to implement the laws without political interference.

I did not hear the official opposition attacking the Supreme Court when it upheld the Latimer conviction, even though there was considerable public debate over the case. The court properly, in my opinion, said that the rights of a disabled victim are equal to all other Canadians. I do not remember the Alliance standing and calling for the judges' heads on that one. It seems to pick and choose.

Another strange aspect of this is the contradiction between this motion and the opposition's obsession with becoming American. The opposition has spent an inordinate amount of time trying to say that Canadians should be American. Its cultural policy is, let the Americans do it. Its defence policy is, let us do what the Americans say. Its foreign policy is to follow the Americans in whatever adventure the Pentagon decides is best for it.

If the opposition was really pro-American it would never put forward such an anti-American bill, I would suggest, because in fact it would have understood that one of the great strengths of the American system is the protection of basic individual rights as stated by the U.S. bill of rights and protected by an independent judiciary. These things are central to the American system of law and government. Indeed, the U.S. supreme court has been more activist than Canadian courts on important issues such as segregation in the schools, abortion, due process for criminals, the use of the death penalty, cruel punishment for prisoners and have given an absolute freedom of speech blanket to even pornographers, but the official opposition seems to have forgotten that.

In conclusion, I wish the Alliance had decided it had something more useful to talk about today, such as the environment, health care, peace, or the crumbling state of our cities. Instead we see this myopia, this sense of betrayal by our courts which in fact I believe is one of the strengths of our democracy.

● (1145)

Mr. Chuck Strahl (Fraser Valley, Canadian Alliance): Mr. Speaker, that was an interesting speech but it was given by a member whose party uses *Animal Farm* as an instruction booklet, not as a critique on government policy. When we talk about irrelevant, it is the NDP.

We have a motion before us dealing with things that Canadians feel are important. They are not the top issue every day. We have had many other important issues, such as the war in Iraq, health care and so on, but the motion today is important.

I had a professional poll conducted in my riding a little while ago and 68% of the people in my riding supported the traditional definition of marriage. The last time the House discussed this issue, members, by an overwhelming majority, felt that Parliament should take all measures necessary to protect the definition of marriage. We are suggesting that it is time to do that.

On the other issue of sexual predators, if people do not think it is important that sexual predators be sent a message, then I say to them that they are not reading the tea leaves and they are not listening to the people.

We need to send a message to the population, to the sexual predators and others, that we mean business in this place and we will not be ignored by the courts or anyone else.

● (1150)

Ms. Wendy Lill: Mr. Speaker, I am not exactly sure what the question was but I will make the point that the NDP and this particular member are just as concerned as everyone else in the House about the issue of child pornography. There is absolutely no question about that.

However what is important is that we not bring out some kind of scare tactic, some kind of red herring at this point in time about how we are going to solve the problem of child pornography. The motion today, as far as I can see, will result in not one less child being abused in this country because the courts will strike it down as unconstitutional, leaving us back at square one.

If people really care about protecting children, we need to make sure that the child pornography legislation that is now on the table is carefully looked at in committee, that it solves the problems that we all want to solve and that it is good law and protects the rights of Canadians.

Mr. Myron Thompson (Wild Rose, Canadian Alliance): Mr. Speaker, over the last few years, with all the studies on child predators, and the problems we have with the assaults that have taken place throughout our society, we are ending up with thousands of young children being victims.

I constantly hear the NDP saying that we need to know the root causes. Studies have shown, and pedophiles and sexual predators themselves have indicated this very strongly, that child pornography was what started them on their trail of doing what they do. These are all well documented studies. That is the root cause of the problem.

What we say is that Canadian children deserve to have child pornography totally banned. Canadians, through thousands and thousands of petitions, have been asking for that. I know there are people in the hon. member's riding who are asking for the same thing.

Does the member believe, as I believe, that child pornography should be banned in its entirety?

Ms. Wendy Lill: Mr. Speaker, I would like to raise an issue that I think has become a red flag for members of that party. They believe that artists are out there somehow promoting child pornography. There is a sense that we have to remove any provisions for artistic merit.

An hon. member: No.

Ms. Wendy Lill: I am sorry but that is the kind of objection I have heard.

I do not know one artist who does not want to see strong child pornography laws. Everyone wants to see laws that will protect our children. Artists have children as well. We all want to see the obliteration of child pornography and the protection of our children.

Ms. Alexa McDonough (Halifax, NDP): Mr. Speaker, I am pleased to have an opportunity to make a few comments on the opposition motion that is before the House today. I had not intended to enter the debate. However I was in my office, busy dealing with some other things, when I suppose I was provoked into saying that I would not sit this one out or bite my tongue in the face of what seems to me to be a continuation of the kind of scaremongering and scandalmongering in which this particular party has indulged itself, in fact has almost perfected the art of, to the point where it sometimes is puzzling as to what it is those members think is accomplished by the way in which they go about tackling the issues that they bring before the House.

I want to be very clear that an opposition day is an opportunity to bring forward issues that one's party believes are the priority issues that Canadians would want addressed through their members of Parliament.

If the members of that party believe this is an issue of top priority, which I guess they do by the endless amounts of hand-wringing and hurling of accusations, then I guess they have a perfect right to bring it forward. However what provoked me was in listening to the member for Provencher, the sponsor of the motion before us today, attempting to discredit and devalue, with great indignity, and harrumphing the extremely important work of the Supreme Court of Canada and the independence of the Supreme Court of Canada, and suggesting that most people probably did not even know the names of the nine members of the Supreme Court of Canada.

After listening to the member I wondered what point he was trying to make. I will grant, absolutely and without a moment's hesitation, that the vast majority of Canadians could not stand and give us the names of the nine members of the Supreme Court of Canada. As a matter of fact I will admit that I had to really stretch to remember the names of the nine members of the Supreme Court.

Maybe it would be useful to read the names into the record if this is the real concern which the Alliance thinks needs to be debated on the floor of the House. We have the Right Honourable Madam Justice Beverley M. McLachlin; the Honourable Mr. Justice Charles Doherty Gonthier; the Honourable Mr. Justice Frank Iacobucci; the Honourable Mr. Justice John C. Major; the Honourable Mr. Justice Michel Bastarache; the Honourable Mr. Justice William Ian Corneil Binnie; the Honourable Madam Justice Louise Arbour; the Honourable Mr. Justice Louis LeBel; and the Honourable Madam Justice Marie Deschamps.

Now we have the names of the nine members of the Supreme Court of Canada, but what is the point of the member for Provencher?

He went on to talk about how the Supreme Court somehow usurps the powers and takes over the responsibilities of the Government of Canada.

I listened to my colleague from Dartmouth and she clearly set out something. I know the member who introduced this motion and the other members of his party understand that the Supreme Court does not usurp powers. The Supreme Court is there to interpret the laws that are passed by all governments and to ensure the rights and freedoms of all Canadians, which are guaranteed, are respected, protected and upheld.

It may surprise the member for Provencher to hear me say this but I agree with him that there are areas of social policy in which the government has been negligent. The government has not followed through in the way that it ought to, to be giving the kind of political leadership to some of the social policy issues of the day. I do not disagree with the member on that.

● (1155)

However, I then heard him say that an example of what is so wrong about what is going on is that repeatedly Supreme Court decisions have acknowledged that the rights, for example, of gay and lesbian Canadians are not being fully respected and protected. He uses that as an example of how the Supreme Court is somehow usurping powers.

I think it is absolutely clear. Unless that party will be absolutely insistent that it remain in the 19th century instead of dragged through the 20th century and into the 21st century, it is time to recognize that the definition of marriage as offered up by the Liberal government in 1999 is an antiquated shrunken down notion of marriage in today's context.

When I hear these members freak out at the notion that the definition of marriage should be modernized to recognize that it is not only a man and a woman in a relationship who want to make a commitment to one another, but that there are women who enter into loving lifelong relationships and men who enter into loving lifelong relationships who want to take on the commitments and benefits that go with that, I ask myself, what world are these Alliance members living in?

When the Supreme Courts points out that this is an issue that must be addressed, instead of beating up on the government for not sticking with the antiquated definition of marriage that it rammed through this place in 1999, that party should be applauding it because it recognizes that there needs to be some changes in the law to reflect reality.

When I see how insecure and traumatized some of these Alliance members are by the notion that there are relationships between women and there are relationships between men that are lifelong commitments, I wonder whether their problem is that they are insecure about marriage. And I am not suggesting about their own marriages. Maybe they are just insecure about their own sexual identity that they cannot cope with the reality that not everyone has the same sexual orientation that they do.

I have many criticisms of the government on a lot of fronts, but the fact that it finally opened up for public debate the issue of the definition of marriage is a step in the right direction. It was the Supreme Court of Canada, bringing in repeated decisions, that acknowledged that gays and lesbians are being discriminated against. This has finally forced the government to begin to address the issue. That is the system of checks and balances. That is what it means to have judicial review. It allows each and every citizen who feels their rights are not being respected and upheld to have an opportunity to have their day in court, and then to have a review and an appeal of a decision.

I do not agree with everything that the Supreme Court of Canada decides, but it scares the wits out of me to think that an official opposition party, that could become the government, would have that much disrespect not just for the current Supreme Court of Canada but for the whole system of checks and balances that is at the very heart of a healthy, dynamic democracy that is responsive to the needs, rights and freedoms of our citizens.

● (1200)

Mr. Roy Bailey (Souris—Moose Mountain, Canadian Alliance): Mr. Speaker, I am appalled at the representative of the party that has just spoken in the defence that has been put forth.

I have stood in many classrooms and have been called to many classrooms to see the results of a nine year old or an eight year old who has been sexually abused. Do these children have any rights? Or are we here to defend the rights of those who have done the abusing? That is the question.

I lived through a period of time that when we saw it, we did something about it. Now we get some whacky individuals who prevail on these kids and they must have rights, they must have defenders, but nobody is stepping forward and saying that an eight year old girl or a seven year old boy must be defended and their rights must supercede the rights of those who offended them.

Since the beginning of time the idea has been of a man and a woman consummating marriage. Time does not change the meaning of that nor will it ever change the meaning. When I represent a constituency that is 90% in agreement with that, I am not about to change it. One can call it a red herring if one likes. The NDP is wrong on these issues and so is anybody else who wants to defend it.

● (1205)

Ms. Alexa McDonough: Mr. Speaker, I did not hear a question but the usual rant. This is what demeans Parliament in views of many people. Members stand up, and rant and rave about how only the Alliance is concerned about children victimized by sexual predators because it introduces these motions again and again, as if it does anything to address the real issues of victimization.

There is not a thinking Canadian over the age of, I will arbitrarily say, 13 years old who thinks that, despite differences of opinion in the House and the diversity of ideological views, there is anybody in the House who is in favour of the sexual exploitation of children. It is an absurdity to stand up and say that. It does earn the disrespect of Canadians who wonder what all the nonsense is about.

I listened to the words of the questioner a few moments ago. He talked about how it was time that we made it clear in Parliament that we mean business when it comes to dealing with pedophiles. There is no one in this House who does not mean business when it comes to dealing with pedophiles, but we are not like minded in how far we would go to tip the balance in the direction of saying we should arbitrarily ban all kinds of things.

Yes, the issue is to protect children from exploitation and exposure. We must look at ways to do that. However, we must also be concerned with the arbitrariness and the fanaticism that gets expressed by members from that corner of the House on issues of freedom of speech and expression. We must be concerned about how far we go to give them the power to trample on freedom of speech and expression. What else will they ban? Will they stop at issues concerning the victimization of children? Will they start banning ideas that they do not like, and so on?

That may seem extreme, but that is why we have a system of checks and balances. It is to curb the excesses that may occur on all sides of these kinds of issues. Thank heavens we have a judicial system. It may not be perfect. I do not agree with every decision and nobody here would agree with every decision, but I will entrust to the Supreme Court the interpretation of the law and continue to insist that we in the House, as parliamentarians, take the responsibility for the implementation of progressive laws.

Mrs. Elsie Wayne (Saint John, PC): Mr. Speaker, I will be dividing my time with the hon. member for New Brunswick Southwest.

I must say that I never thought, when I came to the Hill in 1993, that I would ever have to rise in the House of Commons and debate the definition of marriage. I cannot believe that this is happening.

In recent years Canadians have become concerned about the appearance that courts have encroached upon the supremacy of the Canadian Parliament by reading into our laws interpretations that appear to be inconsistent with or outside the intent of the laws passed by Parliament.

I heard the hon. member from Nova Scotia refer to the hon. members in the Supreme Court of Canada. If they are going to be honourable members, then they had better define marriage as a union between a man and woman and then I will call them honourable, but I will not if they do not.

This is in large part why we are having this debate today. There are those who believe that the unelected who serve in the top courts of our land must not be allowed to dictate public policy and should stick strictly to the letter of the law based on precedent.

We have so many people who are out of work, who are hurting, and we should not have to bring this for debate before the House of Commons.

I mentioned earlier about attending a meeting with the Toronto police department. Concerning John Robin Sharpe, I could not believe that the Supreme Court of Canada, or a court of Canada, would say that it was artistic merit. That man was so sick with what he had. It was pathetic. It was unbelievable. It brought tears down the side of my face. I could not look at half of what he had. I could not believe that anyone in Canada would have the likes of that in their possession and the court called it artistic merit. That is sick.

However, as with any system there will be situations that do arise where conflicts will occur. As the motion points out, there are three such items that do not seem to coincide with public perception today. When I look at the motion that we have before us concerning the granting of house arrest to child sexual predators that makes it easier for them to produce and possess child pornography, there is something wrong.

I have two grandchildren. I would never ever want them to see what I saw at the Toronto police department. I would never want them to see that.

When it comes to people who wish to live together, whether they are women or men, why do they have to be out here in the public always wanting to call it marriage? Why are they in parades? Why are men dressed up as women on floats? They do not see us getting up on floats to say we are husband and wife. We do not do that. Why do they have to go around trying to get a whole lot of publicity? If they are going to live together, they can go live together and shut up about it. There is no need for this nonsense whatsoever and we should not have to tolerate it in Canada.

We have witnessed a number of cases at the Supreme Court level in the last year which have in effect seemed to take away from the supremacy of Parliament and it seems to contradict society values that we hold dear. That is the Supreme Court of Canada. I refer once again to the John Robin Sharpe case. When I think about it, it was the courts overruling rules that were laid down here for Canadian society.

● (1210)

We have also witnessed three provincial cases in Ontario, Quebec and most recently British Columbia, which have decided that the legal definition of marriage is a violation of the charter rights afforded to same sex couples.

Let me say this. We have a Charter of Rights and Freedoms and that Charter of Rights of Freedoms does not lean to addressing same sex unions, same sex marriages. It is pathetic that with all the problems we have in this country from coast to coast we would be spending this time discussing this sort of thing. I really and truly am shocked to think that here we are in the House of Commons debating whether or not there should be same sex marriages. As I have stated before, if people wish to live together they can go live together, but do not expect us to endorse it as marriage because they live together.

To many it seems that the reading into the intent of laws by the courts seems to be a violation of the basic constitutional principles that we have, that Parliament makes the laws, the executive implements them and the courts interpret them. I am really worried about the way the courts are interpreting the laws we make. Who would think that in this day and age we would have to stand in the House of Commons and debate the definition of marriage? Who would think we would have to do that? I would never have thought when I came to Ottawa in 1993 that this day would come.

I have to say I am really hurt when I think of this. As I have stated, I look at these young people, our pages who are sitting here, bless their hearts, and we want to have a great country for them. We want to make sure that we have a solid foundation for their future, and a solid foundation for their future is to make sure that we stand up and we speak out for the values that are good for them for the rest of their lives. That is what we are here for: to build a solid foundation.

I will say right now that when I look at the definition of marriage being changed that is not a solid foundation for the future of our children. When we are going to change the definition of marriage and allow John Robin Sharpe what is called artistic merit, and now we are saying we will be granting prisoners the right to vote as well, I am going to tell—

An hon. member: Where are we going?

Mrs. Elsie Wayne: Yes, where are we going? In what direction are we going?

It is time for everyone on both sides of the House to get down to debating and working toward building a better foundation from coast to coast for all of our people in Canada. I have to say that redefining marriage is not the way to go nor is giving John Robin Sharpe the right to make use of and abuse young, little children. I could not believe that we would endorse it, that anyone sitting in the House of Commons in the 301 seats we have would support the likes of that. I cannot believe that. I cannot believe that has happened in Canada.

As for the Supreme Court saying that this is his right, where are the rights of those little children? Where are the rights of those little children we saw in the picture? If you had seen what they did to those little boys and those little girls, Madam Speaker, you would not have been able to look at it. I had to put my hands over my eyes, for I could not believe that here in Canada we would allow that to happen.

We will continue to fight for what is right. We will continue to fight for the traditional marriage. We will continue to fight against the John Robin Sharpes. We will not stop and we want the Supreme Court of Canada to know it.

● (1215)

Mr. Darrel Stinson (Okanagan—Shuswap, Canadian Alliance): Madam Speaker, I listened quite closely and agree with the hon. member on many of the issues she brought forward in her speech. I did have some idea in 1993 that these issues would probably come before the House of Commons. I have seen the country deteriorate on the morality aspect so badly in the last few years. It was one of the reasons I got into politics.

I cannot believe some of the comments I have heard here from some members of the House. In regard to these issues, I have heard members say it is not a concern in their areas or maybe not a concern in Canada and that they are red flag issues, that we are trying to stir up things and that it is not as big a problem as we say it is. I will stand here and say all these issues are, if not the number one concern, certainly in the top two or three anywhere I have travelled in Canada.

I have to ask the hon. member a question. I came here with the understanding, and I was led to this belief even through school, that the House of Commons is the highest court in Canada, that we were here to make the laws and the courts were to interpret them and if we did not like the courts' interpretation of the laws, we were to stop it and change the laws. I would like to know how the member feels about this. As I see it, we have a government today that has passed the buck, so to speak, so that it does not take any heat. The government likes to say that it is the unaccountable judges who are making the decisions so the government does not have to stand up and take the heat in the country for what it deserves.

This is the highest court in the land and we, the members of Parliament, have to be held accountable for decisions the judges make.

● (1220)

Mrs. Elsie Wayne: Madam Speaker, I want to say, like the hon. member stated, that I thought we made the rules. I thought we were the ones who brought in how our country was going to grow and how our people were going to live, but now the courts dictate to us and that is wrong. If the courts interpret a bill in the wrong way, then we had better reword the bill so they understand it, and in everyday language if that is what we have to do.

Mr. Norman Doyle: Or it won't pass the country.

Mrs. Elsie Wayne: Yes, it won't pass the country.

I have to say that in my riding of Saint John, New Brunswick, we have come to what we thought was a crossroads when saw these things happening up here on the Hill. At my little church that I go to our minister has done outreach into the area. The church now is packed on Sunday morning with anywhere from 800 to 1,000 people. We have reached out to those who are poor, to those who were going in the wrong direction, and to those who were drug addicts, and we have turned their lives around, because we could see that Canada had come to a crossroads.

Let me say that when I look at where we are at now with the Supreme Court, what it wants to do with the definition of marriage and what it wants to do in supporting John Robin Sharpe, we have come to a crossroads and we must take the stands we have to take here in these Parliament Buildings to correct it.

Ms. Alexa McDonough (Halifax, NDP): Madam Speaker, I have to say that I think the speech we just heard by the member for Saint John is not really worthy of her. I think the reality is that she has, as every single member of this Parliament has, a significant number of constituents whom she represents, or whom I think she would say she aims to represent, who in fact have entered into loving relationships and partnerships, unions that they want to be sanctified in the same way as any others.

I have to say that when I listened to the last several speeches from Alliance members and, I am sorry to say, from the Conservative caucus as well, I had to wonder about whether there was not a deliberate juxtaposing of the issue of same sex marriage with that of sexual predation on small children to try to inflame and engender the hateful form of homophobia that does grip some of the people in our society.

I have a particular question for the member for Saint John. When she said go and live together if you want but just shut up about it and do not ask for equal rights that neighbours and other family members have, is that—

Mrs. Elsie Wayne: A mother and a daughter live together and they don't ask for equal rights. A father and a son live together and they don't ask for equal rights—

The Acting Speaker (Ms. Bakopanos): Time has run out. I am being lenient with the time. There was a question. The hon. member for Saint John.

Mrs. Elsie Wayne: Madam Speaker, I have to say that I got re-elected in nine consecutive elections because of what I stood for. Everyone knows what I stand for. I will not change and they know that.

● (1225)

Mr. Greg Thompson (New Brunswick Southwest, PC): Madam Speaker, the exchange we just heard shows the degree of emotion that sometimes erupts in this place on motions which I think should be debated; that is not to say that we are going to have all of the answers at the end of the day.

I am going to speak specifically to the motion, which states:

> That this House call upon the government to bring in measures to protect and reassert the will of Parliament against certain court decisions that: (a) threaten the traditional definition of marriage as decided by the House as, "the union of one man and one woman to the exclusion of all others"; (b) grant house arrest to child sexual predators and make it easier for child sexual predators to produce and possess child pornography; and (c) grant prisoners the right to vote.

Those issues have been debated this morning.

The previous member spoke specifically on the definition of marriage. I do agree with her. I do not think, if we check the record, that she used the inflammatory language that she has been accused of using by the member for Halifax. I think the record will show that. I think her language was appropriate and it was consistent with what she believes and what many of us believe, but it was not homophobic, and I think it is regrettable that the member for Halifax used that term.

Really, the motion speaks to the issue of who decides public policy. Is it the elected officials in this country or is it the unelected judiciary? That is really the point of this whole debate. Who makes the laws?

I can remember the exact date of one of my first debates in the House. I spoke in the House on November 23, 1989 on the abortion issue. Again, that law was struck down by the Supreme Court. Parliament at the time was involved in debate on the issue of coming into the House with a bill that would survive close scrutiny by the Supreme Court, or in other words, conform within the Charter of Rights. Typical of the debate today, that bill involved a lot of raucous debate. A lot of different views were exchanged on the floor of the House.

Just as an example of how members can support or vote against a particular bill for a particular reason, there were people in the House at the time who voted against that bill because they felt it was more pro-choice than pro-life. I was one of the members who voted against it. Conversely, there were the members of the NDP. I remember that the member for Burnaby—Douglas, who sat a row or two across from me, voted against it for completely opposite reasons.

This shows us the controversy that can come out of legislation to address that need to have our elected politicians make public policy. Some Canadians, and I include myself, think there is something wrong with the system when public policy is struck down by the courts, as in the Robin Sharpe case where that was allowed to happen. Unelected judges are making these kinds of decisions. They do not have to be accountable to the people in their communities after having made those judgments, unlike us. We have to go back to the public to keep our jobs.

● (1230)

Our jobs are on the line because people measure us on the positions we take, the words we say in the House and whether we are for or against something. That is not the case with Canadian judges. Some are saying that we should have a system where judges have to be confirmed by Parliament so that whenever a vacancy arises in the Supreme Court, as is the case in the United States, there is a process where their confirmation is required. That suggestion has been made in Canada. It may be a sign that we adopt a system similar to that.

I do not think we want to get into that because most of us realize there are problems in the American system as well. Sometimes it turns into nothing more than a political battle, when the President of the United States, whether he is a Republican or Democrat, attempts to appoint someone to the supreme court. There is always a huge and almost uncontrollable debate in the United States as to whether judges will be confirmed. I do not think we want to see that happen. However one of the debates we should have in this place is whether we can change the way in which judges are appointed to Canada's Supreme Court. I am not saying I have the answers but it is time that debate take place to see if we can possibly change it.

One point I do want to make in regard to this motion is that the motion itself does not really come up with any answers. In other words, it is suggesting that something has to change but it is not suggesting any amendments. Very bluntly, the motion does not call for specifics. I am not saying that in a confrontational sense; it simply does not call for an amendment to current legislation, particularly to the Criminal Code. It does not speak of charter amendments. It does not speak of highlighting one particular right over another. It calls for the Government of Canada to acknowledge that this is an important issue and to bring in measures to protect and reassert the will of Parliament against certain court rulings.

We do not disagree with that, but the fact is there are no specifics. In all fairness, whatever those specifics might be, they have to be well thought out and well articulated. Possibly at some point one of the parties in the House might come in with an amendment that might be considered in this place, but the motion does not call for that.

Again, in the motion the Canadian Alliance highlighted some of the issues under some of the flashpoints. At the end of the day when we talk of issues like same sex marriage, child sexual predators, who are basically under house arrest and allowed to walk freely in the streets, and granting prisoners voting rights, those issues raise the ire of a lot of Canadians. They really are left scratching their heads about how things like this can happen.

It comes back to the supremacy of Parliament. It comes back with a government that is strong and brave enough to confront some of those issues head on and bring in legislation which is more consistent with the true values of Canadians. I would like to see the Government of Canada recognize that there is a problem, bring in some specific amendments, or maybe in a very brave sense, debate whether the Charter of Rights and Freedoms is serving us in the way we expect, in the way we expected it to 20 years ago when, for the first time, we brought in a charter in Canada. It has led to some of this public debate and some of these challenges in our courts.

I will leave it at that and I look forward to any comments or questions from my colleagues.

● (1235)

Mr. Myron Thompson (Wild Rose, Canadian Alliance): Madam Speaker, as this member has the same name as I do, I would like to take this opportunity to thank him for paying some of my bills, but I will not do that.

The point of the debate today is it really is a good time for us all to reflect on exactly what is happening in this land regarding court decisions versus the legislation which comes out of this place. I know we all have thought about it and made comments, when we have had conservations among ourselves, on how it should change, et cetera.

This member has been here before and I would like to ask him a question based on his experience, and to put on his thinking cap. I cannot help but believe that the decision by the courts, for example on the Sharpe case, upset the people who developed the charter and brought it into being. I do not believe for a moment that the purpose of the charter is to protect those individuals who have been brought to the courts for possession, usage and distribution of child pornography.

It appears to me that the charter has been used in too many cases to override the entire value of the country and the people's values with regard to some issues. I believe perhaps now is the time that the charter should be brought to the House of Commons for full debate and consideration for amendments or whatever it might be to protect society's values and what Canadians really want to see happen in this land.

Perhaps there is a problem there. Does the member think there is and, if he does, how should that be handled?

Mr. Greg Thompson: Madam Speaker, the member is onto something, which is I guess is the point that we are attempting to logically debate today. This is a big question in the minds of many Canadians and in fact some civil libertarians on issues like that. There comes a point when we have to ask, "Who are we protecting? Are we here to protect the greater society or the greater good or an individual that has been convicted of a heinous crime?" That is really the essence of the debate.

I think many Canadians fall down on the side of that member in this case. I think the law has let us down. Who was it who said that the law is an ass from time to time? I should have the full quote before me, but this is an example of where the law in a sense has to be revisited.

If we are talking about the charter, there are many members here who have legal backgrounds. This is a road that most governments do not want to go down. We tried that in the late eighties, early nineties and right through to the fall of the Progressive Conservative government in 1993 where we paid a heavy price for some of that constitutional renewal. Some of the charter issues were being debated then.

We do have in the charter a notwithstanding clause which, to my knowledge, the federal government has never exercised. Some of the provinces have from time to time. In other words, notwithstanding these rights, the Government of Canada would have the chance to basically put the charter on hold for five years I think while it thought its way through some of these issues. That in fact has never been used by the federal government and I think it has only used twice by the provinces. One of them was the province of Quebec and, if I am not mistaken, I think the province of Manitoba as well.

There is a safety mechanism or trigger in the charter which is very seldom used by the federal government, much to the chagrin of many Canadians from time to time.

Mr. Kevin Sorenson (Crowfoot, Canadian Alliance): Madam Speaker, I rise today to participate in this debate asking the House to call on the government to bring in measures to protect and basically to reassert the will of Parliament against certain court rulings. More specifically, I want to draw some attention to the ones granting prisoners the right to vote.

On August 13, 2002, an editorial by Dan Gardner appeared in the *Ottawa Citizen* that concluded:

> —it's not judges that deserve to be pummelled. It's the elected politicians who didn't have the guts and vision their job demanded.

Although Mr. Gardner has referred solely to section 15 of the charter in relation to same sex marriages in his editorial, there are numerous examples where judiciary, particularly those within the Supreme Court, are creating new law in their rulings.

Before I proceed, I would like to take the opportunity to thank my colleague from Provencher for the excellent speech that he delivered this morning and the powerful arguments that he presented regarding Parliament defending the traditional definition of marriage and Parliament's role here.

The member for Provencher as well as our other colleague from Surrey North travelled throughout the country over the course of the last month and a half with the Standing Committee on Justice to hear numerous witnesses present arguments both for and against changing the definition of marriage.

For the record, I fully support the position of my colleague and my party that the definition of marriage should remain as the union of one man and one woman to the exclusion of all others.

As I stated earlier, judges are creating laws in this country. This is not just in the opinion of member on this side of the House, but I refer members to today's editorial in the *National Post* "Looking for leadership". Let me read the first paragraph:

> Canadians expect that their elected representatives will have the courage to tackle divisive questions head-on. Yet on two of the most prominent issues facing this country—marijuana decriminalization and gay marriage—it is the court system, not Parliament, that has taken the lead. Will the federal government take a definitive stand now that lower court decisions are piling up on both issues? Or will it stand back and let the Supreme Court usurp the role of legislator—as it is regrettably done in the past...

It goes on and lists a number of issues on which it stepped out.

Effectively, the decisions or judgments of judges are being substituted over that of elected representatives of the people. We therefore must ask, "Why and how are judges entering into an area that has exclusively been the prerogative of Parliament?

The partial answer to that question appears in a column that I read in a 1999 edition of *Choices*. In the article "Wrestling with Rights: Judges, Parliament and the Making of Social Policy", author Jane Hiebert says:

> Since the Charter's introduction, the judiciary has passed judgement on the constitutionality of a breathtakingly broad range of political and social issues from the testing of cruise missiles in Canadian airspace to euthanasia...
>
> —the Charter has changed the political environment and climate of legislating and is influencing legislative choices at all stages of the policy process..

Effectively, according to Professor Hiebert, the charter offers:

> —a convenient refuge for politicians to avoid or delay difficult political and moral decisions. Elected representatives can insulate themselves from criticism, and political parties can avoid risking party cohesion, by ignoring controversial issues and claiming that fundamental issues of rights should first be resolved by courts before political decisions are taken...Thus, the expectation is for political inaction in which Parliament not only avoids issues but does not exert influence on how the Charter should be interpreted and applied to social conflicts.

● (1240)

Professor Hiebert contends "this is an abrogation of political responsibility to make policy decisions in the public interest".

Former attorney general of British Columbia, Alexander Macdonald, agrees with Professor Hiebert. In the book that he authored, *Outrage: Canada's Justice System on Trial*, Mr. Macdonald contends that the Charter of Rights and Freedoms has entangled the criminal justice system in a mesh of judge-made law. He says that elected officials are too powerless or scared to lift a finger to stop it.

The former British Columbia attorney general says that government may have to consider wider application of the notwithstanding clause, the Constitution's rarely used escape valve, to deal with judicial activism and courts that go far beyond what people think is common sense and fairness.

Pointing to the British Columbia court decision that struck down the law against possession of child pornography, Mr. Macdonald demonstrates how courts are substituting their judgment over that of the elected representatives of the people.

