Debates of the Senate

2nd SESSION • 36th PARLIAMENT • VOLUME 138 • NUMBER 42

OFFICIAL REPORT
(HANSARD)

Tuesday, April 4, 2000

THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

This issue contains the latest listing of Senators, Officers of the Senate, the Ministry, and Senators serving on Standing, Special and Joint Committees.

CONTENTS

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

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

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

THE SENATE

Tuesday, April 4, 2000

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

Prayers.

SENATORS' STATEMENTS

PRIME MINISTER OF JAPAN

CONDOLENCES AND WISHES OF EARLY RECOVERY FROM SUDDEN ILLNESS

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, on Saturday night, His Excellency Keizo Obuchi, Prime Minister of Japan, fell ill and was admitted to hospital. As honourable senators are aware, Prime Minister Obuchi suffered a stroke and is in a coma. His illness is of such gravity that an acting prime minister in the person of Mikio Aoki assumed the office, and he and the government have resigned making way for a new prime minister to be elected by the governing Liberal Democratic Party today.

I know all honourable senators join me in offering sympathy to the Japanese people and their government. I have spoken to Ambassador Katsuhisa Uchida to convey these sentiments, which have been acknowledged by Acting Prime Minister Aoki. I extend our sympathy to His Excellency's family, especially his wife, Chizuko Obuchi, the members of the diet and of his party.

We wish His Excellency a return to health, as the Japanese people have been well served by his invaluable talents as a political leader. Prime Minister Obuchi's political career and his long-standing interest in foreign relations brought him into frequent contact with Canada. I met with the then foreign minister Obuchi as Minister Axworthy's envoy to Japan to encourage Japan's participation in the convention against anti-personnel mines. Minister Obuchi not only received me warmly but also actively encouraged his government to sign the convention. He was in Ottawa in December 1997 to sign the convention. He also greeted Prime Minister Chrétien and the entire Team Canada mission to Japan with great warmth and ensured the success of the trade mission.

In the recent past, His Excellency has done a great deal to nurture the good relationship between our two countries and has many friends in Canada. We will miss him as Prime Minister. For one so young, he has had a notable and extraordinary political career. We wish him our best.

PLIGHT OF STREET CHILDREN

Hon. Sharon Carstairs: Honourable senators, on Friday evening at the National Library, it was my privilege to see a film entitled *Letters to a Street Child*. The filmmaker is Andrée Cazabon. She is also the street child depicted in the film.

At the age of 14, she took to the streets of Ottawa, Montreal and Toronto. Through the efforts of Operation Go Home and through the help and assistance of Rideauwood Addiction and Family Services, Andrée left the streets, received treatment for her addiction to drugs, returned to school and became a film producer. She is one of the lucky ones.

The letters were written to her by her father, a teacher in Orleans, which is just east of Ottawa. He wrote to her while she was on the streets. His agony and that of his whole family is depicted in this film. It is not an easy film to watch, but as lawmakers and service providers it is very important that we do so.

Today, honourable senators will receive in their offices a letter from the Honourable Ethel Blondin-Andrew explaining how to gain access to this film through the House of Commons broadcasting branch.

Honourable senators, in the question and answer session following the presentation, I asked Andrée why she had taken to the streets. She said it was because of a sexual assault that took place while she had been on a visit to a farm.

• (1410)

Physical and sexual assaults are reasons our young people turn to the streets, yet we have few treatment programs available for them. Every single agency in Canada engaged in this work has a waiting list. Most provinces do not have residential treatment facilities. There is one, for example, in all of Ontario, and it is located in Thunder Bay.

Honourable senators, children as young as 10 take to our streets. Are they not worth saving? If they are worth saving, why are we not doing it?

SENEGAL

NEW GOVERNMENT

The Hon. the Speaker: Honourable senators, I am taking advantage of rule 55(2) to make a statement which I believe is important from a democratic standpoint.

Over the weekend, I represented the Government of Canada at the swearing in of the new President of Senegal in Dakar. I rise today to speak about this event because, in my view, it was an amazing tribute to democracy.

For the first time in that country, a change of government was brought about on a totally peaceful basis. The new President, Abdoulaye Wade, whom I have known for some 25 years, was the leader of the opposition for all that time. In the early years, there was little hope of bringing about change. That was the view held by most Senegalese. This recent election brought about change. A new government was elected. The retiring president has accepted the result most gracefully. The incoming president

has asked the retiring president to represent him at a major African conference in Egypt this coming weekend. The whole thing has been done in a perfectly democratic fashion.

I had the good fortune of speaking to a few young Senegalese. They said to me, "We had given up hope on democracy. It was always the same. It did not matter what we did; there were always the same people in office." Quite obviously, I make no comment from a partisan standpoint, only on the general principle that democracy prevailed.

Honourable senators would have enjoyed the enthusiasm there. One hundred thousand Senegalese came into the stadium for the swearing-in ceremony. It was the most impressive ceremony I have ever seen, and it was without expensive pageantry. It was simply 100,000 people cheering, absolutely convinced that they had made a change.

CANCER AWARENESS MONTH

Hon. Mabel M. DeWare: Honourable senators, on this first sitting day of April, I am pleased to see that many in the chamber are wearing daffodil pins in support of Cancer Awareness Month in Canada.

Cancer Awareness Month is organized by the Canadian Cancer Society each April. It includes a series of fundraising and educational events across the country. It is an opportunity for Canadians to reflect on how cancer has changed our lives, to renew our commitment to a healthy lifestyle, and to help fund research that can improve cancer prevention and treatment. One day we hope to find a cure.

The importance of Cancer Awareness Month cannot be overstated when you consider that one in three Canadians will develop some form of cancer in his or her lifetime. I could recite some pretty grim statistics about the tens of thousands of Canadians who will be diagnosed with cancer this year alone and the tens of thousands more who will die from it. Today, I want to focus on something more positive: the hope and faith that cancer can be beaten.

The Canadian Cancer Society has adopted the daffodil, a bright, cheerful flower that heralds the arrival of spring, as its symbol of hope. Indeed, hope underlies all of the important work done by the Canadian Cancer Society. The society, which relies entirely on donations, is the largest single funder of cancer research in Canada today. It also offers public education programs to promote prevention and early detection of cancer. It provides patient services to meet the social, spiritual, emotional and informational needs of people with cancer and their families.

Cancer touches all of our lives. I know all honourable senators will join me in applauding the courage of people with cancer, their friends and their families, and in saluting the Canadian Cancer Society and its 350,000 volunteers.

TAIWAN

NEW GOVERNMENT

Hon. Consiglio Di Nino: Honourable senators, upon hearing of the strides democracy is making around the world, I thought it would be appropriate to comment on what has happened recently in Taiwan.

Until 1988, there was no democracy in Taiwan. Ever since Chiang Kai-shek and his followers fled to Taiwan, the party he once led has controlled power with a very heavy hand. In 1988, democratic elections were first held in Taiwan. Several weeks ago, Chen Shi-bian was elected President of Taiwan, defeating the Kuomintang candidate for the first time since the foundation of that country.

We should rejoice. Democracy is moving forward in many parts of the world. We should join with those in Canada and around the world in a non-partisan way to say, "Well done. We are happy that the democratic system is becoming more important and accepted and embraced throughout the world."

On my behalf and on behalf of all honourable senators, I wish Mr. Chen good luck and many good years of democratic government.

[*Translation*]

ROUTINE PROCEEDINGS

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

SEVENTH REPORT OF COMMITTEE PRESENTED

Hon. Pierre Claude Nolin, Deputy Chair of the Standing Committee on Internal Economy, Budgets and Administration presented the following report:

Tuesday, April 4, 2000

The Committee on Internal Economy, Budgets and Administration has the honour to present its

SEVENTH REPORT

Notwithstanding, the *Procedural Guidelines for the Financial Operations of Senate Committees*, your Committee recommends that the following committee funds be released for fiscal year 2000–2001 as interim funding:

Aboriginal Peoples Committee	
Legislation	$ 3,167
Agriculture and Forestry Committee	
Special Study	$19,535
Banking Trade & Commerce Committee	
Legislation	$55,080
Special Study	$80,564
Energy, the Environment & Natural Resources Committee	
Legislation	$ 8,000
Special Study	$87,307
Fisheries Committee	
Special Study	$54,283
Internal Economy, Budgets and Administration Committee	$ 3,333
Legal & Constitutional Affairs Committee	
Legislation	$ 9,717
National Finance Committee	$ 5,667
Privileges, Standing Rules & Orders Committee	$ 3,333
Social Affairs, Science & Technology Committee	
Legislation	$ 4,500
Of Life and Death	$ 2,630
Special Study	$13,667
Transport & Communications Committee	
Legislation	$17,133
Special Study	$60,050
Library of Parliament Committee (Joint) (Senate Share)	$ 833
Official Languages (Joint) (Senate Share)	$ 715

Respectfully submitted,

PIERRE CLAUDE NOLIN
Deputy Chair

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

On motion of Senator Nolin, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

SCRUTINY OF REGULATIONS

SECOND REPORT OF JOINT COMMITTEE PRESENTED

Hon. Céline Hervieux-Payette: Honourable senators, I have the honour to present the second report of the Standing Joint Committee on Scrutiny of Regulations, relating to section 36(2) of the Ontario Fishery Regulations, 1989, as enacted by SOR/89–93.

[*English*]

• (1420)

QUESTION PERIOD

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I have a response to a question raised in the Senate on March 21, 2000, by Senator Stratton, regarding the farm crisis in the Prairie provinces, flooding problem in Manitoba and Saskatchewan; a response to a question raised in the Senate on March 21, 2000, by Senator Atkins, regarding residency requirement for job applicants; a response to a question raised in the Senate on March 22, 2000, by Senator Andreychuk, regarding China, influence of environmental policy in granting of funds to Three Gorges Dam Project; and a response to a question raised in the Senate on March 23, by Senator Forrestall, regarding Sea King helicopters, level of flight training for pilots.

AGRICULTURE AND AGRI-FOOD

FARM CRISIS IN PRAIRIE PROVINCES—FLOODING PROBLEM IN MANITOBA AND SASKATCHEWAN—REQUEST FOR RESPONSE

(Response to question raised by Hon. Terry Stratton on March 21, 2000)

The Government of Canada has made a number of changes to existing Safety Net programs to help farmers who were unable to seed due to wet weather conditions last spring.

In partnership with the Government of Saskatchewan, the Government announced a $50 per acre benefit for those with unseeded acres. This offer was open to the Government of Manitoba as well.

The Government extended the seeding deadlines for crop insurance.

The Government changed the Agricultural Income Disaster Assistance (AIDA) program to allow farmers to get interim payments on their 1999 benefits earlier.

The Government adjusted the Net Income Stabilization Account (NISA) program rules to permit easier access to those funds.

The AIDA program is designed to provide benefits to farmers who suffer severe income drops regardless of the circumstance. This would include farmers who are unable to seed due to wet weather.

In addition, for Manitoba, projected eligible expenditures under the Disaster Financial Assistance Arrangements (DFAA) will amount to approximately $16.4 million, which would result in a federal share of about $12.75 million. This will cover eligible items such as private property, road repairs, culverts, and other infrastructure.

Projected DFAA expenditures in Saskatchewan are estimated at $2.5 million, which would result in a federal share of about $1 million.

Losses in the agricultural sector not eligible for cost-sharing under the DFAA are being dealt with through AIDA.

ENVIRONMENT

RESIDENCY REQUIREMENT FOR JOB APPLICANTS

(Response to question raised by Hon. Norman K. Atkins on March 21, 2000)

Environment Canada does not have a residency requirement. The *Public Service Employment Act*, the legislation that governs hiring for much of the Public Service of Canada, allows the Public Service Commission, in its role as hiring agent, to establish geographic, organizational and occupational criteria that prospective candidates must meet in order to be eligible for appointment.

While the Public Service Commission often requires that potential candidates be residents of Canada, this is not an absolute, inflexible rule. The Commission's practice has been to include Canadians who apply in competitions opened to the public, if they are outside the country on a temporary basis and have a permanent residence in the area of selection.

EXPORT DEVELOPMENT CANADA

CHINA—INFLUENCE OF ENVIRONMENTAL POLICY IN GRANTING OF FUNDS TO THREE GORGES DAM PROJECT

(Response to question raised by Hon. A. Raynell Andreychuk on March 22, 2000)

Canada's position is that the advantages (flood control, power generation and inland shipping) and disadvantages (environmental issues and human displacement) of undertaking the project have been weighed carefully by the Chinese.

After considerable studies, analysis and deliberations, the Chinese government concluded that the imperative of flood control and the benefits of power-generation and transportation outweigh any negative environmental impact of proceeding with the project.The need to mitigate annual floods caused by the Yangtze River is China's fundamental rationale for proceeding with the project. Severe flooding in the Yangtze River Basin has killed thousands and caused significant damage in nearby communities. The Chinese government has already demonstrated that it is managing resettlement in a manner which minimizes hardship for the local population.