In the book that Mr. Macdonald wrote, he also touches on what he calls "the whole immigration fiasco, thanks to the Singh decision". This one-time lawmaker says that as a result of the Supreme Court's interpretation of the law, if somebody gets into Canada and touches Canadian soil, whether they are smuggled in or have falsified their papers, it does not matter. They immediately get a lawyer and can buy two or three years while they go through the process, quite possibly selling drugs and committing other crimes while they wait to be processed, all at the expense of the Canadian taxpayers, and all at the expense and time of genuine refugees who are unable to afford or receive a hearing.

● (1245)

For all the examples of where the courts have overturned laws passed by Parliament and failed to reassert its authority, there are examples where this and previous governments have deliberately and with much forethought abrogated their responsibility by drafting and passing legislation that is full of holes and therefore wide open to interpretation.

Bill C-41, which gave us conditional sentences, is a prime example. Under this legislation which passed in 1995, any person convicted of an offence for which the punishment is a sentence of two years less a day may receive a conditional sentence, meaning they are not incarcerated but remain at home under house arrest or under certain other conditions. Although my party, the Canadian Alliance Party, repeatedly asks that the legislation be amended to limit conditional sentences to non-violent offences and first time offenders, the government refuses to amend the law.

Subsequently in case after case, including manslaughter and rape cases, time and time again these violent offenders were receiving conditional sentences. Still the government failed to amend the law despite many demands from victims groups, the Canadian Police Association, and those of us sitting in the official opposition. Ultimately the courts ruled that conditional sentences were not off limits to violent offenders, and if this in fact had been the intent of Parliament, it should have been written clearly within the law. That is what the courts say.

As I stated in the House just over a month ago, the Supreme Court will be ruling any day on whether or not warrants allowing for the taking of DNA samples is unconstitutional. A convicted rapist's lawyer in this case is not arguing his client's innocence, and he is not arguing that there has been a miscarriage of justice. He is arguing against the law that has allowed the police to obtain evidence against his client.

As I also mentioned in the House in regard to the Feeney decision, Supreme Court Judge L'Heureux-Dubé in her dissenting opinion said that while the rights of the accused are certainly important under the Charter of Rights and Freedoms, they are not all the equation. This Supreme Court judge boldly suggested that it was time to reassess the balance the court has struck between protecting the individual rights of the accused and preserving society's capacity to protect its most vulnerable members and to expose the truth. Judge L'Heureux-Dubé said:

> —perhaps it is time to recall that public respect and confidence in the justice system lies not only in the protection against police abuse, but also in the system's capacity to uncover the truth and ensure that, at the end of the day, it is more likely than not that justice will have been done.

In regard to courts overturning a law passed by Parliament, a prime example occurred on October 31, 2002. On that date the Supreme Court overturned a 1993 law passed by Parliament prohibiting prisoners serving a sentence of two years or more from voting in a federal election.

The court found that the law infringed section 3 of the Charter of Rights and Freedoms which gives every Canadian the right to vote. Section 3 cannot be overridden by section 33, which is the notwithstanding clause. However, the government can, but in this case has chosen not to, introduce a constitutional amendment to reverse this decision.

Given the government's failure in this regard, the Canadian Alliance has stepped forward and tabled a constitutional amendment. The amendment we have put forward would replace section 3 of the Canadian Charter of Rights and Freedoms, part 1 of schedule B, with the following:

> 3.(1) Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and be qualified for membership therein.
>
> 3.(2) Subsection (1) does not apply to any person who is imprisoned.

It is a constitutional amendment. Effectively this constitutional amendment would mean that no person imprisoned at the time of an election would be guaranteed the right to vote under the charter.

● (1250)

In the opinion of members on this side of the House, an opinion that I am confident is shared by the general public, the majority of Canadians, convicted persons should not enjoy the same rights as upon conviction they do not enjoy the same liberties as law-abiding citizens.

For the government to continue to assert the rights of the offenders over the rights of the victims, over the protection of society I believe is an affront to Canadians in general and to victims more specifically. Again I am confident that the majority of Canadians would be of the same opinion.

According to a poll that was commissioned by the Solicitor General, a majority of Canadians believe safety and security concerns should override the protection of some individual rights. Two-thirds of Canadians think that police and prosecutors should have more power to fight crime even if that might be seen as an infringement on some individual rights.

Furthermore, and again I remind the House that this is a poll by the Solicitor General's very own department and I quote from it, "just under half of Canadians are very or somewhat confident in the prison system, while only one in three would say the same thing about the parole system".

While the spokesperson for the federal parole board says that he believes this apparent lack of confidence is only as a result of misperception, Correctional Service Canada has provided absolutely no comment, at least to my knowledge, regarding the majority of Canadians who have zero or no confidence in the prison system. One can therefore only surmise that it too would chalk up this confidence crisis to the misperception of Canadians when the truth is Canadians have ample reasons and examples to have no confidence in the correctional system, which is shown in the case of a number of offenders, one of which I would like to point out.

His name is Michael Hector. In 1995 the National Parole Board let armed robber Michael Hector out of prison. Within less than two years Hector went on a killing spree. On January 9, 1997 he shot Robert McCollum in the face point blank. He walked up to him and killed him instantly. The same day he shot Kevin Solomon, I believe in the back, while he took a shower because he was a possible witness in the McCollum murder. In the same month he stuck the muzzle of a .38 calibre revolver into the back of 20 year old Blair Aitken's head and pulled the trigger after robbing this student and gas station attendant of $944.

On May 5, 1997 Michael Hector, entering a guilty plea to three counts of first degree murder, was given a life sentence for 25 years with no eligibility for parole.

This past Easter weekend, the families of the murder victims learned that after only six years in a maximum security facility, this multiple murderer had been approved for transfer to Archambault Institution in Quebec. That institution is a medium security penitentiary.

This is not an isolated case. It is not a case out of the blue that we have never heard about. This is another example of the correctional system. There is example after example of murderers being transferred to medium, from medium to minimum, and from maximum to medium after serving only a few years of their incarceration. It is these cases that have resulted in Canadians' lack of confidence in the correctional system, their lack of confidence in the prison system and the parole system.

I suggest that the Liberal government has not tabled a constitutional amendment to deal with the Supreme Court's decision because deep down it agrees that prisoners should have the right to vote. Deep down the Liberal government believes that we should never take away the right that these murderers have to vote. The Liberals agree that Michael Hector has the right to vote. They agree that Paul Bernardo has the right to vote. They agree that Clifford Olson has the right to vote. Two of Canada's most notorious sex offenders and multiple murderers, Bernardo and Olson, the Liberal government believes should have the right to vote.

● (1255)

Given the cushy quarters of many of our resort-style prisons in which these and other violent offenders, including Clinton Suzack, are housed, the Liberal government is hoping that granting prisoners the right to vote may improve their chances in the next election. It has already been mentioned that Clifford Olson can hardly wait to vote for the Liberal Party. If the right to vote does not, then perhaps allowing prisoners unlimited access to many other rights should be an affront to Canadians as well.

Over the last couple of months we have noticed in the House where we have given the prisoners the rights to explicit movies, the rights to pizza parties and porn parties, and the rights to have their drugs in prison, to a certain degree.

Our military boot camps do not have TVs, let alone movie channels. They do not have posh weight rooms or air conditioning. If that is good enough for our young men and women who serve this country, it should be good enough for those who are trying to undermine this country and destroy the safety and security of our citizens.

The Solicitor General and Correctional Service Canada maintain that they have a zero tolerance toward drugs in prison but everyone in the House understands the rampant problem of drugs and alcohol in our federal institutions. Sitting as a member of the non-medical use of drug committee, I witnessed firsthand the problem of drugs in our prisons.

In my opinion, no prisoner who is not drug free should be eligible for early release or parole of any kind. If prisoners come up positive in a drug test they should not be eligible for early release. If they cannot remain clean inside, how will they ever remain clean outside? If they cannot function outside in society they will remain inside. Visitation should be strictly limited only to those willing to undergo a thorough search in prisons where drugs remain a problem.

Prisons should not be Holiday Inns and prisoners should not, in my opinion, be afforded the same rights as law-abiding citizens. Prisoners in federal institutions should not have the right to vote, regardless of what the courts say.

Again, I am confident that Canadians would agree. I therefore implore the House to call on the government to bring in measures to protect and reassert the will of Parliament against the court rulings that granted prisoners the right to vote.

● (1300)

[*Translation*]

Mrs. Marlene Jennings (Parliamentary Secretary to the Solicitor General of Canada, Lib.): Madam Speaker, the people of Lachine are very happy that you pointed out that they live in my federal riding.

Today I have the honour of speaking to the opposition motion that proposes debating the respective roles of the judiciary and the legislative branch.

The motion asks the opinion of the House on whether federal legislation should not be amended or rewritten by our judiciary. For the benefit of the House and Canadians across the country who may be following this debate right now, I would like to reiterate what, exactly, the motion says.

The Canadian Alliance motion moved by the member for Provencher proposes:

That this House call upon the government to bring in measures to protect and reassert the will of Parliament against certain court decisions that: (a) threaten the traditional definition of marriage as decided by the House as, "the union of one man and one woman to the exclusion of all others"; (b) grant house arrest to child sexual predators and make it easier for child sexual predators to produce and possess child pornography; and (c) grant prisoners the right to vote.

That is the motion we are considering today.

Democratic society depends on the intervention of several levels, such as Parliament, the executive and the judiciary.

I would like to remind members that it is not the courts that restrict Parliament, but our Constitution as well as the Canadian Charter of Rights and Freedoms. This debate on the role of our courts should not be surprising, given how new our charter is. There is no doubt that the role of Canadian courts is to interpret our laws, our constitution and our charter.

Since the charter was enacted, 20 years ago, this role has taken on a new meaning. There is nothing ambiguous about the fact that the charter has had a direct and indirect impact on the lives of Canadians.

The result is that a dynamic dialogue has been established between the courts, the executive and Parliament. I believe that this dynamic dialogue is healthy for society and democracy.

Unconstitutional legislation is regularly replaced by legislation with similar objectives that meets constitutional criteria. Interpreting the charter gives the courts a greater role in the life of Canadians.

Since the charter was enacted, the courts have certainly had a greater impact on Canadian law. Decisions handed down by our courts are based on the constitution and follow well-established rules used to interpret the constitution and legislation, not on the intellectual or philosophical preferences of each judge.

The critics of judicial activism are deliberately creating the impression that the courts are usurping Parliament's role. This has caused Canadians to wonder about the legitimate role of the courts in interpreting legislation.

Inevitably, some individuals or groups will disagree with some of the decisions by our courts. Normally, the public only becomes aware of the debate when a court hands down a controversial decision.

● (1305)

Canadian judges have an increasingly demanding constitutional role, ruling on issues that are fundamental to all Canadians.

I am the first to recognize that the decision-making role of judges is often not the most popular. This is inevitable, given that the legislator asks them at times to make difficult and controversial decisions on economic, social and legal matters.

For these reasons, our judges must not base their decisions on an issue's popularity or pressure from certain lobbies. This is essential for all Canadians, so as to preserve the independence of the judiciary. Its independence is one of the most important tenets of the Constitution, so as to instill in Canadians trust in our judicial system.

Despite the fact that some members of society will not necessarily agree with a particular decision, the public must understand that our judicial system in Canada makes its decisions without interference from any corner.

These attacks that insinuate that there is a problem with the judicial system and the role of judges undermine the trust of Canadians in our judges and courts. Moreover, they also have a disinformation effect on the public regarding the role of the judiciary. Judicial tribunals have demonstrated that they recognize their role within a democratic society.

It should be noted that judges must be independent and free to make decisions that are often difficult and unpopular. This independence adds to the public's respect for equity and the rule of law.

In spite of this, elected Parliaments, acting through their members —like the hon. members of this House here today—remain free to amend legislation or introduce new legislation in the public interest. Still, such legislation must also go through the test of constitutionality. Why? Because we live in a democratic society based on a constitution and, for 20 years now, a charter of rights and freedoms.

I agree that there should be an informed public debate on the role of the courts. I am happy to say that this debate is going on today in this House, as well as in society at large. In order to see through the often groundless attacks on the judicial system, the public needs to have a better knowledge of the important role of the judiciary in our Canadian democratic system.

The opposition motion presented by the hon. member for Provencher is related to judicial decisions on three issues. The first is the issue of "the definition of marriage as decided by the House as, 'the union of one man and one woman to the exclusion of all others'". The second part of this motion concerns court decisions that "grant house arrest to child sexual predators and make it easier for child sexual predators to produce and possess child pornography".

● (1310)

Lastly, the third part of the motion is opposed to judges' decisions granting inmates the right to vote.

I will start by looking at the issue of inmates' rights. According to the Canada Elections Act, any person serving a sentence of two years duration, or longer, was ineligible to vote. A court judgment found it was unconstitutional to impose a blanket prohibition on the right to vote of all those sentenced to over two years.

[*English*]

Let us look at that. It was in the Sauvé decision of October 31, 2002, that the Supreme Court of Canada, the highest court of this land under our Constitution, ruled that the blanket prohibition violated the constitutional rights of federal prisoners to vote under section 3 of the charter and could not be justified as a reasonable limit in a free and democratic society under section 1 of the charter. This is the second time that the Supreme Court of Canada has ruled in favour of the voting rights of prisoners.

The Government of Canada must respect the court's decision. What does that mean? In my personal view, it does not mean necessarily that all prisoners who have been sentenced to two years or more of imprisonment constitutionally have the right to vote. What that decision says is that we may not, by blanket decision, remove the right to vote for all.

I would suggest that our government should look at the possibility of putting into place a legislative system with the proper checks and balances. It would allow a judge, for example, when declaring someone who has been condemned to more than two years as a dangerous offender to hear a submission from the Crown that the judge should also order that the individual would not be allowed to vote. We could do a reference to the Supreme of Canada asking it whether that kind of limitation would be constitutional or a violation that is unjustified under section 1 of the charter? I think there is an interest in doing that.

I agree, however, with the Supreme Court of Canada that a blanket prohibition is not constitutional. A prohibition should be well defined for certain offences under specific conditions and where it is not blanket, where there is an independent decision that is made, and where the individual's charter right to vote may be limited or taken away, there must be an opportunity for that individual to speak to the issue and to defend his or her right. That is my personal opinion.

However, I would not be in favour of using the notwithstanding clause. I believe that a proposal to amend the charter of rights is not a realistic option given that such an amendment would require resolutions of the Senate and the House, as well as the legislative assemblies of at least seven provinces that have in total at least 50% of the population. The special voting rules of the Canada Elections Act allow prisoners to vote who are serving sentences of less than two years. Elections Canada has adopted those rules to collect the votes of those federal inmates who are Canadian citizens and are serving a sentence of less than two years.

To reassure Canadians, prisoners vote by special ballot. Their votes are counted in Ottawa by the special voting rules administrator. Prisoners vote for a candidate in the riding where their place of ordinary residence is located. This is not the penitentiary or the prison, but the place where they lived before being incarcerated. If there are fears on the part of some Canadians that the fact that they live in a federal riding where a federal penitentiary or prison is located and that this might have some impact on who actually is elected, there would be little risk of votes by prisoners significantly affecting the result in any given riding.

● (1315)

I understand that there are some members who have been elected with a one vote majority, a five vote majority and a 10 vote majority. I understand their concern if they are in a riding where a penitentiary is located. However, as I said, the votes taking place in the penitentiary are not attributed to that riding unless the inmate casting the vote lived in that riding prior to being incarcerated.

There are approximately 12,000 prisoners in federal penitentiaries. The national average of prisoners associated with each federal riding is approximately 40. It could go up. It could be somewhat less, but it is the national average. The government has already referred the matter to the Standing Committee on Procedure and House Affairs pursuant to Standing Order 108(2) with a request that the committee consider the impact of the Sauvé decision and the scope for legislation in light of the ruling.

Members have already heard a suggestion from my part as to how the committee may wish to look at blanket prohibition, but there is the possibility that we could develop a definite scheme that would meet the test under the charter. Another part of the motion deals with marriage.

[*Translation*]

Marriage is a recognition of the union of same-sex partners. As I said, the motion addresses the fact that lower courts in British Columbia, Ontario and Quebec have brought down divergent judgments on the heterosexual requirement of marriage.

These judgments were appealed and a decision was brought down just recently by the British Columbia Appeal Court, on May 1, 2003. The Ontario appeal was heard in late April of 2003, and is still pending. The date for the appeal hearing in Quebec will be set shortly.

As hon. members are aware, the three lower court decisions were appealed because the government wanted clarification from the courts on certain legal matters on which judges had given a variety of interpretations.

Marriage, however, goes beyond the strict limitations of the law. I acknowledge that, I agree with that. The Minister of Justice has said that he firmly believes that Parliament is the best place for us, as a society, to address this important issue.

On November 12, 2002, the minister announced that he was referring the issue of marriage and recognition of same-sex unions to the Standing Committee on Justice and Human Rights, He asked the committee to study possible policy approaches to this issue, to hear from Canadians and to provide him with recommendations on possible legislative reform. We are waiting for the committee report and hope that recommendations will be forthcoming.

I am a member of that committee. We travelled all across Canada, and heard from hundreds of Canadians. Now we are drafting the report and holding in camera discussions. I cannot say more on this, therefore, but the government is treating this seriously.

● (1320)

[*English*]

Mr. Brian Fitzpatrick (Prince Albert, Canadian Alliance): Madam Speaker, that was a good speech from the member opposite.

I have a question pertaining to section 33 of the charter of rights. When the charter was designed, an agreement was reached between the premiers and the Prime Minister at the time. People foresaw the situation where there would be a conflict between the courts and the public, as well as the value system of the country. There would be a clash. The compromise that was reached was section 33 of the charter which says that when that happens Parliament has the final say not the courts. That is part of section 33.

There are members opposite who take the position that section 33 should never be used and that the courts should always have the final say. On some issues we are talking about, public opinion is 90% against the court decisions. Does the member opposite believe that there are situations in which Parliament should exercise section 33 and override the decisions of the courts?

[*Translation*]

Mrs. Marlene Jennings: Madam Speaker, as I said, section 33, the notwithstanding clause, may not be used to override section 3 of the charter, which guarantees the right to vote. This would require an amendment to the Charter and such an amendment can only be made with a resolution of the House and the Senate, as well as resolutions from the legislative assemblies of seven provinces representing 50% of the population.

I simply wanted to provide the context for my response. As for his specific question, I am a lawyer by training; I am not an expert in constitutional law, despite having studied it in law school. However, I can say as a Canadian citizen who is very proud of our Charter of Rights and Freedoms, that I hope that our federal government and this House will never be called upon to enact legislation invoking the notwithstanding clause.

I hope that we will never get to that stage. I believe that with the intelligence of members of our society, with the creativity to be found here on both sides of the House and in the Senate, among the executive and our judiciary, we will never be in that situation. I believe that we will have the ability to reach a consensus that will respect the Charter and our Constitution, without the need to invoke the notwithstanding clause.

I know there are some provincial legislatures that have invoked it. Personally, I deplored this. According to our Constitution, when the notwithstanding clause is invoked, it is valid for only five years.

That means the issue will come back every five years. Parliament will be called upon to debate and decide whether it agrees to invoke the clause again. This would mean that the issue would never be resolved for the public and for the people who are directly affected by the issue and by the right with respect to which the notwithstanding clause was invoked.

I find it quite surprising that a member of the Canadian Alliance asked this question.

● (1325)

[*English*]

I said I was surprised, but in fact I am not surprised: At its last convention, the Alliance Party debated a policy resolution calling for the repeal of the Charter of Rights. Even the watered down version that it finally passed reflects, in my view, an appalling disregard for individual liberties and personal freedom. It also in my view reflects an appalling disregard for a society founded on the rule of law, on a constitutional democracy, on the separation of powers of the executive, the legislature and the judiciary. I for one would not want to live by choice in a society where we did not live, work, legislate and rule under a Constitution, under a charter that guarantees individual rights and freedoms.

Mr. Chuck Strahl: Answer the question.

Mrs. Marlene Jennings: I did answer the question, Madam Speaker. I was asked if I would be in favour of invoking the notwithstanding clause, and I made it clear that no I would not and—

Mr. Chuck Strahl: It's part of the Constitution.

Mrs. Marlene Jennings: I would hope, Madam Speaker, that we would never as a Parliament be in a position where we would invoke the notwithstanding clause during my lifetime.

I deplore the fact that there are some provincial legislatures that have in fact invoked it. But what is interesting is the case of my home province of Quebec, which in fact did invoke the notwithstanding clause on the sign law. While I deplored it, I applauded the government because it used that five year period in order to find a legislative solution to the problem which respected the needs of the majority of the population in Quebec and the survival of the French language and at the same time respected minority rights. The legislation Quebec came out with afterward in fact did meet the charter test. It met the charter test at fifteen and it met it the charter test at one.

While I deplore the use of the notwithstanding clause, I do recognize that at times a provincial government may have had to do that in order to allow time to seek a solution. However, I would never be in favour of repealing our Charter of Rights and Freedoms, as was debated at the Alliance convention. I can only say that the fact such a thing was debated, while there was a watered down version, is still somewhat appalling. I guess it reflects that leader's view that the justice system is only for the protection of property and for punishment and not for the protection of individual rights and freedoms.

It is too bad that I am not permitted to ask questions at this point in time of the members opposite. I hope the member opposite will be taking part in this debate if he has not already done so because I have a few questions for him.

I find it amazing that this attitude comes from the Alliance Party, which has so often criticized the use of the notwithstanding clause in the province of Quebec. There is a disconnect there. On the one hand, that party thought about or proposed repealing the charter. On the other, it asks me if I would be in favour of using the notwithstanding clause. This would allow the conclusion that those members are in favour of that. At the same time, that same party, or its previous incarnation as the Reform Party, criticized the Government of Quebec for using the notwithstanding clause. I wish that party would get its act together and make up its mind.

● (1330)

Mr. Myron Thompson (Wild Rose, Canadian Alliance): Madam Speaker, once again it is a pleasure to rise and speak to the issues in regard to the motion today.

Just before I get into that, though, I must say that some of the members I heard speak here today have been very effective at confusing me. I heard one member say that we must abide by and live under the Constitution of Canada and then deplore section 33, which is part of the Constitution, if I am not mistaken. I do not understand where the member is coming from. She deplores section 33 but she loves the Constitution of Canada. That section is part of the Constitution. Maybe one of these days we will have to meet somewhere and she can explain that one to me.

By now everyone will know that I am going to stick to one issue that is on the agenda of this supply motion. That, once again, is child pornography, an issue that is burning at the bottom of my heart and which I think must be dealt with and must be dealt with quickly.

I think everyone in this House, the 301 members of this place, would agree that they do not want any child pornography to exist; I do not think we would find one member who does not. I also think they would agree that in their own ridings probably 90% or more of the people deplore child pornography and would like to see it abolished and banned in its entirety. I do not think there is any quibbling about that.

The question is, do we as a Parliament have the ability and the authority to achieve this? In my opinion, we most definitely do. It would take leadership. It would take determination. It would take a commitment to put all party differences aside and work together to deal with an issue which we know beyond a shadow of a doubt is affecting thousands of children across this country alone, not to mention what it is doing internationally all across the world. The people most vulnerable to abuse are the young people, the kids. I am talking about kids all the way down to the age of two months who have been identified as victims of sexual abuse or sexual predators and pornographers.

If we were to stop and think about that for a moment, I am sure we all would like to say we would like this to disappear tomorrow, we would like to see it gone. We know that is not going to happen, but I think that collectively we can work together to make an effort to do our very best to get that show on the road to abolish and ban it in its entirety, because that is one thing that not only Canadian children but all children across the world deserve: to be free from child predators and this kind of abuse.

As well, if I have heard this once I have heard it a hundred times: "The trouble with the member for Wild Rose is that he is not interested in getting to the root causes of these kinds of problems". The root cause of these kinds of predators existing and being active across this world is, as has been determined by a number of psychologists, a number of psychiatrists, people working in the medical field, people on the front line and by predators themselves, the root cause of most of these abuses is child pornography. So let us stop the rhetoric about getting to the root cause. It has been pretty well documented and determined that child pornography is the root cause of this kind of problem. We have discovered that now, so let us stop the rhetoric about getting to the root cause. We know what the root causes are. We have good evidence of that.

● (1335)

Let us go after the root cause. The root cause being child pornography means that 301 members of Parliament, on behalf of probably 32.5 million Canadians who would love to see this happen, must come together on that one issue and stop muddling that issue by putting it in a bill such as Bill C-20 with other issues that are going to take a lot of discussion and time. Let us separate it, set it on its own and say we are going to deal with that.

An hon. member: Have the courage.

Mr. Myron Thompson: Let us have the courage to do it. We know we have the support to do it.

If there is one thing that I have been able to determine in my visits across the country it is that the individuals in the police departments who are assigned to the child pornography units, who are doing their best to fight it, are crying out and pleading with this government to give them the sources and the resources that it is going to take to set up a national strategy to deal with this once and for all, a national strategy that would reach out to other countries to form an international effort, which is well underway in a lot of other countries already. Let us join their efforts to do this.

There has not been one commitment in the form of the budget, not one commitment in terms of dollars and cents that has shown up in any one of the police departments or any one of the areas of jurisdiction that are making an effort to put an end to this terrible thing that is going on in our society. We could start by committing a certain amount of dollars to that cause. Then we could come together as a group of 301 to ask how we are going to accomplish this, spend a day or two to make sure we get it right, and then go forward with it. This would send a loud message to the predators and the child pornography distributors all across the country: "Folks, your time is coming to an end because it is not going to be allowed".

Instead, what has happened is that the government has tried to come up with legislation that will appeal a decision made by a court, which allowed pornography to continue because there might be some artistic merit to it. In its wisdom, the government came up with a paragraph in its document that says we will get rid of that and what we will do is put in "public good". Once again the minister has left in the hands of unelected and unaccountable judges the determination of what constitutes public good.

I can assure the House that the Toronto police department, which has approximately two million pieces of evidence in the form of child pornography, is really going to enjoy trying to go through two million pieces of this to determine whether it has any public good. We can almost be certain that any time a charge is brought against a person for having possession of or distributing that particular item, the person will be able to claim the defence of public good. Our courts will be jammed day after day and we will never get anywhere because we have allowed the courts to leave a loophole. No one will be charged.

The government has come back and is reinforcing that loophole with Bill C-20. I say, close the loopholes, listen to the people who have signed their names on the petitions that have been tabled in the House of Commons. Hundreds of thousands of Canadians are begging us to take up legislation that will put an end to the torment and the exploitation of our children across this land. They want it stopped. They have appealed to us to do it because they believe that we are the body of people who can do it.

● (1340)

I have to ask every member in the House of Commons, from every party, whether they would agree that we can do something about this problem. If they do agree, then we must do something about this problem. The last thing I would ask is whether they have the courage to move forward immediately and set this particular item on the table all by itself, not to muddle it with all other social issues but to get it underway and help our police departments across the land to deal with it, to set up a national strategy program and fund it.

Funding is no problem for the government. It found $100 million not too long ago to help out the City of Toronto regarding SARS. I can assure the people in the House that there are police officers who would love to get their hands on $100 million to help them in their fight on child pornography. No one can say for a moment that one is worse than the other, because I can assure members that the number of victims of child pornography far exceed the number of victims of diseases.

I do not think there is anyone here who would not agree that it can be done, so let us do it. We were elected to bring about the will of the people, and I can assure the members who are in here today that the will of Canadians is to stamp out child pornography once and for all, to get rid of it, and to make every effort we can to do it and not muddle it with clauses that leave loopholes.

Child pornography has no artistic merit and does not serve the public good. Every Canadian, except for the 2,500 pedophiles who have been identified, would attest to that to the highest degree.

I find it discouraging that this topic comes up over and over again. In the last six months I do not know how many times I have spoken to this very issue.

I find it discouraging that adult men and women, who are in a position to really do something that will protect our children, cannot come up with an idea or the dollars to do just that but have no problem inventing all kinds of ways to implement a gun registry program, for example. I do not think the almost $1 billion they are going to spend on the gun registry will have much impact on the safety of our children, not nearly the impact that fighting child pornography would have. The police departments would be the first ones to tell us that. The things they see are devastating.

The other problem is that the images we talk about in child pornography are not drawings or sketches. The majority of these images are photographs. These are real people. These are children who are alive and exist, and we do not even have a thing in place to identify who these children are so we could possibly rescue them out of their situation. Whether it be in Canada, in Europe or in the U.S., it does not matter, these children need to be rescued from this horrible plight.

There are countries that have gone to the extent of doing something about that. Sweden sort of set up the initial part of it. Canada was there and observed what it was going to do. It has a program which, generally speaking, is beginning to work. This thing was spread out to other countries, including the United States.

● (1345)

As a result of that program, the police have been able to identify some of the victims and some of the predators. While we sit on the sidelines, not participating in this kind of activity, a project in place in other parts of the world called "snowball" has identified for our police departments in Canada over 2,000 predators who reside in Canada. They know their names and where they live.

We should be participating in this program to help identify the victims, the predators, the distributors and the people who are making millions of dollars in profit off this evil thing, and start to wipe it out. That is an action we could take that would be so positive.

An hon. member: So popular.

Mr. Myron Thompson: And so popular. It would probably get anybody some votes.

Contrary to what the NDP says about this party not being interested in major issues, child pornography and the safety of our children is a major issue in the hearts of Canadians. If members of the NDP do not think it is, I would ask them to please start reading the hundreds and thousands of signatures on petitions in this place alone which beg us to do something about it.

What are we facing in regard to all of this? I started reading some letters that come in from the public. These letters are only a reflection of the hundreds of letters in regard to this issue. One letter reads, "Last week I heard on the radio that we do not have enough money and people power to prosecute child pornographers but we have a billion dollars to establish a long gun registry to keep trapping and sporting tools of law-abiding citizens. What is wrong with this picture? Firearm owners are not potential criminals. Those who prey on young children are already criminals".

That is a very good point. The government is going after millions of people because it thinks there is a potential problem but in the one area that we have identified, through the help of other methods, it is not doing anything about it.

We are not helping our police departments. In case the people over there do not know it, Toronto is a huge city. I think it has three or four officers to deal with two million pieces of evidence regarding child pornography. They are begging and crying for help.

Members of the RCMP in my own riding have told me that they are getting complaints about child pornography from various sources but that they do not know what to do about it because they are not trained. They give those cases to the police departments in Calgary or Toronto.

We should stop and think about how right the guy is who wrote the letter. He goes on to say, "I don't know why I bother going down to the law court buildings any more to watch our so-called justice system in action. I only get more frustrated and disillusioned every time I go". He then goes on to talk about the number of child predators and child pornographers who are convicted. "In every case", he said, "they were given house arrest and community service".

It is too bad we have to spend so much time talking about this issue. Now we have to wait until Bill C-20 goes to a committee. Even the Conservative Party critic, much to my dismay, said that we had no choice but to support this because we had to get it to committee to try to fix it.

● (1350)

Getting a document to committee means it will take weeks and months and it could probably die. In weeks and months thousands of kids could die. It is time we decided to do something about it. The Liberal Party is the government in power. It has the ability to bring forward the initiative. What is it waiting on?

Mr. Chuck Strahl (Fraser Valley, Canadian Alliance): Madam Speaker, I appreciate the comments of the member for Wild Rose. I know he is very passionate about this issue and worries tremendously, as all of us do who have children and grandchildren, realizing there is a lot of sickness out there, especially in the child pornography area. It is truly sick and truly evil. I appreciate his championing this cause. He has done it, as he has already said, dozens of times in the House. I encourage him to keep that up as long as necessary.

I would like to ask the member to comment on the Liberal government's attempt to deal with kind of a side bar issue, I guess one could call it, of the fall out from some of this child pornography. It brought in legislation a year or two ago to allow for the prosecution of people who go on overseas vacations and then abuse and use children in those exotic locations. People go on sex holidays so they can avoid Canadian laws and then use and abuse children. Of course this is all part of this whole worldwide child pornography connection. People are hugely connected and the sickness is not isolated to any one society.

Would the member comment on the number of prosecutions we have had under that legislation? I will give him the answer even though I know he knows it. The answer is zero, none, zip, no action, nothing. There have been no prosecutions, not a single filing of charges. That legislation is as useless as useless can be because the government is not serious about the issue of child pornography, about protecting children, not only in Canada but overseas, about realizing that it is an interwoven mess that goes from one continent and one culture to another.

However the same sick people are abusing everything from their own Internet fantasies to these vacations for sexual exploitation purposes. Yet nothing is done in a so-called modern society as ours. There is no strategy. We have feeble, useless legislation on the books and the government hides behind that by saying that it has done something through its legislation. Not only has there not been a single prosecution, there has not even been a single filing of charges under that legislation. It is the same thing for child pornography.

Does the member think it is an attitudinal problem or is it just that the government is afraid to put enough teeth in the legislation because it is afraid of the courts? I do not know what it is but I know what the net result is: no protection for kids, no national child pornography strategy and no one understanding that these are real kids in real peril right now.

Mr. Myron Thompson: Madam Speaker, the member did a pretty good job of answering the question himself when he said that the number of convictions was zero. Other countries, Sweden for one and Australia for another, have programs in place following these kinds of activities. They are making arrests, convicting and sending criminals to jail. They are getting them off the streets to protect society as a whole. It can be done.

I do not know why the government sits idly by and does not engage in these kinds of activities with other countries. It has been invited. We have the technology. We have the money. It is not that expensive. We could do it. Why is there not a priority on it? It comes up with the idea that it is priority and that is why it brought in Bill C-20. The Liberals cannot seem to get it through their heads that Bill C-20 does not close the loopholes. There will be loopholes. The public good is there.

There are two million cases of child pornography in Toronto alone. I could not even begin to name the number of cases across the country. Every one of these items individually could be declared as public good by whoever owns, possesses or distributes them. If it has to go to court, we let the judges determine who is right or wrong. Let us send a message to the judges of our Supreme Court real quick. The people of Canada want child pornography stamped out and banned entirely but the government must take the initiative because it is in charge. We will support it.

● (1355)

Mr. Paul Szabo (Mississauga South, Lib.): Madam Speaker, I am sure that the member will agree that there is no one in this place and probably very few Canadians who would not agree that the existence of child pornography necessarily means that a child has been abused. Collectively, if we were to vote in this place today, we would all support a straightforward motion to prohibit the possession of child pornography.

We have this problem and I would appreciate the member's comments. It stems back to the Sharpe case, where there was talk about pictures that he may have drawn or stories he may have written. Photographs of human beings are clear. Lawyers can have fun with the statement that "it was just in my mind and so nobody was hurt".

Why do we always get sucked into these debates on things that are grey when there are black and white issues before us concerning child pornography?

I did some research on the Supreme Court of Canada and the whole concept of court made law. This is also part of the problem. I thought that Parliament was the highest court in the land. As far as I am concerned, in almost nine and half years as a parliamentarian, I have not seen Parliament represent itself in its work as the highest court in the land. Maybe it is time that Parliament exercised its authority and constitutional right to reflect the social values of Canadians.

Mr. Myron Thompson: Madam Speaker, that was well said and I could not agree more.

The problem is that only a few minutes before I spoke one of his colleagues spoke and she clearly said the Supreme Court was the highest court in the land. There are other members on that side of the House and down at the other end who believe the same thing. Members should check *Hansard* because it was said.

I indicated that Parliament was the highest court in the land. This member looked boldly at me and said that the Supreme Court was the highest court in the land. Maybe we had better have that debate and get that over with. Which is the highest court? Who is in charge of the country?

I prefer to believe that the people of Canada are in charge. The people of Canada put their faith in us as they democratically elected us. They want us to be the highest court in the land, rather than some appointed, unaccountable judges. We should have those issues settled. That should not take very long. Let us collectively work together and do what the member agrees should be done. Let us wipe child pornography out, ban it, and get rid of it. It is of no value.

I can guarantee members that if somebody wants to sit at home and doodle or whatever they want to call it, they had better keep their doodling file at home because if we do what we want to do it had better not be distributed or used in any form or that person has had it. We must get that message out there to let them know that.

In one court in Manitoba a child pornographer was caught. The crowd applauded because the lady judge brought in a fine of $10,000. She said that she wanted this predator of children to think about what he had done every time he opened his wallet. The crowd cheered and said that at last this was a decision that would have some deterrence. That decision was appealed to a higher court and guess what, it was overturned.

At the same time we had a poacher who shot an elk out of season and was fined $250,000. The fine stuck and he had to do jail time. Which is more important, our animals or our young children?

STATEMENTS BY MEMBERS

● (1400)

[*Translation*]

SHERBROOKE BIOTECHNOLOGY DEVELOPMENT CENTRE

Mr. David Price (Compton—Stanstead, Lib.): Madam Speaker, it is my honour to rise in this House today to given Canadians another example of the excellent job this government is doing in the riding of Sherbrooke.

S. O. 31

On April 25, the Sherbrooke Biotechnology Development Centre received a non-refundable contribution of $1.5 million from the Government of Canada, under its biomedical development project. This funding will buy state of the art equipment in the fields of biotechnology and human health.

The Sherbrooke Biotechnology Development Centre is a multi-tenant building with 20 or so laboratories which could accommodate more than 140 researchers. The building is under construction in the Sherbrooke Biomedical Park, a major scientific park in Quebec.

I want to assure the citizens of the riding of Sherbrooke that they —

The Acting Speaker (Ms. Bakopanos): The hon. member for Prince George—Peace River.

* * *

[*English*]

NATIONAL DEFENCE

Mr. Jay Hill (Prince George—Peace River, Canadian Alliance): Madam Speaker, I recently had the opportunity to meet a number of our naval personnel while in Halifax. As expected, I found them to be of exceptionally high calibre and proud to be serving our country. Our sailors have always given us their best. Yet in return, the Liberal government continues to abandon, neglect and embarrass them.

As we commemorate the 58th anniversary of Victory in Europe today as well as the 60th anniversary of the Battle of the Atlantic last Sunday, we must remember to honour our the commitment of our forefathers to fight for peace and freedom by properly supporting our military.

To meet this commitment Canada urgently needs to replace our aging Sea King helicopters. Canada needs to immediately replace our supply ships, HMCS *Preserver* and *Protector.* Canada needs new command destroyers. Canada needs a continuous shipbuilding policy to not only ensure our navy has the ships it requires, but to ensure we keep the skilled shipbuilders the industry itself requires.

Canada needs a Canadian Alliance government.

* * *

BOB MILLER

Hon. Andy Scott (Fredericton, Lib.): Madam Speaker, I am pleased to rise today to congratulate Bob Miller on winning the 2003 Award of Excellence at the New Brunswick Multimedia gala. This award goes to an individual who has made an outstanding contribution to the multimedia industry in the province of New Brunswick.

In 1982 Bob established his company, Atlantic Mediaworks Ltd., a full service video and film production company. He is an award winning producer and director. His work has been recognized provincially, nationally and internationally, including the Gemini Award winning CBC movie, *At the End of the Day: The Sue Rodriguez Story,* which he co-produced with Daphne Curtis, co-owner of Atlantic Mediaworks.

Bob has been a supporter and advocate of New Brunswick film. He works to produce high quality products, contributes to a viable and vibrant industry, increases opportunities for others in the field, and raises the national and international visibility of New Brunswick film.

I wish to congratulate Bob Miller for the honour of winning this prestigious and well deserved award.

* * *

VICTORY IN EUROPE DAY

Mr. Joe McGuire (Egmont, Lib.): Madam Speaker, today is VE Day, Victory in Europe Day, which marks the 58th anniversary of the liberation of Europe.

On this historic occasion, Canadians from sea to sea to sea will be joining their European counterparts in remembering those who served and made the ultimate sacrifice to defend liberty.

Close to one million Canadian men and women volunteered to fight for their country in its time of greatest need. By the end of this horrific conflict more than 45,000 Canadians had given their lives and up to 55,000 were wounded. Our military men and women were and are second to none, no matter what the conflict.

Today, we also pay tribute not only to those who served in Europe, but to those Canadians from all walks of life who contributed in a significant way to the war effort. Whether in factories, schools or at home, these Canadians toiled relentlessly to support their loved ones.

Their legacy lies in their courage and inexorable will to defend the values and freedoms which we enjoy today. Lest we forget.

* * *

WORLD RED CROSS DAY

Mr. Stan Dromisky (Thunder Bay—Atikokan, Lib.): Madam Speaker, today is World Red Cross Day, celebrated by national Red Cross and Red Crescent societies worldwide.

The Canadian Red Cross is a non-profit, humanitarian organization dedicated to improving the situation of the most vulnerable in Canada and throughout the world. All Canadian Red Cross programs and activities are guided by the fundamental principles of humanity, impartiality, neutrality, independence, voluntary service, unity and universality. These principles allow it to provide help immediately to whoever needs it, wherever they are, whatever their race, political beliefs, religion, social status or culture.

In Canada, the Red Cross provides a wide range of assistance to millions of people through national disaster relief, first aid, water safety and abuse prevention programs.

We would like to declare today, May 8, World Red Cross Day.

* * *

● (1405)

OLIVE STICKNEY

Miss Deborah Grey (Edmonton North, Canadian Alliance): Mr. Speaker, I rise today to pay tribute to a long time reformer and personal friend, Olive Stickney. A pioneer from the Peace River country, Olive died in Edmonton on May 3 at the age of 88.

In the early years of the reform party, we held small informal meetings all over the countryside. At one meeting in the Peace River country Preston Manning expressed surprise at the huge audience assembled in the hall. In explanation, one person called out "Olive Stickney told us we had to come to this meeting or she'd burn our barns down". Such was the presence and personality of Olive.

In recent years she lived in Edmonton. She and I had many visits, many laughs, and compared notes on each other's riding skills—I on my burgundy motorcycle and she on her burgundy motor scooter. I am sure she put almost as many miles as I did.

We will miss her laughter, her mischief, her sheer joy of life, and her wild and wonderful hats. To her family, we offer our sympathies as they say goodbye to Olive. We thank them for sharing her with us.

* * *

[*Translation*]

NATIONAL HOSPICE PALLIATIVE CARE WEEK

Mr. Gérard Binet (Frontenac—Mégantic, Lib.): Mr. Speaker, palliative care is designed to alleviate suffering. It is specialized care for the seriously ill and their family. The basic idea is to ensure the comfort and dignity of terminally ill patients.

One Canadian in ten is caring for someone who is seriously ill. We know that 80% of Canadians in the last stages of their life would rather stay at home, surrounded by their relatives, to receive care. This means that, in 25 years, one labour force participant in two will be caring for a relative at home.

In response, the Liberal government has put in place special measures, such as the establishment, in budget 2003, of eternity leave and the development of a strategy to improve end of life care.

This week is National Hospice Palliative Care Week. This is a time to honour those who, through their dedication, care for the seriously ill till the end.

* * *

MENTAL HEALTH WEEK

Mr. Réal Ménard (Hochelaga—Maisonneuve, BQ): Mr. Speaker, the goal of Mental Health Week 2003, running from May 5 to 11, is to raise awareness of the need to reduce the shame and social isolation that are all too often associated with mental illness.

I take this opportunity to salute the excellent work of the Montreal foundation known as Les Impatients, which is primarily a self-expression centre with workshops open to people who have, or have had, psychiatric problems, to enable them to experiment with various forms of art.

It is also an interpretation centre for therapeutic art and outsider art that permits any interested person to experience the creations of workshop participants, through exhibits, and to be better informed about mental health issues, through lectures, roundtable discussions and seminars.

There are some 150 regular participants at the three Les Impatients locations in Montreal. About 50 volunteers support the foundation in the pursuit of its goals.

Long live the foundation and bravo to all the workshop participants.

* * *

[*English*]

ROY ROMANOW

Mr. Tony Tirabassi (Niagara Centre, Lib.): Mr. Speaker, it is my pleasure to rise today to pay tribute to the winner of the Canadian Public Service Award for 2003, Mr. Roy Romanow.

Retiring in 2001 after a long and distinguished political career, Roy Romanow was lured back to public service in order to head the highly successful Romanow Commission on the Future of Health Care in Canada. The Romanow Commission has helped pave the way for better health care in the 21st century for all Canadians. This could not have been accomplished without Mr. Romanow's selfless dedication and tireless effort. Roy Romanow's career has been a model for Canadians who strive to make a difference in the lives of others.

I ask the House to join me in congratulating Mr. Romanow.

* * *

VICTORY IN EUROPE DAY

Mr. Roy Bailey (Souris—Moose Mountain, Canadian Alliance): Mr. Speaker, today is the 58th anniversary of VE Day, Victory in Europe. I remember VE Day 1945 very well. I do not have the words to describe the tremendous feeling of joy and relief that was demonstrated across this country.

Although it was a day of great happiness, I recall some sad events following VE Day, the saddest of which was when a German U-boat surfaced in the North Sea, obviously unaware that the war was over, and shot down a Canadian reconnaissance plane killing all members, one being from the community in which I live.

VE Day came less than one year after D-Day on June 6, 1944, which some historians describe as the longest day in history. It was on this day that the largest armada of naval, army and air force ever came together under one command. Too often VE Day does not get the attention it should. However, the war was still on in Asia and would not come to an end until some few months later.

* * *

● (1410)

STANLEY CUP PLAYOFFS

Mr. Massimo Pacetti (Saint-Léonard—Saint-Michel, Lib.): Mr. Speaker, in these uncertain times I would like to draw your attention to something that unites all Canadian fans from coast to coast. Of course what I am referring to is hockey.

With the spirit of both the men's and women's Olympic victories still fresh in our minds, I think it is very appropriate that we take a moment to wish the Vancouver Canucks the best of luck in tonight's game.

With my glorious Habs and the Flames not having made the playoffs and with the Oilers and Leafs making an early exit from this year's playoffs, it is with impatience that all Canadians keep their fingers crossed in order to continue the quest to have an all Canadian Stanley Cup final.

What a great series it would be to see the Vancouver Canucks and our local Ottawa Senators facing each other in the finals. Such a series would truly grab the attention of all Canadians.

* * *

WESTRAY MINE DISASTER

Mr. Bill Blaikie (Winnipeg—Transcona, NDP): Mr. Speaker, tomorrow will be the 11th anniversary of the Westray mine disaster. It has been 11 years since that awful day and still we have no assurance that the government will bring in the kind of corporate criminal liability legislation that would help to prevent such an avoidable and criminal waste of life in the future.

The government has said that it will introduce amendments to the Criminal Code in May. It is May now and we await the legislation. Hopefully it will be good enough to support. Hopefully it will not get lost in the political chaos that seems to be overtaking the Liberals as a result of the leadership race.

Hopefully the 26 miners will some day rest in peace knowing that what was done to them will never again be done with the impunity that weak laws now make tragically possible.

* * *

[*Translation*]

WALTER SISULU

Ms. Madeleine Dalphond-Guiral (Laval Centre, BQ): Mr. Speaker, Walter Sisulu, a leading figure in the African National Congress, and a comrade of Nelson Mandela, has died at the age of 90.

Despite threats and mistreatment, Walter Sisulu devoted his life to the freedom and democracy of the South African people. Apartheid did not prevent Sisulu from educating himself to such an extent that Colin Powell respectfully called him “the wise man behind the statesman”.

Not one for vengeance, he played an outstanding role in the difficult negotiations that led to the end of apartheid, peaceful transition and national reconciliation.

We have lost a great man. “Sisulu stood head and shoulders above all of us in South Africa,” said Nelson Mandela. “He was a great force for wisdom and liberty,” added South African President Mbeki.

Walter Sisulu has left us, but his achievement remains. South Africa is at peace with its neighbours and within itself.

Adding its voice to so many others in the world, the Bloc Quebecois offers its condolences to all the people of South Africa.

[*English*]

JUNO BEACH CENTRE

Mr. Sarkis Assadourian (Brampton Centre, Lib.): Mr. Speaker, on June 6, 1944 the first wave of assault troops landed on Juno Beach opening the way for the liberation of occupied France.

With the cooperation of the Minister of Veterans Affairs a constituent of mine, David J. Ward C.D. Retired, a veteran of the Juno Beach landings, will travel to France in June to participate in the opening ceremonies of the Juno Beach Centre.

Mr. Ward was born in France on May 11, 1921 and returned 23 years later as a Canadian soldier to help liberate the country and town of his birth.

Please join me in extending our thanks to Mr. Ward and all veterans for their sacrifice, valour and courage so ably demonstrated on the battlefields of World War II.

I call upon the House to join me in wishing Mr. Ward a happy 82nd birthday this Sunday, May 11. Happy Birthday, David.

* * *

MENTAL HEALTH

Mr. Greg Thompson (New Brunswick Southwest, PC): Mr. Speaker, this week is Mental Health Week and the Canadian Mental Health Association will strive to make all of us more aware of the issues related to this disease that often goes undiagnosed and untreated.

It is estimated that 20% of all Canadians will personally experience some mental illness in their lives. Nearly 4,000 Canadians die by suicide each year.

Last evening Canadians affected by mental illness displayed their art work on Parliament Hill. On behalf of the House I thank all the participants and personally acknowledge Kathleen Power, Gail Fox, Emily Durling, Guy Arsenault, Lawrence Sparks and Blandine Arsenault from New Brunswick. They truly are an inspiration for all of us.

I urge the Canadian government to finally follow through on some of the recommendations from the Canadian Mental Health Association. We need action on that file now, not later.

* * *

● (1415)

MULTIPLE SCLEROSIS

Mr. Jeannot Castonguay (Madawaska—Restigouche, Lib.): Mr. Speaker, I am pleased to inform the House that May has been designated Multiple Sclerosis Awareness Month by the Multiple Sclerosis Society of Canada.

[*Translation*]

Multiple sclerosis is a neurological illness that can cause balance problems, impaired speech, extreme fatigue, double vision and paralysis.

Canada has one of the highest rates of MS in the world. The Multiple Sclerosis Society of Canada provides significant support for research in this field.

In 2002, the MS society raised over $24 million.

[*English*]

Last year the society directed more than $5 million to its MS research program.

It is also supporting a new clinic for children with MS at the Hospital for Sick Children in Toronto.

This month volunteers across Canada will take part in the MS carnation campaign in support of MS research and services.

[*Translation*]

I invite my hon. colleagues to join me in wishing the best possible success to the Multiple Sclerosis Society of Canada, and encouraging all Canadians to take part.

ORAL QUESTION PERIOD

[*English*]

GOVERNMENT LEGISLATION

Mr. Stephen Harper (Leader of the Opposition, Canadian Alliance): Mr. Speaker, it has become evident in recent days that the former finance minister has the explicit support of the majority of the Liberal caucus and the Liberal cabinet. Reports are continuing to surface that he will use this power and is giving orders to block a large number of pieces of government legislation.

My question for the government, for the Prime Minister is, has the former finance minister spoken to the Prime Minister or members of the government to indicate which pieces of government legislation he will allow to be passed and allow to be implemented and which pieces he will not?

Hon. Don Boudria (Minister of State and Leader of the Government in the House of Commons, Lib.): Mr. Speaker, it is rather unusual to have the House business question being asked as the leadoff in question period as opposed to at 3:00 o'clock. Be that as it may, I am pleased to inform the Leader of the Opposition that the very important Bill C-13 on human reproduction will be dealt with tomorrow. This will be followed by the equally important Bill C-17 on public safety. We will then, thanks to the report tabled in the House earlier today, on Monday deal with Bill C-28, the budget implementation bill. Then we will consider, if not completed, Bill C-13, the human reproduction—

The Speaker: The hon. Leader of the Opposition.

Mr. Stephen Harper (Leader of the Opposition, Canadian Alliance): Mr. Speaker, I guess the question is whether anything will get done or this is just a slow motion charade.

The report suggests that the former finance minister will be blocking a large part of the government's legislation, many bills. One in particular I am going to ask about is Bill C-24 on election rules and political financing. We in the Canadian Alliance believe this is a bad bill for taxpayers, however it is important for all political parties that we know what the rules of the next election are going to be. Could the minister indicate whether the government intends to pass this through the House and Senate, and if so, when is it going to attempt to do that?

Hon. Don Boudria (Minister of State and Leader of the Government in the House of Commons, Lib.): Mr. Speaker, this question period is getting weirder by the minute.

I am pleased to inform the hon. member to continue with the parliamentary agenda, that the committee dealing with Bill C-24, the Standing Committee on Procedure and House Affairs, is doing an excellent job under the leadership of all Liberal members and others too who support the legislation, notwithstanding the delays caused by the Alliance in the House of Commons at second reading. The bill will be back in the House probably in a couple of weeks time. Consultations are ongoing. Witnesses are being heard. And yes, after committee the next step is—

The Speaker: The hon. Leader of the Opposition.

* * *

FISHERIES

Mr. Stephen Harper (Leader of the Opposition, Canadian Alliance): Mr. Speaker, what is weird is an 18 month departure period in which somebody else becomes the de facto prime minister and the government does less than usual.

Let me change the subject to an important issue that has come up today as a consequence of the government's mismanagement. The Government of Newfoundland and Labrador apparently has introduced legislation calling for the renegotiation of its terms of union, its terms of Confederation. It apparently wants a joint management of the fishing industry, something that we in this party have long been open to. We believe that offshore resources like Newfoundland has should be subject to similar rights that provinces like Alberta have.

Is the government prepared to sit down and discuss these demands with the government of Newfoundland?

● (1420)

Hon. Stéphane Dion (President of the Queen's Privy Council for Canada and Minister of Intergovernmental Affairs, Lib.): Mr. Speaker, no constitutional amendment will bring back the fish and will do nothing for the communities. What is important is to work as good partners to help the communities facing this difficult event. Anyway, a constitutional amendment about fisheries cannot be bilateral; it would need to have seven provinces and 50% of the population.

* * *

THE ENVIRONMENT

Mr. James Moore (Port Moody—Coquitlam—Port Coquitlam, Canadian Alliance): Mr. Speaker, on March 6 last year, the merchant vessel *Atlas*, a Canada Steamship Lines ship, deliberately dumped oil overboard causing a 22 mile long slick 80 miles off the coast of Halifax. This was caught on video if the Liberals have any doubt about it. Transport Canada says that Canada Steamship Lines' *Atlas* has a history of non-compliance with regard to environmental legislation.

If the government is serious about protecting the environment, why does it allow Canada Steamship Lines to get away with this? Is it perhaps because Canada Steamship Lines is owned by the Martin family?

Hon. David Anderson (Minister of the Environment, Lib.): Mr. Speaker, all infractions of the legislation in question and the regulations under that legislation are pursued by Environment Canada, by Transport Canada, by Fisheries and Oceans Canada, by the Department of National Defence. As appropriate we insist on applying the law in these cases because we understand the consequences of not doing so.

Mr. James Moore (Port Moody—Coquitlam—Port Coquitlam, Canadian Alliance): Mr. Speaker, about Canada Steamship Lines Transport Canada says "the offender obtained significant material gain", profits, "by choosing not to properly maintain pollution prevention equipment on board a Canada Steamship Lines' *Atlas*".

Why is it that after a decade in power the government does absolutely nothing to stop the mass polluting, tax dodging, un-Canadian behaviour of Canada Steamship Lines and the member for LaSalle—Émard?

Hon. David Anderson (Minister of the Environment, Lib.): Mr. Speaker, the unparliamentary language of the member opposite who asked the question is regrettable. I can point out to him, however, that when he quotes government documents about the issue, it is pretty clear the government is taking it seriously and is in fact applying the law.

* * *

[*Translation*]

FISHERIES

Mr. Gilles Duceppe (Laurier—Sainte-Marie, BQ): Mr. Speaker, because of the federal government's disastrous management of the fisheries, thousands of plant workers in Quebec and Atlantic Canada, whose employment insurance benefits ran out over a month ago, are left with nothing, there being no cod or crab to process.

Since the government is responsible for the collapse of the fisheries, and since the employment insurance fund surplus stands at $45 billion, will it use these funds from contributors to improve the program and assist the plant workers of the North Shore, the Gaspé Peninsula, the Magdalen Islands and the Atlantic region?

Hon. Robert Thibault (Minister of Fisheries and Oceans, Lib.): Mr. Speaker, when the moratorium on the stocks was announced, a $50 million short-term assistance program for these communities was also announced, as was a desire to hold discussions on long-term economic development. The minister responsible for the Economic Development Agency of Canada is doing an excellent job here.

Mr. Gilles Duceppe (Laurier—Sainte-Marie, BQ): Mr. Speaker, Bernard Lord and Nathalie Normandeau, a Quebec cabinet minister, both said today that this is the federal government's fault and responsibility. The federal government must act. This is what Natalie Normandeau said during a press conference, when she asked, "When will the federal government assume its responsibilities? When will it support Emploi-Québec?" The federal government is doing nothing and is letting everyone suffer. That is what she said. Does the minister have anything to respond?

Hon. Robert Thibault (Minister of Fisheries and Oceans, Lib.): Mr. Speaker, it is true that the federal government is responsible for taking steps to protect our resources, and it is true that it has agreed to create a short-term assistance program for these communities, when the resources collapsed. It is also true that there are agreements with the provinces related to the provision of services by HRDC. I am convinced that the Departments of Human Resources Development Canada and Economic Development Canada will do an excellent job.

● (1425)

Ms. Monique Guay (Laurentides, BQ): Mr. Speaker, the federal government has been accumulating enormous surpluses in the employment insurance fund for eight years now. The fund now stands at $45 billion, all ready for a rainy day it would seem.

When the North Shore fishery workers find themselves with nothing, with no more cod or crab to catch or process, and no hope of any other means of livelihood, that is a rainy day.

Will the government admit that the time has come to use the surplus in the employment insurance fund to provide special assistance to the people of that region?

Ms. Diane St-Jacques (Parliamentary Secretary to the Minister of Human Resources Development, Lib.): Mr. Speaker, I wish to state that the government is greatly concerned by the situation of the fishery workers and that the employment insurance program is operating well, overall. It is there to meet the needs of workers who lose their jobs temporarily.

As has been stated on numerous occasions, workers can count on the assistance of our government. This is why the department is working in conjunction with ACOA and the provinces to find solutions to the problems being experienced by fishers.

Ms. Monique Guay (Laurentides, BQ): Mr. Speaker, the situation on the Lower North Shore is a really exceptional one, because fishery zone 13 is closed completely, thus doing away with all employment in that sector.

Will the government admit that this exceptional situation demands an exceptional solution, and that the EI fund with its $45 billion surplus must be used to save these people from abject poverty?

Hon. Claude Drouin (Secretary of State (Economic Development Agency of Canada for the Regions of Quebec), Lib.): Mr. Speaker, there are some things hon. members must realize. First, there is no surplus in the EI fund. Second, we are transferring $600 million for manpower training to Quebec, and will be working in collaboration with the new government, which is greatly concerned with supporting employers and employees in these regions. The $14 million we will be injecting into short-term measures will be enhanced by consultations with a view to establishing long-term measures. We are going to be working with fishers, ship's crews and plant workers in order to provide assistance.

* * *

[*English*]

HEALTH

Mr. Bill Blaikie (Winnipeg—Transcona, NDP): Mr. Speaker, I thank the minister for getting the House properly worked up before my question.

My question is for the Minister of Health. It has to do with the fact that the deadline for the national health council that Roy Romanow recommended has expired. Mr. Romanow has expressed concern. We in the NDP share that concern.

I am not able to ask a question of the provisional government at Earnscliffe, so I thought I might ask the Minister of Health what is going on. When will we be getting a national health council like Roy Romanow recommended?

Hon. Anne McLellan (Minister of Health, Lib.): Mr. Speaker, we are working on the development of the health council but as the hon. member is aware, over these number of weeks provincial colleagues, in particular my provincial colleague from the Province of Ontario, have been dealing with the outbreak of SARS. A collaborative decision was made to postpone ministerial discussions around the health council until such time as we were confident that the control and containment measures around SARS were working and we could move forward in terms of helping Toronto deal with the economic fallout from the outbreak of SARS.

* * *

TAXATION

Mr. Bill Blaikie (Winnipeg—Transcona, NDP): Mr. Speaker, while I am talking about the unconstitutional provisional government, I would like to follow up on the question asked by the hon. member about Canada Steamship Lines and the record of that company with respect to pollution, a question for the Minister of the Environment.

Does he think it is appropriate that when a company like Canada Steamship Lines is fined for environmental violations it is able to deduct those fines from its income tax? Does he not think that reduces the deterrence effect of such fines and would he be prepared to recommend changes in that regime?

Hon. Elinor Caplan (Minister of National Revenue, Lib.): Mr. Speaker, as the member opposite should know, the Supreme Court of Canada ruled some time ago. That ruling is under review by the Department of Finance because we want to ensure that everyone pays their fair share of taxes.

* * *

NATIONAL DEFENCE

Right Hon. Joe Clark (Calgary Centre, PC): Mr. Speaker, the Prime Minister used to have conversations with homeless people who did not exist. Now, on missile defence, his position is that he is studying very carefully a proposal he has never received. Let us coax out a little more of the truth.

The U.S. plan involves the deployment of ground-based interceptors and the upgrade of early warning radar. The Americans have already requested the U.K. and Denmark to upgrade radar on their territory.

Has the government received either a formal request or an informal suggestion that Canada should upgrade early warning radar or allow ground-based interceptors on our territory?

Hon. John McCallum (Minister of National Defence, Lib.): Mr. Speaker, the Liberal caucus is engaged in a very open and useful discussion of this issue. As characterized on television earlier this morning by the member for Charleswood—St. James—Assiniboia, the situation can be described as a debate rather than a split within the Liberal caucus. This is a transparent, open, intellectually stimulating process, and I would commend it to the leader of the fifth party to carry out in his own party.

● (1430)

Mrs. Elsie Wayne (Saint John, PC): Mr. Speaker, we now know that Eurocopter had special influence on the Prime Minister's Office through Ambassador Chrétien.

Did any other company competing for the contract to replace our Sea Kings seek to exercise similar influence on the Department of National Defence through the PMO? If so, will the Prime Minister agree to table in the House all relevant documentation concerning this representation?

If not, could the Prime Minister explain why our ambassador to France has become the ambassador for Eurocopter?

Hon. John McCallum (Minister of National Defence, Lib.): Mr. Speaker, without accepting any of the many premises in that question, I would remind the House that the contract is based on a statement of requirements, which was specified in 1999 with the full agreement of the military leadership, and that is the bible, that is sacrosanct in terms of acquiring the right helicopter.

All the companies involved in the process, including the one mentioned by the hon. member, have made representations to the government in terms of the detailed specifications to carry out the statement of requirements. However the statement of requirements has not changed one iota and will not change.

Mr. Gerry Ritz (Battlefords—Lloydminster, Canadian Alliance): Mr. Speaker, the Liberal government has turned the urgent need to replace our 40 year old Sea King helicopters into 10 years of national disgrace.