The project will also generate substantial electrical power and improve navigational access to China's interior. The project will meet about 9 percent of China's current but rapidly growing power needs. This is renewable energy and considerably cleaner than the coal-fired plants that account for three quarters of China's energy and contribute to global warming.

In addition, the involvement of Canadian companies could help mitigate any negative environmental effects of the project, as the high environmental standards and practices of Canadian suppliers would be made available to the Chinese Project Team.

NATIONAL DEFENCE

SEA KING HELICOPTERS—LEVEL OF FLIGHT TRAINING FOR PILOTS

(Response to question raised by Hon. J. Michael Forrestall on March 23, 2000)

The Minister of National Defence has stated on numerous occasions that the Canadian Forces need to replace the Sea King helicopters, and that the Maritime Helicopter Project is his number one equipment priority.

The safety of personnel is of the utmost importance and this is a principle the Canadian Forces won't compromise. The Canadian Forces take every step necessary to ensure that Sea Kings operate safely until such time as a new maritime helicopter enters service. The Air Force follows a very strict maintenance and inspection regime, and the Sea Kings are upgraded as necessary.

As for the level of flying training, Sea King crews continue to meet the strictest training requirements. The Air Force continuously strives to maintain a training program that is adapted to both the capabilities and likely tasks of the Sea Kings. The Sea King crews are provided with the appropriate level of flying hours to ensure that they maintain all the skills they need to perform a wide range of missions and respond to a broad range of situations. The recent rescue of 13 crew members from a Panamanian cargo ship underscores the validity and effectiveness of Sea King crew training.

ORDERS OF THE DAY

NISGA'A FINAL AGREEMENT BILL

THIRD READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Austin, P.C., seconded by the Honourable Senator Gill, for the third reading of Bill C-9, to give effect to the

Nisga'a Final Agreement. (*Debate suspended March 30, 2000*).

The Hon. the Speaker: I should like to remind honourable senators that this item was not concluded the last time we met; it was suspended. We are now at questions and comments. If there are any further questions or comments, we will hear them before we proceed to further debate on the third reading motion.

Hon. Jack Austin: Honourable senators, I was in the course of answering a question the last time we met and should like to reply to all the questions that were asked of me before the Honourable Senator St. Germain begins his debate.

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

Hon. Senators: Agreed.

The Hon. the Speaker: We will then conclude with the answers to the questions that were asked of the Honourable Senator Austin.

Senator Austin: Honourable senators, Senator St. Germain asked a question with respect to accountability. On page 906 of the *Debates of the Senate* for March 30, he asked:

> Is there any possibility that transfer funds can be withheld if financial accountability is not being satisfied within these particular nations? Do the province and the federal government have the right to withhold funding?

Honourable senators, with respect to financial accountability, the Nisga'a government must meet similar standards of financial administration as other governments and must publish its laws in a public registry. Where Canada or British Columbia provide funding for programs or services delivered by the Nisga'a government, audited financial statements must be provided and the Auditor General can review these statements. In the case of federal funding, the full authority of the Financial Administration Act would apply to any and all transfer payments.

In addition, the three parties to the Nisga'a Final Agreement have entered into a companion agreement, separate from the treaty, called the Fiscal Financing Agreement. It is not a treaty and therefore not protected by section 35 of the Constitution Act, 1982. The Fiscal Financing Agreement specifies that the funding provided by Canada and British Columbia to the Nisga'a Nation and sets out the responsibilities of the Nisga'a government in delivering agreed-upon programs and services.

The Fiscal Financing Agreement specifies, in paragraph 87, the circumstances that would constitute a default, including failure to meet responsibilities, as well as bankruptcy or insolvency. Paragraph 90 sets out the right of the funding party to deduct from payments the amounts that were to be provided for the provision of the affected programs or services.

The Fiscal Financing Agreement also provides for the establishment of a tripartite finance committee comprised of federal, provincial and Nisga'a representatives that will monitor financial arrangements between the parties and assist in resolving any issues that emerge. This committee is designed to prevent potential defaults from occurring.

Lastly, it should be noted that the Fiscal Financing Agreement must be renegotiated every five years.

Honourable senators, I believe these provisions and the various checks and balances represent the highest standards for accountability that could be expected from government anywhere.

I will send over to Senator St. Germain two pages from the Nisga'a Fiscal Financing Agreement that contain the default and remedies from section 87 through to section 92.

Honourable senators, Senator Beaudoin has commented on the role of a treaty under section 35 of the Constitution as being constitutionally protected. Senator Beaudoin indicated that he would be completely satisfied with the constitutionality of this agreement if he was confident that it is a treaty under section 35 of the Constitution.

I should like to draw Senator Beaudoin's attention — and, indeed, the attention of the all honourable senators — to the provisions in Bill C-9 and in the Nisga'a Final Agreement itself that clarify this point. Clause 3 of Bill C-9 states:

> The Nisga'a Final Agreement is a treaty and a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

Under the heading of "General provisions" in Chapter 2 of the Nisga'a Final Agreement, paragraph 1 states:

> This Agreement is a treaty and a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

The Honourable Senator Sparrow asked me questions with respect to polling. In my third reading remarks on March 30, I advised that in 1998, the polls showed that a majority of British Columbians supported the Nisga'a Final Agreement. I also stated:

> As the fortunes of the Clark government sank to an all-time low in public esteem, the polls showed a modest decline in support for the agreement.

Senator Sparrow asked me to elaborate on the polls, and I will do so as follows.

Vancouver Sun political columnist Vaughn Palmer, in a column dated December 2, 1998, refers to the findings of MarkTrend, a B.C.-based polling group not usually associated with the NDP, wherein 35 per cent of respondents did not know what they thought of the Nisga'a treaty, 12 per cent were unaware of it, 30 per cent were somewhat supportive, and 24 per cent were somewhat opposed.

An October 22, 1998 article by Dianne Rinehart reported that, according to an Angus Reid poll, 51 per cent of British Columbians viewed the Nisga'a Final Agreement as a step in the right direction, with 33 per cent of those polled holding the opposite view and 16 per cent unsure of their views. The poll was described as having been conducted shortly after the Nisga'a Final Agreement was signed and prior to the initiation of court proceedings by the provincial Liberal Party and others.

The Ottawa Citizen, in a story by Rick Molfina on November 6, 1999, carried the following comments:

> The attitudes of Canadians toward aboriginal self-government are hardening, but a majority across Canada and in British Columbia support the historic Nisga'a treaty, a federal government survey shows.
>
> "Canadians are becoming less likely to feel that Aboriginal Peoples have a historic right to self-government, and becoming more likely to feel that Aboriginal Peoples have no more right to self-government than other ethnic groups in Canada," said the report titled Survey of Land Claims and Nisga'a Treaty.
>
> The Angus Reid poll was submitted to the Department of Indian Affairs in March 1999. It surveyed about 1,200 people across Canada.
>
> Of those polled nationally who are following the treaty, 48 per cent strongly supported it, compared with 25 per cent who strongly opposed it. The remainder placed their support or opposition somewhere within a scale ranking their view from one to seven, with one representing strong opposition and seven representing strong support.
>
> Of people polled in British Columbia who are following the Nisga'a treaty, 41 per cent strongly supported the treaty, compared with 39 per cent who strongly opposed.

• (1430)

Honourable senators, I also wish to comment briefly on the issue of "repealability" which Senator Kinsella addressed. I am having more work done on that most interesting question. I hope to have an opportunity to rise again during the debate to answer that part of the honourable senator's question.

The Hon. the Speaker: Honourable senators, the Honourable Senator Austin said he would like to reply at a later time to the request of the Honourable Senator Kinsella. As Senator Austin does not have the right of reply at third reading, is it agreed that he be allowed to do that?

Hon. Senators: Agreed.

Hon. Gerry St. Germain: Honourable senators, I have a question further to that of Senator Kinsella. In Senator Austin's reply, perhaps he could elaborate further on the non-delegation of this agreement where it is constitutionalized. He made reference to the fact that this was required for certainty, trust and various other reasons.

All other agreements entered into with our native peoples, in the cases of Sechelt, Sawtooth, Gwich'in, Yukon and various others, have been done on a delegated basis. Is he saying that those agreements are in jeopardy?

I personally would be very concerned if his government feels that these particular agreements are in jeopardy due to the manner in which they were formed. As far as I am concerned, those agreements were entered into in good faith and are not in jeopardy. Whether an agreement is delegated or not should make no difference to the way it is carried out. The honourable senator may wish to answer this query later and tie it to the response to Senator Kinsella.

Senator Austin: Honourable senators, I have no difficulty in answering the question now. In terms of legal effect and the honour of the Crown, whether it is protected by section 35 of the Constitution Act, 1982 or whether it is the subject of legislation through the delegation of power, the obligation is the same. I see no difference. I have no trouble with the validity of the existing agreements. Nothing in Bill C-9 affects those existing agreements.

I should have noted, while on my feet, that Senator Sparrow asked for a list of the witnesses who asked to appear but were declined and for additional information with respect to witnesses. That information has been supplied to Senator Sparrow and to all honourable senators who participated in the committee's work.

Hon. Lowell Murray: Honourable senators, I think we have a problem here of consistency on the part of the government. The government recently refused what I considered to be a quite moderate proposal by Grand Chief Phil Fontaine for an amendment to Bill C-20. That proposal would have assured the aboriginal peoples of Quebec a seat at the negotiating table in the event of any secession negotiations. The government refused that proposal on the basis that the aboriginal peoples of Quebec are not a party to the amending formula.

We have in this bill, it appears, a proposal to entrench under section 35 a self-government agreement and a treaty with the Nisga'a in British Columbia that simply sets aside the division of powers in the Constitution Act, 1867.

The honourable senator himself made the following statement about section 35, as found at page 910 of the *Debates of the Senate* of Thursday, March 30, 2000:

> I have no hang-up with respect to the division of powers between sections 91 and 92. We took that decision in 1982. Some want to repeal section 35. They want to argue from propositions that start without acknowledging its existence.

I neither put myself nor other senators in that category. I was a sometime member of the joint Senate-Commons committee that studied the patriation resolution between 1980 and 1982, as was Senator Joyal and as was my honourable friend. At least three of us who are here today were here that night in 1981 when section 35 was approved. I remember well the very moving speech that Senator Austin made on that occasion, recalling his very first political assignment in Ottawa as a political assistant to the Honourable Arthur Laing, minister of Indian Affairs in the Pearson government. I am sure he recalls it as well.

I ask the honourable senator to reflect, first of all, on the circumstances under which the word "existing" was placed into section 35. I say that the word "existing" was put there to calm certain people. By the time we got to section 35, the patriation initiative had ceased to be an Ottawa-New Brunswick-Ontario initiative. Mr. Trudeau, by that time, had nine provinces on board, as we know, and section 35 was the subject of some very intense and careful negotiation, as my friend will recall.

I ask the honourable senator to reflect especially on the fact that, having agreed on section 35, we went on to provide for a series of constitutional conferences, first ministers' conferences, to discuss — and I quote from the section — matters that directly affect the aboriginal peoples of Canada:

> ...including the identification and definition of the rights of those peoples to be included in the Constitution of Canada...

That suggests to me that we will be taking considerable liberties with section 35 by purporting to entrench in it a self-government agreement or treaty that sets aside the division of powers in the 1867 Constitution.

Senator Austin: Honourable senators, I think that Senator Murray's excellent comments more properly belong in debate than as a question.

Senator Lynch-Staunton: Comment.

Senator Austin: I will be happy when I close the debate to cover the same ground and to provide my comments.

Hon. Gerald J. Comeau: Honourable senators, I asked some questions during committee stage regarding the fisheries allocations. Approximately 17 per cent of the Nass River total allowable catch is to be reserved for Nisga'a citizens. The official of the Department of Justice responded that this was not an exclusive fishery and, as such, the government had the right to allocate such entitlements to whomever it wished.

However, at that time I suggested that if such entitlements are to be made, there should be competent legislation providing that right to government.

• (1440)

Once this entitlement belongs to the Nisga'a, it becomes a permanent allocation to the Nisga'a. As such, Parliament can never touch it again because it is under section 35 protection. We are suggesting that Parliament does not have the right to abdicate such responsibility over allocations of fish.

Given that I was not provided with an answer to this particular question, would Senator Austin have a more direct answer at this point?

Senator Austin: Honourable senators, I have in front of me a letter, dated February 25, sent to Senator Comeau by Tom Molloy, the federal chief negotiator. I will read to the Senate the answer of the chief negotiator. I will not read every word, just the general sense of the letter, if I may.