The Liberals bent over backwards to address specious complaints by the French government that our military's requirements were too stringent, so the government lowered them.

Our new French allies have now rejected the successful $4 billion bid for aircraft engines by Montreal's Pratt & Whitney for blatantly political reasons of their own.

Will the Liberal government admit that its willingness to dumb down the replacement requirements to keep the French happy has backfired?

Hon. John McCallum (Minister of National Defence, Lib.): Mr. Speaker, the government will admit no such thing because it is not true.

I guess I cannot blame the hon. member for not anticipating the question preceding, but it is the same question. As I have just explained, the government has adhered religiously to the statement of requirements delivered in 1999. We have heard representations from every company that might be in the bidding process. We have made adjustments to ensure that we get the helicopter faster and at lower risk.

We are deeply committed to carrying out that process as fast as possible.

Mr. Gerry Ritz (Battlefords—Lloydminster, Canadian Alliance): Mr. Speaker, the continued assertions by ministers over there that the 10 years that they have wasted searching for the politically correct helicopter are sounding more foolish all the time. The minister just proved that again.

We all know the requirements were constantly manipulated; bundled, debundled, rebundled, bungled, rebungled. We now know the procurement process was shanghaied by the Prime Minister with the help of his nephew, the Ambassador to France.

Could the minister of public works guarantee that Canadian taxpayers will not be saddled with another mess that he and his government have made?

Hon. John McCallum (Minister of National Defence, Lib.): Mr. Speaker, again I accept none of that because it is largely untrue.

Except he did mention the word rebundling which gives me the opportunity to explain once again to the House that the government did take the step to move from two contracts to one contract. As a result, the entire industry agrees that this is a positive move in the sense that we will get the right helicopter faster than otherwise, at lower risk.

We are seized with the issue to get the right helicopter at the best price as soon as possible.

* * *

[*Translation*]

FISHERIES

Mr. Ghislain Fournier (Manicouagan, BQ): Mr. Speaker, the people in my riding on the Lower North Shore are crying for help. All that they had left, their fishery, is now completely off limits. They need help. I presented the minister with a seal processing project with Tamasu, which is only waiting on a supply guarantee.

What is the minister waiting for to confirm this supply guarantee?

Hon. Robert Thibault (Minister of Fisheries and Oceans, Lib.): Mr. Speaker, the member gave us a recommendation, a letter, yesterday. We received it. We will evaluate it and officials from my office will contact the company to see what is possible.

We will look at it favourably, but we cannot make any decision without considering all of the elements, all of the other communities and the sealing industry.

Mr. Ghislain Fournier (Manicouagan, BQ): Mr. Speaker, the situation is critical. My constituents are desperate, as am I. I spoke with the minister about this project on May 1. He told me he was looking at the idea. We spoke again on May 5; he told me again that he was looking at it.

Today is May 8; what does it take? A decision needs to be made. What does he have to say to my constituents? If he does not care, if he wants to shut down the Lower North Shore, he should say so.

● (1435)

Hon. Robert Thibault (Minister of Fisheries and Oceans, Lib.): Mr. Speaker, the member gave us a letter with the name of the company for the first time yesterday. We will contact them. We will look into the idea and see if there is a possibility of going ahead without posing any risks to the rest of the industry, if we can allocate quotas to one specific company for a short term and give it the chance to compete with the others, but allocations are normally given to sealers, not companies.

* * *

[*English*]

FIREARMS REGISTRY

Mr. Garry Breitkreuz (Yorkton—Melville, Canadian Alliance): Mr. Speaker, a former head of the Canadian Firearms Centre, at the public accounts committee yesterday, said that no one was fired or demoted because of the firearms fiasco. This is contrary to what the Prime Minister told the media, and I quote:

> Some people have been demoted; some lost their jobs in the process. It's not the same people who are in charge today.

The reason the same people are not in charge is because they have all been promoted, not demoted. Does the Prime Minister regret making this statement?

Hon. Wayne Easter (Solicitor General of Canada, Lib.): Mr. Speaker, I know the hon. member for Yorkton—Melville likes to stick with the past. The government has moved on since those days. We have moved on and we have moved progressively on. In fact, we have passed legislation in the House that will create more efficiencies in the system.

I would think that the member should be looking at helping us to move that program forward in the country and have gun owners come into the system so that we have safer streets.

Mr. Garry Breitkreuz (Yorkton—Melville, Canadian Alliance): Mr. Speaker, the best thing the government could do to move on is scrap Bill C-68.

Yesterday the Solicitor General told the House that his billion dollar gun registry does not even track the addresses of 131,000 criminals who have been prohibited from owning firearms by the courts.

The Solicitor General said that this information on the most dangerous people in Canada with firearms was not necessary for the management of the program and, therefore, was not authorized by the Privacy Act.

Could anyone on that side of the House please explain why these criminals are protected by the Privacy Act, but two million law-abiding firearm owners are not?

Hon. Wayne Easter (Solicitor General of Canada, Lib.): Mr. Speaker, as usual the member's facts are not quite on target. The fact of the matter is that in the month of December 2002 there were 325 actual police investigations using the services and information databases of the Canadian firearms program. Those investigations went some distance in terms of using the registry to find illegal weapons, to find stolen weapons and to make our communities safer. Will the hon. member start to get with the program?

* * *

[*Translation*]

SOFTWOOD LUMBER

Mr. Michel Gauthier (Roberval, BQ): Mr. Speaker, a few weeks ago the federal government announced a $2 million program to help out the Lac-Saint-Jean—Saguenay region, which has been a victim of the softwood lumber crisis.

My question for the Secretary of State is this: why is it that the program in question has such absolutely ridiculous criteria that it cannot be used by the Coopérative de solidarité Multi-ressources du Québec, where 135 employees are at risk because of the cash-flow situation, and why is Dolbeau-Mistassini, in the heart of the Lac-Saint-Jean—Saguenay forestry sector, not eligible according to these criteria?

Hon. Claude Drouin (Secretary of State (Economic Development Agency of Canada for the Regions of Quebec), Lib.): Mr. Speaker, the program we established was intended to help communities, since we could not help businesses. We do not want to be accused by the Americans of subsidizing business, which is one of the points of contention in the present dispute.

Still, for a particular case like that, I will have a look at it with our Lac-Saint-Jean—Saguenay office and see what we can do. I will come back with an answer to this.

Mr. Michel Gauthier (Roberval, BQ): Mr. Speaker, I thank the minister. I hope he will look into the situation and at the same time I would like to ask him one question.

Is the federal government not capable of understanding that when one announces assistance programs in a region and then allows public servants to set criteria that have nothing to do with reality on the ground, we end up with illogical situations like this one? I will also ask him to review his criteria and get busy supporting the economy and the people who have been thrown out of work, rather than announcing programs that apply to some imaginary region.

● (1440)

Hon. Claude Drouin (Secretary of State (Economic Development Agency of Canada for the Regions of Quebec), Lib.): Mr. Speaker, I can tell the House that we have a professional public service, working in good faith on behalf of the entire population and in cooperation with the government and with the hon. members on this side of the House.

There already have been 53 projects accepted and steps have been taken. Of these, 11 have been implemented and we shall continue working to help the people in the regions as we have always done.

[*English*]

CANADA ELECTIONS ACT

Mr. Vic Toews (Provencher, Canadian Alliance): Mr. Speaker, voters in Perth—Middlesex are outraged that a convicted murderer will be voting in the byelection this Monday. The minister promised Canadians six months ago that he would review the decision to give prisoners the right to vote. On October 31 he said, "We will review the decision in great detail and respond to the House".

Will the minister tell Canadians why after six months he has failed to make any report to Parliament on this important issue and why he continues to support equal rights for murderers?

Hon. Don Boudria (Minister of State and Leader of the Government in the House of Commons, Lib.): Mr. Speaker, I answered this question yesterday, but evidently the hon. member was not listening too attentively so let me repeat it. First, I indicated last fall that the government would be looking at the decision of the Supreme Court of Canada in order to respond. That review was done by officials of the government.

After that was completed, I personally wrote to the Chair of the Standing Committee on Procedure and House Affairs. I was informed that in fact the hon. member across and others have not yet made any contribution to that process. I said—

The Speaker: The hon. member for Provencher.

Mr. Vic Toews (Provencher, Canadian Alliance): Mr. Speaker, the minister has shown no leadership after promising to show leadership and the Liberal government has shown no leadership in protecting the safety and security of Canadians. The Liberals refuse to overturn a court ruling giving convicted murderers the right to vote and they refuse to close their own legal loopholes that allow child pornography. There is no excuse for this Liberal government sacrificing the safety of our children.

Will the Prime Minister pledge today that he will end the right of murderers to vote and impose a zero tolerance policy for child pornography?

Hon. Don Boudria (Minister of State and Leader of the Government in the House of Commons, Lib.): Mr. Speaker, the hon. member refers to the issue of inmate voting as one of public security. This is absolute and utter nonsense, as he will be aware. This question is a desperate attempt by a party running a distant third in the electoral district of Perth—Middlesex to try to salvage something next Monday. Unfortunately for them and fortunately for the rest of the world, it will not work.

* * *

TRADE

Mr. Walt Lastewka (St. Catharines, Lib.): Mr. Speaker, exports account for 41% of Canada's GDP. One in four jobs in Canada is linked to trade. Current events such as SARS, the U.S. deficit and the increasing Canadian dollar all have an impact on imports and exports. Would the Minister for International Trade please provide the House with an overview of Canada's state of trade?

Hon. Pierre Pettigrew (Minister for International Trade, Lib.): Mr. Speaker, today I was pleased to table the fourth annual report on Canada's state of trade, with 2002 marking the eleventh consecutive year of economic growth, the longest and most stable expansion of the post-war era. Canada performed well despite the lacklustre economic performances of most of our major trading partners. Services trade was the bright spot in Canadian exports, registering an increase of $1.6 billion. As we move forward, I am convinced that momentum will pick up and we will approach 2004 with renewed economic and trade confidence.

* * *

FOREIGN AFFAIRS

Ms. Alexa McDonough (Halifax, NDP): Mr. Speaker, my question is for the defence minister, the guy who will not buy helicopters that work but has no problem buying a star wars system that does not. The government now says that NMD is not about weaponizing space, that Rumsfeld has abandoned his passion for putting weapons in space. Talk about head in the clouds.

To assure Canadians who are worried about where the government is headed on star wars, could the minister name in the course of human history the new weapon that did not expand?

● (1445)

Hon. John McCallum (Minister of National Defence, Lib.): Mr. Speaker, I am not sure I fully understood the question, but as my colleague the Minister of Foreign Affairs has indicated several times, Canada is firmly opposed to the weaponization of space and that policy will not change one little bit. Canada remains firmly opposed to weaponization of space, whether or not we enter into negotiations with the United States on missile defence. Our opposition to weaponization of space is entirely non-negotiable.

* * *

[*Translation*]

FISHERIES

Mr. Yvon Godin (Acadie—Bathurst, NDP): Mr. Speaker, the Minister of Fisheries and Oceans continues to insist that he is too busy in Ottawa to go to Shippagan where there is a serious crisis affecting the fishing industry.

It is true that running from one reception to another, including one for the Liberal leadership candidate and member for LaSalle—Émard, is very important. The Minister of Fisheries and Oceans has very mixed up priorities.

My question is for the Minister of Fisheries and Oceans. Will the Liberal candidate for LaSalle—Émard have to hold a fundraiser in Shippagan to get the Minister of Fisheries and Oceans to go there, in order to finally resolve the fisheries crisis?

The Speaker: It is not clear that this question relates to government business. Therefore, in my opinion, it is out of order.

Some hon. members: Oh, oh.

The Speaker: The hon. member for Calgary Centre.

[*English*]

MEMBER FOR LASALLE—ÉMARD

Right Hon. Joe Clark (Calgary Centre, PC): Mr. Speaker, for eight years the member for LaSalle—Émard was simultaneously Minister of Finance and owner of Canada Steamship Lines. As minister he received 12 separate briefings on his private business. A vice-president of Canada Steamship Lines told the CBC program *Disclosure* that the company had moved its operations to Barbados because of "changes in Canadian tax rules".

Would the government confirm that those changes were made in the member for LaSalle—Émard's first budget and can the Prime Minister categorically declare that the former minister did not influence the changes in Canadian tax rules in his budget which caused his company to move its activities to Barbados?

Hon. David Anderson (Minister of the Environment, Lib.): Mr. Speaker, the issue raised by the right hon. gentleman has been raised before in the House. The hon. member for LaSalle—Émard has time after time clearly indicated that he recused himself from all cabinet discussions in which any interest of his might be affected. That was the case. Time after time this has been looked at and time after time it has been proved that he really is absolutely without blame on any aspect of this.

It really would be advisable for the right hon. gentleman, in his last week or two in the House, to adopt a higher tone and more appropriate behaviour.

* * *

FISHERIES

Mr. Loyola Hearn (St. John's West, PC): Mr. Speaker, the Government of Newfoundland and Labrador is seeking a constitutional amendment to seek shared jurisdiction and equal management over the fisheries. The Minister of Intergovernmental Affairs today flippantly said a constitutional amendment will not bring back the fish.

If we had had such an amendment we would not have lost the fish in the first place. In light of this, will the government consider—

Some hon. members: Oh, oh.

[*Translation*]

The Speaker: Order, please. It is impossible to hear the hon. member's question.

[*English*]

There is too much noise. The hon. member for St. John's West has the floor. I cannot hear a word he is saying. The Chair has to be able to hear.

Mr. Loyola Hearn: Mr. Speaker, in light of this, will the government consider discussing such an arrangement not only with Newfoundland and Labrador but with other coastal provinces so that the resource can be managed properly?

Hon. Stéphane Dion (President of the Queen's Privy Council for Canada and Minister of Intergovernmental Affairs, Lib.): Mr. Speaker, this has nothing to do with a constitutional amendment. I quote the former Tory minister of fisheries, Mr. John Crosbie, who said that the problem is "happening everywhere in the world. It's not just off the east coast of Canada". I think Mr. Crosbie is quite right. It has nothing to do with a constitutional amendment.

* * *

JUSTICE

Mr. Kevin Sorenson (Crowfoot, Canadian Alliance): Mr. Speaker, the justice minister knows that conditional sentences have been granted to violent offenders, some convicted of manslaughter and rape. He also knows that the courts have ruled that conditional sentences are not off limits to violent offenders because the government failed to restrict their use in legislation.

My question is for the Minister of Justice. Was it the intent of this government to allow convicted rapists and other violent offenders to serve out their sentences at home?

● (1450)

Mr. Paul Harold Macklin (Parliamentary Secretary to the Minister of Justice and Attorney General of Canada, Lib.): Mr. Speaker, the hon. member knows that conditional sentencing is a part of our overall sentencing program. It has been in place now for six years. It seems to work amazingly well. It does a great deal to keep our overcrowded prisons from excess prisoners who should otherwise be serving in the community. As far as I am concerned at the moment, the justice and human rights committee is examining the exceptional cases. It is completing its review and will report to the minister and to the House.

Mr. Kevin Sorenson (Crowfoot, Canadian Alliance): Mr. Speaker, I think those who believe that conditional sentences are working amazingly well are those violent offenders who are serving out their sentences at home.

If the Minister of Justice agrees that rapists should not be serving their time in the community and that these are only exceptional cases, why does he not immediately amend the Criminal Code to allow the use of conditional sentences only for non-violent offenders, an idea that the Canadian Alliance has been demanding for years?

Mr. Paul Harold Macklin (Parliamentary Secretary to the Minister of Justice and Attorney General of Canada, Lib.): Mr. Speaker, only those offenders who do not pose a risk to the public are considered for conditional sentences. The committee is examining the entire matter of conditional sentencing to make certain that this process is being followed. Over six years, conditional sentencing has proven to be a valuable resource to justice in this country. We are only going to look at the exceptional cases when the committee reports back.

* * *

[*Translation*]

NATIONAL DEFENCE

Mr. Claude Bachand (Saint-Jean, BQ): Mr. Speaker, the missile defence shield issue has been back in the forefront for the past few weeks now. We are learning how divisive an issue it is, splitting the cabinet and the Liberal caucus, although not one iota of the plan has been seen by anyone.

Does the Prime Minister not find it strange that the government is preparing to negotiate on a project of this scope without first presenting it for discussion in the House of Commons? Does he not feel that would be the minimum required?

Hon. John McCallum (Minister of National Defence, Lib.): Mr. Speaker, there is nothing strange about it. The government has not yet made a decision on this.

What is going on is a good discussion within the Liberal caucus. It has been discussed within caucus, at the caucus committee meeting, and in cabinet. There is plenty of brain power within the Liberal Party for such discussions. Why would there be no discussions within the Bloc? Is brain power lacking there?

Mr. Claude Bachand (Saint-Jean, BQ): Mr. Speaker, the government has adopted the position of the Standing Committee on Foreign Affairs and International Trade as its own. It has accepted the committee's position, and the committee has already expressed opposition to the weaponization of space.

Cabinet is now preparing to negotiate a project that will lead to just that. I do not know whether the minister is following the intellectual development of my argument. This defence shield project will cost millions of dollars and on top of that we learn that no one, including the government, knows all the details.

Does the Prime Minister not find this premature to say the least, as well as imprudent, to move on this project before these conditions are met?

Hon. John McCallum (Minister of National Defence, Lib.): Mr. Speaker, as I have just explained, the weaponization of space has been opposed by the government for years. We continue to be opposed to these policies. This will not change. So that is what the government policy is.

* * *

[*English*]

CHILD PORNOGRAPHY

Mrs. Betty Hinton (Kamloops, Thompson and Highland Valleys, Canadian Alliance): Mr. Speaker, all over the world governments are uniting to wipe out the scourge of child pornography. Only in Canada do we have a government that allows this industry to continue to exist.

Having been told repeatedly by Canadians that there is no merit, artistic or otherwise, in such filth, the Liberals have decided there might be some public good to be found in graphic illustrations of child exploitation.

Will the justice minister explain to Canadians how he can defend the existence of child pornography by searching for evidence of some public good?

Mr. Paul Harold Macklin (Parliamentary Secretary to the Minister of Justice and Attorney General of Canada, Lib.): Mr. Speaker, clearly we are all in this House against child pornography. I do not think there is any question about it.

We are bringing forward and have now before the committee legislation that we believe will be effective in dealing with child pornography. Despite the fact that the opposition disagrees, we believe it will be effective and we will support that legislation.

● (1455)

Mrs. Betty Hinton (Kamloops, Thompson and Highland Valleys, Canadian Alliance): Mr. Speaker, Canadians know there has never been any artistic merit in child pornography and Canadians know there is no public good to be found in depraved illustrative material that exploits children.

When will the Minister of Justice do what is right and what Canadians want and introduce legislation declaring that child pornography is indefensible at every level, and lay down strict sentencing guidelines for those found guilty of trafficking in it?

Mr. Paul Harold Macklin (Parliamentary Secretary to the Minister of Justice and Attorney General of Canada, Lib.): Mr. Speaker, clearly we are against child pornography, but in the process of trying to deal with that before our courts, one of the examples of public good is that our prosecutors have to be able to deal with the material in order to prosecute.

* * *

ABORIGINAL AFFAIRS

Mr. Brian Pallister (Portage—Lisgar, Canadian Alliance): Mr. Speaker, my question concerns the Liberals' Criminal Code provisions that instruct judges to be more lenient to aboriginal criminals.

We on this side of the House understand that discounting sentences for criminals means discounting justice for their victims. In the near future the murderer of RCMP constable Dennis Strongquill may be given a more lenient sentence because of his aboriginal status.

If Dennis' six children were to come here and ask the government to explain why they do not deserve equal, equitable justice in this country, what would the government say?

Mr. Paul Harold Macklin (Parliamentary Secretary to the Minister of Justice and Attorney General of Canada, Lib.): Mr. Speaker, with respect to aboriginal offenders, special alternative measures are available in certain cases, but in this case, the murder of a police officer, there is a mandatory minimum sentence and those alternative opportunities will not be available.

Mr. Brian Pallister (Portage—Lisgar, Canadian Alliance): Mr. Speaker, that is totally irrelevant and is of absolutely zero comfort to the victims of crime.

If there were a maximum sentence imposed it might be relevant but it is not relevant. Justice is supposed to be blind. It is not supposed to be peeking out from under a blindfold to see what one's skin colour is.

The government should be ashamed of having this provision. This is the only country in the world that asks judges to be social workers and asks judges to peer out and see what the race of the offender is.

Liberal justice is two tier justice. It is race based justice. It is colour coded justice. The Canadian Alliance believes that Canadians are equal before the courts and aboriginal victims of crime deserve equal justice.

I ask the government to—

The Speaker: The hon. Parliamentary Secretary to the Minister of Justice and Attorney General of Canada

Mr. Paul Harold Macklin (Parliamentary Secretary to the Minister of Justice and Attorney General of Canada, Lib.): Mr. Speaker, we are of the opinion that the penalty ought to fit the crime. In this particular case that the hon. member raises, there is no question that it applies equally to all.

* * *

[*Translation*]

FISHERIES

Mr. Gilles Duceppe (Laurier—Sainte-Marie, BQ): Mr. Speaker, following the request made by Bernard Lord, Premier of New Brunswick, and Nathalie Normandeau, Quebec's minister for the regions, the federal Liberal member for Bonaventure—Gaspé—Îles-de-la-Madeleine—Pabok just announced in Chandler that there would be no additional support from the federal government.

How is it—during a crisis that is affecting thousands of workers and fishers—that the federal government refuses to work with both Quebec and New Brunswick? How can the government refuse the requests made by Quebec and New Brunswick?

Hon. Claude Drouin (Secretary of State (Economic Development Agency of Canada for the Regions of Quebec), Lib.): Mr. Speaker, I want to remind members of the Bloc Quebecois that we have already announced $14 million for short-term measures and we are in consultations regarding long-term measures that we would like to announce in the fall.

In addition, we will be working together with the municipalities, plant workers, fishers and the community to find long-term development solutions and to diversify the region's economy.

* * *

[*English*]

EMPLOYMENT INSURANCE

Mr. Jim Pankiw (Saskatoon—Humboldt, Ind.): Mr. Speaker, the finance minister claims to be ignorant about the upward pressure that excessive employment insurance premiums have on municipal payrolls and, by extension, property taxes.

The former finance minister and next Liberal leader wants Canadian municipalities to get federal money for infrastructure renewal. However the present minister's excessive EI premiums are robbing municipalities of property taxes that should be used locally instead of confiscated by Ottawa.

Why is the minister using excess employment insurance premiums to pick the pockets of Canadian municipalities?

● (1500)

Hon. Maurizio Bevilacqua (Secretary of State (International Financial Institutions), Lib.): Mr. Speaker, I want to draw attention to the hon. member's question.

I want to clearly point out to him that we have in fact reduced premiums for employers and employees. We have also set up the type of economic conditions where cities and municipalities have actually prospered.

When we look at the macroeconomic environment here in Canada, it is one that speaks to economic growth and to job creation, and cities benefit from that.

* * *

CITIZENSHIP AND IMMIGRATION

Mrs. Lynne Yelich (Blackstrap, Canadian Alliance): Mr. Speaker, the minister of immigration continues to push his pet project, the national identity card. He is fond of saying that we need a national debate.

The results of that debate are coming in from his cabinet colleagues, from his committee witnesses, from the privacy commissioner and in a flood of letters to his own department. Canadians are not keen on his scheme.

Why can the minister of immigration not take no for answer to the national identity card?

Hon. Denis Coderre (Minister of Citizenship and Immigration, Lib.): Mr. Speaker, the definition of my democracy is to have debate in this society and that is exactly what we are doing.

* * *

[*Translation*]

MIRABEL AIRPORT

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): Mr. Speaker, officials from the Montreal airport authority have apparently decided to rent vacant airport space, including the Mirabel terminal. One of the conditions in the contract would be that the renter promise not to use the space for passenger air travel service.

Will the Minister of Transport, who owns Mirabel and the terminal, promise us that he will never agree to the ADM renting the space on the condition that it not be used for passenger air travel?

Mr. Marcel Proulx (Parliamentary Secretary to the Minister of Transport, Lib.): Mr. Speaker, I thank my colleague for his question. Once again, it would appear as though not all of the information made it from Mirabel to Ottawa.

ADM has already informed Transport Canada that an international call for tenders to develop certain facilities at the Mirabel airport was being prepared. These facilities include the terminal, the hotel, administrative offices and public parking lots.

ADM is looking to find a future use for the site once passenger service is transferred to Dorval, and it must keep Transport Canada apprised of—

The Speaker: The hon. member for Winnipeg North Centre.

* * *

[*English*]

TAXATION

Ms. Judy Wasylycia-Leis (Winnipeg North Centre, NDP): Mr. Speaker, most Canadians think the highest tax rate is reserved for those with the highest income, which is as it should be in the name of tax fairness.

However, under the government's 50% guaranteed income supplement clawback, about one-third of our lowest income seniors, probably the most vulnerable group in our society, are paying what amounts to a 75% tax rate simply because they have managed to save some small amount over the years.

How can the government claim to stand for equality while presiding over such an inequitable system?

Hon. Maurizio Bevilacqua (Secretary of State (International Financial Institutions), Lib.): Mr. Speaker, there is no question in the mind of any Canadian that one of things the government has actually improved on is taxation, not only in its structure but also making sure that the system is fair. It is fair to working class Canadians. It is fair to high income earners. It is fair to seniors as well.

* * *

BUSINESS OF THE HOUSE

Mr. John Reynolds (West Vancouver—Sunshine Coast, Canadian Alliance): Mr. Speaker, the government House leader may be wondering why my leader was asking questions about what was going on in the House. We know the Liberals' plan changes so often these days we thought if we asked him at the start instead of at the end we might really find out what is going on.

We would like to ask the government House leader if the reports are true that the government House leader has told all House leaders that he wants the party financing bill through the House and the Senate before we adjourn for the summer. Will the member for LaSalle—Émard be able to change his mind on that or will he still insist on having this legislation done before we go home for the summer?

Hon. Don Boudria (Minister of State and Leader of the Government in the House of Commons, Lib.): Mr. Speaker, we had the curious scene of having the weekly business statement made in the lead off question and the lead off question made during business statements this week. Nonetheless, we all have very much confidence in the opposition House leader.

This afternoon we will continue with the opposition motion.

Tomorrow we will resume debate on the third reading of Bill C-13 respecting reproductive technologies. This will be followed by the report stage of Bill C-17, the public safety bill, as I indicated earlier, around 2:15 p.m.

On Monday we will commence report stage of Bill C-28. When this is completed we will return to the business not completed this week, adding Bill C-36, the archives and library bill introduced earlier this day.

On Tuesday evening the House will go into committee of the whole pursuant to Standing Order 81 in order to consider the estimates of the Minister of Health.

Next Thursday shall be an allotted day.

In terms of when we propose to consider the report stage and third reading of Bill C-24, the election financing bill, I understand the committee is doing tremendous progress, thanks in large measure to

Liberal MPs on the committee, and we hope to deal with that shortly after the House resumes.

* * *

● (1505)

[*Translation*]

POINTS OF ORDER

ORAL QUESTION PERIOD

Mr. Yvon Godin (Acadie—Bathurst, NDP): Mr. Speaker, I rise on a point of order concerning my question during oral question period.

As you know, and as all of Canada knows as well, the incidents that took place in my riding of Acadie—Bathurst are not funny in the least. We know that fire was set to four boats, a fishery plant and a warehouse, and that more than 2,000 fish plant workers cannot return to work. Day after day, people rise in the House of Commons and ask the minister responsible to go to the region and try to settle it. The minister responsible for fisheries keeps saying he is too busy in Ottawa.

Mr. Speaker, I am having trouble understanding your decision. I would like to have an explanation at some point in order to know why you ruled in this way, particularly since the case of the member for LaSalle—Émard is raised here in the House every day. Why then pick on me, a member who just wanted to ask the question directly of the Minister of Fisheries and Oceans, to get him to assume his responsibilities, to travel to the Acadian peninsula and settle the fisheries crisis? People are worried; families and children are suffering. It is his responsibility as a minister to come to our area and solve these problems,

I have trouble understanding why I was called to order for asking the question when all parties are asking questions about the member for LaSalle—Émard, and this has never happened before since I came here. I would like to understand your reasoning.

Hon. Don Boudria (Minister of State and Leader of the Government in the House of Commons, Lib.): Mr. Speaker, in a short while we will be able to review the record of what was said. But if I remember correctly, the question was whether it would require the presence of one hon. member—who is not currently a minister in this government—in that region in order to obtain action on an issue.

Oral question period is reserved for questions to ministers. If that person is not a minister, the question is obviously out of order, and I support the way in which the Speaker made his ruling.

The Speaker: I thank all the hon. members for their input on this matter. During oral question period I rendered a quick decision, as one does at that time. As the hon. member undoubtedly heard, there was a certain amount of noise in the House during the latter part of his question and I let him finish his question before I made my ruling. I will reread the question when the blues are available and, if necessary, I will return to the House with a more detailed ruling later.

Speaker's Ruling

[*English*]

STANDING COMMITTEE ON OFFICIAL LANGUAGES REPORT—SPEAKER'S RULING

The Speaker: I am now ready to rule on the point of order raised on Thursday, May 1 by the hon. member for West Vancouver—Sunshine Coast concerning the sixth report of the Standing Committee on Official Languages.

[*Translation*]

I would like to thank the hon. member for West Vancouver—Sunshine Coast for raising this issue. I also wish to thank the hon. Leader of the Government in the House, and the hon. members for Ottawa—Vanier and Acadie—Bathurst for their interventions on the matter.

[*English*]

The hon. member for West Vancouver—Sunshine Coast raised concerns related to the decision of the Standing Committee on Official Languages to request that the Board of Internal Economy support the chair of the committee, the hon. member for Ottawa—Vanier, in his intervention in the Quigley v. Canada court case. The committee motion, adopted on April 29, 2003 and reported to the House on April 30 reads as follows:

[*Translation*]

Pursuant to Standing Order 108, the committee adopted the following motion:

> It is resolved that the Standing Committee on Official Languages express its support for the initiative of Mauril Bélanger, MP (Ottawa—Vanier) in the Quigley v. Canada (House of Commons) case, and request the House of Commons suggest to its Board of Internal Economy to make available a maximum budget of $30,000 to cover a portion of the legal fees incurred by Mr. Bélanger for his role as intervener in this case.

[*English*]

First, the hon. member for West Vancouver—Sunshine Coast argued that by signing the report of the committee, the hon. member for Ottawa—Vanier placed himself in a position of conflict of interest by directly endorsing a decision that grants him a personal gain of $30,000.

Second, the House leader for the official opposition suggested that the act of signing the report can be equated with voting on a matter in which the member has a direct pecuniary interest, thereby directly contravening Standing Order 21 which states:

> No Member is entitled to vote upon any question in which he or she has a direct pecuniary interest, and the vote of any Member so interested will be disallowed.

[*Translation*]

The hon. member for Ottawa—Vanier responded to the charges laid against him on Friday, May 2. The member indicated that in signing the committee report, he was only complying with the well-established practice of having the Chair authenticate a report on behalf of the committee just prior to its being tabled in the House.

I have now reviewed the facts of the case and wish to make the following points. First, let me deal briefly with the matter of personal gain.

[*English*]

In the present case, I believe that it is important to note that the reimbursement is being recommended to the hon. member for Ottawa—Vanier as a reimbursement for legal costs he incurred as a third party intervener. The funds are not, strictly speaking, a grant of money to the member personally, though it must be admitted that, if no reimbursement is made, the hon. member will have suffered a loss and so can be said to have a pecuniary interest in the matter. However, the Chair understands, as do all hon. members, that there has been no suggestion that the hon. member stands to receive any direct monetary gain.

● (1510)

Now let us consider carefully the very strict interpretation that has always been given to Standing Order 21 relating to conflict of interest. *House of Commons Procedure and Practice* at page 194 states:

> —the Standing Orders of the House provide that Members may not vote on questions in which they have direct pecuniary interests; any such vote will be disallowed. The pecuniary interest must be immediate and personal, and belong specifically to the person whose vote is contested.

[*Translation*]

Standing Order 21 is also quite explicit that the prohibition relates to voting. The hon. member for West Vancouver—Sunshine Coast alleged that signing the committee's report was tantamount to voting in favour of the contents and recommendations contained in the report itself. The hon. member for Ottawa—Vanier countered this argument by stating that the signing of the report was only an authentification of it and not an endorsement. He quoted from Beauchesne's 6th edition, citation 873 on page 241 to illustrate that the signing of a report by the chair of a committee is an expected part of our practice:

> The chairman signs only by way of authentification on behalf of the committee. Therefore, the chairman must sign the report even if dissenting from the majority of the committee.

[*English*]

I would further draw the attention of hon. members to page 827 of Marleau and Montpetit where the role of committee chairs is laid out in regard to the procedures for tabling reports. It states:

> Reports to the House from the committee are signed by the Chair, who must ensure that the text presented in the House is the one agreed to by the committee.

[*Translation*]

There is not, as the hon. member for Ottawa—Vanier pointed out, any suggestion either in our written rules or our practice that, in signing a report, the chair takes a position for or against its contents. The signature merely attests that the contents of the report reflect the decisions of the committee.

[*English*]

With respect to the votes that took place during the committee's consideration and adoption of the report, the hon. member for Ottawa—Vanier refrained from disclosing how he had conducted himself during those votes, given that they were taken at an in camera meeting of the committee.

However, he assured the House that he is very aware of the rules and has followed them to the letter. He pointed out that for a similar vote held at a public meeting of the committee in February, he had left the chair and abstained from taking part in the committee's decision making. He asserted that there was no reason for him to have behaved any differently during the vote to adopt the recommendations of the sixth report.

Taking all of the facts presented into account, your Speaker can see no foundation for a suggestion that the hon. member for Ottawa—Vanier has violated the provisions of Standing Order 21 in any way.

Finally, on a separate point related to this matter, I should note that the sixth report of the Standing Committee on Official Languages itself is in a procedurally acceptable form. In the event that the House chooses to concur in the report, the end result is that a recommendation will be made to the Board of Internal Economy, the statutory authority for the administration of the House of Commons pursuant to sections 50 to 54 of the Parliament of Canada Act.

[*Translation*]

On a point of order, the hon. member for Ottawa—Vanier.

● (1515)

Mr. Mauril Bélanger (Ottawa—Vanier, Lib.): Mr. Speaker, I thank you for the ruling that you just made. I would like to know if it is customary, on matters like this, to accept the apologies of the person who made the accusation of conflict of interest.

The Speaker: The Chair's ruling concludes the matter, because I have made a ruling on it. However, if the hon. member for West Vancouver—Sunshine Coast wishes to make any comments, he may certainly do so on a point of order.

[*English*]

Mr. John Reynolds (West Vancouver—Sunshine Coast, Canadian Alliance): Mr. Speaker, I would certainly say I accept your ruling, as I always do. I think it is only proper that the opposition ask these questions on these motions so that the public can get a clear answer as to how they are done. There was an issue there, but we accept your ruling and I think it goes no further than that.

GOVERNMENT ORDERS

[*English*]

SUPPLY

ALLOTTED DAY—PARLIAMENT AND COURT DECISIONS

The House resumed consideration of the motion.

Hon. Hedy Fry (Vancouver Centre, Lib.): Mr. Speaker, I will be sharing my time with the hon. member for Scarborough East. I rise to add my objections to the opposition motion.

I note that the motion on the floor cites three specific instances where the opposition party is concerned that the courts are threatening the will of Parliament. One of those is the recent court decisions that allegedly threaten the traditional definition of marriage.

With respect, I believe that this is an oversimplification of a far more complex issue. It is true, as we all know, that the question of the opposite sex requirement for marriage is before the appeal courts in three provinces, British Columbia, Ontario and Quebec.

The B.C. Court of Appeal rendered its decision on Thursday, May 1. That court held unanimously that the opposite sex requirement for marriage violates the equality rights of gay and lesbian Canadians and that discrimination is not justified in a free and democratic country. It is important to note that the court also stayed the effect of its judgment until July 12 of next year, the same date chosen earlier by the Ontario Divisional Court. This decision is one of three Court of Appeal decisions we expect to be heard in the near future. The appeal in Ontario was heard at the end of April and that decision is pending.

The question of marriage and the legal recognition of same sex unions is also before the Quebec Court of Appeal and is expected to be set down for hearing shortly.

The court decisions are only one part of this complex issue. The Minister of Justice has already said that out government does not accept the premise that the roles of Parliament and the courts conflict. Rather, we strongly believe that those roles complement each other.

Some of those who disagree with the court decisions on the opposite sex requirement for marriage have expressed concerns, as does this motion, that the courts rather than elected members of Parliament are making decisions to change fundamental social institutions. Every court decision on this issue has specifically acknowledged the essential role that Parliament has to play in deciding important social questions such as these. The courts have done so by deliberately staying the effect of their decisions to give Parliament time to consider how to address the important equality concerns that they, the courts, have identified.

The Government of Canada recognizes that marriage is a complex question and that it is more than a legal issue. The government strongly believes that the best place to discuss how Canadians wish to address this important social issue is through Parliament. In fact the Minister of Justice has stated that in his opinion it is the responsibility of Parliament to take a leadership role in this area, which is precisely why he referred the question of marriage and the legal recognition of same sex unions to the Standing Committee on Justice and Human Rights last November. The minister asked the committee to consider possible policy approaches, to hear from Canadians and to report back with recommendations on possible legislative reform.

I am a member of that committee. We recently finished our hearings on this issue and are considering our report and recommendations right now. We heard from a large number of organizations and individuals, received briefs from others who could not appear before us and visited some 10 communities across the country. We hope to report back to the minister shortly.

I want to point out that the very process we talked about just now belies the need for the motion brought here today. With respect, how can we consider this motion when the government has already given over to the standing committee of the House the very question cited as requiring measures to protect and reassert the will of Parliament?

The will of Parliament does not need protection. Parliament has shown leadership time and time again by acknowledging its responsibility to ensure equal treatment of gay and lesbian Canadians under federal law, beginning as far back as 1969 when then prime minister Pierre Elliott Trudeau amended the Criminal Code to remove homosexuality as a criminal act and I quote, "Take this thing on homosexuality. I think the view we take here is that there is no place for the state in the bedrooms of the nation. I think that what is done in private between adults doesn't concern the Criminal Code. When it becomes public this is a different matter, or when it relates to minors this is a different matter".

Changes in the Immigration Act in 1978 removed homosexuals from the inadmissibility list.

In 1996 the federal government added sexual orientation as a prohibited ground for discrimination to the Canadian Human Rights Act.

In 2000 the government passed the Modernization of Benefits and Obligations Act giving same sex couples living together in a conjugal relationship the same benefits as heterosexual common law couples, affecting 68 federal statutes.

Now, with the question of marriage and the legal recognition of same sex unions before the courts, Parliament is being asked through its Standing Committee on Justice and Human Rights to play its role in a proactive manner.

● (1520)

Throughout the changes to same sex legislation, as in the case of Mr. Trudeau's amendments, Parliament has taken the initiative. In others, the courts have asked Parliament to uphold its own laws and pointed out where it has not ensured the equal access to justice of its citizens and given it time to decide how to do so as it is currently doing by staying the effect of the decision in B.C.

This complementary relationship between Parliament and the courts is a dynamic one. What the opposition complains of here in this motion is no more than the court playing its constitutionally mandated role, a role that members of the House assigned to it when the Canadian Charter of Rights and Freedoms was added to our constitution in 1982. At that time Parliament and the legislatures decided to make explicit the right of Canadians to go to court and challenge laws.

The courts have not ignored our earlier 1999 motion on this subject, as some across the floor have alleged. Instead the courts have set out new interpretations on the scope of the charter equality guarantees and asked Parliament to review its 1999 approach to marriage in light of these decisions.

The standing committee is completing its work to do exactly that. This motion is premature and shows a sad lack of understanding of the complementary roles of Parliament and the courts as set out in the Constitution.

Mr. Myron Thompson (Wild Rose, Canadian Alliance): Madam Speaker, I listened to the member speak to this particular point and I did not hear her mention anything regarding child pornography, the decision in the Sharpe case and the effect it has had on police efforts in trying to combat this very serious issue.

I wonder if the member believes that child pornography should be banned in its entirety, as 90% of Canadians do. Is this as much a burning issue in her heart as it is in mine? I would like her to answer to child pornography.

Hon. Hedy Fry: Madam Speaker, I assure the House that it is not only a burning issue but when I was secretary of state for the status of women it was an issue which I took an extraordinary interest in. I used that department to look at the issue of the exploitation of children and youth with regard to pornography and commercial sexual exploitation, because it is indeed close to my heart.

The member said that I did not mention that particular issue. What we are discussing here is not the issue itself; it is the principle that is laid out in the motion, that the courts have taken over the job of Parliament and are overriding Parliament. That is a principle we need to discuss regardless of what it applies to. The principle is what I was discussing, not the issue, because if one agrees or disagrees with that principle, then obviously it would apply to any particular incidence in which, as the members opposite decide, the courts have overridden Parliament.

● (1525)

Mr. John McKay (Scarborough East, Lib.): Madam Speaker, I appreciate the opportunity to speak on this important issue. It is an interesting motion and one that I have thought about for awhile. It highlights a frustration that many people feel with respect to the dialogue between Parliament and the courts. Some might even argue that it has become a monologue. I will focus my remarks on the attempt to change the definition of marriage as something of an example of the perverse consequences of judicial activism.

Everything we do in this place has a charter lens. Sometimes that lens enhances and sometimes that lens distorts. The trump card in the charter is section 15, which looks at discrimination. If a practice, or a law or an institution is discriminatory, whether that discrimination is intentional, then the analysis takes us to section 1 to see if that practice or institution can be justified in a free and democratic society. If it can, then that is it. If it cannot, then the court will strike down a law, practice or institution or say to Parliament "You fix it or we will fix it".

In theory that sounds fine but in practice it has led to some egregious effects on the use and abuse of courts to find section 15 discrimination. Laws by definition are discriminatory. A law says to this group of people that they are entitled to certain rights and benefits and to another group that they are not. The wheels, however, fall off when the court finds discrimination when in fact there was no intention to discriminate. In fact all it was intended to do was create a difference or a distinction.

I would submit that once the courts make a finding that the institution of marriage is discriminatory, the whole issue, that is one man and one woman to the exclusion of all others, it makes it very difficult to then justify it under the saving section.

When the country was founded, the framers of the Constitution gave marriage and divorce to the federal government to bring uniformity to the institution of marriage. Protestants did not recognize Catholic marriages and Catholics did not recognize Protestant marriages. It was somewhat chaotic and the framers rightly said to themselves "We want some national coherence here, so you, the federal government, look after this area of jurisdiction", and everything else fell to the provinces.

If the framers of our Constitution knew that the courts were about to open up this constitutional word called marriage and eliminate its gender requirements, I am sure they may well have thought that we had all taken leave of our senses and probably would have retired to the parliamentary restaurant over a few drinks and a couple of laughs. Yet this is the state in which we find ourselves by virtue of charter analysis.

First, a finding of discrimination is made, whether real or in its effect, and then we go to section 1 to see whether we can justify it. However the ball game is virtually lost by then and the arguments become hopelessly ambiguous and vague due to the fact that they are rooted in value systems that are based upon beliefs that are deeply held. It is devilishly difficult to justify when those arguments are so rooted in deeply held beliefs by a number of people.

The problem is that it leaves Parliament with no manoeuvring room. We are stuck with an either-or decision. It is a little like President Bush saying "You are either with us or against us", and it does not really leave much room for those who say, "We may not be for you but we are certainly not against you". That is what we are faced with, the so-called judicial activism. It creates almost a false pluralism.

Real pluralism should surely mean that I accept and respect one's right to be different, but so also should that person accept my right to be different and not do that which is against my beliefs. The religious communities are having a collective gag reaction. As decision after decision goes against them, they are forced to accept what I would describe as forced or convergent pluralism, one size fits all: "In the name of pluralism, you must accept what I say and who I am". It is quite, I would submit, an illiberal pluralism and the courts are wittingly or unwittingly forcing values, convergent on a population that did not elect them and barely knows them.

● (1530)

If, as some anticipate, the court changes the definition, then it is reasonable that some minister, priest, rabbi or imam who refuses to marry two people of the same gender will be sued. That is almost a dead certainty. Witness after witness told us of case after case where equality rights trump religious freedom.

I remember the lawyer for the Catholic Civil Rights League making reference to the Hall case in Ontario. This was the young man who wanted to take his gay date to the prom. The Catholic School Board has a constitutional guarantee to conduct its affairs in accordance with Roman Catholic teachings and doctrines. All students and parents effectively sign on to that concept when they send their children to that school. Therefore it comes as no surprise when a Catholic board or school says, on something such as this issue, that no, they would not permit that. That did not seem to prevent the judge from making an order forcing the board to let the boy take his date to the prom. Equality rights trump religious freedom guarantees embedded in our constitution. Effectively, judge trumps bishop.

Is it any wonder witness after witness looks over their shoulders at the Hall case, or the Brockie case, where a printer was asked to print gay literature, refused and was sued, or the Trinity Western case, where all students signed on for a certain code of sexual conduct and the teacher's board said that it made them ineligible to teach in the schools of British Columbia? Is it any wonder therefore that these folks feel naked and exposed to certain aspects of judicial activism and take no comfort in the bland assurances that the guarantee of religious freedom will offer protection of religious expression?

It would be of some comfort if Parliament could be explicit in its guarantee of freedom of expression but I am afraid that would be an illusion. A robust freedom to dissent act or a human rights code might be of some comfort, as several witnesses suggested, but the courts will rightly say to that kind of idea, "Is the charter not enough?" Those in the religious community who are constantly paraded before the human rights boards and courts do not think the fig leaf of a charter provides them with any protection at all. It is almost a case of words are not enough.

The other thing that makes one wonder about this issue is Parliament itself. In 1999 we passed an overwhelming resolution after a day of very animated debate re-affirming the traditional definition of marriage. The preamble of Bill C-23, re-affirmed the traditional definition of marriage and brought it from a common law interpretation into an actual statutory bill. That has scarcely slowed down judicial trains heading toward a clash with Parliament, one which Parliament cannot win.

Twice in the last few years Parliament has spoken forcefully and unequivocally. Yet our system is such that the courts hold the ultimate trump card, which brings me back to my original point. It is extremely difficult to fashion a public policy which takes into account divergent interests and views when the legal environment is such that "you do it our way or we will do it for you".

How does one fashion a response in the face of such a threat? I, and quite a number of others, believe we would be quite willing to address the genuine equity issues that rise before us, those broader issue, but the courts have effectively put us in a zero-sum game: "you win; you lose". Unfortunately, the effect of which is that we all lose.

● (1535)

Mr. Paul Szabo (Mississauga South, Lib.): Madam Speaker, I thank the hon. member for his intervention on this opposition day motion, including the issue of the definition of marriage. It is very helpful that he has reminded the House of some of the important history.

I personally have done some research in the last couple of years on the whole discussion of court made law. It does raise the whole aspect and the question of whether Parliament in fact is the highest court in the land.

We understand it is Parliament that does these things but even the Supreme Court of Canada has defined what is a free and democratic society and has laid out in its definition of what constitutes a free and democratic society elements which would encompass virtually every interest group in society. It leaves it so fuzzy that we could make an argument, like we do with regard to the Sharpe case on artistic merit and discrimination against a group because marriage cannot be applied to it. There is all this fuzziness and vagueness.

I would like the member's comments on this whole concept of court made law and whether Parliament is the highest court in the land.

● (1540)

Mr. John McKay: Madam Speaker, the hon. member hits on an extremely important point. When I went to law school, and this was pre-Charter days I am afraid to admit, the issues were simply that a judge was there to interpret what was in front of him and to build on precedents that existed. That was the circumscribed area in which judges could deal with the cases in front of them.

With the advent of the charter, we have opened up that whole realm of interpretation and we have developed this concept of the living tree. This living tree sometimes, one would think perhaps just exactly what a judge wants it to be at any given time, allows a judge to interpret not only what he thinks Parliament meant but also what he thinks possibly the law should be.

That brings us four-square into the concept of the supremacy of Parliament. In some respects Parliament does have the "trump card" in the notwithstanding clause but it is a very crude idea and something that any government would be quite reluctant to use.

We are faced with the reality that Parliament may put forward a piece of legislation. However once we hit on section 15 and it is found to be discriminatory, whether it is intentional, we end up in a section 1 analysis and if it cannot be justified, then that particular law does not survive.

● (1545)

The hon. member asks a very important question and I think in some respects that is the root question that is behind this motion: Is Parliament still supreme? I think there are a lot of us saying that if it is supreme, it is not perfectly obvious that it is.

Mr. Maurice Vellacott (Saskatoon—Wanuskewin, Canadian Alliance): Madam Speaker, I read an excellent article by Douglas Farrow, associate professor of Christian thought at McGill University. If others want to read it, it is in the Wednesday, May 7 *National Post*. It is entitled "Culture wars are killing marriage". It talks about the particular proven social goods, these things coming with marriage, "stability of community and property, of human reproduction and the care of children, of cross-gender and cross-generational bonding".

Would the member want to comment on those particular social goods?

Mr. John McKay: Madam Speaker, it was really interesting over the course of the hearings to start to unpack the reasons why marriage was the bedrock of our society. As one witness has put it, marriage is society's parent. It is not society's child. Therefore, no one can mess with it, including Parliament and the courts. That speaks directly to the hon. member's point that society benefits hugely from heterosexual marriage.

Mrs. Diane Ablonczy (Calgary—Nose Hill, Canadian Alliance): Madam Speaker, I would like to let Canadians who are watching this debate know that we are debating a motion brought forward by my party, the official opposition, the Canadian Alliance. The motion reads as follows:

> That this House call upon the government to bring in measures to protect and reassert the will of Parliament against certain court decisions...

Which ones are they? There are three. The first is rulings that would reverse the traditional definition of marriage as decided by the House to be, "the union of one man and one woman to the exclusion of all others". This was decided by the House in 1998. The second ruling would grant house arrest to child sexual predators and make it easier for child sexual predators to produce and possess child pornography. The third ruling that concerns us and that we feel Parliament should deal with is one that grants prisoners the right to vote.

● (1550)

What I would like to add to the debate today is a discussion of a very important principle. The important principle is as follows: that it should be the elected representatives of the people in the House who decide the laws under which our society operates rather than appointed members of the judiciary who are not elected and who are not responsible or answerable to the people of this country. That is a very important principle.

I would like to point out why this is a concern. As I mentioned before, I was here and I believe you were here, Madam Speaker, when we had a debate and a vote a few years ago on the important issue of the definition of marriage. A majority of the House and the majority of most of the parties in the House upheld the definition of marriage as an institution, which is defined by the union of one man and one woman to the exclusion of all others. That was what Parliament decided. What has happened? As everyone knows, there have been recent court rulings which say that this decision by Parliament contravenes the charter and that the definition of marriage, according to these court rulings, must be changed.

With respect to the matter of house arrest, Parliament says that house arrest should only be given to people who do not pose a risk to society. What are the courts doing? In case after case house arrest, which is basically no punishment at all, is given to people who are a risk to society. A case in point is that of Ronald James Aucoin in New Brunswick who was twice convicted of child molestation and being a sexual predator. What was he given for causing this harm to innocent children? He was given 18 months house arrest. That was it. Therefore, our courts are using the law of this Parliament in a way that it was never intended to be used.

With respect to the law on child pornography, there are many sections of our Criminal Code which make it illegal and unlawful to produce and own child pornography. Yet in the well known Sharpe case the courts, right up to the Supreme Court, ruled that there was some artistic merit in this material and therefore the Criminal Code provisions, which we past in the House to outlaw it, were of no effect.

With respect to giving prisoners the right to vote, the elected representatives of the people of Canada have said that if someone breaks the law in significant ways and is imprisoned for it, and as we have just seen it is pretty hard to be put in prison for breaking the law so one would have to be a pretty serious criminal to be imprisoned, then that person does not get to pick the lawmakers of the country because that person is a law breaker. That is what our law says, as passed in the House. What did the courts say? They said that law was unconstitutional and we had to let violent offenders and lawless people vote and have full participating rights in our democratic society. This is a tremendous concern.

● (1555)

Let us remind ourselves of what this is all about. This is about a nice, little word called democracy. It is one that is thrown about with great abandon very often in our society. Yet what does it really mean? Do we think about that and do we really honour it with the way we order our society? Democracy means rule by the people. Because there are 30 million of us to come together and decide on all the things that we want to do to make our society a good, safe and well ordered society, we elect people to speak for us.

About every 100,000 Canadians elect someone like me to come to this place to consider the measures that must be taken to protect, to order our society and to put those into place. We represent 100,000 people, more or less. We are their voice to allow them to rule their own affairs and we are accountable to them. If we do something that the people who elected us do not approve of, then they can turf us out of office and have done so in the past. That is what democracy means.

If we get to the point, as we have, where judges decide that certain laws passed by the representatives, the voice of the people, can no longer be effective, then I submit that is undemocratic. That is completely and utterly a slap in the face to the democratic values and traditions that we claim to hold dear because judges are not elected. They are not accountable to the people. In fact they are appointed mostly by the Prime Minister. If the people of this country do not like the direction or the judgments that are made, there is nothing they can do about it.

I want to stop and make it clear at this point that this is not a criticism of judges. There is a huge number of very fine, committed, intelligent, capable people serving in our judiciary and we are very proud of our judicial system in this country. What is causing the problem is that instead of Parliament asserting its supremacy as the voice of the people in a democratic country, we have abdicated in many cases decision making and important interpretation of laws to the point where the interpretation becomes law making.

Not long ago we had a judge appear before our immigration committee and in the course of our discussion with him the judge said the following:

> —I'm always concerned when legislation uses imprecise language because what you're saying to a judge is "You solve it". You're asking judges, who don't have experience and who don't really have any background as to the real purpose of what Parliament is trying to do, to come up with an answer.
>
> Language should be as precise as possible and I can only tell you that after almost 40 years of having to deal with provisions, particularly the Criminal Code provisions...legislation is getting more confusing every day.
>
> One gets the impression that when the draughtsmen don't know what to do and how to solve a problem, they just use imprecise language hoping that someone will solve it some day.

He also said, from the point of view of a judge:

> I would always welcome legislation that was precise and defined what we were supposed to do, rather than leaving it up to the judge to define, because then you get different judges having to define it and you have different interpretations. Then you need to go to the Court of Appeal for them to come up with a single definition, and from there you end up going to the Supreme Court of Canada, which may disagree with the Court of Appeal...many problems [are created]...

● (1600)

It is not only the people of Canada or members of Parliament who see this as a problem. It is the judges themselves and it is up to us to fix it.

An example of what the judge was talking about would be a bill that makes amendments to the Criminal Code intending to safeguard children from sexual exploitation. Supposedly, it would make it easier to prosecute sexual predators. However, in fact it does not. What the bill does is it takes the existing defences to possession of child pornography, and those defences are that it is of artistic merit, educational, serves scientific or medical purposes, or serves the public good, and repackages all of those defences into one single defence of the public good.

However, nowhere in the legislation from the House is the public good defined. What are judges supposed to do? They must put a definition in place because we did not have either the foresight or the intestinal fortitude to make it clear what we meant. Thus we have a situation where the court decides.

Here is what the Supreme Court said in the Sharpe case which supported a child pornographer possessing the most horribly explicit and degrading material involving children. The court said:

> It might be argued that the public good is served by possession of materials that promote expressive or psychological well-being or enhance one's sexual identity in ways that do not involve harm to others.

How anyone could suggest that the creation of this material would not involve harm to the very children it preys on and degrades is beyond belief.

If the people of Canada or members of Parliament were asked whether this made sense and whether they wanted this to govern someone who could own or produce child pornography they would say no way, of course not. Yet, what we say does not matter because we have this vague legislation talking about the public good which puts the real power of determination into the hands of judges. In many cases the judges do not want this.

I would like to quote Abraham Lincoln from his first inaugural address where he said:

> The candid citizen must confess that, if the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court, the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal.

That is what Abraham Lincoln said 150 years ago. What have we learned? Here we are today making the very same mistake that Lincoln warned against in the early days of the formation of another great democracy in the United States. The decision that caused Lincoln so much problem was the infamous Dred Scott decision which created a constitutional right to own slaves. That is what the court had decided, even though the leader of the country said, no, we want an end to slavery.

The simple fact is that a constitutional document in the hands of the judiciary has the potential to undermine democratic institutions by taking out of the hands of the people the ability to make the most basic moral and cultural decisions.

If we were to do a survey of any group of Canadians not behind bars and asked, "Should violent criminals who have murdered, raped, mugged, robbed and otherwise abused the rights of innocent citizens be allowed to have all the rights and privileges of citizens in democratic elections?", we would get a huge percentage of the majority of people replying, "Is this a joke? Why are we even being asked this question? The answer is no".

Yet, we cannot have the will and the common sense of people on this important issue of who gets to choose our lawmakers. We cannot have the will of the people prevail because a small group of unelected, unaccountable people have decided otherwise.

The House has a duty if it cares about democracy, if it means business about what our country is all about, and if it means business about our values and traditions of a people free to rule and govern their own affairs through their elected representatives. We have a responsibility to fix this situation. There is a simple way to fix this situation. It is one that no government has ever been willing to do. We must access the clauses in our Constitution that would allow us to make certain that the will of Parliament prevails, like the notwithstanding clause.

We would say that notwithstanding any interpretation of the charter it is the will of the people of this country that prisoners do not vote. It is the will of the people of this country that the institution of marriage remain the way it is. It is the will of the people of this country that no one will be allowed to produce or to own child pornography because it is repugnant and repellant and because we have a duty to protect our children.

That is what we should be saying. We should be standing up for democracy and for the voice of the people, and saying this is the decision that will stand, period. It is not up to the courts to overrule by judicial interpretation what the House and people of Canada, by giving the House authority, decide is right for our society. That is exactly what our motion says.

The motion in its fundamental essence is in defence of the democratic principles and values that we claim to hold dear but are allowing to slip away, ruling by ruling, decision by decision, on issues that are fundamental to the way our society is ordered, fundamental to the way we treat each other, and fundamental to the way we protect our most vulnerable members.

No matter what side the House might come down on these judicial rulings and no matter that we know that judges are honourable people and try their anxious best to do a good job in the position they have been placed in, the fact of the matter is that it is completely wrong. No matter what the decision is, no matter the honour and integrity of the people making it, it is completely wrong in a democracy for unelected people to be making fundamental societal decisions that are not accountable in a democratic sense.

The House has the ability, the tools, the right, and the legal authority to put a stop to that. However, it is not willing to do that. Our motion urges the House to make the changes that would allow us to protect and reassert the will of Parliament. It is not only the will of Parliament; it is the voice and forum where the people are able to rule and govern their own affairs.

I urge the House to support the motion.

Mr. Paul Szabo (Mississauga South, Lib.): Madam Speaker, I want to thank the hon. member for her contribution to the important debate today.

I wanted to ask her a question about the charter. I have often heard arguments concerning the Charter of Rights and Freedoms that everything it brought was not necessarily all positive, that it also brought with it some exposures. We have seen those exposures by the significant number of challenges against the charter.

I have often thought that if we have a list of something, there would be exclusions or inclusions. If we have a list then someone must be left off, otherwise there would be no need for a list. It would apply equally to all.

Therefore, in the case of the democratic rights and freedoms of any of the matters that we consider to be our rights, the charter should probably have said that all persons resident or on Canadian soil shall enjoy the protection of those rights under the charter, period. It would apply to everyone whether they are citizens, non-citizens, visitors, immigrants, refugees or whatever.

The member is well aware of the plethora of charter challenges on a variety of issues. Is Parliament now questioning whether or not the notwithstanding clause was a serious effort to recognize that there would be problems under the charter and that it was a necessary tool? Or whether in fact it was simply there as an accommodation which was never intended to be used, but that we would work through the evolution of the changes to our laws in Canada on a case by case basis? I would be interested in her comments.

Mrs. Diane Ablonczy: Madam Speaker, the member has raised a number of important issues.

I will respond to his last comment first. If the notwithstanding clause was meaningless, never meant to be used, then why was it put in? Surely we owe the people of Canada better than to toss in empty words and meaningless phrases.

I would argue that it is there for a reason. It is there because wise people recognized that there may be unintended consequences to the introduction of the charter, and that those consequences needed to be dealt with and that there had to be a mechanism allowing those unintended consequences to be dealt with in order to preserve the rule of the people in this country.

With respect to the list, it is my belief that democracy has as one of its tenets, the equality of all people before the law. It is not the equality of people before the law, including a whole bunch of things. As soon as we mention a, b and c, then people say what about d, e and f.

By including some people or some cases specifically, we are, whether intentionally or not, giving special recognition to those categories, those lists. That is wrong because it detracts from the clear principle that Canadians are equal before and under the law, and have certain rights as set out in the charter.

More than that, the charter has been used as a reason not to bring in effective legislation. One case in point is the desire to attack organized crime. We know from the shootings in Quebec, the problems in human smuggling, and other situations that are laid at the doorstep of organized crime that we must take steps to outlaw criminal organizations and participation in those organizations.

What happened? There is always a fear that the charter would overrule that law because it would take away from people's right to association. Parliament should say that notwithstanding the charter right to association it believes that criminal organizations must be outlawed and that no one should be permitted to participate in them. However it cannot say that. We have this cumbersome set of rules that is trying to get at these organizations and is not doing so directly.

Is the member asking, are there unintended consequences of the charter? That is a good example of where a clear evil in society, a clear problem in society, or a clear unsafe situation in society needs to be firmly and fairly dealt with, but because the charter and the interpretations of the charter are allowed to interfere with that the will of the people is thwarted.

This is definitely a situation where the notwithstanding clause should be put into place and state that, notwithstanding, we do not allow criminal organizations to operate with impunity in our society.

● (1605)

Mr. Maurice Vellacott (Saskatoon—Wanuskewin, Canadian Alliance): Madam Speaker, because my hon. colleague is a lawyer I have a question along that line. A good article was written by Douglas Farrow, the associate professor at McGill University, in the Wednesday, May 7 *National Post* entitled "Culture wars are killing marriage". He stated: "...the courts are actually ordering illicit alterations to the 1867 Constitution Act..."