> ...you asked for my views on the question as to whether the Nisga'a treaty creates an "exclusive" fishery contrary to the Magna Carta. As you may know, this is one of the issues raised by the British Columbia Fisheries Survival Coalition ... in a constitutional challenge to the Nisga'a treaty in the British Columbia Supreme Court. The Survival Coalition claims that a constitutional amendment would be required to give effect to the Nisga'a treaty (a claim similar to the constitutional challenge filed by Gordon Campbell and members of the BC Liberal party.) The Survival Coalition also claims in court that the Crown holds the fishery in trust for the benefit of the people of Canada and has an obligation to manage the fishery for the benefit of the people of Canada.
>
> The Magna Carta of 1215 establishes a common law public right of access to the fishery. The Magna Carta was intended to limit the King's capacity as owner of the seabed to grant exclusive fishing rights. The Supreme Court of Canada and the Judicial Committee of the Privy Council decided in the early part of this century that the Magna Carta applies to the fishery in tidal waters of coastal British Columbia. In *R. v. Gladstone* (1996) 137 DLR ... the Supreme Court of Canada recognized that aboriginal rights to fish can co-exist with the public fishing right in the following terms:
>
> > It should be noted that the aboriginal rights recognized and affirmed by s.35(1) [of the *Constitution Act, 1982*] exist within a legal context in which, since the time of the Magna Carta, there has been a common law right to fish in tidal waters that can only be abrogated by the enactment of competent legislation.... While the elevation of common law aboriginal rights to constitutional status obviously has an impact on the public's common law rights to fish in tidal waters, it was surely not intended that, by the enactment of s.35(1), those common law rights would be extinguished in cases where an aboriginal right to harvest fish commercially existed.... As a common law, not constitutional, right, the right of public access to the fishery must clearly be second in priority to aboriginal rights; however, the recognition of aboriginal rights should not be interpreted as extinguishing the right of public access to the fishery.
>
> The Magna Carta was intended to limit the King's power to create exclusive fishing locations at which no other member of the public could fish. The *Gladstone* case illustrates that aboriginal rights to fish do not give aboriginal people exclusive fishing locations at which no other member of the public can fish. Aboriginal rights do not create exclusive property rights to fisheries in particular locations contrary to the Magna Carta. The analysis in *Gladstone* applies to the Nisga'a treaty rights to fish. Just as any Nisga'a aboriginal right to fish today on the Nass river is not an exclusive property right that would extinguish any public access to the fishery, future Nisga'a treaty rights will not be exclusive property rights that would extinguish any public access to the fishery.

Both aboriginal and treaty rights to fish are available only to the "aboriginal peoples of Canada" as defined in the *Constitution Act, 1982*. Non-aboriginal Canadians do not have a legal right to insist that they become members of any particular aboriginal community in order to obtain the benefit of being able to exercise aboriginal or treaty rights to fish. Applying the *Gladstone* case this does not mean that public access to the fishery is denied contrary to the Magna Carta.

This is why, during the presentation to Senators, we emphasized the fact the creation of Nisga'a treaty rights to fish, even though they are treaty rights only for Nisga'a persons, do not prevent members of the public from fishing. As indicated during the Minister's presentation to Senate by Canada's legal counsel, putting in place the Nisga'a treaty will not prevent other groups from exercising any aboriginal rights to fish they might have, and will not prevent recreational and commercial fisherman from fishing under ordinary law. In this sense the exclusive allocation or percentage share of the fishery for the Nisga'a is not an "exclusive" fishery in the legal sense contemplated by cases dealing with the Magna Carta.

The Nisga'a Treaty is drafted so as to prevent the Nisga'a from having any exclusive rights to sell Nass river salmon. The Fisheries chapter prevents the Nisga'a from selling a particular salmon species when commercial and recreational fishermen are not allowed to target those same species. Paragraph 33 of the Fisheries chapter provides:

> If, in any year, there are no directed harvests in Canadian commercial or recreational fisheries of a species of Nass salmon, sale of that species of Nass salmon harvested in directed harvests of that species in that year's Nisga'a fishery will not be permitted.

The fact that no exclusive property right to the fishery is created is underscored by paragraph 3 of the fisheries chapter of the Nisga'a treaty which provides that:

> This Agreement is not intended to alter federal and provincial laws of general application in respect of property in fish or aquatic plants.

Lastly, as our legal counsel discussed during the Minister's presentation before the Senate, the Nisga'a have no capacity to close any part of the Nass river fishery or to prevent fishing by any other group. Apart from conservation concerns which serve the interests of all fisheries participants, nothing in the Treaty would require the Department of Fisheries and Oceans to close Nass River fisheries or deny to any members of the public who wish to fish a right of navigation on the Nass River. In fact, paragraph 14 of the Access chapter of the Nisga'a treaty specifically preserves all public rights of access on navigable waters within Nisga'a lands.

Yours truly,

W. Thomas Molloy, Q.C.

Senator Comeau: There are many words and interpretations by Mr. Molloy, who is a negotiator, I understand, of this agreement. Obviously, he wrote a lot of words to try to confuse everyone. That still does not answer my question.

As parliamentarians and as a government, we do not own that resource; it belongs to the Canadian public. As such, it is not ours to give to whomever we wish. We would be relinquishing our parliamentary duty in this stewardship that we hold over this resource to the Governor in Council, and the Governor in Council would then assume that responsibility from us. As I understand it, Parliament does not have the right to abdicate its responsibility, especially in a case where we do not even own the resource.

Senator Austin: I can only reply by saying that I do not believe the letter was written to confuse anyone, and I do not feel confused by reading it. I believe I can understand its argument.

In any event, the *R. v. Gladstone* decision says, as I have already mentioned, that a common law right to fish in tidal waters can only be abrogated by the enactment of competent legislation.

Senator Comeau: If such arrangements can be made so that Parliament can relinquish its responsibility over fisheries resources and hand over that responsibility to cabinet, and if cabinet can then turn around and hand over these resources to whomever it wishes — whether an aboriginal group, friends of the minister, or friends of the Prime Minister — does that not create a precedent whereby such resources as scallops on the East Coast of Canada could be allocated to certain groups in perpetuity?

• (1450)

Is this what may be in store for Atlantic Coast lobsters? Will Minister Nault be given the power to allocate lobster stocks to groups of his choosing? We may be establishing a precedent that should be given careful consideration.

Senator Austin: I understand the concerns of Senator Comeau, although I do not believe they justifiably arise from this bill. The paragraph that I just read gives Parliament the power, which it may choose to exercise, but in the Nisga'a case this has not been done, as the rest of the letter makes clear. It is not an exclusive fishery. Therefore, the principles from which Senator Comeau originally argued do not apply.

I understand the concern with respect to the allocation of fish and other seafood resources anywhere; however, that is, in my view, a political question rather than a legal one.

Senator Comeau: Obviously, I must provide the honourable senator's response to both East Coast fishing interests and West Coast fishing interests in order to advise them that this may be what is in store for East Coast lobsters, the resource that is being requested at this time by certain groups. The senator says that it is a political question. It appears that the government has decided the direction of the political question. There may be opinions contrary to what the government is suggesting.

Senator Austin: Honourable senators, this legislation applies only to the Nisga'a. I do not at this time wish to discuss its extension. I do not speak for the government; I am the sponsor of the bill. However, in my remarks closing debate at third reading I shall mention the *Marshall* decision.

Senator Comeau: Honourable senators, the Nisga'a treaty also provides for non-salmon fisheries resources in the Nass River Valley. It gives the government the right to negotiate entitlements to those resources. In effect, Parliament is giving cabinet carte blanche to assign allocations of the non-salmon resources.

Is this, as well, a precedent that will be established for fisheries resources all across Canada?

Senator Austin: Honourable senators, I think the rest of the topic can be canvassed when I conclude the debate.

Hon. A. Raynell Andreychuk: Honourable senators, I hope that Senator Austin will bear with me while I ask a series of questions on minority rights.

I will start with the Canadian Charter of Rights and Freedoms. In our hearings, we were told that the Canadian Charter would apply. However, the preamble of Bill C-9 says:

> Whereas the Nisga'a Final Agreement states that the *Canadian Charter of Rights and Freedoms* applies to Nisga'a Government in respect of all matters within its authority, bearing in mind the free and democratic nature of Nisga'a Government as set out in the Agreement;

It would appear that the Canadian Charter of Rights, under section 25, already takes into account the distinctive philosophies, traditions, and cultural practices of the aboriginal peoples. Further, if we believe that this is a third level of government, section 33 would be employed and the aboriginal peoples could use it as a notwithstanding clause. Therefore, why was it necessary to include the words following "the *Canadian Charter of Rights and Freedoms* applies"?

Senator Austin: I shall need to consider that question, honourable senators. I asked for notice of questions when we concluded on Thursday last, and I have received none. The question asked by the honourable senator is a particularly interesting one, and one that I have not explored in detail. I look forward to doing so.

Senator Andreychuk: I did not think this question would catch Senator Austin off guard, because I asked it repeatedly in committee. I shall await a reply to that question and ask further questions in writing.

The majority of the committee made an observation with which some of us did not agree. The last sentence reads:

> Your Committee therefore strongly urges the federal government and its negotiating partners to pursue vigorously all means at their disposal to ensure that overlap issues are resolved to the satisfaction of concerned First Nations prior to the conclusion of future land claim agreements.

If the Gitanyow and Gitxsan are acknowledged as First Nations, and if they are acknowledged to be in negotiations with the federal government, why should their rights be less than those of other First Nations, as would be the case if no further agreements are negotiated unless overlaps are resolved?

Senator Austin: We are not saying that at all. In the observation, we recognize the equity that is contained in the Nisga'a Final Agreement that provides for adjustments, either to further negotiations or to the consequences of litigation. We also express our concern for future negotiations. We are asking the federal government and its negotiating partners to be vigorous, but we are not in any way asking them not to proceed with further agreements where they believe that the parties have negotiated in good faith and have meet the other tests that Minister Nault set out in his evidence.

Senator Andreychuk: Is the honourable senator saying that all efforts were made to settle the overlap issues before proceeding with negotiations and that, therefore, the minority Gitxsan and Gitanyow were not being prejudiced? If that is the case, what is the point of the last sentence?

Senator Austin: Honourable senators, we are saying that the agreement with the Nisga'a was concluded as a result of good faith negotiations and that the aboriginal rights of the Gitxsan and Gitanyow are not absolutely or ultimately compromised. If they establish their rights either through negotiation or litigation, those rights will be taken into account in the Nisga'a agreement. I am sure that the honourable senator is very much aware of paragraphs 33 to 35 in the Nisga'a Final Agreement.

Senator Andreychuk: I am pleased that Senator Austin mentioned those paragraphs. Does he not believe that precisely those paragraphs point out that the government is not acting in an appropriate fiduciary way toward all aboriginals, that it has taken the side of the Nisga'a against the Gitanyow and Gitxsan? Is it good public policy to be seen to be supporting one aboriginal claim over another, if we accept the fundamental point that all aboriginals are First Nations and should be treated equally by our government?

Senator Austin: This question was fully dealt with by Minister Nault in his evidence.

• (1500)

The Government of Canada at a certain point in negotiations must make a decision to proceed with the rights of the people with whom they are negotiating. In order to avoid prejudicing other rights, the provisions of the Nisga'a Final Agreement preserve those rights if they are accepted through the negotiating process or through the courts. Therefore, I believe that there is no basis to argue that the Government of Canada is in any way choosing sides or in any way acting prejudicially.

Senator Andreychuk is arguing for a total stasis in treaty negotiations and the progress in the course of establishing agreements with aboriginal communities. She is arguing that the slowest ship in the convoy should determine the entire speed of the fleet. She is arguing that the Gitanyow and Gitxsan, in this particular case, should have the right to hold up the concluded negotiations between the Nisga'a, the Government of British Columbia and the Government of Canada until they, in their own discretion and their own time, decide they are willing to come to the table.

We have had evidence from Mr. Molloy and others that the Nisga'a made every effort to come to a conclusion. The government was satisfied that the Nisga'a had negotiated in good faith, and it decided to proceed with the Nisga'a agreement.

I believe that this first step is important to unlocking the process of treaty negotiations in the province of British Columbia. I believe that it does honour to all parties who have engaged in this negotiation and concluded it.

Senator Andreychuk: It is unfair to characterize my opinion as one where the government could not proceed. My question is not whether the federal government proceeded with the Nisga'a because, quite correctly, the federal government did proceed with the Nisga'a.

If one reads the report of the Royal Commission on Aboriginal Peoples, and I believe that is one of the bases upon which the government proceeded, it states that all aboriginal nations can proceed at their own speed. If the Nisga'a were ready to proceed and were acting in good faith, then the federal government had a responsibility to enter into that arrangement and discussion.

The question is: Why, in a public policy manner, would the government have included sections 33, 34 and 35 without some signal, undertaking, letter, public statement or otherwise to the Gitxsan and Gitanyow that they would be treated the same way? Why did Minister Nault say that he believes the Nisga'a and not the Gitanyow and Gitxsan?

The argument is not to hold up the debate; the argument is that the government took sides when it had other avenues, channels and legal recourses.

Senator Austin: May I ask the honourable senator to what alternatives she refers?

Senator Andreychuk: The government could have instituted a dispute-resolution mechanism prior to continuing with the Nisga'a. That is what Canada advocates around the world in our foreign policy.

I can see why the Nisga'a would ask for compensation if their claim failed in court. At that stage the Nisga'a would be required to allocate resources, time and energy to administering the process. At that point, the government should have signalled to the Gitanyow and Gitxsan that those groups would be in the same position and would be offered the same compensation in a very public and open way.