He goes on to say that "marriage is not merely a union of two persons". In fact, if we were to use that neutered definition of merely between two persons it would not be an institution at all but a legal fiction and an incoherent one at that. On the matter of marriage, he goes on to talk about judicial activism:

> And then the courts will find themselves having to choose between Section 15 equality rights and Section 2 freedoms. This is not supposed to happen and the remedies for it are—as yet—virtually unthinkable. Some of these remedies, while claiming to balance Section 2 and Section 15, will dangerously erode freedom of speech, freedom of association, and freedom of religion.
>
> Charter jurisprudence, I fear, has allowed itself to become a combatant in this culture war. That is why it has chosen to sacrifice marriage on the altar of a spurious equality right, and to attempt to resurrect it as "the union of two persons". This is a futility in which Parliament is about to become complicit. If it does, it will only drag Canada deeper into a quagmire of competition between two incompatible visions for society: one which sees marriage as a tried and tested good which must be privileged, and one which out of jealousy refuses to privilege it, consequences be damned. Is it really too late to turn back?

Could the member respond to my question of balancing section 2 freedoms and section 15 rights—freedom of association, freedom of religion, freedom of speech, and this equality issue from section 15?

● (1610)

Mrs. Diane Ablonczy: Madam Speaker, I will answer that question by pointing out the bigger picture rather than addressing a specific issue.

The ever expanding authority that the charter is conferring on the courts, because Parliament refuses to reassert itself, has contributed to a fundamental shift. Whether we think that the authority of the charter has been used by the judiciary in a positive way or not, the fact is that there is a fundamental shift. Decisions with the legislative expression of the democratic institutions are discarded by the court and have lead to the conclusion that the judiciary is now exercising substantial political power, once vested only in the hands of elected officials.

Some, like the former Chief Justice of Canada, do not deny that this shift in political power is taking place, but simply say that this what politicians must have wanted when they passed the charter.

Other members of the judiciary are more willing to recognize that much of the current utilization of the charter is a political rather than a judicial exercise and caution constraint. However, the interpretation of the charter, as my colleague mentioned as it applies to the definition of marriage, to whether one may own child pornography or whether a law-breaker can vote in federal and democratic elections, any of those issues and more, is now allowed to be taken out of the hands of the people through their representatives and put into the hands of the judiciary. I do not agree with the Supreme Court Justice who says that this is what politicians wanted. I do not believe the people wanted that.

● (1615)

Our commitment to democracy is too strong and too much of a tradition for us to have knowingly just flung it off on a small group of appointed people. That was never intended.

To answer my colleague, if the people of the country, through their elective representatives, do not want to have the charter interpreted in a way that interferes with traditional institutions of our country, then there is one way for that to be stopped and that is for this House to use its legal power to reassert the supremacy of members of Parliament, and therefore the people of Canada and the democratic rights of the country.

Mr. Paul Szabo (Mississauga South, Lib.): Madam Speaker, we are debating a motion which calls upon Parliament to bring in measures to protect and assert the will of Parliament against certain court decisions.

It is straightforwardly put and I have listened carefully to the debate. I am not a lawyer and in some instances that gives me an advantage because I can ask naive questions, rhetorical questions they may be, hopefully to stimulate debate.

Whenever members of Parliament come to the House to speak, sometimes what happens to be before the House when one is doing House duty may not necessarily be one's area of expertise. As a consequence parliamentarians are offered a plethora of background material, a little history, and a few words of wisdom that may help them to look at the subject matter before the House and participate in debate. I want to share with the House some of the background information that was given to parliamentarians.

> In 1982, Parliament adopted a new Constitution and entrenched the Canadian Charter of Rights and Freedoms. The charter embodies the values of Canadians, and sets out our rights and freedoms. According to some recent surveys, up to 90% of Canadians see the charter as a symbol of Canadian identity and believe it has played a crucial role in protecting our rights and freedoms.

That is a wonderful statement and I think it is hogwash. It refers to a number of surveys where 90% of Canadians believed that the charter sets our rights and freedoms and is a symbol of our Canadian identity. I am not sure if 90% of Canadians are even aware of what is in the charter or what it means. They have probably seen a news flash or heard someone once say that, but I am not sure that Canadians were engaged in the charter when it first became part of the laws of the land back in 1982.

The charter is a very interesting document. The whole process that Canada went through to patriate our Constitution and to enshrine a Charter of Rights and Freedoms was a significant event in our history, but it was also a political event. It was an event that had some interesting political manoeuvering. There was posturing, negotiating and trade-offs.

I do not think that the patriation of the Constitution with a Charter of Rights and Freedoms was a result of extensive consultation with Canadians or with parliamentarians. It turned out in some cases to be simply the discussions of two people huddled away in a kitchen trying to cut a deal.

We know what happened there. We know that Quebec was not a part of it and was not happy with the result. The then Prime Minister of the day, Prime Minister Trudeau, said that we had better take a deal while we can get it and that was celebrated.

Most of the debate that I have heard today has raised some of the questions related to the charter and the fact that it has broken through another dimension of the legal and judicial system in Canada.

I took a law course when I was in university. I learned about precedents and about the different areas of the judiciary. I always remember the roles and functions of the judiciary basically being to apply the laws as the courts interpreted them, to look at precedent, and to maintain some consistency and stability within the application of the law.

Very slowly, as a consequence of the charter, the question of interpretation started to creep in and it went even further. I discussed earlier with a member here in the House the concept of a list. There are certain groups that have been identified. I have often thought that if there is a list of anything that must mean that something is not on the list. Otherwise we would say all things.

● (1620)

Canadians would probably agree that the laws of Canada apply equally to all. Our Charter of Rights and Freedoms does not say that in simple terms. It is more complex and this is where the lawyers come in. This is why I appreciate not being a lawyer in that culture because I can ask questions about my motivation.

If a case were to come up that identified potential grey areas within the laws of the charter, I would imagine that it would be interesting to go to the Supreme Court to try and shape the interpretation of an aspect of our laws or the charter and win a case to make a difference. Part of the profession is the identification of areas within the charter and our laws which must grow as society grows. We change, but maybe not for the better in all things. Because of what has happened, I could mention a few areas where the world is not a better place, and child pornography is one of them.

This aspect of court-made law fascinates me. A couple of years ago I asked the resources of the Library of Parliament to provide me with some scholarly papers on the debate about court-made law. How did this evolve? Suddenly the courts of the land were interpreting the laws in different ways such that there were consequences to the application of those laws.

There were also consequences to Parliament which made those laws in the first place. We have gone through a period over the last 10 or 15 years where our laws have been challenged on virtually every front. This is because more precedents are being set. Where do Parliament and the courts fit with each other? The briefing note stated:

> By adopting the charter, Parliament and the provincial legislatures decided to make explicit the right of Canadians to go to court and challenge laws. The roles of Parliament and the courts do not conflict, but rather complement one another and Parliament remains a key stakeholder. Through the charter, Parliament has provided the courts with a lens through which to interpret the laws that it has passed.

This cannot be so because we are now faced with many different challenges. Parliament and the courts do not complement each other in this regard because there is disagreement. Parliament, for instance, disagrees with the definition of marriage. This Parliament has voted on two occasions in the recent past that marriage is defined as the union of one man and one woman to the exclusion of all others.

Bill C-23 contains a preamble which reaffirms Parliament's view, on behalf of Canadians and the social values of Canada, that marriage is the union of one man and one woman to the exclusion of all others. Others have come forward to say that it leaves them out because they want to be married and enjoy recognition like married couples because they too are in a loving, caring relationship, and they believe that a loving, caring relationship does not have to be a man and a woman. This certainly does touch some hot buttons.

I have often thought that when people in this place talk about being discriminatory by using a term like homophobic, that the term was being used as a negative. However, I have also heard the word discrimination used in a positive context such as a person being discriminating in wines because one wine is different from another. There are differences and we celebrate those differences.

It would be a shame if everything in our world was reduced to the lowest common denominator. We would then have to look at everything that we had. If some people had more money than others, then their money would have to be redistributed so everyone would get down to the lowest common denominator. It does not make much sense to make us all the same. If we were all the same, this world would be boring. If everything is important, then nothing is important. If everything is a priority, then nothing is a priority.

Can we not discriminate in favour of the traditional family being the biological mother and biological father with a child? Marriage is an institution which does not offend people. One of the previous speakers mentioned a comment taken from committee testimony describing marriage as society's parent, not society's child. We should think about that for a moment.

We must understand that the basic instinct of every human organism is survival of the species. That is the number one instinct of all species, either human or non-human. The number one instinct is to survive, to propagate, and to flourish. We do that as human beings by procreating. For years mankind has had the urge to propagate, to have children, to grow families, to create a society, and to build a family tree. These are not bad things. As a matter of fact, our society grew to the point where it thought so highly about the important roles of the traditional family, of child with biological mother and biological father, that it started to discriminate in favour of that traditional family by giving it child tax credits, family deductions, or assistance for child care.

Every law in our land is discriminatory. If all things were equal for all people and at the lowest common denominator, there would be no injustices for the laws to deal with. All our laws are discriminatory and that is not a bad thing. I discriminate in favour of seniors and the disabled who need help. I discriminate in favour of aboriginals. I discriminate in favour of high unemployment areas which need assistance in job creation or alternatives, as in the terrible situation we are seeing now in the Atlantic fishery.

Yet, people are going before the Supreme Court and other courts in the land saying they are being discriminated against. By this action we are slowly eroding the variety and the vibrancy of a free and democratic society. Change is good, variety is good, and differences are good. We should celebrate our differences. Do we all have to look and act the same? No.

Our Charter of Rights and Freedoms says that we are all entitled to be treated equally under the laws of Canada and we should all enjoy those rights, without qualification. Lawyers felt it was a little more interesting to make it a little different.

I will give the House an example. Today I received a communication from a colleague who thought he had something in a similar vein regarding some difficulty in a bill before the House. It was a question relating to values underlying a free and democratic society. The legislation uses this language which was borrowed from the Supreme Court of Canada because it is part of the values underlying a free and democratic society.

● (1625)

Let us look at section 1 of the charter as interpreted by the Supreme Court with regard to the values underlying a free and democratic society. They are described as follows:

> —respect for the inherent dignity of the human person, commitment to societal justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society.

That is a mouthful, to say the least, but if members get a chance to look at the transcript and look at the statement again, it is a statement that arguably anyone could use to say, “I should be there”. In fact, the values of a free and democratic society are being defined by the Supreme Court of Canada as the consolidation of the values of each and every person individually and therefore everybody's values are there. But then we get into the problem that everything is important and, as I said, if everything is important then nothing is important. If everything is a priority then nothing is a priority.

Our value system cannot be a consolidation of everybody's values, because in a free and democratic society everyone has the right to have values and establish their own set of family, moral and social values. It does not mean that they reflect Canadian society's consensus on those values. Those values move over time and our laws will move to reflect them over time, but I must admit that there are certain things within our society which should not move.

This place is hypocritical if it does not put our children first. It is hypocritical if it does not uphold the fact that the existence of child pornography in any form constitutes an abuse of children and is bad for society. That is a value that has not changed and it should not be changed, so why are we now getting into things about someone who drew pictures from his or her imagination and there being artistic merit? If someone was in possession of photographs of children in compromising situations, clearly a matter of child pornography, why were they not charged for those pictures? Why were they also charged for drawings or for writings? It just opened a Pandora's box. I swear, Madam Speaker, if this was the intent, this was the perfect way to yet again open up this argument about child pornography.

There are certain values within our society that we should not abandon. I think that the issues with regard to protecting our society, our children, from the existence of child pornography and dealing with it in the strongest possible terms are unquestioned. It would pass 100% in the House in a plain, simple motion: Is that the value that we as parliamentarians want to defend on behalf of the Canadians we all represent? The answer is yes and yet the courts are discussing it, debating it and challenging it, and now we have legislation that talks about concepts such as public good. I do not need another vague definition. I do not need another uncertainty. I would rather split the case, split the bill, deal with the certainties first and let them play with their vagarities later on.

Finally, I think the debate has been useful from the standpoint of raising an important question, that is, it may be time for the question of the true supremacy of Parliament vis-à-vis the courts to be revisited. It is an important question. All people in Canada are represented by the 301 parliamentarians here. We have the opportunity and the resources as well as the responsibility to make ourselves aware of the views, opinions and values of our constituents, of all Canadians. When we bring them here, there can be no clearer voice than the voice of parliamentarians. I am sure that Canadians would agree that the laws of the land should be made by Parliament and not by the Supreme Court of Canada.

● (1630)

[*Translation*]

The Acting Speaker (Ms. Bakopanos): It is my duty, pursuant to Standing Order 38, to inform the House that the questions to be raised tonight at the time of adjournment are as follows: the hon. member for St. John's West, Fisheries; the hon. member for Renfrew —Nipissing—Pembroke, National Defence.

[*English*]

Mr. John McKay (Scarborough East, Lib.): Madam Speaker, I want to thank the hon. member for Mississauga South for his able speech. I noted that it was almost without notes. I always admire someone who can speak without notes, but I have no such ability.

I will read from a *Globe and Mail* article of last week by Professors Katherine Young and Paul Nathanson. They ask a very interesting question and I want to hear the hon. member's response to it:

> So why would marriage be harmed by adding a few gay couples?
>
> For one thing, we would lack even the ability we still have to provide public cultural support for heterosexuality. It would become, at best, nothing more than one more "lifestyle choice"...and could then no longer be propagated in the public square—which is necessary in a secular society. In fact, propagating it would be denounced and could be challenged in court as discrimination—the undue "privilege" of a "dominant" class, which is a breach of...Canada's Charter of Rights and Freedoms. But discrimination to maintain marriage as it has long been defined should be allowed in view of the fact that marriage, as a universal institution and the essential cultural complement to biology, is prior to all concepts of law.
>
> In short, redefining marriage would amount to a massive human experiment.

The article states that just as change in the Divorce Act showed compassion for a few 40 years ago, it set in motion social forces that are only being played out now. In fact, I remember both these witnesses. I also remember students from McGill University who talked about how they were the products of a divorce culture. Those forces were set in motion at least 30 or 40 years ago when we last experimented with marriage by changing the Divorce Act.

I will ask the hon. member this. On one level we really should ask ourselves what the problem is here. Why can we not simply admit a few gays to the institution of marriage? In fact, I think it will be a few; it will be a symbolic few. It will not be a huge number by any means, so what is the great harm? What is the problem here? Why should we not make this decision based simply upon a charter analysis as opposed to a larger social policy analysis?

● (1635)

Mr. Paul Szabo: And, Madam Speaker, I have another 20 minutes.

It is a terrific picture with a number of dimensions. I do not consider this an issue of whether or not we should change the definition of marriage to allow a few gay couples to be married. In our society we have had some changes. We have had changes, for instance, in the rising number of common law relationships that are outside of the marriage bond, the licensed and registered marriage. There is a growing class of people who for their own reasons decide that they do not want to consummate a marriage in the same way that others do.

So the question really gets down to why we are making a big deal of it, because it is only a few people. It shows that there is a difference. Our statistical analyses of a broad range of problems has shown that there is a big difference between the value system of each of the groups as they evolve.

The breakdown and divorce rate of married couples is at about 40% in Canada. Common law couples split up 50% more often. Gay couples split up even more frequently than that. I do not have the numbers, but I know from businesses that provide benefits to declared same sex couples that they have to wait one year before they are eligible for those benefits, the reason being that the likelihood of a relationship lasting more than a year is very low. If it lasts a little more than a year, chances are that the relationship will be there for a little bit longer. In comparison to the lifestyle choices and the value choices, there is the longevity of the relationship.

Then we can look at domestic violence. The statistics tell us that numbers of people who experience domestic violence are highest in common law relationships and very low in married relationships. It is really interesting. It is almost like the commitment to the relationship is much stronger at the marriage end of the scale, it dilutes somewhat in the common law and then in the same sex partnerships there is less cultural commitment to long lasting relationships. The strength of the commitment is in direct correlation to the degree of difficulty and, even within the gay population, abuse. We get statistics there.

The other part is with regard to children. The common law relationship emulates the married relationship because it is a heterosexual union and procreation is part of the relationship. The only thing it really does not have is the formality of the registration and the licensing of that marriage. Again, some aspects of the benefits to those families are delayed for a year. Common law relationships and same sex relationships have to wait for a certain period before they qualify for certain benefits, whereas married couples immediately qualify. There is no question that in our laws we discriminate in favour of married couples because we recognize that commitment.

I would argue that what really matters, why we would not want to open it up and reduce it all to the lowest common denominator as just two people who love and care for each other, is that there are other differences in terms of the commitment to the relationship, the lifestyle description or the way those lifestyles are demonstrated. A married relationship, I think, is different in an historic sense. Had common law relationships continued to rise and married relationships seemed somehow to peter away over time, it would be different. However, that is not the case. Married relationships have stabilized. People are going back to getting married because they have found out that there is security and comfort in knowing that there is a relationship in which there is a commitment.

● (1640)

Let me leave the House with what I had written in a book on the definition of real love. This is kind of interesting. I thought real love, or some would say true love, was a situation where one puts the interests of the other ahead of one's own. It is an unselfish commitment in an unselfish relationship.

I found out that the biggest reason common law relationships were entered into so much more frequently than marriage was that they were easier to get out of than being married. If that is the reason then obviously the best interests of the other is not ahead of one's own. Therefore I tried to argue in this monograph that the quality or the degree of real love was less strong in a common law relationship than a married relationship because of the degree to which one puts the interests of the other ahead of one's own.

We could have a lot of discussion on this but if we were to look at the demographics in our society and the statistics on social problems we would see that married relationships are the healthiest places in which to raise children and the healthiest and safest places for women. Marriages contribute the most stability to a society, which we enjoy in Canada.

Mr. John McKay (Scarborough East, Lib.): Madam Speaker, I want to reinforce the answer that the hon. member gave me. When we took in testimony we heard that if we took a five year segment for relationships and over that five years someone married, there was an 8% chance that the marriage would end in a divorce in that five year period. If, however, they first lived together and then married over that five year period, they actually doubled their chances of separation, which is a bit counter intuitive. In a similar situation, if two people lived together over that five year period, the breakup rate was 40%. That is five times greater than marriage, which is really an interesting statistic.

If we were to do what has been put to us, which is simply to say that marriage is an institution about love, that gender has nothing to do with it, then why cannot anybody be in this institution? It really should make no difference at all.

Mr. Paul Szabo: Madam Speaker, I thank the member for the statistics. Marriage is not just about love. I think that the value within Canadian society of the marriage union has to do with children. It has to do with getting together. Our basic instinct is to procreate. It is to create a healthy society, to create families and to create family trees. It is not just about love. It is about reflecting that love in having children. That is the deciding point.

The member hopefully will find a way in which marriage can be described as something more than a caring relationship between two people, because the next thing that will happen is that we will have two university students sharing the same accommodation and saying that they really care about each other and want the same tax deductions.

Mrs. Betty Hinton (Kamloops, Thompson and Highland Valleys, Canadian Alliance): Madam Speaker, I will be splitting my time with my colleague from Regina—Lumsden—Lake Centre.

I would like to address my remarks to all clear-headed and decent Canadians, like those in Perth—Middlesex and in my own constituency. I think I can safety state that the people in these two ridings hold the same values and share a common philosophy.

Recent court decisions are a concern of most Canadians. Canadians do not hold our courts in contempt but Canadians think they have reason to believe that our courts have contempt for them, for their beliefs and for their values.

On the issue of child pornography, we witnessed the use of the defence of artistic merit. Where is the artistic merit in written or visual material that deals with the sexual exploitation of children? How could anyone buy the argument that graphic depictions of children being sexually manipulated against their will by savage predators has any artistic merit? Yet we have the court accepting this specious and brutal argument.

Decent and normal Canadians reject that argument because they know child pornography is clearly harmful to children and must be the subject of criminal prosecution. It is not only our right as parliamentarians, it also is our duty and moral responsibility to eliminate the defence of artistic merit by repealing that section of the Criminal Code.

Most Canadians have never seen or read any of this unspeakable material with no wish to be exposed to it. I have seen the light of innocence and trust in a child's eyes extinguished by the horror and pain of this terrible exploitation.

The Canadian Alliance invited the most senior Toronto police investigators from the child pornography squad to visit our caucus and give us their opinion on what was being done and what needs to be done.

To this day, those terrible, horrible, depraved photographs are seared in my memory and still tear at my heart. If I am impatient for change to our laws and angry when members in this chamber argue against this motion, I will explain that it is because I have seen the evidence.

Now the Liberals and their friends are going to attempt to further confuse Canadians. The latest scheme is to allow lawyers to argue that perhaps there is some public good to be found in child pornography. Public good and child pornography do not belong in the same sentence. There is absolutely no merit, artistic or otherwise, in child pornography. There can be no public good in it either.

It is simply repugnant to Canadians that the government would allow anyone to consider that somehow the public good can be served by the production and distribution of child pornography. How can the public good be served by such depraved material? How can the corruption of innocent children be considered some sort of contribution to the public good?

Canadians want legislation declaring child pornography indefensible on every level. They also want harsh sentences handed down to the guilty. While we are at it, we should raise the age of consent from 14 to 16, while maintaining the close in age exemption.

Why can we not give our children the gift of an extended childhood to give them the greater gift of freedom from legal exploitation? Why is it that the Liberals and their friends so harshly reject the notion that children under 16 deserve our protection? Why do the Liberals and their friends buckle in the face of Supreme Court decisions that rob our children of their innocence, trust, dignity and, most important, their childhood?

That old refrain of respecting court decisions is wearing thin. How can Canadians be expected to continue respecting our courts when they increasingly believe that our courts do not respect Canadians? We can remedy that right here in this Parliament. Insofar as child pornography is concerned, we can eliminate the defence of artistic merit in child pornography that is clearly so harmful to children.

This is the people's Parliament and children are people. Children are owed the love, the respect and the protection of their Parliament.

If all hon. members stand together in the House, we would be sending a message to Canadians and to our courts. That message would be very clear. Any obscene material, any pornography that depicts the exploitation of children is legally, morally and totally repugnant to Canadians and to their Parliament.

● (1645)

The other court decision that rankles us as well is the idea that pornographic sexual predators can serve their sentences under house arrest. It is totally unacceptable. What about children who walk up to that front door in all innocence or, even more frightening, a child who runs to that house for shelter against a threat? The inhabitant of that house could be just as dangerous, or more so, for that child than the one from whom he or she is trying to escape. It simply does not make sense. A criminal is a criminal and a child predator is most definitely a criminal. They belong in prison, not in the comfort of their own homes.

If Parliament adopted a national child protection strategy and allocated the necessary financial resources, we would be taking a step in the right direction.

Plain and simple, the priorities of Canadians are not the priorities exhibited by the Liberals. The police and crown lack the necessary resources to ensure the investigation and prosecution of child pornography, and related crimes receive the appropriate priority. What greater priority could there be than the safety, trust and innocence of our children?

I stress that this is not a partisan issue. It is simply and only an issue of children and their protection. How could anyone with a clear conscience stand and disagree? How could any member of Parliament turn his or her back on Canada's children? How could members look another child in the eye if they do not support what it is we are here speaking about today?

We have to stop child pornography. How could any member ever approach a voter, who is also a parent, and ask for that person's trust and vote if we deny them this simple right?

Let us switch to another part of the motion. I think the majority of Canadians are wondering why the Liberals and their friends here in Ottawa are eroding many of the cherished beliefs, values and standards of Canadians. It is no surprise that Canadians are beginning to wonder who is in charge of their country and their destiny.

Liberals should have the right to denounce or support the motion, this whole concept, if it is what they and their constituents deem appropriate, without having to ask for the authority of the whip or face party discipline.

Another part of the motion echoes again the beliefs of the majority of Canadians. Law-abiding citizens and victims of criminals do not accept that prisoners should have the right to vote in Canadian elections. Prisons are places where people pay their debt to society. The fact that they receive pay from society while in prison still baffles many Canadians, but that is an argument for another day.

There is not a thinking Canadian anywhere who supports the notion that prisoners should have all the rights and privileges of those who live outside the prison walls and within the law. There is not a thinking Canadian anywhere who would agree that murderers should enjoy the same rights as his victims.

It devalues the vote. In fact, it inflates the value of the prisoner's vote while deflating the vote of citizens outside the prison walls.

If the right to vote is held as an inalienable right, a right that people have fought and died to win or retain, what value does it hold when a mass murderer enjoys the same right?

The Liberals and their friends make a tired argument that criminals are victims of society. If that were believed to be true, then we would have a question to ask, and I would challenge any Liberal across the way to answer the question. What did some innocent, law-abiding citizen do to society to deserve a brutal and agonizing death at the hands of his or her murderer? What did the innocent victims of Paul Bernardo and Karla Homolka or Clifford Olson do to society to deserve their deaths at the hands of these beasts?

Canadians do not believe the argument that criminals are the victims of society. Canadians do not believe that a vote from within a heavily populated prison should swing the results of an election. Canadians do not want prisoners to have the right to vote.

● (1650)

This is a non-votable motion. Having heard many speakers from other parties, especially the Liberals, I am left pondering one question. Because of the Liberals, New Democrats, Bloc Québécois and Progressive Conservatives who argued against this motion, can we assume from that that they would not vote to protect children from being exploited at the hands of beasts involved in the child pornography industry? Do they believe that children at 14 years are old enough to be exploited by those who would do such things? Do they believe that Paul Bernardo, Karla Homolka and Clifford Olson should have the right to vote, the same as law-abiding citizens?

We will be reminding Canadians in the next election who stands where on the issue of protecting children. Right now it appears that the Canadian Alliance is the only party standing for Canadians.

● (1655)

Mr. Larry Spencer (Regina—Lumsden—Lake Centre, Canadian Alliance): Madam Speaker, I am glad to rise today to bring the attention of the people across the land and the attention of Parliament to the need to stand and be counted against the decisions that are being made across the land in our courts that bring a threat to certain things. These are things like the definition of marriage, like making it easier for child predators to produce pornographic materials, like granting prisoners the right to vote, and one other which I might mention.

Judges are extremely important public servants and are well paid for their competence in the business of making decisions that affect the lives of individuals and families. However, interestingly enough over recent years judges increasingly and purposefully are influencing public policy through their edicts. At times they seem to be dictating to Parliament on what public policy should be and what are the best interests of the general public. Often decisions by the judiciary reflect the judiciary's own personal views of the will of society rather than a more accurate application of the law.

Only elected officials and Parliament have the authority and the role to establish public policy. This is supposed to be done through the passage of legislation in what we all want to be a democratic system of government. The role of judges is to apply the law, but it is not the role of the judiciary to create the law. Elected officials can be removed from office if they do not represent fairly the views of the people. They can also be defeated even if they are doing an outstanding job of representing their constituents.

That having been said, judges are both unelected and unaccountable to the people for the decisions they render. Therefore, judges' decisions must always be subject to the laws established by our elected representatives. Elected officials should bear the responsibility of demanding more effective accountability of the judiciary. In a government of the people, by the people and for the people, there must be a strong system of accountability built into each branch of the government.

There are hundreds of stories in this country of judges making decisions that are not mandated by the laws that they are to administer. There is definitely a problem within the realm of family law, for instance. In family courts many times the decision favours one party or the other without real justification. Time and again, husbands and wives going through personal divorce are then divorced from their own children by the decision of the court. In most cases this means that the father is no longer allowed to have adequate parental involvement with his own children. He effectively becomes divorced from his own children.

Rulings handed down by these activist judges likely would never be found to be charter-proof if they were written in law by Parliament. Both the judiciary and the Liberal government have turned a blind eye to this travesty of justice. They have both failed the families of this nation.

Controversial decisions or bad decisions are met with little or no public scrutiny. Is this fair? Now more than ever our country is in need of fundamental legal reform. These changes must be made through Parliament and not dictated by appointed judges.

Recently an Ontario court ruled that the definition of marriage, defined in tradition and in Parliament as being exclusively between one man and one woman, was unconstitutional because it excluded same sex marriages. The ruling shocked Canadians across the country who have for decades supported the traditional definition of marriage and valued the institution of marriage on religious and societal grounds. The ruling also shocked many federal representatives who only three years ago voted overwhelmingly in the House of Commons to uphold the definition of marriage as being between one man and one woman.

Following the Ontario court ruling, I joined with Canadians across the country in calling upon the federal government to appeal the Ontario decision and to defend the traditional definition of marriage. In addition, my office received a great number of phone calls, e-mails and letters from across the country and from residents of my riding.

● (1700)

Regrettably the Canadian Alliance was the only party actively working to encourage the government to appeal that decision. Elected members of the federal Progressive Conservative Party and the New Democratic Party remained strangely silent on the subject despite the number of Canadians who were calling for an appeal. The federal government struggled with its decision waiting until the last day to finally make the right decision and launch an appeal.

Just this month the B.C. Court of Appeal overturned a lower court decision and said that laws prohibiting same sex marriage are discriminatory. The ruling gave Parliament until July 12, 2004 to change Canada's marriage laws and is similar to other rulings in Ontario and Quebec. The minister is again hesitating to appeal this court decision, this in spite of his vote in favour of the 1999 resolution which was overwhelmingly passed in the House of Commons and which stated in part, “that marriage is and should remain the union of one man and one woman to the exclusion of all others, and that Parliament will take all necessary steps to preserve this definition of marriage in Canada”.

The Minister of Justice is not following the will of Parliament's resolution. Interestingly enough, the current Prime Minister, the current Deputy Prime Minister and the wannabe prime minister all voted in favour of the resolution. It remains to be seen if the Liberal government will ever have the backbone to follow through on its commitment to take all necessary steps to preserve the institution of marriage.

The Canadian Alliance supports the definition of marriage as it currently stands. We believe that the government has an obligation to defend the longstanding application of the definition of marriage as was affirmed in the House by that overwhelming vote. An issue as important as the definition of marriage must be ultimately decided by elected representatives who can reflect the wishes of Canadians. It must not be left to unaccountable judges.

The John Robin Sharpe case brought out a very imaginative ruling. It ruled that the child pornography produced by John Robin Sharpe had artistic merit and was therefore legal to be possessed by that convicted pedophile. Decisions continue to lean toward protecting the criminal rather than children and families.

Yet another example of judicial activism was apparent when the Supreme Court recently allowed prisoners, including murderers and pedophiles, the right to vote. We in the Canadian Alliance believe that this court decision is fundamentally flawed. We contend that this court ruling is nothing more than a slap in the face to the ordinary law-abiding citizen.

In her decision the chief justice stated that the right to vote is fundamental to our democracy. I agree. However, is not the obligation to obey the law equally fundamental? If there is no respect for the rule of law, both our society and our institutions will deteriorate into a state of chaos. It seems absolutely ridiculous to me that we would give prisoners the right to continue to vote so that lawbreakers then have the right to select those who make the laws and write out the pardons.

I also believe that this decision is in violation of the Charter of Rights and Freedoms. The charter does state that reasonable limits may be placed on fundamental rights. It is ridiculous to say that we cannot interfere with the rights of a prisoner. What is incarceration? Incarceration is all about limiting a prisoner's rights. The charter says that we can do that so we cannot hide behind that excuse.

Political scientists have failed to see the importance of this Supreme Court ruling. They claim that the 12,000 prisoners to whom this decision will give the right to vote is too small a number to influence the outcome of the election. That is not the point. It is a matter of principle.

What has the court done by giving prisoners the right to vote? The easy answer would be that the court has diminished the value of citizenship and it has harmed the integrity of the democratic system. Perhaps the court should reconsider its actions. Most of all, perhaps the government should reconsider, step up to the plate and deliver legislation to reclaim the rightful place of this the people's House.

● (1705)

Canadians expect their elected representatives to have the courage to make important decisions even if it means tackling divisive questions head on. For too long the Government of Canada has stood back and let the Supreme Court usurp Parliament's role as legislator. It is time for Parliament to take responsibility and protect and reassert its will and right to be the lawmaker of this land.

Mr. Paul Harold Macklin (Parliamentary Secretary to the Minister of Justice and Attorney General of Canada, Lib.): Mr. Speaker, the motion asks the House to call upon the government to bring in measures to protect and reassert the will of Parliament against decisions of the courts that certain members do not agree with.

With the greatest of respect, I believe this reflects a fundamental misunderstanding of the role of the judiciary in our democratic process. In the proper functioning of a democratic society, it depends on a number of key participants. Under our Constitution, Parliament, the courts and the executive form those key participants. We enjoy a strong and free democracy because the sum of those three parts is greater than the whole.

It is also important that we maintain a healthy and continued respect among Parliament, the courts and the executive. That respect is undermined when parliamentarians engage in unfounded attacks on the judiciary and judicial institutions.

Canadians are justifiably proud of their Constitution. They are proud of the rights and freedoms they all enjoy and which the Constitution protects. They are also proud of our judiciary which has the difficult and sometimes unenviable task of deciding when those rights and freedoms have been violated.

Our judicial institutions are among the finest in the world. Other nations look to us as an example for developing their own judicial systems. Canada is a leader in preserving and promoting judicial independence. I for one, who has had an opportunity to see other countries struggling with this question, want to ensure that the tradition continues well into the future.

Our system of justice, indeed our democracy, is based on the rule of law. The rule of law simply cannot exist without a healthy, vibrant and independent judiciary. We do not have to look much further than the evening news to understand what life is like in countries where there is no independent judiciary, where judges are pressured to toe the government line. I know that is not what Canadians would want to see happen in this country.

The Constitution is the supreme law of our country. Since 1867 we have called upon the courts to interpret and apply the Constitution and they have done so, striking down laws that offend federal or provincial jurisdiction. Since 1982 we have called upon the courts to interpret and apply our Charter of Rights and Freedoms. In many ways this task is different because it involves consideration of the fundamental values and beliefs that we hold dear. However, in many ways the task is the same.

The courts are interpreting the supreme law of our land and applying it in the best way they know how. This is a difficult job. It is not easy trying to figure out what equality, or freedom of expression, or fundamental justice mean.

We have to remember that the courts did not ask for this task; we in this Parliament gave that task to them. Therefore it is simply not right for this chamber to turn around and chastize judges for doing the job that we gave to them.

It is completely consistent with the rule of law that judges be able to strike down laws that are inconsistent with the Constitution. They have been doing it in one form or another for almost 136 years. If they did not have this power, how would the rule of law be protected? How could we require governments to comply with the Constitution? The answer clearly is, we could not.

● (1710)

Underlying this motion is the notion that courts have somehow usurped or limited the role of Parliament by inserting their views on issues of public policy. However it is not the courts that limit Parliament. It is the Constitution, including the charter, which limits Parliament.

We have made a deliberate choice to provide the courts with a role and that role is interpreting the charter and the Constitution. That role includes the power to declare unconstitutional legislation that is invalid. When the courts find that legislation is unconstitutional, the legislature can respond by crafting legislation that contains limits that are reasonable and justified in a free and democratic society as set out in section 1 of the charter. There is certainly no question that with the advent of the charter, the courts have had a more direct impact on the lives of Canadians. As a result, there has been public scrutiny of their decisions.

However to the extent that courts play a role in shaping public law and policy, they do so in accordance with well established rules of constitutional and statutory interpretation, not based on any philosophical preference on the part of the judges. For example, this motion talks about the same sex issue. Some disagree with the court decisions on opposite sex requirement for marriage. They have expressed concern that the courts, rather than the elected members of Parliament, are making decisions to change fundamental social institutions. They are concerned that judges are making law in accordance with their own opinions.

I disagree. In my view, the courts are simply trying to apply the charter in a way that is consistent with the law and past court decisions. Indeed, as my colleague has noted, the courts in all of these cases have gone to great pains to underscore the importance of Parliament. Each decision has given Parliament time to consider how to address the important concerns that have been identified. Rather than trying to usurp or ignore Parliament, I would suggest that these decisions specifically acknowledge the essential role that Parliament has to play in deciding important social questions such as these.

As we all know, last November, the Minister of Justice referred the question of marriage and the legal recognition of same sex unions to the Standing Committee on Justice and Human Rights. He asked the committee to consider policy approaches, to hear from Canadians and to report back with recommendations on possible legislative reform. Members of the standing committee have just recently finished their hearings on this issue and are considering their report and recommendations right now. I understand that the committee hopes to report back to the minister in early June.

I am the first to recognize that judges and their decisions are not always popular but judicial decision making is not about popularity. It is about interpreting and applying the law which, like it or not, happens to include our Constitution. We as legislators have given the courts the task of determining some of the most difficult and divisive legal, social and economic issues of our time. Judges must be independent and free to make those difficult and sometimes very unpopular decisions.

The independence of the judiciary is a key constitutional principle and one that is critical for the public's confidence in the judicial system. Although all members of the public will not necessarily agree with a particular decision, it is important that the public knows that the courts will make decisions free from interference.

● (1715)

Through several international agreements, all democratic governments, including Canada's, have endorsed the basic principles of judicial independence. In adopting these principles of judicial independence, governments and legislatures have agreed to constrain their power to ensure that the judiciary remains independent and has the legitimacy necessary for the continued public support and confidence in the justice system.

Our system of governance has worked well and will continue to work well as we enter the next millennium. The effectiveness of our system of governance depends on a judiciary that is independent and willing to make difficult and sometimes unpopular decisions in accordance with the rule of law.

Parliament is never prevented from amending or introducing new legislation in the public interest so long as that legislation is constitutional. The Canadian people expect no less from us as parliamentarians.

Our Constitution and what it stands for is the underpinning of this entire country. We as a Parliament chose, based on principles some 21 years ago, to add a Charter of Rights and Freedoms to that Constitution. I think each and every one of us has to stop, look at the principles that underline that charter, as it is entrenched, and make a decision; do we believe in the principles that it espouses or not. If we do, there is ample room for us as legislators to go forward within the confines of those principles to legislate and to do the job Canadians expect us to do in a way that is fundamental to the preservation of the society that we know.

Mr. Myron Thompson (Wild Rose, Canadian Alliance): Mr. Speaker, I agree that probably a big majority of Canadians are quite fond of the Charter of Rights and the principle of it, and it is certainly supported across the land. I support those principles.

I was also pleased that the 20 people or so who put this document together were wise enough to remember that there could be times when the public values, and the public in general, could be in conflict with the decisions that the courts made based on the charter. Recognizing that possibility, they put in section 33, the notwithstanding clause.

If I have heard it once, I have heard it a hundred times, and strongly from that side, that it was deplorable to even think about using section 33 in regard to the charter. However the public has risen up and tabled thousands of signatures begging Parliament to literally put an end to child pornography, to close the loopholes. They are demanding this and asking for it. However the courts make a decisions that leave the loopholes. Obviously the government is not going to change the law because it has not done it with Bill C-20. In its feeble attempt, it left "public good" in legislation as another loophole.

When do we use section 33? Should it never be used? Members of the Liberal party said that today. It will be quoted in *Hansard* over and over. When are we going to recognize, that yes in a judicial sense the Supreme Court is the highest court of the system, but Parliament is the highest court of the land and it is run by the people of Canada, not by me, not by that member or by you, Mr. Speaker. It is run by those who elected us.

They are demanding, and there is no doubt about it, that the safety of our children be top priority and that child pornography be stamped out . Why is the government so reluctant to do that? Why does it to continue to hide under the decisions of the court and under the idea that there could be some artistic merit or public good, or whatever, to child pornography? It just does not make sense.

I would think that the member has relatives, children of some kind, in his household. Does he not believe that our most elemental duty is to make every effort possible and to make absolutely certain that we do our utmost to protect the little ones in the land? What is wrong with that? I think there is nothing wrong with that and the public thinks there is nothing wrong with that. However I can guarantee, based on what I have heard throughout the day, the government will not even consider clause 33. It seems to be very reluctant to go against any decisions that the courts make. Why?

● (1720)

Mr. Paul Harold Macklin: Mr. Speaker, as legislators, where do we fit in the entire perspective of the charter? As a government, what we are doing now is what we will continue to do, and as I stated in the House today, we are very clear. We do not disagree with the fact that child pornography is wrong. We are against child pornography.

However what we are trying do, within this legislature, is to find an effective way that meets a number of interests. I know that sometimes people look at the way in which we are approaching it in Bill C-20. They refer to the fact that we are using and have put in the only defence, a public good defence. They look at that and ask how anything about pornography can be good. I do not disagree with that. There is no good in pornography itself.

The question that we are really struggling with is freedom of expression. How do we deal with the ability of, for example, those who teach in a university, to teach about pornography? How do we do that if in fact it is absolutely and completely illegal to even talk about pornography? It cannot be discussed. The police officers would not be permitted to deal with it.

Mr. Myron Thompson: We do not.

Mr. Paul Macklin: The hon. member says no. I think it is very important that we understand that part of the public good is in prosecuting those individuals. In so doing the police need to have access. They need to be able to investigate and see the pornographic images in order to to prosecute these people.

Those members of the opposition who choose not to accept this have to be understanding of the sensitivities and the problems that are involved in the prosecution of these offences. There is no answer to say that there is an absolute and complete prohibition on pornography. We have to leave a way and a means, for example, in dealing with it in medical institutions, research institutions. It would not be allowed unless the defence was available of the public good because it is for the public good to deal with it in that fashion.

We do have disagreements in the House but the House has the ultimate authority to go forward. The member talked about section 33 of the charter. I believe that was put in the charter for good reason. It has been used within provinces to date. I am not aware that it has been used at the federal level, but from that perspective it is there to provide a safety valve if a situation were to arise where we would not able to react as a legislature in an appropriate fashion quickly enough. That at least is another way and means to deal with the issues of the charter.

However we must remember what that does. When we deal with section 33 of the charter it effectively takes away the other benefits that the charter was originally set out to give. What we would effectively be saying is that notwithstanding all those other principles we are going forward with this other perspective.

It is very clear that section 33 of the charter does have a valid reason for being there. Yes, it has been used and may be used in certain circumstances but it must be used with care because those principles, as I said earlier, are either respected or they are not. I believe we should always try to respect the principles that form the basis of the charter.

● (1725)

Mr. Brian Fitzpatrick (Prince Albert, Canadian Alliance): Mr. Speaker, a democratic society works because we have mutual respect for one another's rights. If I want somebody to treat me fairly and respect my rights, I have to do that with the other person.

The very nature of criminal law is when people ignore other people's rights. The ultimate crime, of course, is murder. Murderers deprive citizens of their rights when they terminate their very existence, which undermines the whole democratic process. Society as a whole would collapse if people did not have respect for one another's right.

It seems to me that a natural consequence of committing a serious criminal offence is that one is deprived of some of one's rights in society. It is a reasonable thing. It can be justified. One of those rights is the right to participate in the democratic process by voting.

Without getting into a legalistic argument with the parliamentary secretary on court decisions, does he not feel that a natural consequence of committing serious crimes should be that people will be deprived of some of their rights under the charter? When people break that social contract is that not the bedrock of our democratic society?

Mr. Paul Harold Macklin: Mr. Speaker, in response to the member's question, of course we take away rights from individuals when they commit a crime.

However, who was it who established the rights we are going to take away? It was this place, this Parliament, through the Criminal Code, that determined what rights we would address for various crimes. We are the ones who set out the sentences, the penalties and the options that are available. It is those of us who gather here who have made those decisions. We set out the limitations and gave the courts what we believed were the appropriate ranges of sentences that should be applied in each individual case. I think it is very clear that we set out what those responses were to be.

Let us go beyond that. What the court has clearly stated is that we did not have the right under the charter to take away those voting rights. What we have to do in this place is re-examine this to see what we as a legislature can do.

I still believe, and I do not believe that I will be doubted, that this House of Commons, this Parliament in its totality, is the place where we make decisions. We have the ultimate authority. It is not the court that holds the ultimate authority and, therefore, to criticize the court is inappropriate in this case.

● (1730)

The Deputy Speaker: It being 5:30 p.m., it is my duty to inform the House that proceedings on the motion have expired.

THE ROYAL ASSENT

[*English*]

The Deputy Speaker: I have the honour to inform the House that a communication has been received which is as follows:

Rideau Hall

Ottawa

May 8, 2003

Mr. Speaker:

I have the honour to inform you that the Right Honourable Adrienne Clarkson, Governor General of Canada, signified royal assent by written declaration to the bills listed in the Schedule to this letter on the 8th day of May, 2003, at 4:07 p.m.

Yours sincerely,

Barbara Uteck

Secretary to the Governor General

The schedule indicates that royal assent was given to Bill C-2, an act to establish a process for assessing the environmental and socio-economic effects of certain activities in Yukon; and Bill C-10A, an act to amend the Criminal Code (firearms) and the Firearms Act.

It being 5:33 p.m., the House will now proceed to the consideration of private members' business as listed on today's Order Paper.

PRIVATE MEMBER'S BUSINESS

[*English*]

CRIMINAL CODE

Mr. Brian Pallister (Portage—Lisgar, Canadian Alliance) moved that Bill C-416, an act to amend the Criminal Code and the Youth Criminal Justice Act (sentencing principles), be read the second time and referred to a committee.

He said: Mr. Speaker, on July 15, 2000, Valentino Harper was found guilty of manslaughter. He broke into the apartment of George Monias and beat him severely. While Mr. Monias lay on the floor, Mr. Harper took a 43 pound television set and dropped it on Mr. Monias' head, killing him.

On December 21, 2001, near Russell, Manitoba, RCMP constable Dennis Strongquill was fired upon by Robert Sand when he attempted to pull over a truck driven by Sand's brother. The brothers proceeded to pursue the constable back to the detachment where they rammed his cruiser trapping him. Robert Sand then fired four shotgun blasts into the body of the police officer. Constable Strongquill did not survive the attack.

Besides the horrible nature of these two events, what do they have in common? In both cases the assailant is of aboriginal descent, as is the victim. In both cases the lawyer has argued for a more lenient sentence based on the criminal's race. In both cases the judge must take into consideration the race of the guilty offender when making a sentencing determination.

However that has not always been the case. Since the Liberals made amendments to the Criminal Code in 1996, Canadian justice is no longer blind. It now peeks out from under the blindfold and checks to see what race someone is. Like the American Express card, a status card now has its privileges.

However a status card is not supposed to be a "get out of jail free" card. My bill would delete nine words from the Criminal Code and from the Youth Criminal Justice Act that instruct judges to pay "particular attention to the circumstances of aboriginal offenders". Why did the government introduce this specific provision?

We know that as a percentage of the population of our country, aboriginal offenders are disproportionately represented in our penal institutions. The Liberal government wanted to appear sensitive to that reality so, rather than confront the root causes of the crime at the preventative stage, it decided that it would appear to address the problem after the crime had been committed. This created the present predicament where the old adage "Do the crime, do the time", has been amended and now says "Do the crime, do the time, unless you're Indian". That is flawed for several reasons.

First, the amendment is based on the erroneous assumption that judges have been discriminating and victimizing aboriginal Canadians. Professors Philip Stenning and Julian Roberts, in the Saskatchewan *Law Review*, wrote:

> Recent data do not sustain the view that judges systematically discriminate against aboriginal offenders at the sentencing stage. Clearly there is a problem with the disproportionate numbers of aboriginal people in prison but the available evidence overwhelmingly suggests that these individuals did not get there through discrimination at the sentencing stage.

[*Translation*]

Second, there is no mention in the 1996 Royal Commission on Aboriginal Peoples' report that the sentencing process contributes in a significant fashion to the over-representation of aboriginals in correctional facilities. It makes the frank admission that the over-representation of aboriginals in the correctional system is attributable to the substantially higher crime rate in aboriginal communities and for aboriginals.

This is the reality that must be changed.

● (1735)

[*English*]

Third, combined with the fact that aboriginal offenders commit more offences against the person, which are generally considered far more serious crimes, and that they have longer prior records, one would tend to believe that the median sentence would be longer for aboriginal offenders than for non-aboriginal offenders. That is not the case.

Carol La Prairie, who is a noted scholar and justice researcher, argued in a recent paper that data prior to the amendment revealed that at the federal level non-aboriginal offenders were being given longer sentences. I will quote from that report: "Aboriginal offenders are receiving significantly shorter sentences for attempted murder, assault causing injury and robbery".

Therefore, discrimination against aboriginal offenders, according to the evidence, is not and has not been the problem.

By reducing sentences based on race, Canada's justice system disrespects the victims of those crimes. The majority of the victims of the crimes of aboriginal perpetrators are in fact aboriginal people themselves. According to the latest Statistics Canada figures, 35% of the aboriginal population in this country reported having been the victim of at least one crime. Aboriginal people are also more likely to be repeat victims. Aboriginal people experience violent crime at a rate that is nearly triple that for non-aboriginal people, and rates of spousal violence are also alarming. Approximately 25% of aboriginal women reported having been assaulted by a current or ex-spouse, compared to 8% for non-aboriginal women.

When we discount the sentences of aboriginal criminals, we discount justice for the victims of those crimes, an approach which uses racial generalizations to attempt to alter the rate of aboriginal incarceration, which introduces a new concept to our justice system: the concept of volume discounts for crime. More important, it places communal circumstances over individual responsibility. It is choosing criminals over victims.

On January 17, 2003, Clinton Derrick Byrd was found guilty of sexual assault. He had forced his wife to commit bestiality with a dog. He had been engaging in sex acts with his daughter, including sexual intercourse, for over 10 years. This behaviour commenced when she was not yet two years old. Why do the victims of this man's crimes, his wife and his own daughter, not deserve the full and equal protection of our justice system?

Constable Dennis Strongquill leaves behind six children. Why should their father's murderer receive leniency because he is an aboriginal man? Dennis Strongquill is an aboriginal. Dennis Strongquill's six children are aboriginal. Surely they deserve the equal protection of our justice system.

There is no other jurisdiction in the world that has followed our example, none that includes race as a factor in sentencing. By adding a racial distinction in the sentencing provisions of Canada's Criminal Code, the government has implied that aboriginal Canadians, by virtue of their ethnicity, are more likely to commit crimes. This stigmatization is intolerable. It offends all Canadians. Let me quote from an editorial in *The Globe and Mail*: "We do not endorse the Balkanization of the justice system with distinct sentencing rules based in any way on skin colour or ethnicity".

But that is what has happened. The government has Balkanized our justice system and in so doing it has unfairly stigmatized aboriginal people. People who listen to these arguments are not convinced.

An hon. member: You have no idea of what you're talking about.

Mr. Brian Pallister: The member opposite tries to argue for Balkanization and race based sentencing in our system. She will have the opportunity to make her arguments. I invite her to do that. I encourage this debate.

Perhaps what is even more egregious than what the government has done here is the expansion of these differential sentencing provisions to the new Youth Criminal Justice Act. This is the youngest, fastest growing population in Canada and it is imperative that aboriginal youth feel that they can become significant contributors to Canada's economic, social and political life. By offering sentencing discounts based on race, the government is sending a message to aboriginal young people and it is not a good message. It is a message that they are incapable of fulfilling the same duties and the same responsibilities as all other Canadians. We have to stand up and say no to this policy of stigmatization and restore the fundamental principle of equality to our justice system now and for future generations.

● (1740)

Ethnicity should never be a factor in the sentencing determination of any convicted criminal, but that is not to say that socio-economic conditions should not be considered. Sentencing judges already do so. Sentencing judges have to take into consideration background factors such as lack of education, poverty, substance abuse and child abuse, but not all aboriginal Canadians suffer from these afflictions nor are they solely the possession of aboriginal Canadians.

To stipulate that aboriginal status should be considered and specifically targeted by judges is a mistake. The overrepresentation problem cuts across different racial minorities and it requires a response that does not focus exclusively on one group, however historically disadvantaged. To single out a particular group encourages judges to treat aboriginals as a category rather than as individuals. Categorical assumptions are inappropriate in a sentencing system that is supposed to be based on the culpability of the offender. The sentence must relate to that culpability and the factors should be individual, never collective.

The solution lies beyond the purview of the sentencing judge. It is not the mandate of a sentencing judge to try to correct society's historical wrongs. That is antithetical to the purpose of our justice system. If judges begin to make sentencing determinations on the basis of collective identity they are no longer serving as the safeguards of equality in our justice system but rather as social engineers.

The conditions which contribute to the likelihood of criminal involvement, such as poverty, lack of education, drug and alcohol dependency and lack of economic opportunity, should be the priorities of any government. Yet after 10 years of this government's rule, little progress has been made. The barriers to aboriginal equality have not come down because the government seems to believe that aboriginal Canadians do not merit the full equality that other Canadians take for granted. The price of this philosophy is that the federal government has been allowed to escape its leadership role in all aboriginal issues.

For example, the government has ignored well documented problems such as lack of matrimonial property rules on reserve, economic and consumer equality for aboriginal people, women's rights, and property rights. The federal government's ambivalence toward these inequities has directly resulted in the third world conditions that we see on Canadian reserves.

The Canadian Alliance believes that the re-establishment of these individual rights, which most Canadians take for granted, is central to building that foundation of equality of opportunity for aboriginal Canadians, and the establishment of these individual rights is central to crime prevention.

[*Translation*]

The Liberal government's approach is to stave off problems with community-based band-aids, while the Canadian Alliance believes that prevention requires individualized solutions, starting with equal rights and duties for everyone and equal justice.

● (1745)

[*English*]

While the overrepresentation of aboriginal people in Canadian prisons is an undeniable and important problem, there is little evidence that the problem has arisen as a result of discriminatory sentencing. To explain the high incarceration rate as a byproduct of failed sentencing practices is to miss the problem altogether and therefore miss finding the solution to the problem.

Those nine words in the Criminal Code offer little more than an empty promise to aboriginal people, a bitter pill for sentencing judges who struggle to do the right thing but become daily more aware of the powerlessness they have in the face of a situation far beyond their control. It would have been better if these nine words had never been included in the Criminal Code.

My bill has been given a great deal of support across Canada already. *The Edmonton Journal* stated on April 29 of this year, "The reasons for the high rates of incarceration, poverty, substance abuse, family breakdown and the like are not and cannot be adequately addressed at the sentencing stage".

We have been supported by the first nations mothers' association of Canada, which has said in a press release that it believes all Canadians should be treated equally before the courts and there is only one brand of justice for Canadians.

The *Windsor Star* said on May 5 of this year that the government's approach "smacks of two-tier system. A truly just justice system would expect judges to remain blind to an offender's ethnicity".

In closing, let me say that it is long overdue that this unjust provision in our Criminal Code which stands in the way of true equality for all Canadians be removed. I urge all members of the House and I urge all Canadians following these proceedings to support this bill and to encourage their members of Parliament to support the bill when it comes back to the House. The bill will accomplish several things. It will restore fairness and equality to our justice system. It will end the stigmatizing of aboriginal Canadians. It will reinstate the rights of the victims of crime and their full and equal protection under the law.

Mr. Paul Harold Macklin (Parliamentary Secretary to the Minister of Justice and Attorney General of Canada, Lib.): Mr. Speaker, I am pleased to speak to Bill C-416, an act to amend the Criminal Code and the Youth Criminal Justice Act (sentencing principles), which has been introduced by the hon. member for Portage—Lisgar. The bill focuses on the sentencing of aboriginal offenders and it would result in the removing of the obligation of the court to consider the particular circumstances of aboriginal offenders when passing sentence.

Let us look at the history. On July 13, 1995, Bill C-41 received royal assent. It was proclaimed in force in September 1996. In Bill C-41, Parliament for the first time set out the purposes and principles of sentencing. One of the new principles, found in section 718.2(e), was that:

> ...all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

The effect of this private member's bill would be to eliminate the specific reference to aboriginal offenders in the Criminal Code as well as in the Youth Criminal Justice Act. I cannot support this proposal.

The purpose of this provision is to encourage restraint in the use of imprisonment for all offenders. Codified for the first time in Bill C-41, the idea of encouraging restraint in the use of incarceration is not new. A white paper published under the authority of the then minister of justice in 1982 included in its "Statement of Purpose and Principles of Criminal Law" that "in awarding sentences, preference should be given to the least restrictive alternative adequate and appropriate in the circumstances".

Restraint in the use of imprisonment has been endorsed by numerous other commissions and in various law reform reports. By the time Bill C-41 was debated, however, the need to consider restraint had been given increased importance as a result of Canada's high rate of incarceration when compared to those of other industrialized nations.

According to Council of Europe statistics published on September 1, 1993 for 1992-93, Canada incarcerated about 130 inmates per 100,000 people, compared to the range in western Europe of about 51 in Holland and 92 in the United Kingdom. Furthermore, the rate at which aboriginal Canadians were being incarcerated was even higher, in the neighbourhood of 785 per 100,000, or about six times the rate of the general population. It is worth noting that if aboriginal Canadians were jailed at the same rate as non-aboriginals, Canada's overall incarceration rate would be comparable to those in most western democracies.

There is a longstanding concern by the government and by the Parliament of Canada with the overrepresentation of aboriginal people in the criminal justice system. For example, this was addressed in "Taking Responsibility", the 1988 report of the Standing Committee on Justice and Solicitor General; in the 1987 report of the Canadian Sentencing Commission; in the 1991 Department of Justice discussion paper, "Aboriginal People and Justice Administration"; in Law Reform of Canada Report 34, "Aboriginal Peoples and Criminal Justice"; in parliamentary debate on Bill C-41; and finally, in the Speech from the Throne on January 30, 2001, opening the first session of the 37th Parliament.

As I stated previously, section 718.2(e) of the Criminal Code applies to all offenders, not just aboriginal offenders. Parliament intended that it, along with the purpose and other principles found in section 718 of the Criminal Code, would breathe life into the notion of restraint in Canada. As I previously stated, the bill before us today would eliminate any reference to aboriginal offenders and I simply cannot support that change.

● (1750)

The purpose of including this specific reference to aboriginal offenders in the Criminal Code and more recently in the Youth Criminal Justice Act was to signal Parliament's concern over the especially high aboriginal incarceration rate and the socio-economic factors that contribute to this. It requires sentencing judges to be sensitive to these matters and for judges to consider the appropriate alternative sentencing processes, including restorative, culturally sensitive approaches such as sentencing circles, healing circles and victim-offender mediation.

There is no doubt that many of the accused who appear in our criminal courts exhibit some of the same socio-economic deprivations of poverty, substance abuse, lack of education and low self-esteem that one finds in all too many aboriginal Canadians. However, as the Supreme Court of Canada confirmed in its 1999 decision in Regina v. Gladue:

> —aboriginal offenders differ from those of the majority because many aboriginal people are victims of systemic and direct discrimination, many suffer the legacy of dislocation, and many are substantially affected by poor social and economic conditions.

The court is therefore required to acknowledge that these special factors are to be considered and to consider what role they may have played in bringing that aboriginal offender before the court and to consider the full range of sentencing options that are appropriate in the circumstance. In other words, it provides an individualized sentence that is appropriate for both the offence and the offender. I fully support that approach.

In conclusion, there is no doubt that aboriginal people are vastly overrepresented in the Canadian criminal justice system. The government is continuing to make efforts to change this. However, the causes of overrepresentation involve complex social and economic factors of poverty, addiction and disadvantage. They are historical and not easily dealt with.

It appears that the courts are supporting the sentencing provisions in the Criminal Code that encourage restraint in the use of incarceration and I say for all offenders. However, the government continues to be concerned about the incarceration of aboriginal offenders and will continue to make efforts to ensure that aboriginals are not overrepresented in our prisons.

The references to aboriginal offenders in the Criminal Code and the Youth Criminal Justice Act are one part of the overall plan to reduce this overrepresentation. At the same time, the government is focusing on the root causes of crime so that long term changes will result. Examples are the funding of programs for aboriginals through the national crime prevention program, the aboriginal justice strategy and the youth justice renewal initiative.

The government is committed to working with aboriginal peoples to ensure that those changes we need within the system result.

● (1755)

[*Translation*]

Ms. Madeleine Dalphond-Guiral (Laval Centre, BQ): Mr. Speaker, you are obviously well aware of how equally frustrating and gratifying the work of parliamentarians can be. The frustration comes when we work tirelessly on something very important to us, but when the results, for one reason or another, are slow in coming or, sometimes, never materialize. The gratification comes when these same efforts, no matter how long it takes, produce results that improve the quality of life of our constituents. For the past several years, the Bloc Quebecois has been intensely experiencing both emotions with regard to the young offenders issue, a subject directly affected by Bill C-416, which we are debating today.

When the federal government decided to go forward with Bill C-7, the Bloc did not waste any time in advising the federal government of the inherent dangers of such legislation for Quebec. Once again, I want to salute the untiring efforts of our former colleague, the former member for Berthier—Montcalm, the hon. Michel Bellehumeur, a Court of Quebec judge.

Quebec's system of dealing with young offenders is recognized as the most effective in the country. Since 1991, the crime rate among young Quebeckers has dropped by 23%. Everyone involved in the system in Quebec agrees that our approach, oriented toward reintegration rather than repression, should not be modified by any federal legislation.

Nevertheless, as we know, there are none so deaf as those who will not hear. Unfortunately, that too often describes the federal government which, once again has chosen to ignore our party's objections and reject the consensus from Quebec. Despite all our efforts, the Minister of Justice has decided to proceed with utter disregard for our recommendations. That is, in short, why we are so frustrated with this issue.

We had to wait two years before receiving any gratification or recognition for our considerable efforts. Recently the Quebec court of Appeal agreed with the Government of Quebec in a unanimous opinion concluding that certain provisions of the federal Youth Criminal Justice Act, formerly the Young Offenders Act, are contrary to the Canadian Charter of Rights and Freedoms.

Last week, the federal Minister of Justice decided not to appeal this decision, thus recognizing that he must amend his legislation, as the Bloc Quebecois suggested two years ago. It is easy to imagine the time, energy and money that we could have saved if this government had had the wisdom to recognize the relevance of our arguments. And to think that some people still question the relevance of the Bloc Quebecois.

While we were celebrating this victory, another political party in this House, the Canadian Alliance—the official opposition, to top it off—demanded that the government appeal this judgment. According to them, the decision by the Quebec Court of Appeal weakens the Youth Criminal Justice Act. Far be it from me to speak ironically—it is not my style. Still, their position on this issue confirms that they are not yet ready to make inroads into Quebec. I can predict in advance that the next electoral struggle in Quebec will be between the Bloc and the Liberal party.

It is therefore not surprising that we are here today debating a private member's bill, C-416, which is one again trying to tighten up the young offenders system. This time the Canadian Alliance is deliberately targeting aboriginals by trying to amend both the Criminal Code and the Youth Criminal Justice Act. The purpose is to deliberately deny the particular conditions in which a number of aboriginal youth live. Let us see specifically what Bill C-416 proposes to amend.

The Youth Criminal Justice Act states the following at subsection 3(1)(*c*)(iv):

> within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should
>
> respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements;

Now, in Bill C-416, this would read as follows:

> (iv) respect gender, ethnic, cultural and linguistic differences;

● (1800)

You heard right: the specific needs of aboriginal youth are deliberately excluded from the factors the judge will take into consideration. Yet the bill does recognize that certain differences do have to be taken into consideration, but those differentiating aboriginal youth do not seem to be important enough.