Senator Austin: The entire process was public and open. I do not understand, and I probably never will, why Senator Andreychuk does not understand sections 33 to 35 because in my opinion, and in the opinion of the witnesses who appeared before the committee, they preserve the status quo for the Gitanyow and Gitxsan without prejudice to them. Beyond that, we begin to dance on points of pins. Senator Andreychuk is entitled to her opinion, but I do not believe it is on based on the facts.

Senator Andreychuk: I believe sections 33 to 35 are not dancing on the heads of pins. There is a clear difference between justice and the appearance of justice. If we are to have a just and fair system, it is not only that justice is done but that it appear to be done in the eyes of the people.

Pulling off a Gitxsan-Gitanyow negotiator and moving him to the Nisga'a and putting in sections 33, 34 and 35 may not be a prejudice, but it is the appearance of prejudice that is damning. In fact, the Gitanyow and Gitxsan felt they had been prejudiced. I, for one, will not tell the aboriginal people that they were wrong and that their point of view with respect to how they can negotiate was inappropriate. My plea was for a better public policy that would not have put the Gitanyow in that position.

I do not believe I misunderstand sections 33 and 35. I question the federal government practice that I hope will not be repeated. I believe the Gitanyow and Gitxsan have been prejudiced.

Senator Austin: Honourable senators, I look forward to Senator Andreychuk's contribution to the debate.

Senator Lynch-Staunton: She just made one.

Senator Andreychuk: In February, the Standing Senate Committee on Aboriginal Peoples tabled a unanimous report entitled "Forging New Relationships: Aboriginal Governance in Canada." Recommendations 1 to 4 deal very much with what we believe the federal government should do and how it should approach section 35 and aboriginal peoples. We were very strong in saying that aboriginals define themselves. The aboriginals determine how they gain their inherent rights and self-government. Recommendation 1 states:

> The Committee recommends that flowing from Section 35 of the *Constitution Act, 1982,* federal approaches to engaging Aboriginal peoples in self-government negotiations be flexible, inclusive and demonstrate sensitivity to the diverse historical and contemporary circumstances of Aboriginal peoples and their aspirations for self-government.

Does the Honourable Senator Austin believe that passing the Nisga'a agreement and forging ahead with the Nisga'a at this point is inclusive and involves the Gitxsan and Gitanyow?

Are we not violating our own recommendations? We say in recommendations 2, 3 and 4 that the Department of Indian Affairs and Northern Development is the wrong place to negotiate. The Nisga'a did what was right, but surely the federal government's approach does not comply with recommendations 1 to 4 of our report.

Senator Austin: Honourable senators, I see no inconsistency.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, if I may return to the observations in the fourth report of the committee to which Senator Andreychuk referred to but to which I do not believe Senator Austin responded directly. I will read the last sentence because I believe it contradicts what we are being asked to do. The last sentence is quite firm. It states:

> Your Committee therefore strongly urges the federal government and its negotiating partners to pursue vigorously all means at their disposal to ensure that overlap issues are resolved to the satisfaction of concerned First Nations prior to the conclusion of future land claim agreements.

The observation could not be clearer. Over 50 First Nations may be involved, in time, in a treaty process similar to this one. This one will obviously set the standard for future agreements. If it is good for 50-plus First Nations to be assured that the overlap issues, as they exist, be resolved before a conclusion of future land claim agreements, why is that principle not applicable in this case?

• (1510)

Senator Austin: Honourable senators, it was applied in this case. After vigorous pursuit of the settlement of overlapping claims, it proved impossible for the Nisga'a, the Gitanyow and the Gitxsan to settle those claims.

Since 1995, the Government of Canada has laid down its policy with respect to the way in which it will conclude an agreement with an aboriginal community. As Minister Nault said in his concluding remarks, the Government of Canada has followed that policy with respect to the Nisga'a. It became satisfied that the Nisga'a had negotiated in good faith, had proven right of possession and the boundaries which they had submitted and that the Province of British Columbia was prepared to sign on to the agreement. In the final instance, after a vigorous pursuit going back years — certainly back to 1977 in some cases and 1991 in the principle agreement on negotiation signed by the Northwest Tribal Council — the Government of Canada, Nisga'a and the Government of the Province of British Columbia decided that they would come to an agreement with Nisga'a while preserving the rights, under sections 33 to 35, of the Gitxsan and the Gitanyow to establish their claims. I believe that system is eminently equitable. It meets not only the tests of the Standing Senate Committee on Aboriginal Peoples' report to the Senate but also the tests of the observation of the committee.

Senator Lynch-Staunton: If I heard the Honourable Senator Austin correctly, the government took sides. It agreed with the Nisga'a's rejection of the other two nations' claims and therefore went ahead with the agreement. That is what I understand, namely, that government and the Nisga'a agreed that the Nisga'a's rejection of any territorial claims would be valid and, therefore, they would carry on with the agreement.

Senator Austin: Honourable senators, let me be as clear as I possibly can be. The government, after a long period of negotiation with all the parties, accepted the claims of the Nisga'a with respect to the boundaries and the use of lands and proceeded to conclude an agreement with the Nisga'a. I want to be very clear, and I will repeat it again: The rights of the Gitanyow and the Gitxsan are preserved, either as a result of concluding negotiations or litigation. The treaty and the agreement will be adjusted to the establishment, through negotiation or through litigation, of Gitxsan and Gitanyow rights. Nothing is shut off; nothing is closed out. Those rights and the status quo are preserved.

Senator Lynch-Staunton: How can the government reconcile this pathetic generosity after having clamped down on the two claiming nations? How can you say on the one hand that the government and the Nisga'a agree that claims are ill-founded and then, on the other, say to the claimants, "By the way, keep on talking with the Nisga'a. If that does not work, then go to court to spend God knows how many years and how much money." How can the government reconcile those two statements? One is an absolute contradiction of the other. As Senator Andreychuk suggested, why not include in this agreement compulsory arbitration or some form of mediation, even a dispute settlement mechanism, so that a third party can force a claim settlement?

I do not pretend to be very knowledgeable of the treaty itself, but I have listened to and read much of the testimony at committee stage. I am troubled by some of the spokesmen for the two claimants stating that, perhaps, more than words will take place to assert their rights. That may be an empty threat and it may be theatrics, but the fact that it is on the record should be enough to make us pause and think of the impact, should that happen.

Senator Austin: Honourable senators, I appreciate the observation of Senator Lynch-Staunton. I should like to point out, however, that under the Nisga'a Final Agreement, should claims be established through litigation, in particular, through negotiation with both the Gitxsan and the Gitanyow, the Nisga'a will be entitled to compensation. They have very little to lose. If they are prepared, through negotiation with the Gitxsan and the Gitanyow, to make adjustments to the current terms of the agreement, the Nisga'a will not lose anything of value. They will get compensation in other terms of value. They should not be accused of not being willing to proceed to negotiate in good faith with the Gitxsan and the Gitanyow once this agreement is terminated. They have every reason to want to live in harmony with their neighbours. They also have every reason to go ahead with their own political, economic and social development and not be held up by neighbours who are neither prepared to come to the table, which is the case with the Gitxsan, nor prepared to move quickly, as is the case with the Gitanyow.

I wish to remind all honourable senators that we are in the twentieth year of negotiations and the tenth year since the rules with respect to boundaries were established in 1991. The Nisga'a have been a very patient people. They have been at this particular process of negotiation for a very long time. I want to say — and I will probably have to say it again and again — that the Gitxsan and the Gitanyow are not compromised in law. I believe that the Nisga'a will continue to hold discussions with those tribal communities, the Gitxsan and the Gitanyow, in the hope that there will be a settlement. This is not an unusual situation, as was pointed out to us by Senator Christensen. In the Yukon, it took two to three years after the Yukon final agreements were signed for some participants to settle boundary claims with other Yukon aboriginal communities.

Senator Lynch-Staunton: I will not prolong this discussion because I will have a chance to enter the debate later. However, I congratulate the Nisga'a. They are winners on both counts. If their position is maintained, then it is maintained and the claims are rejected. If they lose, then they are compensated. What a position to be in. The point is that if it happened in the Yukon and it is happening here, why at the same time be so adamant in saying, "Do not let it happen again?" That is the point of the question. Obviously, it is an admission that not having a solution to the overlap problem is wrong. Do not try to convince us that, because negotiations have been going on for 20 years, we should give up. In the conclusion of the report, the committee indicates that any future agreement should ensure that any overlapping problems will be resolved first.

Honourable senators, I repeat my first question: Why not impose that principle on this agreement and set a principle which must be followed in future agreements? I am going beyond my knowledge of these negotiations, but I can see future negotiation with overlap problems and someone waving the Nisga'a agreement and saying, "You allowed these overlap claims not to be resolved before signature. In so doing, you set a precedent. Let us do it again." This committee observation will then be meaningless. In fact, you have proven by what you said that it is meaningless.

Senator Austin: The honourable senator is off base. Upon reading the entire observation, he will see that the establishment of the entitlement to include the Nisga'a agreement is referred to in the first part of the observation, and all else flows from that. His interpretation is not correct.

In any event, I look forward to the debate. We have started, and I do not wish to deprive any of my colleagues in this chamber of the novelty of putting forth their arguments and defending those arguments later on. Much of what I expected to hear from honourable senators is coming out in this question period. I think you are being unfair to yourselves.

Senator Lynch-Staunton: I am simply quoting to the honourable senator the words of his committee, which recognizes that the parties have attempted to address this question by including provisions in the Nisga'a Final Agreement that aim to preserve and protect the rights of aboriginal peoples other than the members of Nisga'a Nation. Your committee is, nevertheless, "deeply concerned about the implications of outstanding overlap issues not only in relation to the Nisga'a and neighbouring First Nations but in a broader context." In that statement, you have demonstrated deep unease at the fact that this issue is not resolved. My question is: Why did you not put in your report, "Because we are so uneasy about that situation, resolve it before signing the treaty?" If you had put that in front of the Nisga'a and the other two nations, I am sure the privileged ones in this treaty might be more anxious to have the claims resolved. As it is, they have no interest in so doing, and the other two nations are being penalized.

• (1520)

Senator Andreychuk: Honourable senators, I am sure that Senator Austin did not intend to say that our arguments, particularly mine, were novel though not sincere, because they are sincere questions. I have absolutely no doubt about the sincerity and good faith of the negotiation by the Nisga'a. They have proved that in the testimony before us and in their actions otherwise, to my knowledge.

Is it the honourable senator's understanding — and is it on that basis that he is supporting this legislation — that the federal government must negotiate in good faith with aboriginal peoples?

Senator Austin: First, honourable senators, I would be astonished if I used the words "sincere" or "insincere" in what I had to say, but the record will show if I did. If I accused anyone on that side of being insincere, I certainly did not intend to do so, and I apologize. I did use the word "novel", and I do not believe that that is a derogatory reference in any way.

As to the outstanding portion of the honourable senator's question, I shall stand down from replying for the time being. I would like to hear the full arguments of all my colleagues opposite. Following that, I would be pleased to ask questions of those who enter the debate on that side, or on our side, because I think very soon it should be my turn to ask questions.

Hon. Anne C. Cools: Honourable senators, when Senator Austin was responding to Senator Comeau's question, he read into the record some extracts from a document. Would Senator Austin table that document, in order for all of us to have a copy of it?

The Hon. the Speaker: Honourable senators, leave must be granted for the tabling of documents. Is leave granted?

Hon. Senators: Agreed.

The Hon. the Speaker: Leave is granted.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I wish to thank Senator Austin for agreeing to reply to my question on whether the committee canvassed the "repealability" of this bill.

When we suspended last Thursday, at Senator Austin's request, some of us did give him a heads-up on the kinds of questions we were interested in exploring. I should like to explore, as I mentioned to him last Thursday, whether the committee examined the international treaty obligations that Canada has assumed. For example, we are bound by international treaty obligations pursuant to the United Nations International Covenant on Civil and Political Rights, as well as the obligation under the first option of protocol to that international covenant.

I mention that one in particular because of my experience in assisting native women in Canada in filing their communication against Canada a number of years ago because of the old section 12.1(*b*) of the Indian Act, which, as Honourable Senator Austin will recall, was found by the United Nations Human Rights Committee to be in breach of covenant obligations.

At that time, then prime minister Trudeau accepted the judgment of the United Nations, which was made after the Supreme Court Canada had found the sex discrimination in the Indian Act to be okay and not offensive to the Bill of Rights.

Prime Minister Trudeau then caused work to be commenced for the preparation of what was ultimately Bill C-31. That bill was introduced into Parliament and was adopted. It struck down the rights-denying provision. Thus, the question of the international treaty obligation is very important and we need to understand it. As such, did your committee look at whether Parliament will be able to do anything about treaty offences or non-compliance with treaty obligations as a result of things that may occur on the Nisga'a land?

Senator Austin: Honourable senators, the committee did not hear evidence on the subject of the question that Senator Kinsella has just raised. However, I shall be very pleased to discuss the question with officials of the Department of Indian Affairs and provide Senator Kinsella with the best answer I can give.