Could we have an explanation as to what that political party has against the aboriginal community and the recognition of the specific nature of certain nations in this country? Hard to explain, and even harder to understand.

How can a party with its main base in the west of this country ignore the particular living conditions, often very precarious ones, of the native communities? According to the 1996 census, over half of the aboriginal people in Canada live in the western provinces and territories. Why then act as if they knew nothing about the living conditions of aboriginal people and how radically different they are from those of non-aboriginal people?

The census I referred to also reported that the average annual income of Canadians over the age of 15 years was $25,196, while for aboriginal people it was $14,283. I need hardly point out that such poverty generates violence and despair. It would, therefore, be normal for a judge to be required to take this into consideration when reaching a sentencing decision.

Another example shows the distress frequently facing young aboriginals, starting at a very early age. I am referring here to the haunting images of young Innu from Davis Inlet sniffing gas. The federal government had to implement a special assistance program to remedy this serious dependency that hinted at much greater problems, such their lack of hope, poverty, social isolation and its effects.

In a legal sense, the amendment contained in Bill C-416 has no logical justification, particularly under the case law developed under paragraph 718.2(*e*) of the Criminal Code. In the R. v Gladue decision [1999], later confirmed by the R. v Wells [2000] decision, the court determined that this section does not alter the fundamental duty of the sentencing judge to impose a sentence that suits both the offence and the offender, but that the sentence must include a consideration for the community context of the aboriginal offender.

The judge is obliged to consider the unique systemic or background circumstances or aboriginal heritage. Furthermore, in section 36 of the R. v Wells decision, Justice Iacobucci stated and I quote:

> —that sentencing judges should pay particular attention to the fact that the circumstances of aboriginal offenders are unique in comparison with those of non-aboriginal offenders.

In conclusion, it is important to clearly understand that the sections in question do not give preferential treatment to aboriginals as the Canadian Alliance is claiming, but rather propose an individualized treatment for each specific case, which must not be taken out of context. If this continues to be applied in a mandatory fashion when it comes to ethnic, cultural, linguistic and gender differences, why should there be a double standard when it comes to young aboriginals.

As the Bloc Quebecois has been saying from the start, there has to be an individualized approach, based on reintegration rather than repression. Obviously, we will not support Bill C-416, and we will be voting against it when the time comes.

● (1805)

[*English*]

Ms. Alexa McDonough (Halifax, NDP): Mr. Speaker, I am pleased to have an opportunity to speak to private member's Bill C-416, a bill to amend the Criminal Code and the Youth Criminal Justice Act. For the benefit for those who may have just joined the debate, this is an enactment that proposes to amend the Criminal Code and the Youth Criminal Justice Act by removing the obligation of the court to consider the circumstances of aboriginal offenders when imposing a sentence.

I listened carefully to the Alliance member who introduced the bill. I wanted to hear the principal argument for putting forward the kind of amendments he seeks. Once again it seemed to me that it reflected a quite worrisome disrespect for the important and sensitive role of the judiciary. We heard that this morning in the Alliance opposition day business where there was an attempt, I think, to utterly discredit the Supreme Court of Canada. I know part of the purpose behind that motion was to slam the Liberals along the way, but it showed a real disrespect for the roles of interpretation and bringing to bear experienced, sound judgment, accumulated wisdom and sensitivity to the general public in the conduct of those various roles, including that very difficult task of fair sentencing.

We see a bill that contributes absolutely nothing to the elimination or the reduction of crime. It is just a total preoccupation with the results of crime. It does absolutely nothing to improve the correction system, which begs for reform and adequate resources with which to do the job that it is charged to do, and it does absolutely nothing to develop a healthier society. If that member and his party were actually concerned about the prevention of crime, then one would hope they would focus on what needs to be done to not only ensure fair and even-handed treatment, but also to get at the conditions that contribute to the crimes about which that party proposes to be so concerned.

Once again, rather than focusing on the causes of crime or the adverse circumstances affecting the daily lives of far too many aboriginals, we see the Alliance wasting the time of the House debating a measure that will contribute absolutely nothing in the way of a solution to these fundamental problems.

There is another regrettable aspect to the problem which we are being invited to address in the amendment proposed by the Alliance. The Alliance is characteristically being utterly reactive rather than proactive in dealing with the issue of crime as it occurs in the aboriginal community. The Liberals have done the same. They too have been reactive. They too have failed to be proactive in addressing the question of the incidence of crime among aboriginal Canadians. They actually amended the legislation in the first place to deal with the particular circumstances of aboriginal offenders.

While the Alliance Party wants to do away with the amendment introduced by the Liberals, there surely is cause for some consternation. Neither the Liberal Party, the governing party, nor the Alliance are really proposing measures that will resolve the underlying causes of crime, particularly among aboriginal youth.

● (1810)

Why do they always choose to focus instead on the after the fact issues such as sentencing rather than getting serious about the prevention of crime and ameliorating the underlying causes of crime within a particular community?

I have to say parenthetically it is that same failure with respect to the government's priority in introducing and trying to drive through the first nations so-called governance act, which has so enraged the overwhelming majority of Canadians and most particularly and understandably, aboriginal Canadians

It is not that aboriginal Canadians do not see that there is always the need to try to create greater transparency and greater accountability with respect to the use of resources and taking responsibility for decisions that are made on behalf of aboriginal people. However it is utterly frustrating, to the point of it being enraging, for a great many aboriginal Canadians when the government thinks this is the priority. There are so many issues from the Royal Commission on Aboriginal Peoples that remain completely on the shelf gathering dust and that scream for urgent attention.

This falls somewhat within the same category. What is becoming clearer is the Liberal government is really a false friend of aboriginal Canadians in this respect. The clause introduced by the Liberals is, in a way, an admission that Canada's aboriginal people ought not to expect things to get very much better. It is like saying to them that many of them will continue to live in frustration, despair, dire poverty and far too often without opportunity and hope, but they should not worry about it. That will taken into account when the government decides how long to sentence them to prison when the time comes, when the predictable and inevitable higher rates of crime occur among aboriginal Canadians.

Meanwhile, the Alliance is claiming that aboriginal people are getting off too lightly. In the end I would have to say that it is like two sides of the same coin. Both the Liberals and the Alliance get an issue they can try to play to their mutual political advantage. Whether it is Liberal inaction or Alliance out and out discriminatory attitudes and downright prejudice, victims of crime, Canadian communities and aboriginal people continue to suffer.

Finally, any allegation that the Criminal Code extends preferential treatment to aboriginals is simply unfounded and manipulative of the public's understanding of the facts. What the code does permit is for judges to adopt the sensitivity and the understanding required when sentencing, in this instance when sentencing aboriginals. This degree of understanding is not extended because the justice system favours aboriginals but because it allows judges to implement sentences that are more fully contemplative and achieve the public and individual good. This specific discretion protects the public by allowing judges to impose sentences that are tailored to the rehabilitation needs of a particular segment of society, rather than confining a judge's discretion to imposing a one size, fits all punishment, that ignores the needs and realities of a particular individual group or community.

In case it is not already evident, it is not my position nor that of my colleagues to support Bill C-416. It has nothing to offer in terms of dealing with the real fundamental problems of crime and it will not change anything to the advantage of the broader community or of the aboriginal community. Supporting this bill would only lend credibility to those who wish to conceal and manipulate the real issues for their own political advantage.

● (1815)

Mr. Greg Thompson (New Brunswick Southwest, PC): Mr. Speaker, Bill C-416 would amend the Criminal Code and the Youth Criminal Justice Act by removing the obligation of a court to consider with particular attention the circumstances of aboriginal offenders when imposing a sentence.

We are not supportive of this type of amendment. It is imperative we recognize social and cultural differences. This recognition is not a type of reverse discrimination. The Criminal Code and the Youth Criminal Justice Act recognition of the societal differences does not prevent a judge, during the sentencing process, from examining the same type of differences for non-aboriginal people. We have to put that on the record.

The bill brings to light a very serious issue. If positive discussion stems from this debate, not that we always have to agree with the other member, it will come in the form of recognition that there are societal and cultural differences and that they have to be acknowledged.

The debate today centres around what would be an amendment to the new Youth Criminal Justice Act. We have spoken on that act here many times. Arguably one of the most important tasks that we could undertake in this place is to put in place a more effective and more accountable system of criminal justice for youth.

As legislators, we have to be very adamant about recognizing that no bill will satisfy everyone. The Youth Criminal Justice Act was intended to simplify and streamline a system so that young people, in particular, their parents and those who are tasked with the enforcement of youth criminal justice, would be able to work in a more suitable and responsive fashion, in a way that would be quick to adapt to the changing times and the way in which young people found themselves facing tough decisions, which would lead to their involvement in the criminal justice system.

The intent clearly is to somehow codify a system that will allow for early intervention which will allow for the proverbial pre-emptive strike in dealing with young people when they are making those decisions that challenge the law.

Sadly, in the Youth Criminal Justice Act what we have done is put layers on top of layers and have created a system that will result in numerous delays in our court challenges.

The new approach that was supposed to achieve so much had exactly the opposite effect. It will result in delays, which follow that old legal maxim that "justice delayed is justice denied". This system will not allow young people and their parents, in particular, to grasp what is happening.

Many who work in the system would certainly agree that accountability and responsibility are paramount to any youth justice system. What this does is separate that nexus or that bond of accountability.

What we are doing is trying to somehow codify this system of discretion, telling police that they can now issue warnings, that they can now issue cautions and that those have to be written up in a certain way. We are superimposing these responsibilities in an artificial way, telling police that they must be counsellors and caseworkers and that they must document all of this, do the paperwork and spend less time on the street and more time being administrators and paper shufflers.

This imposition, on top of the current responsibilities of law enforcement and the demands upon the men and women who are currently carrying out that important task, is, I suggest again, a great deal of delay and a great deal of unnecessary, unsubstantiated work that is currently outside the realm of police work in terms of what they should be concentrating on in their efforts.

There are a number of flaws in this bill. However, the amendment passed by the Senate last year does manage to shed light on a very serious problem that can be found not only in the youth system but the Canadian justice system at large. Noting differences for differences' sake only is unacceptable.

● (1820)

What we see in the Youth Criminal Justice Act is a recognition of the inherent differences that do exist sadly on native reserves in the country. The fact of the matter is that there are social and economic differences and the consequences of those for our young people are very acute.

The problems on our reserves are very serious and highlight some of the inequities throughout the entire country. These differences need to be addressed. The inclusion of the recognition of how those circumstances differ is an important one for the courts to consider not only through the adjudication process but when considering sentencing.

This is not equivalent to the solution. It is simply a reminder to those in the judiciary that this has to be taken into account. If there is one positive note that can come from the debate today, it is that the bill as proposed by the member for Portage—Lisgar demonstrates that the societal differences between aboriginal and non-aboriginal youth are officially recognized.

I admit that justice should be blind to race. It should be blind to ethnicity and it should be blind to gender. In a perfect world we would not need this stated but this is not a perfect world. Those societal inequities remain and are evident today.

These directions are in the Criminal Code and the new Youth Criminal Justice Act. I would submit that we have to be consistent between the youth and the adult system; we have to have similar protection under this new youth criminal act.

Statistics and studies have consistently shown that there are disproportionate numbers of aboriginal youth incarcerated in our system. I do not believe that there is a race or ethnicity issue associated with the particular clause we are considering.

The addition of aboriginal recognition during youth sentencing is consistent with current Criminal Code provisions. It is not about specializing the interests of the accused or the victim. It simply puts in the legislation a recognition that the situation in which aboriginal people find themselves today is worthy of note in coming to a conclusion as to what the appropriate sentence is that is meted out by the sentencing judge.

Some have argued that it is in and of itself discriminatory to have a clause like this in the Criminal Code. Yet in our justice system we have to recognize that the courts have made an important pronouncement. It was alluded to in Regina v. Gladue which set out clearly what we can improve upon regarding aboriginals and our legal system, a recognition of their circumstances.

I had the opportunity today to read that Supreme Court ruling in Regina v. Gladue. I wish I had time to quote from it but the fact is it reinforces some of the message which I think we are trying to put out on at least this side of the House, that the discrimination the member is trying to address in the bill is not an issue that is worthy of debate or in terms of changing the existing law because the fact is it is something that is always considered by judges. For example, for young people who grow up in a poor family, a family that is ravaged by alcohol or drug abuse, that is always considered by the judge in handing down a sentence, whether they are aboriginal or non-aboriginal.

In this particular court ruling the judge clearly outlined that in many cases the punishment that is handed down to aboriginals is more severe because of the conditions that might have surrounded that particular case.

● (1825)

We cannot support this effort by the member from Manitoba. We think it is very narrow in its scope. We do not believe it would be a positive move by us to endorse that type of legislation and we will be voting against it.

The Deputy Speaker: Understanding of course that we began private member's hour with the mover of the motion who is from the Canadian Alliance and having heard representation from each party, I will go back to the Canadian Alliance for the final seven minutes left in this hour today.

Mr. Myron Thompson (Wild Rose, Canadian Alliance): Mr. Speaker, it gives me pleasure to speak to this private members's bill. I commend my colleague from Portage—Lisgar for getting this item to the floor and calling it to the attention of the House to debate and when the time comes, for the committee to take a close look at.

Back in 1996 when this first became part of the Criminal Code, I spent a couple of years following it in Indian affairs work, going across the land with grassroots natives and trying my best to help at that level wherever I could. What the last speaker from the Conservative Party and the previous speaker from the NDP neglected to think about or to consider is what I heard following the inclusion of that particular statement in the Criminal Code.

It was the aboriginal women particularly across the country. My colleague from Okanagan—Shuswap was there and he heard the same thing. The cry was from the victims who are the majority of the people who are offended by aboriginal offenders. It is usually another aboriginal individual who suffers from the crime that has been committed. They were quick to respond to this particular inclusion in the Criminal Code with, "Why are we treated as second class citizens? Offenders are people who offend us, people who violently attack us. Why are we not considered as important as someone who is not aboriginal and is a victim of crime?"

That is a very good point. It is a point that the last speaker from the Conservative Party completely pushed aside. He did not talk about that.

Today in the parking lot that my colleague from Okanagan—Shuswap and I had the opportunity to meet a couple of ladies we had worked with in the past in regard to accountability on the reserves. They were in front of the Parliament Buildings and we talked with them. I mentioned that this was coming up again. They were quite pleased that there would once again be an effort to try and bring some equality in for them.

This is about equality. It is not about that judges should not take into account the past and the backgrounds of everybody who gets charged with a crime. They do that. Generally speaking they do that across the board for everyone and they should. Certainly as the member from the PC Party said, there are big differences in some of those backgrounds. There is no doubt about it. They do have to take them into account.

I attended one trial on behalf of some families from Saskatchewan back in those years when that first came out. A young aboriginal person, 18 years of age, had hit a carload of youth from Saskatchewan and had killed four people. He was charged with driving while intoxicated and negligence causing death. After many months of being in court, the young fellow was found guilty. He even pleaded guilty but it took quite a while to get the conviction. Then they waited for the sentencing. They wanted a pre-sentence report.

When the families came back to see what was going to happen to this young fellow, the judge called to their attention that this particular clause had been added to section 718 of the Criminal Code and even he was not sure what it meant. His words were, if I remember them correctly "I am going to have to delay the decision because we have this new inclusion in 718 and I am not sure what it means". All the families had to go back home to Saskatchewan and then return in 30 days while he considered the fact that the offender in this case was aboriginal.

During this time, people, including the aboriginal people I was dealing with, could not understand why someone who would break the law would be given any kind of consideration based on their race, that it was a race based inclusion, that yes, the background of the individual who is being charged should be examined.

● (1830)

What can we do to help prevent these things in the future? That has to be part of the big picture. That was what we were trying to do when we went from reserve to reserve looking for solutions that would help solve the problems of severe poverty, underemployment, drug addiction and all that.

There is no doubt that has to happen. We want it to happen. It also has to happen in other communities that are non-aboriginal. I know that we have problems in our major cities across the land in certain areas. A lot of times the background contributes to people committing an offence.

All hon. members should remember that the fact remains that the majority of victims of aboriginal perpetrators are aboriginal people. These victims are the ones who have asked "Why are we treated differently? Why is it somebody who offends us is treated in a softer manner if he is aboriginal?" They are right. I do not think anyone who has spoken from any other party has even thought about that. They certainly did not mention it in any of the speeches that I heard today.

The member for Portage—Lisgar has heard this very cry from the people who live on reserves. Why should the criminal be treated any differently because the victims are aboriginals? Why should they be second class victims, were their words. I have to agree with them.

I commend the member for Portage—Lisgar for bringing this issue to our attention. I hope that the House and the people who have spoken will stop to consider all aspects of this and the problems it is causing. It is not necessary. I certainly support the private member's bill as presented.

The Deputy Speaker: The time provided for the consideration of private members' business has now expired and the order is dropped to the bottom of the order of precedence on the Order Paper.

ADJOURNMENT PROCEEDINGS

A motion to adjourn the House under Standing Order 38 deemed to have been moved.

[*English*]

FISHERIES

Mr. Loyola Hearn (St. John's West, PC): Mr. Speaker, last week I raised a question with the Minister of Fisheries and Oceans. I did not agree with his answer and of course we have the right to put such complaints on the late show and get our chance to discuss them in more detail.

Unfortunately what happens quite often is that the minister to whom we want to speak and from whom we want to try to elicit answers does not show up to defend himself. He or she sends in some parliamentary secretary with a prepared response, sometimes with no connection to the question.

However, this evening I notice that we do have a parliamentary secretary, the member for Beauséjour—Petitcodiac, who is familiar with the situation and that makes a bit of a difference. I accept the member being here to respond on behalf of the minister as I know the minister is busy and because the member for Beauséjour—Petitcodiac is on our Standing Committee on Fisheries and Oceans, has been there for quite some time and is knowledgeable about what we are talking about here.

However, I suggest to him that when I finish my couple of minutes, instead of reading for me the response the minister's

department gave him, I want him to throw it out and give us some feeling of what he thinks about the situation.

The question I raised with the minister concerned the shutdown of the Atlantic cod fishery, particularly in the northern and southern gulf and the northeast coast of Newfoundland and Labrador. I basically asked the minister why he did not listen to the people.

Every politician in Newfoundland, including the government led by the premier, the opposition led by the opposition leader, the NDP, its leader and other member, the senators from Newfoundland, all the MPs from Newfoundland and just about every agency that I am aware of, came together and submitted one report to the minister on what he should do in relation to the fishery. That was before he made his decision.

The chair of that committee when it first started was the minister responsible for ACOA. The report was unanimous, something that never happened before in the history of Newfoundland and Labrador, I suppose, and might never happen again. The group suggested to the minister better ways of addressing the declining stocks rather than just closing the fishery and throwing out a handful of goodies.

Did the minister listen? Did the minister come up with a concrete plan? Did the minister try to involve all those affected? The answer is no. He closed the fishery and tried to give them a handful of goodies.

This is not acceptable. It is not a matter of us saying that we should not address declining stocks. Absolutely, we should have addressed them long ago, and if we had had a joint management board where we had some management at the local level we probably would have and could have.

However, it did not happen and we are in a serious situation. The issue has to be addressed, but our main concern is that we should be involving those directly affected in a positive, proactive way, not in a negative way. We should not be telling them to get out of the fishery and saying, "Here are Canada Works programs". Let us involve them in science research. Let us address the seal situation. Let us address the foreign overfishing. Let us address the bycatch. Let us deal with all the issues and not just tell some fishermen, "You can't fish. Here is a handful of goodies, now be satisfied". It does not work that way.

There has to be a better approach. Collectively we can find it, but not if the minister is going to make a decision and say that is it.

● (1835)

Mr. Dominic LeBlanc (Parliamentary Secretary to the Minister of National Defence, Lib.): Mr. Speaker, I want to thank the member from St. John's. His kind comments as he began his statement made me think that his long parliamentary experience, both in this House and in the Newfoundland House of Assembly where he served in many roles, gives him a great knowledge of fisheries issues.

In the two and a half years since I came to this place, I have had a chance to get to know the member for St. John's West on the fisheries committee and to appreciate his good nature and his sense of humour but also to appreciate his very considerable understanding of the Newfoundland fishery. I have learned a great deal from him from the discussions we have had at the committee and also from having heard the many witnesses that he and other members from Newfoundland and Labrador encouraged the committee to meet with in the lead-up to this very difficult decision.

But I also recognize a trap, with his knowledge of the issue and the complicated debate surrounding this question, in his inviting me to depart from some careful remarks that I have pondered and that were prepared by those who have a very considerable knowledge of this question. I will go some distance to accommodate him, but I will not respond entirely to the trap he set.

Like the minister and the member for St. John's West, I represent coastal communities. I am fortunate that not many of the fishers in my constituency are dependent on groundfish, on cod. That is not the case for the members from Newfoundland and Labrador, Quebec and other provinces. I have a deep understanding of the importance of the coastal fishery for these many communities, but I also understand, as I know the member does, that sometimes the minister has to make very difficult decisions in the name of conservation.

● (1840)

[*Translation*]

The minister's decision to completely close the northern cod fishery and the southern cod fishery in the Gulf of St. Lawrence is one of these very difficult decisions.

However, I know that it was made for the right reasons. The information we have on these stocks indicates that their condition has not improved. The scientific assessment presented to the minister paints a very bleak picture when it comes to the future of these stocks.

[*English*]

To compound the difficulty, the scientific information given to the minister indicated that high mortality and low production of juveniles is slowing the growth of the adult population. All three of these stocks are below the levels where harm is serious and it may be very hard to reduce this trend.

The latest scientific assessment was unprecedented in its nature and scope and that is reassuring. A very considerable effort was made to ensure that the scientific advice involved over 70 scientists from DFO, fisheries managers, participants from the fishing industry and experts from Canada, the United States, the United Kingdom and Iceland. The data does not come from vessels from Canada alone.

When the minister made this difficult decision in the name of conservation, he also announced, with the minister of state for ACOA, who has done a remarkable job in ensuring that these coastal communities have some short term measures while the government prepares a longer term response, a $44 million investment to provide assistance to those affected.

Mr. Loyola Hearn: Mr. Speaker, perhaps with your good graces, seeing that neither the Leafs or the Canadiens are playing tonight and you are not in a rush and I am not in rush, we could extend this debate. However, perhaps you would not agree with that.

[*Translation*]

The decision make by the minister does not help the fishers of Newfoundland and Labrador. It does not help anyone.

[*English*]

Nobody is helped by the decision that the minister made. It is a quick fix for the department. If the minister had said, "We are going to close or cut back", that would have helped. What was asked for was that a partial fishery be kept open. Because while the minister says, "You cannot fish, Mr. Fisherman or Madam Fisherman or Fisherperson", all he is going to do with the seal herds that are ballooning is to study them for two more years. The government is not going to address foreign overfishing at all; he did not mention it. It is not going to talk about bycatch or directed fisheries or gear types. It is just going to say, "You don't fish".

If the fishery had been kept open to the point where people could be involved, they could be monitoring what is going on, they could be involved in research, they could be involved in dealing with the seal program, and they could be involved in experimental fishing, and everybody would be happy. The minister would be a hero. It can still be done. The question is, will the minister revisit the decision?

Mr. Dominic LeBlanc: Mr. Speaker, the member for St. John's West was at committee when the minister was there on the estimates. He was asked very precisely if he would revisit the decision and the minister gave a very clear answer at that time.

He said that he would only revisit the decision if he had subsequent information which indicated to him that the decision he took, with considerable difficulty and a great deal of consideration, was the wrong one. The minister said that he has not been convinced by what he has heard and that in spite of the difficulty this decision has caused it was based on sound information, a great deal of consideration having been given to options, and in the best interests of conservation.

NATIONAL DEFENCE

Mrs. Cheryl Gallant (Renfrew—Nipissing—Pembroke, Canadian Alliance): Mr. Speaker, it is a pleasure to rise tonight and expand on a question that I asked the Minister of National Defence on February 7, 2003.

As Canadian Forces Base Camp Petawawa makes its home in my riding of Renfrew—Nipissing—Pembroke, members from all sides of the House will appreciate the sincere and profound interest I take in the well-being of the women and men who serve in the Canadian armed forces, as well as that of their dependants. I wish to congratulate and give thanks to the men and women who have performed so well in making do with years of federal cutbacks.

As Petawawa is the former home of the now disbanded Canadian Airborne Regiment, I take an equal interest in Joint Task Force 2, JTF2, because many of the former members of the Canadian Airborne Regiment have either served or are now serving in the JTF2.

We treat our military neighbours as family and it was in that context that I asked my question of the minister.

The federal government has sought to avoid accountability when it comes to talking about JTF2, under the guise of national security. This excuse is not acceptable in a democracy. Secret military organizations have no place in Canada and it is accepted in other democratic countries that the public has a right to know.

This is why public scrutiny, particularly when government is responding to questions from the official opposition, is important for democracy to work in Canada. The scrutiny that is provided by the official opposition improves democracy and it is with that fact in mind that if the government is sincere about a commitment to JTF2 as an important strategic asset it will be more forthcoming about what is happening in JTF2.

While the minister refuses to officially acknowledge the fact, there is a high burnout and stress rate within the JTF2 unit. The purpose of my question was to address that fact.

The chief of the defence staff has confirmed an expansion in the capabilities of JTF2 and the government was quick to confirm an increase in the budget of JTF2. However, there was a lack of response when it came to the soldiers who serve in JTF2. The unit is suffering from a manpower shortage.

Canadians are aware of the efforts to recruit the unit and that it was necessary to lower recruitment standards to try to overcome the attrition rates. It is a sad reflection on the problem of recruitment to JTF2 that Canadian Forces members privately refer to JTF2's inadequate training facility on Upper Dwyer Hill Road in the City of Ottawa as divorce university. Equally as serious is the fact that the specialized training and the secrecy inherent in clandestine missions means long periods of separation from loved ones.

The second part of my question dealt with the lack of manpower to fill an increasing number of commitments due to the government's decision to put JTF2 in charge of more missions, using it to deflect criticism away from the overall deteriorating rate of our military. Expecting individuals to run flat out all the time means they burn out sooner.

If Canada is going to commit JTF2 on a regular basis to an increasing number of missions, it needs the manpower to do it. In the past, the minister has talked about being more open about JTF2 and sharing some of the exploits of the little known group. Today would be a good day to act on those promises.

● (1845)

Mr. Dominic LeBlanc (Parliamentary Secretary to the Minister of National Defence, Lib.): Mr. Speaker, I thank the member for Renfrew—Nipissing—Pembroke for her interest not only in the men and women who serve at CFB Petawawa but also her genuine interest in JTF2. She has asked questions about JTF2 in the past. She is on the defence committee. She does have a genuine interest in the welfare of the men and women of our forces, particularly those who serve in that elite unit and for that I thank her.

The House will know that in budget 2001 the government increased by more than $1.2 billion the amount of money invested in the defence portfolio. The budget also demonstrated the government's strong commitment to address the challenges posed by the terrorist incidents of September 11.

The security measures funded in budget 2001 were aimed specifically at meeting the new terrorist threat. For example, new funds were dedicated to intelligence, biological and chemical protection, emergency preparedness and anti-terrorism. In that context budget 2001, as the member knows, also called for an increase in the capacity of JTF2 to better respond to Canada's new security needs both at home and abroad.

To successfully fulfill its role and mission, JTF2 is trained to very high and exacting physical and mental standards. These standards will never be compromised. The idea that somehow these standards were lowered as a means of recruiting people simply is not an accurate reflection of what has happened. As the hon. member knows full well having been on the defence committee longer than I have, revealing operational information around JTF2 and its training details in our view puts current and future missions of this unit in jeopardy and the safety of the members of this unit at jeopardy.

This is not an issue of accountability and democracy; to continue the fisheries analogies of before, that is a red herring. The member knows it would be irresponsible of the government to provide details of training practices, of training programs, of operation missions.

One thing I can tell the member is that JTF2 performs a remarkable role in protecting Canadians. I had the chance to go to Afghanistan, to Kandahar with the Minister of National Defence last summer. We heard from many of our allies serving there of the remarkable work that these dedicated professionals have done. Kandahar was not, as some people and the hon. member might believe, some kind of Hollywood training exercise. These professional soldiers had earned praise from all of the other allies with whom they had come into contact.

To say that there is a recruitment and retention problem in JTF2 is to misrepresent the challenge that all organizations, including national defence, have with respect to recruitment and training. However there has been enormous progress and very positive recruitment initiatives undertaken in the Canadian Forces. I can assure members that JTF2 will continue to do the remarkable work it has done in preserving and protecting the security of all Canadians.

● (1850)

Mrs. Cheryl Gallant: Mr. Speaker, yes, the budget increases for the military are sorely overdue. The member opposite repeated that the government is increasing the capacity of JTF2, not increasing the numbers. What that means is the people who are already there are expected to do more, and that is where we are getting the burnout from.

We ask the questions on JTF2 for the purpose of accountability. We do not ask operational questions.

The shadow of secrecy is totally unnecessary. The United States Delta Force lets the public know what is going on. They are not holed up on some separate military base all on their own. They are part of a full base so that the dependants of those soldiers who are asked to go overseas without even speaking to their spouses or loved ones for months on end are within the military community where there are the resources and people to help them and others who know what their circumstances are, so they do have that support base. As well as being part of a larger base, they have access to the services on the base, medical and psychological help. That is what these people need.

Mr. Dominic LeBlanc: Mr. Speaker, I hope there is no misunderstanding with respect to what the member refers to as a cloak of secrecy put over JTF2. The only reason the government does not talk about the operational missions, the deployments and the military persons serving in this regiment is for their own safety, the safety of their families and the safety of the unit.

To somehow pretend that because there is not a large public viewing of all JTF2's operations that somehow the physical or mental health or the needs of these remarkable soldiers or of their very understanding families are not met simply is a misrepresentation. At all times the Canadian Forces looks after its members. We recognize that people who serve in this unit have special needs and those needs will continue to be met regardless of people's attempts to uncover great secrets that simply are not there.

● (1855)

[*Translation*]

The Deputy Speaker: The motion to adjourn the House is now deemed to have been adopted. Accordingly, this House stands adjourned until tomorrow at 10 a.m., pursuant to Standing Order 24.

(The House adjourned at 6:55 p.m.)

CONTENTS

Thursday, May 8, 2003

ROUTINE PROCEEDINGS

GOVERNMENT ORDERS

STATEMENTS BY MEMBERS

ORAL QUESTION PERIOD

GOVERNMENT ORDERS

THE ROYAL ASSENT

PRIVATE MEMBER'S BUSINESS

ADJOURNMENT PROCEEDINGS

MAIL POSTE

Canada Post Corporation / Société canadienne des postes

Postage paid | Port payé

Lettermail | **Poste–lettre**

1782711
Ottawa

If undelivered, return COVER ONLY to:
Publishing and Depository Services
PWGSC, Ottawa, ON K1A 0S5
Internet: http://publications.gc.ca
1-800-635-7943 or Local 613-941-5995

En cas de non-livraison,
retourner cette COUVERTURE SEULEMENT à :
Les Éditions et Services de dépôt
TPSGC, Ottawa (Ontario) K1A 0S5
Internet: http://publications.gc.ca
1-800-635-7943 ou appel local (613) 941-5995

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

Also available on the Parliamentary Internet Parlementaire at the following address:
Aussi disponible sur le réseau électronique « Parliamentary Internet Parlementaire » à l'adresse suivante :
http://www.parl.gc.ca