Senator Kinsella: I thank the honourable senator for that and, in fairness to him, I shall develop my own thinking. Your committee did not examine it. When I participate in the debate at third reading, I shall examine it. With reference to the "repealability", it would be helpful to have that answer before I participate at third reading.

One final question: The War Measures Act was replaced by the emergency measures legislation, and that legislation is recognized by international human rights treaties. In other words, there are times when the life of a nation is threatened or there are emergencies and, as such, the rights and powers of subsidiary governments must be derogated.

Did the committee look at the application of the emergency measures legislation and its application to the Nisga'a land? That legislation is under review by Parliament. There is a timeline within which Parliament must examine whether an emergency exists. Hence, there are controls that were not in place with the War Measures Act.

Does the derogation of rights and powers apply to the Nisga'a land by virtue of the emergency measures legislation?

Senator Austin: Here again, honourable senators, the matter was not raised in the evidence before the committee, but I shall be pleased to examine that question with government officials and to try to provide Senator Kinsella with a response.

Senator Comeau: Honourable senators, I have a question with respect to "repealability", and I raise that question in light of some of the concerns regarding the role of the Senate as raised in the clarity bill, which is also before us.

My understanding of the Nisga'a treaty is that any amendment to that treaty must involve the three parties, the Nisga'a, the legislature of British Columbia and the federal cabinet. Why did it not follow the same trend as in British Columbia, where the legislature was to be involved in any amendments? Why was the Parliament of Canada excluded from the amendments of the Nisga'a treaty? Why was it left in the hands of cabinet, rather than Parliament?

Senator Austin: I am not sure that the honourable senator's question is correctly based. There are a number of ways to make changes to the agreement. Of course, Bill C-9 itself, to be changed, would require agreement of the three parties. If it were a legislative change, it would require legislation. There are, however, provisions for change within the Nisga'a Final Agreement that do not require legislation. They require the agreement of the parties.

I will study the honourable senator's question in an attempt to provide him with a more full answer.

Hon. Gérald-A. Beaudoin: In reference to Senator Murray's question on the division of power, reference was made to the application of the Canadian Charter of Rights and Freedoms. Can it not be considered in the answer that section 31 of the Charter says that nothing in this Charter extends the legislative powers of anyone or authority?

• (1530)

Section 25 of the Charter says, on the other hand, that the guarantee in this Charter of certain rights and freedoms should not be construed so as to abrogate or derogate from any aboriginal treaty or other rights and freedoms.

Section 35, as we know, is not in the Charter — it is outside the Charter. Therefore, I wonder if it might be possible for Senator Austin, in his reply, to refer to the effect of section 25 and section 31.

Senator Austin: Thank you, Senator Beaudoin. I will endeavour to do so.

Hon. Jerahmiel S. Grafstein: Honourable senators, I have a supplemental question arising out of Senator Kinsella's question. It is one of the issues that troubled me as I reviewed the evidence of the committee after the hearings. Perhaps I could put that same question in another way, because Senator Austin is already on notice that he will respond.

My question is this: In the event of a national emergency as declared under emergency legislation, such as a declaration of war, to what extent would the federal powers, including its powers under section 92 and also its residual powers, be subject to limitation as it applies to the paramount powers granted to the Nisga'a under this treaty?

Senator Austin: I will take that variation on the question under consideration and endeavour to respond to it.

The Hon. the Speaker: If there are no further questions or comments, we are prepared, then, to proceed to further debate at third reading.

I must give warning to the Senate, particularly to Honourable Senator Austin, who has referred several times to closing the debate. Under rule 35, there is no closing of debate at third reading. Of course the Senate is free by leave to do as it wishes, but under rule 35, there is no provision for closing debate at third reading.

Senator St. Germain: Saved by the bell.

Honourable senators, first, I should like to recognize the fact that today we have in the gallery the leaders and representatives of the Nisga'a nation. I think it is important that we recognize them, the hard work that they have put in to get to this stage of their negotiations, and the way they followed the proceedings

and worked to try to respond to all the questions that were put to them during the course of each of the studies that has taken place.

We have arrived at a critical time in the history of British Columbia and our dealings with our aboriginal peoples. Those of us from British Columbia, like Senators Austin, Perrault, and myself, know full well that we must make progress in this particular area. Expectations are extremely high in British Columbia that what we do here will be the right thing, the correct thing, and that it will bring finality to the issue.

I thank the members of the Standing Senate Committee on Aboriginal Peoples for their serious examination of this legislation. I also thank Senators Sparrow, Grafstein, Beaudoin, Joyal, Lawson, Wilson, Comeau and Nolin for their interest and attention to the issue of British Columbians.

Senator Austin, as Chair, had a difficult task. In retrospect, we should have travelled. We should have gone to listen to the man or woman on the street. It was decided that we would not do that, but I believe it was important. We are at third reading stage now, but I wanted to mention that in passing as a reflection of some of the evidence brought before the committee.

Honourable senators, negotiated treaty settlements are important to the economy of British Columbia. British Columbians want their aboriginal land claims and self-governance agreements concluded so that we can have certainty and finality in our province. I have consistently stated that I am pleased that the Nisga'a negotiated an agreement. These agreements must take place. As stated before, politically my party is in agreement with the intent of the deal.

However, in my review of this agreement, and in the studies that we have done, I am struck with the realization that only three groups really want this deal as written. I stand to be corrected on this. The majority of the Nisga'a, those who voted, accepted this deal through the ratification process. The federal and provincial governments want this deal. However, in spite of all polling, I believe that fewer than 50 per cent of British Columbians really understand the deal and want it. That is a major concern, and it must be a concern to all of us. They do not understand partly because this deal is so complex. As well, British Columbians are doubtful that this agreement will bring the finality and certainty that is intended.

I believe we have a responsibility not only to pass legislation but to ensure that people on the street understand what is being done. It is not a case of government doing things to people but doing things for people.

My understanding is that the Tsimshian and Tahltan nations, both neighbours of the Nisga'a, signed agreements with the Nisga'a, but their traditional lands and aborignal rights were marginally infringed upon. They apparently are still negotiating with the Nisga'a in regard to their differences.

The 2,000 house members of the Gitanyow and the 10,000 house members of the Gitxsan nations are opposed to this specific agreement. Why? As has been mentioned, it is because their rights will be severely impacted. This has been mentioned during the questioning of Senator Austin.

Honourable senators, I have a great deal of concern about several aspects of this bill. There is the constitutional aspect, accountability, minority rights, women's rights, the fisheries, et cetera. I will not go into constitutional issues, mostly because I am not as qualified as others in this place to fully discuss constitutional issues, but I will make some comments about the delegated authority.

I have never received a full answer to the question of why this is a constitutional agreement as opposed to a delegated agreement. Are all the other issues, as I asked Senator Austin today, in jeopardy? What is wrong with them? If nothing else, why was this deal done differently? Will we have to change the others into the type of self-government authority legislation that the Nisga'a agreement creates? As I pointed out in my questioning on the Sahtu, Gwich'in, Sechelt and Yukon, some of those agreements were reached by the previous government and some have been concluded by the present government. I hope that those agreements are not in jeopardy. Senator Austin has said they are not. If they are not, why did we not continue the way we proceeded in the past?

Honourable senators, I have been working on the British Columbia treaty claim settlement for over five years. I have been particularly concerned with the way the federal government has handled the overlap issues. I have travelled to the Gitanyow, Nisga'a and Gitxsan lands and have spent time with the people. It is not a question of me reading the newspaper or transcripts. I have been face to face with these people. I have listened to them and spoken with them.

Let us be clear in this place: The land deal the governments have negotiated today is far greater than the actual original land claim by the Nisga'a. I gather I can use a book, even though we are not supposed to use props. To give an analogy, the original claim of the Nisga'a was about the size of my fist. There is some debate, but it has been explained to me that the *Calder* claim in the 1970s was done without prejudice, referring to the boundaries therein.

• (1540)

The 1913 resolution included the Kinskuch River, which is considered to be one of the boundaries. The 1913 resolution went further than the *Calder* boundaries. The final boundaries that were agreed upon delineated an area the size of both my fists. What is of great concern to me are the fee simple properties that were granted to the Nisga'a within the areas in dispute.

We are placing the Gitanyow and Gitxsan in an untenable position, honourable senators. I have read the history, the court actions and the testimony, and I have listened to the people of the Nass Valley and British Columbia as a whole. I read of the petitions of the late 1800s and 1900s regarding lands and the rights of first peoples thereto.

We know that the *Calder* decision was instrumental in forcing the federal government to create the 1973 comprehensive claims settlement process, which did not adequately address self-governance. We know that the 1980-82 patriation of our Constitution recognized the rights of our peoples within it. We also know that self-governance was not defined or specifically included at that time, nor later. We know that during the 1980s and early 1990s the government dealt with the issue in the only manner available without amending the Constitution, even though the Charlottetown Accord exercise established a solution to recognize self-government for aboriginals within Canada.

We also know the advice and instruction from the Supreme Court that arose from *Sparrow* — the Musqueam — in 1990 and *Delgamuukw* — the Gitxsan — in 1997. We know the 1999 B.C. Supreme Court decision in *Luuxhon*. I will speak further to the *Luuxhon* case in a few moments.

We also know of the establishment of the land claims and treaty negotiations process in 1993 and of the British Columbia Treaty Commission that was then established. We must recognize that it was effectively *Calder* that propelled the issue of modern day negotiations. That, then, is really the modern day starting point for our land claims and treaty rights. This is the background context for these negotiations and agreements.

If we look at this history further, honourable senators, we see that latter day Nisga'a negotiations started in 1976 because of the *Calder* decision. In fact, we know that the Gitanyow filed to commence their negotiations first in 1976, but the government would not put them first in the line. The filing of the Gitanyow was accepted in 1977. These two groups effectively commenced their respective processes at the same time. We also know that the Gitxsan submitted their claim in 1979.

Canada signed framework agreements with the Nisga'a in 1989 and again in 1991. In the late 1980s, the Gitanyow and the Gitxsan commenced the research that would determine where the boundaries of their traditional lands should be drawn. This work was concluded in 1995.

There was a shift in population in the late 1800s, driven by missionaries. However, the eight houses of the Gitanyow were never relinquished and their land was never abandoned. There was a migration due to the economies of scale at that time in this area, as well as due to missionary direction and, I presume, attempted assimilation. However, never did the Gitanyow relinquish rights to the eight houses that are configured in pieces of land.

The Gitanyow had to wait. They again filed their claim when the B.C. Treaty Commission commenced operations in 1993. It is important to point out that the Nisga'a and the Gitanyow were discussing and signing agreements and MOUs through the 1980s and right up to 1992. At the heart of these agreements was the agreement of the Nisga'a that their land boundary with the Gitanyow was at the mouth of the Kinskuch River, a very important boundary. With the exception of a couple of small true overlapping claims, these two groups agreed upon ownership of the land and upon where the boundaries lay. Therefore, the Gitanyow were not overly worried or too aggressive about the land claims process. They were satisfied with the boundaries that had been established.

It was through the pre-AIP consultations of 1992 to 1995 that the Gitanyow accelerated their efforts, resulting in the signing of their framework agreement in 1996 with the B.C. Treaty Commission, the same year the Nisga'a signed their AIP.

The Gitanyow quickly learned that up to 85 per cent of their traditional lands were being claimed by the Nisga'a.

During 1996 to 1998, the Nisga'a held their post-AIP consultations, resulting in the signing of the Nisga'a Final Agreement in 1998. Frustrated with the governments' continuing lack of good faith and negotiations to settle land boundaries, the Gitxsan sued the governments and won under *Delgamuukw.* With the governments' persistent ignorance of the Gitanyow's requests to negotiate in good faith the overlap issues with the Nisga'a, the Gitanyow were once again forced to appeal to the courts for instruction. That was the *Luuxhon* case.

Honourable senators, Bill C-9 infringes upon the rights of several aboriginal groups. It is the Gitanyow and the Gitxsan who are fighting for their rights.

The federal government has told these groups that it will not renegotiate any terms of the Nisga'a Final Agreement and that overlap issues will be dealt with after the Nisga'a Final Agreement and through the processes set out within the Nisga'a Final Agreement.

The minister admitted in committee that the government chose to proceed with the Nisga'a and accepted their information on traditional lands over that of the other groups. The courts have urged aboriginal peoples to negotiate settlements to overlap issues among themselves.

The minister chose the Nisga'a over the Gitanyow and the Gitxsan. It is as simple as that. He said that he did. The minister and the government have a fiduciary responsibility to all aboriginal peoples. I do not believe that the government can take sides. However, by its own admission, it has.

The Nisga'a have done an excellent job of negotiating on behalf of their people. They asked for a huge tract of land, and they have received it. The federal and provincial governments wanted anything that would achieve what some describe as "political objectives." That is what was said in committee.

After 27 years, the government can say that they have resolved the Nisga'a claims for aboriginal rights. However, if this process continues as it has, it will be done on the backs of all the other aboriginal groups in the area — mainly the Gitanyow and the Gitxsan.

The Gitanyow and Gitxsan have no financial resources with which to fight for their rights. I asked the minister in committee whether he was prepared to fund them. He did not answer the question. The government advanced funds for the Nisga'a negotiations by way of loans and legal counsel, but the government has basically said that it will not pay for Gitanyow and Gitxsan counsel.

The government has said, "We are right and everyone else is wrong; if you do not like the results, you can go to court." The government, through its own actions, provided a whole new definition for what appears to be a slight degree of arrogance.

Honourable senators, the Nisga'a worked hard for a deal and they should get a deal. They want a deal and they deserve one.

As honourable senators know, the purpose of this place is to examine and revise legislation, investigate national issues, and represent regional, provincial and minority interests. This has never changed. This is our responsibility as senators. Our instructions are to make laws for the peace, order and good government of Canada. We are not to be coerced in any way, shape or form to ratify what is not in the best interests of all Canadians.

Does this bill deserve to be passed into law? I believe that there may be flaws in Bill C-9 and in the Nisga'a Final Agreement which must be remedied. However, the flaws are not only in the agreement but also in the process.

Chief Joe Gosnell said that it is not a perfect agreement. No one is seeking perfection, honourable senators, but we must examine the process.

• (1550)

We all know that the federal government, at least, established a policy to deal with the land claims and treaty agreements. However, not one of us can state why this treaty and land claim deal was negotiated in the way it was outside of the B.C. Treaty Commission process. Perhaps that question has been answered.

I wanted to discuss amendments at the committee, but senators were told by the chairman that amendments would not be accepted and that they should be proposed in the Senate at third reading.

Instead, it was proposed that advice be put to the government pertaining to the future treaties where overlap treaty rights were in conflict and that they would be resolved through mediation and arbitration. The observation questioned by Senators Andreychuk and Lynch-Staunton and reported to this chamber at report stage is an admission — and I agree with Senator Lynch-Staunton, Senator Andreychuk and others who have questioned Senator Austin on this point — that of what I speak today is correct and should be dealt with before ratification and Royal Assent. That observation, inasmuch as others may want to tie it into this and that, is an admission that the B.C. Treaty Commission produced a document stating that no treaties would be signed or entered into at one stage and then later changed its position, clearly stating that all overlaps should be resolved prior to entering into any agreements or treaties.

Honourable senators, I will provide this chamber with a quote that was uttered by an honourable gentleman in relation to another agreement before the House of Commons. On May 25, 1993, Minister Robert Nault is reported in Hansard at page 19537 as stating:

> What members of this side of the house have tried to relate to their constituents and all Canadians is that we as a House of Commons, as parliamentarians who represent the people, should not be so quick to ram this agreement through the House.

Why Mr. Nault has lost his passion to protect the people now, when he had asked for this in 1993, is hard to understand.

It is important that Canada's First Nations have an unencumbered land base. The Nisga'a Final Agreement pits native against native. Supporters of this agreement tried to dismiss this as nothing. Surely, honourable senators will understand that a people whose livelihoods and existence depend upon the ability to harvest natural resources needs a land base. However, it is not just any land base. It must be a land base with which they are familiar, where they have lived for hundreds of years; a land base they can, without any dispute, call their own. That is why it is so very wrong for the Governments of Canada and British Columbia to have negotiated a settlement with the Nisga'a that includes lands claimed by the Gitanyow and Gitxsan First Nations people.

The government's answer, when we raised the inequities of the situation with the minister in committee, was that the ultimate settlement of the disputed land ownership claims is provided for in the Nisga'a agreement in sections 33, 34 and 35, as referred to by Senator Austin. If it is found that the lands included as Nisga'a lands are found to be traditional lands of the Gitxsan and Gitanyow people, then the Nisga'a are to be equitably compensated for losing land to which they never actually had governing rights.

To clarify that, I fully understand, as the counsel for the Nisga'a have explained to me and to others on the committee, that if they have no rights to the land, they will not be compensated. If they have rights to the land and other people also have rights to the land, I believe the Nisga'a can be compensated. That is a direct version of the compensation in sections 33, 34 and 35.

What about the Gitxsan and Gitanyow? They get back what rightly belonged to them, but are they compensated for the trouble and expense they went through to reclaim their lands? The simple answer is no. How are they to claim title to these lands? They have to go through the courts. How else would they do it, unless there is another solution about which we are not aware?

The method by which the Government of Canada has dealt with the overlapping land issue has been the subject of judicial commentary already. In 1998, the Gitanyow First Nation began a lawsuit against the federal and British Columbia governments as well as the Nisga'a, requesting a court declaration that governments involved owed the Gitanyow people the assurance that bargaining would occur in good faith. The Gitanyow alleged that because the governments entered an agreement in principle with the Nisga'a — now the Nisga'a Final Agreement that is

before us today — the governments had fettered their discretion to bargain in good faith with the Gitanyow. The governments abandoned their negotiations with the Gitanyow and Gitxsan that had been going on at the same time as the Nisga'a negotiations. As we learned from the Minister of Indian Affairs and Northern Development, he and the government chose sides in the land dispute and went on to enter into an agreement with the Nisga'a.

The point being made in the lawsuit is that if there is a duty to negotiate in good faith with the Gitxsan and the Gitanyow, the government could not choose sides in the land ownership dispute. The Gitanyow allege that by this Nisga'a agreement their aboriginal title to land in the Nass Valley has been violated.

When the lawsuit began, the Governments of Canada and British Columbia brought a preliminary motion to strike out the Gitanyow statement of claim as disclosing no cause of action. The court held that the statement of claim was valid as it related to the issue of the two governments making it impossible to bargain in good faith because they had already reached agreement with the Nisga'a. The judge held that, arguably, the duty owed by the governments is to "conduct treaty negotiations in good faith and in a manner which will take into account all aboriginal nations which have a claim in a specific area."

This, I submit, was not done in the case of the Nisga'a, Gitanyow and Gitxsan. The judge in this case, the *Luuxhon* case, and the famous *Delgamuukw* case made it clear that the courts would prefer that all outstanding claims to land ownership were to be settled among the parties without resorting to litigation. When this case eventually went to trial, Mr. Justice Williamson of the B.C. Supreme Court had to determine whether there was a duty of the governments to negotiate in good faith a treaty with the Gitanyow.

The position of the Government of Canada as explained in Mr. Justice Williamson's decision is hard to believe. He wrote:

> While there is a moral obligation —

— so Canada argued —

> — there is no legal obligation to negotiate in good faith.

This is the position of the Government of Canada in relation to the land claims negotiation with the aboriginal neighbours of the Nisga'a. When the government chooses sides, it shows no mercy. Fortunately, Mr. Justice Williamson did not buy the government's argument, stating at paragraph 53 of his judgment:

> I conclude that the duty to negotiate in good faith, founded upon the fiduciary relationship between aboriginal people and the Crown, applies equally to the Crown in Right of Canada and the Crown in Right of British Columbia.

He went on to define the duty at paragraph 74, stating:

> In general terms, that duty must include at least the absence of any appearance of "sharp dealings", disclosure of relevant factors, and negotiation "without oblique motive".

Honourable senators should know that the Crown is appealing this decision, unfortunately.

When one aboriginal nation must use the courts to define the duty to negotiate owed by the federal government in relation to land claims, we are in a sorry state. That is why I believe that all outstanding land ownership issues must be settled before a settlement offer is concluded.

Senator Austin: Is the honourable senator referring to the whole province of British Columbia?

Senator St. Germain: Certainly, all outstanding land ownership issues as far as overlaps must be settled.

Senator Austin: Just to be clear, is he referring to land ownership issues affecting the Nisga'a or the whole of British Columbia?

Senator St. Germain: It is my belief that all outstanding land ownership issues must be settled before a settlement offer is concluded under the B.C. Treaty Commission. The Nisga'a are not motivated to open up the issue. The federal and provincial governments believe they do not have to bargain in good faith. The only avenue left for the Gitxsan and Gitanyow is the courts.

Why force them to go to court when the remedy is so simple? We could wait and have them settle this amongst themselves. Just wait on Bill C-9. That will make the parties focus quickly.

• (1600)

We cannot continue to deal with Canada's aboriginal people in this way. We must ensure fairness. The government will not follow a doctrine of fairness; therefore, it is left to us in the Senate to impose one. If we are prudent, we should obtain an advance ruling before we make a move, get a solution on the overlaps, then decide on the legislation. There may be a delay. However, our mandate compels due diligence.

Honourable senators, that is our duty to this chamber, to Parliament, to the people of Canada, and certainly to the people our decisions will most deeply affect — the people of British Columbia and the people of the Nass River Valley. If we do not proceed with prudence, then the settlement of native claims will be set back for at least as long as it took this issue to get to this point. I do not believe that is the solution. I predict few settlements being reached while the Nisga'a agreement is tied up in the courts.

This bill, the agreement, and the treaty do not achieve certainty, finality, clarity or accountability in their entirety. This is not an agreement that we can point to as a guide or the template to achieve lasting good faith negotiations of which all Canadians can be proud. The process in this agreement must be improved. The legislation must allow for future improvements when important circumstances warrant.

Honourable senators, let us do the right thing. Let us facilitate the parties moving to the negotiating table. The parties have the ability and the focus to determine the equitable solution. It is then and only then that we can be satisfied with honouring treaty rights in the legislation.

This, honourable senators, is such an important issue and will have such a negative impact on all groups where overlaps exist. Both the Gitanyow and the Gitxsan have agreed on an arbitrated settlement if given the chance. Let me repeat that: The Gitanyow and the Gitxsan have both agreed on an arbitrated settlement if given the chance. This may not settle the constitutional aspects or other aspects, but my main concern personally is the overlap. It definitely goes a long way to negotiating aboriginal rights, I believe, if we go that route. Remember, it is one of our chief justices who said that we are all here to stay.

MOTION IN AMENDMENT

Hon. Gerry St. Germain: Honourable senators, in the spirit of prudence and satisfaction, so that we can have certainty and finality, and in order to give the government the opportunity to consider requesting a reference from the Supreme Court of Canada on the constitutionality of the jurisdictional issues, including paramountcy or whatever is set out in the Nisga'a Final Agreement, but mainly because of the overlap, I move, seconded by Senator Andreychuk:

> That Bill C-9, an act to give effect to the Nisga'a Final Agreement, be not now read a third time, but that it be read a third time this day six months hence.

Some Hon. Senators: Hear, hear!

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

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker: Those in favour of the motion will please say "yea".

Hon. Jerahmiel S. Grafstein: Honourable senators, I thought we might have an opportunity to explore this interesting turn of events for a moment or two, if we might.

I listened with care to the Honourable Senator St. Germain's exposition. I find it a little complex and a little confusing, in the sense that on the one hand he seems to attack the governance pillar and on the other hand leaves the land claims pillar alone. The honourable senator then attacks the land claims pillar by saying that the overlap makes it impossible to deal with the land claims issue. It strikes me that that puts us in a more intense state of stasis than the honourable senator suggested the government was doing.

I want to deal with the honourable senator's solution to all this, which is to now say to all of us here to abrogate our own responsibilities and not vote on this matter until the courts — notwithstanding the fact that most of us here believe that Parliament is supreme — clean up our messy handiwork. Is that the honourable senator's position?

Senator St. Germain: Definitely not. I thank Honourable Senator Grafstein for his question. If anything, turning to the courts should be the last course of action. What I have said is that the Gitxsan and the Gitanyow have both said that they would agree to binding arbitration if they were allowed to present their case, their history, regarding their land claims. That is the route that I recommend. It is for that reason that I moved that there be a six-month hold on the bill, so that these people can go to arbitration on the overlap issues, on the lands that are overlapped by the Nisga'a agreement on the Gitanyow and Gitxsan.

Honourable senators, I may have misstated something in my speech; however, there is no way that I meant to suggest litigation. One of the most debilitating and sad parts of this whole process is that we are forcing these people into litigation and into the courts if we allow this to proceed immediately. It is for that reason that I suggest strongly that the only course of action at this stage is to an arbitrator, which both sides that are afflicted have said they would accept.

Senator Grafstein: Honourable senators, my confusion increases, but that may not be the fault of the honourable senator opposite, it may be my limited ability to understand what he is saying.

As I understood the evidence, I did not hear either the Gitxsan or the Gitanyow say that they were prepared to go to binding arbitration for these overlapping claims. As a matter of fact, what I heard is that they did not object to this treaty or to this piece of legislation. That surprised me because the senator knows my concerns about this bill. I remain confused by the position of the honourable senator.

Senator St. Germain: I am more confused by the question, honourable senators. The fact remains that I respect the position of Senator Grafstein, and I think the honourable senator put excellent points forward during the deliberations. This is not a question of opposition going back and forth; it is a question of clarification. As I said, if the honourable senator misunderstood what I said, there is no way in the world that I would ever suggest litigation. I have never been in litigation in my own business life, and it would be the last thing that I would ever suggest to anyone else.

I say to the honourable senator that I believe the Gitxsan were asked a question in the committee in regard to arbitration. Elmer Derrick, who was representing the Gitxsan, clearly stated that he was prepared to accept the decision of an arbitrator. Whether or not the honourable senator could be correct on this, I spoke to the representatives of the Gitanyow and asked them emphatically the question: Would you accept arbitration? They said they would. However, honourable senators, whether, in fact, that was actually in committee or not, I am not certain.

Hon. Jack Austin: I believe that Senator St. Germain will recall that Minister Nault made it absolutely clear that he would not contemplate a recommendation to the Governor in Council with respect to a reference to the Supreme Court of Canada. I believe that the honourable senator, having participated actively in the evidence given by the Nisga'a Tribal Council, will recall that they want to stand with the agreement as it is and that they have no intention of arbitrating the claims. I have the same recollection as Senator Grafstein. I did not hear the Gitanyow or the Gitxsan make an unconditional offer to arbitrate, not that that would have affected the points I have just made. Senator St. Germain asked the question: "Would you be prepared to arbitrate?" They said: "Oh yes, we would be prepared to arbitrate." However, Senator St. Germain has not chosen an arbitrator. There is no process of arbitration and no question framed. What he wants to do is to stall and delay this particular agreement.

• (1610)

What will Senator St. Germain do with the decision of Mr. Justice Williamson of the Supreme Court of British Columbia to the effect that he will not deal with the case commenced by the B.C. Liberal Party to test the constitutionality of the bill until the bill is passed? In other words, as far as the judge is concerned, the proposed legislation raises moot questions. He wants an actual piece of legislation before him.

What the honourable senator is proposing is an amendment which is designed, effectively, to wreck the bill, to destroy the process of treaty negotiations in the province of British Columbia, to arm those who have no intention of ever seeing section 35 aboriginal rights in the area of self-government ever established and who do not want section 35 constitutional protection but rather delegated power, power that can be pulled up and down or pulled away at any time. It is entirely contrary to the spirit of the legislation and the public policy requirements in aboriginal affairs with the Province of British Columbia.

Senator St. Germain: Honourable senators, the arbitration act of the Province of British Columbia would provide all the guidance.

During discussions in committee, the question was asked about who would be the arbitrator. The witnesses assumed that it would be another white person. I said: "No, it does not have to be a white person. We could name aboriginal persons to chair the board of arbitration and to serve as members on the board." I would say the honourable senator's statements in this regard are a red herring.

Certainty is required. I return to what I said before, that the Sechelt, Sahtu and the other agreements are in great jeopardy. If they do have the certainty required, I do not see them as being any different from the Nisga'a or any other native bands or groups in our country. Aboriginals are aboriginals. If one has a constitutionalized type of authority, they should all have it. If some have delegated authority, why is there the difference? That is the question we continually ask. It does not seem that we will ever receive the answer.

As far as the B.C. Liberals are concerned, the honourable senator has as many friends in that gang as I do, and perhaps more. As far as I am concerned, I am asking for this delay because the government may send a reference to the Supreme Court, and perhaps they will not. The fact is, I am asking for the time to force the natives back to the table to negotiate the overlap situation.

As I said earlier, honourable senators, let us delve into this subject. We are discussing a huge block of land. In the negotiations, the Nisga'a were given rights to Gitanyow territory, to five fee simple pieces of land to the tune of a couple of hundred hectares as well as one island on Kwinageese Lake, which was part of the Gitxsan territory and the *Delgamuukw* designated area within the Gitxsan area. The honourable senator says that the bargaining was done in good faith and that we could have changed it when fee simple land that was in dispute was given out. This is the subject I would like to see brought to the fore.

I have been consistent on the issue of overlap. The worst thing we could do is pit natives against natives and tell them the only way they will be able to defend their property is on the ground. Honourable senators know what that means.

I have said to the honourable senator before the committee that we are possibly creating another Palestinian-Israeli situation in regard to land battles. That analogy may be extreme, but there is a possibility. We have had problems up there before.

Senator Austin: Honourable senators, I do not doubt the honourable senator's sincerity. He has actively pursued the interests of the Gitxsan and Gitanyow throughout the evidence. He has focused on their concerns.

The Gitxsan and the Gitanyow have had years to reach a conclusion with the Nisga'a. Negotiating with the Gitanyow continues to be a possibility, as both they and the minister acknowledged in the evidence.

The Nisga'a have no intention of submitting these overlapping claims to arbitration. They have an intention to continue the negotiations once the bill is passed.

The honourable senator's amendment is completely without useful effect. I would never advise the Nisga'a to accept the amendment of the honourable senator. This bargain was struck in good faith between the Government of British Columbia, the Government of Canada and the Nisga'a. If it is to be changed through negotiations, it must be with the willing participation of the Nisga'a; otherwise, it will be changed through the litigation process, which the honourable senator deplores, and I would not be happy to see it take place.

I believe that this amendment would destroy the very objective the honourable senator is seeking. The Nisga'a will not be forced into arbitration and the Government of Canada and the Government of British Columbia will not force them into arbitration. The Nisga'a will, of their own free will and good judgment, have further talks with the Gitxsan and the Gitanyow if there is no undue pressure.

Again, I believe the honourable senator's proposed amendment is harmful to aboriginal relations in British Columbia.

Some Hon. Senators: Hear, hear!

Senator St. Germain: I find that very surprising.

The Hon. the Speaker: Honourable Senator St. Germain, I wish to point out that there is one minute left in your 45-minute speaking period.

Senator St. Germain: Honourable senators, I know the Nisga'a will not relinquish what they have, once they have this final agreement. In any dispute like this, when somebody is put into a preferential position, whether by government or someone else, there is no incentive to negotiate. It does not make sense. If they would not negotiate before, why in God's name would they negotiate later? That is what we are saying.

The honourable senator says the Nisga'a will not go to arbitration. I do not blame them. They might lose in arbitration because of the oral history and the totem poles.

If the Gitanyow are prepared to subject themselves to the decision of an arbitrator, I cannot think of anything more fair. That would remove the possibility of litigation. Senator Grafstein cannot understand me and I cannot understand the Honourable Senator Austin on this position. Perhaps we should all sit down around the table and try to figure this out. This just does not make sense.

The Hon. the Speaker: Honourable Senator St. Germain, your speaking time has expired. Are you seeking leave to continue?

Senator St. Germain: Honourable senators, I seek leave to continue.

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

Hon. Dan Hays (Deputy Leader of the Government): I propose that we extend the time for another 15 minutes.

The Hon. the Speaker: Is it agreed, honourable senators, that we extend the time for a further 15 minutes?

Hon. Senators: Agreed.

Senator St. Germain: I thank honourable senators for their indulgence.

Senator Austin: Could I just say that the Nisga'a will not arbitrate, nor should they. The amendment is a total nullity. It will have no beneficial effect. I propose that the Honourable Senator St. Germain withdraw it.

Senator St. Germain: Honourable senators, I will not withdraw my amendment.

When we asked the minister whether he would fund these people to defend their land claim, he did not respond. Therefore, I ask the honourable senator whether the minister will fund them. He says he does not represent the government but he is speaking on their behalf. The question is: The honourable senator is saying that the parties should go to litigation. How can they go to litigation if they have no money?

• (1620)

Senator Austin: I am sponsoring the bill, but I do not speak for the government. I have no idea what they will do in terms of funding litigation for any aboriginal community.

Senator Hays: Honourable senators, if we are at the end of questions and comments, it is obvious that other senators wish to speak to this amendment. My understanding is that the Honourable Senator Austin would move adjournment of the debate. Senator Beaudoin may also wish to speak.

Hon. Gérald-A. Beaudoin: Honourable senators, I wanted to move the adjournment of the debate.

Senator Hays: Why do we not follow the practice of alternating speakers? If there is no first speaker here in response, then we would agree to you going next, Senator Beaudoin.

On motion of Senator Austin, debate adjourned.

BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Boudreau, P.C., seconded by the Honourable Senator Hays, for the second reading of Bill C-20, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, rarely during the past 133-year history of the Senate of Canada have we been called upon to examine a more dangerous legislative proposal than Bill C-20. The danger of this bill is twofold. First, it speaks to the matter of the secession of a province from Canada. Second, honourable senators are being called upon to give the consent of this house to a historical reduction of the voice of this upper chamber of the bicameral Parliament of Canada.

Honourable senators, on the first matter, and in the words of the second preambular paragraph of the bill before us:

> Whereas any proposal relating to the break-up of a democratic state is a matter of the utmost gravity and is of fundamental importance to all of its citizens;

Honourable senators, given that these words speak to the breakup of Canada, it is surely axiomatic, if anything is axiomatic, that the Senate of Canada is being called upon to analyze and give an in-depth reflection to a legislative proposal that touches on a matter of the utmost gravity.

Honourable senators, the record of our study and sober second thought will be a record of the value of the Senate in our bicameral system of Parliament. Yes, Hansard will demonstrate the thoughtful, acute and in-depth analysis which this second House of Parliament will have given to a proposal which addresses the survival of Canada as a unified country.

On the second matter, our debate will be a watershed or a turning point in the history of the Senate of Canada because this legislative proposal attempts to redefine and restrict the role of the Senate here at the beginning of the 21st century.

Argument has already been advanced concerning a theory of responsible government which, if left unchallenged, would fundamentally alter the manner in which the bicameral Parliament of Canada itself holds the government or the executive power to account. I am confident that all honourable senators shall, in this precedent-setting debate, rise to the challenge and meet this test of history.

Let me turn to the first issue, honourable senators, which is clarity. Clarity, clearly, is popular. It would appear that Bill C-20 itself is very popular across Canada. Honourable senators, I ask: Is it proper? At first glance, and if this bill is presented as a so-called "clarity act", it is indeed very appealing. Everyone is in favour of clarity. To be opposed to clarity on whatever matter would be distinctly anti-intellectual and quite unreasonable. However, my analysis of this bill raises many concerns and demonstrates a lack of clarity. My study also indicates that there is much to be concerned about as Parliament considers whether or not to establish a statutory process and a legal right to secession, for if we do this it will be for the first time in Canada's 133-year history.

Honourable senators, I ask: Does Bill C-20 bring clarity to the matter? The government has successfully led many Canadians to believe that Bill C-20 will bring clarity to the process of a province seeking to secede from Canada. Unfortunately, what this bill actually does is to give a false sense of security, to give a facade that everything will be okay, everything will be just fine. The bill is a masterpiece of political ambiguity, and it is very difficult to determine if the Government of Canada knows exactly what its own real goal is with this bill.

Furthermore, honourable senators, I am reminded by W.P. Kinsella's passage in *Shoeless Joe* that, "If you build it, they will come and use it." We also recall the dynamic of the self-fulfilling prophesy mechanism which is documented by social scientists. Therefore, it is of grave concern to me that Parliament would, for the first time in our history, erect the stage upon which, if used, would be played out the breakup of Canada.

Few federations acknowledge the right of a member state or province to leave, let alone set up the process by which this can be done. By setting out the conditions for secession, no matter how stringent, this government might find short-term appeal for this in some parts of Canada. However, it will at the same time, with this bill, fundamentally damage the real structures holding our country together.

In his article entitled, "Clarity and Confusion", which appears in the February 2000 edition of *Diplomatic International Canada*, David Jones, a former political minister counsellor at the United States Embassy in Canada, has written:

> Ultimately, there are only two ways to maintain national unity: force or persuasion.

All in this chamber abjure maintaining national unity by force. Rather, Canadians have always and must continue to rely on persuasion.

• (1630)

My first approach to the bill was to recognize that its proponents claim that it rests on the advisory opinion of the Supreme Court of Canada. The question that, therefore, presents itself is whether there are fault lines in that advisory opinion. Indeed, what is the status of an advisory opinion of the Supreme Court as compared with a judgment of the Supreme Court? Honourable senators, there are several major fault lines in the advisory opinion in the Quebec reference case. Therefore, the bill, to the extent that it is resting on this foundation, is standing on faulty ground. As compared with a judgment of the highest court in Canada, an advisory opinion of the court is simply that — advisory. Indeed, the Honourable Antonio Lamer publicly expressed his views on this fact. One need not treat this advice with the same degree of acceptance as a decision of the Supreme Court. We should recall, as in the recent *Marshall* case, that the Supreme Court, after making a decision, can clarify or make changes to an earlier decision.

In looking at the advisory opinion of the court, consider what is called "reading in." The court was placed in the unenviable position of having to reply to the reference questions submitted to it by the Government of Canada. It is, however, important that we recognize that the court has attempted in this advisory opinion to use that technique of "reading in" to legislation that which is not contained therein. Many commentators find this type of judicial activism to be dangerous and to be undermining of the functions of the legislative branch in our system of governance.

Honourable senators, if there is a concern with this approach of the court to "read in" provisions not contained in ordinary statutory law, then, *mutatis mutandis*, there must be a grave concern if the court attempts to "read in" provisions of constitutional law that are not expressly provided in the Constitution. In other words, the attempt by the court to "read in" to the Constitution of Canada provisions that are not part of the Constitution could be a dangerous attempt at constitutional amendment that bypasses the proper constitutional amendment process.

Our constitutional amendment process is designed to ensure that changes to our fundamental law will occur only after careful federal-provincial steps are followed, steps that involve the various legislatures and Parliament. Constitutional amendments ought not to be allowed to be bypassed by a judicial "reading-in" by the court.

In this opinion, the court attempts to "read in" to the Constitution that a secessionist movement in Canada be accorded the right to obligate the rest of Canada to negotiate the breakup of Canada. Honourable senators, neither the Constitution Act of 1867, the Constitution Act, 1982, nor the written and unwritten rules and principles of the Constitution provide for such a provision. The advice of the court would require "reading in" such a provision.

A comparative study of this point in constitutions such as those of the United States of America or the Republic of France will demonstrate that not only do these constitutions not provide for secession, their respective Supreme Courts would not be allowed to read in any such provision. We might recall from a case in the United States in 1868, *Texas v. White*, that famous line of the United States Supreme Court, "The union is indestructible."

That brings me to the principle of the divisibility of Canada. One major fault line in the advisory opinion of the court, and consequently a faulty foundation principle of Bill C-20, is the assumption that Canada is divisible. The analysis of the political theory developed by the court on federalism, democracy, constitutionalism and the rule of law led it to develop an opinion which, by implication, accepts the principle that Canada is divisible. Fortunately, the court's view is only an opinion.

Consider, honourable senators, that the Supreme Court of the United States of America and the Constitutional Court of the United States of Mexico, the other two great federations with which Canada shares this North American continent, federations in which also the rule of law, democracy and constitutionalism are shared values — these federations do not have the high court nor their respective governments or legislatures accepting the principle that their federations are divisible; nor should Canada.

Where in the advisory opinion of the court is there a call for statutory action? The advisory opinion, to my reading, neither envisages nor suggests that there should be legislation adopted by Parliament to give statutory expression to this opinion. Indeed, the former chief justice expressed surprise that such a step was undertaken by the government.

Furthermore, honourable senators, where is the constitutional authority for this proposed legislation to be introduced here in Parliament? The advisory opinion of the court does not indicate any constitutional authority on which to base the legislation that has been introduced by the government. As my colleague Senator Nolin asked of the sponsor of the bill here in the Senate:

> Parliament has been asked to decide on the possible secession of this country. On what constitutional authority is the government relying to introduce such legislation?

Honourable senators, I ask where in the Constitution or where in the Parliament of Canada Act or where in the customs and usages of Parliament does the executive or legislative power have the right to bring forward legislative proposals that will facilitate and make legal the breakup of Canada?

The Hon. the Speaker *pro tempore***:** Honourable senators, I am sorry to interrupt the honourable senator but his 15 minutes are up.

Is leave granted for the honourable senator to continue?

Hon. Senators: Agreed.

Senator Kinsella: Honourable senators, the mandate of Parliament is to pass laws that the majority of both houses judge to be in the best interests of Canada. This bill is obviously not in the best interests of Canada because it speaks to the steps to destroy Canada. Even the peace, order and good government provisions of section 91 of the Constitution Act, 1867, do not justify the breakup of Canada. Therefore, this bill, in my view, is *ultra vires* Parliament and should not proceed through this house.

Mention has already been made that it is difficult to see the advice of the court on the matter of the amending formula. The advisory opinion indicates the need for a constitutional amendment at the end of their envisaged process and one would have expected that the court and the proponent of this bill would have set out the circumstances detailing which of the amending formulae would apply. The court does not indicate which amending formula would apply; nor was the sponsor of the bill in the Senate able to tell us when I asked him.

• (1640)

Honourable senators, why introduce this bill? Having made the decision to submit the Quebec reference to the Supreme Court for an opinion, and having received that opinion which purports to give a new constitutional right to negotiations to the secessionist movement, what motivated the government to now give the secessionist movement the statutory right to secession? The Leader of the Government in the Senate, who is also the sponsor of this bill, stated in his remarks at second reading:

> The constant threat of a third referendum on Quebec secession in less than a generation leaves us no responsible choice but to act now, and before the crisis atmosphere of a referendum campaign. The Prime Minister of Canada asked the Premier of Quebec to agree to a commitment not to hold a referendum in the Premier's current mandate. The Premier refused, forcing the Government of Canada to proceed with this bill.

Honourable senators, the issue raised there is what might be called the "shelf-life" of a referendum result; that is, for how long is the result of a referendum good? Bill C-20 is completely silent on this matter, notwithstanding the sponsor of the bill in the Senate telling us that this was one of the motivations for the bill.

I turn the attention of honourable senators to why I believe that Bill C-20 facilitates the secessionist movement. The proponent of this bill would lead us to believe that, by adopting it, things will be better for national unity in Canada. I fear, honourable senators, that the opposite is the case. The Supreme Court itself, in its advisory opinion, upon which the government tries to rely in this bill, states in stark and unambiguous terms that, notwithstanding the envisaged process, unconstitutional secession remains possible. Unfortunately, honourable senators, a unilateral declaration of independence is now made more likely should the provisions of this bill become law.

Here is what the court states in the last paragraph of its advisory opinion. In paragraph 155 the court said:

> Although there is no right, under the Constitution or in international law, to unilateral secession, that is secession without negotiation on the basis just discussed, this does not rule out the possibility of an unconstitutional declaration of secession leading to a *de facto* secession. The ultimate success of such a secession would be dependent on recognition by the international community.

This is what the court told us after its long discussion on the process it envisaged.

Honourable senators, I have on the wall of my office a framed copy of the American Declaration of Independence. There are two stickers on it. One says "UDI" and the other says "Illegal and Unconstitutional".

Bill C-20 does not rule out the possibility of an unconstitutional declaration of secession, but the steps outlined in this bill make such an eventuality more probable. Why? How does Bill C-20 facilitate the secessionist movement?

The answer flows, honourable senators, from the inherent logic of the three steps for legal secession provided for by the bill. The mechanism of the bill for dealing with the adjudication of the clarity of the question creates an advantage for the secessionist movement by co-opting the federal government and Parliament into being a player in the secessionist process. If the House of Commons gives preapproval to a referendum question, this by itself is a major gain for the secessionist province. It is equally a major loss for Canada because, having granted preapproval, the rest of Canada will not be able to challenge the question. It is also important to note that what might be considered clear in Ottawa is not necessarily clear in other parts of Canada.

Imagine, honourable senators, the confusion if some of the provinces, for their own particular reasons, disagreed with the House of Commons on the clarity question. Then consider the next step, honourable senators. If the federal government refuses to work with the secessionist province in determining the clear question, the international community will be told that Ottawa is acting in bad faith, thereby making it much easier for the international recognition to occur as indicated by paragraph 155 of the court's opinion. In other words, the bill gets the international community off the hook. They will be told by the secessionists that they are following the law of Canada and therefore, in terms of international diplomacy, it will make it easy for the international community to grant the recognition.

The provisions of the bill dealing with the assessment of a clear majority of a referendum result once again plays right into the hands of the secessionists. It allows the secessionist movement the opportunity to seek international recognition because of the majority, whatever that majority number may be.

Consider, honourable senators, the membership of the Francophonie. Without naming countries, how many of them would require a majority of 50 per cent plus one for the recognition of a secessionist province? Consider the general who is the head of state of a given country, a leader who has the support of only 12 per cent of the vote but has the army on his side. How will such a leader view a 50-per-cent-plus-one result? The international community, honourable senators, will have little difficulty in giving recognition under these circumstances. We ought not fool ourselves.

The bill speaks to the process of negotiating secession with a province. Up to this time, all Canadian prime ministers have consistently refused to agree to any such negotiation. Furthermore, given the plethora of examples of failed Canadian political negotiations, the chances of successful negotiations are remote. Witness all the failed negotiations, in many of which some honourable senators have participated, on matters that we across Canada agree on. This part of the process, as set out in the bill, once again gives the separatist movement another golden opportunity to argue bad faith in negotiations and then call for recognition by the international community.

The sixth preambular paragraph of the bill asserts:

> ...the secession of a province, to be lawful, would require an amendment to the Constitution of Canada.

Such a constitutional amendment must involve the provinces. However, again, the record of constitutional discussions among the provinces and the federal government is more a history of disagreement than a story of agreement. So, again, the seceding province will have the opportunity to say to the international community: "See, we have attempted to follow the federal secession law but the required constitutional amendment is not forthcoming. Therefore, give us recognition." Thus, again, the scenario foreseen by the Supreme Court in its opinion at paragraph 155 becomes more plausible.

Honourable senators, I will turn for a moment to the matter of who shall determine the clarity of the question. Who are the "political actors" who shall be involved in the determination of the clarity of the question?

• (1650)

The seventh preambular paragraph, and also clause 1 of the bill, as we all know, limits this to members of the House of Commons. It seems to me that it is a classical non sequitur of logic for the bill to state, in the second preambular paragraph, that the matter of secession is of the utmost gravity and then to exclude one of the two Houses of Parliament from a determinative role. Honourable senators will recall that the Supreme Court in its opinion at paragraph 32 pointed out that there are four fundamental and organizing principles of the Constitution, including respect for minorities.

The Senate of Canada has been an integral part of our bicameral Westminster model of parliamentary democracy since 1867. Indeed, the very establishment of the Senate was one of the keys to the bringing about of Confederation. Throughout our 133-year history, it has been the Senate that has defended the rights of regions and ensured respect for minorities. It is, therefore, critical that the Senate of Canada play a determining role in a matter as important to minorities in regions of Canada as the secession of a part of Canada.

The mover of the bill in the Senate has attempted to argue that only the executive power has any mandate to conduct constitutional negotiations and that it was not necessary to limit this mandate as proposed by the bill. We must remind the honourable senator that our system of governance is not one wherein Parliament has no supervisory role over the political aspects of constitutional negotiations. Rather, our parliamentary system is one in which the Senate and the House of Commons provide significant supervision of the activities of the executive. Even had the government not introduced this measure, which I would have preferred it did not, it would not mean that the executive power would have been free of supervision by Parliament.

Indeed, one of the major functions of this house since Confederation and today is precisely to supervise the political process and the exercise of power, not only by the executive but also its exercise by the lower house. In the matter before us, the court has stated that it has no supervisory role. If both Houses of Parliament did not have this role, the government, which controls the House of Commons, would be totally unaccountable, a situation, no doubt, longed for by certain officials in the Langevin Building, but not one that is in the best interests of Canada.

The fact that our Standing Senate Committee on National Finance is currently examining the Estimates, and that the other day we voted on supply, or that the Leader of the Government in the Senate daily replies to questions and gives an account of government activities, would surely provide prima facie evidence and underscore the supervisory role of this chamber. Indeed, the role of the Government Leader in the Senate is not only one in which he or she represents the government in the Senate but also represents the Senate at the cabinet table. I shall return to this important issue shortly, honourable senators.

The drafters and proponents of the bill tell us that they have remained faithful to the advisory opinion of the court in drafting this legislative proposal. However, if you examine, honourable senators, who the court stated ought to be involved in determining the clarity of a referendum question and the clarity of the result, the court stated that it would be the political actors who make this determination.

At paragraphs 100 and 153 of the court's opinion, honourable senators can read:

> ...it will be for the political actors to determine what constitutes 'a clear majority on a clear question' in the circumstances under which a future referendum vote may be taken.

Minister Dion's published notes, which I took off the Web on January 14, 2000, explicate the bill with references to this matter. His notes state clearly that with respect to the seventh preambular paragraph and clause 1, concerning that only members of the House of Commons have a determining role in the clarity of the question and the result, the drafting for those sections — and this is the minister's own notes — comes from paragraphs 100 and 153 of the court's opinion.

Honourable senators, I invite you to read those paragraphs and read the bill.

It gets worse. On page 2, in the second paragraph, the drafters write:

> Whereas, in light of the finding by the Supreme Court of Canada that it would be for elected representatives —

It is there in black and white. The drafters, I submit, have not remained faithful to the expressly written opinion of the court. The court said political actors. The court did not limit this determining judgment on the clarity of the question or the clarity of the result to elected representatives.

Honourable senators, the mover of the bill in the Senate in his second reading speech said:

> How would the process begin? Who would make the original evaluation about whether there was a clear majority on a clear question? Who, in the view of the court, are the political actors who would have the obligation to make such decisions? Though the court does not answer this question directly —

Indeed, the court does not list who the "political actors" are, for it is self-evident that the political actors at the provincial level are the members of the legislative assemblies and that at the federal level they are the members of the Parliament of Canada — senators and members of the House of Commons.

Senator Boudreau, when referring to paragraph 101 of the advisory opinion, then weakens his case by attempting to argue that the phrase "elected representatives" is used by the court. However, honourable senators, read paragraph 101. If you read it, you will see that the court is discussing in that paragraph the issue of negotiations and the phrase "elected representatives" is used and restricted to negotiations which, at the end of the day, the electors can ultimately assess.

It is evident, honourable senators, that Bill C-20 does not follow the opinion of the court. The drafters of this bill are in error. They are in error in their attempt to try to exclude the Senate from a determinative role in the matter of the clarity of the question and the clarity of the majority. Perhaps sadly, honourable senators, it is a more serious error when this attempt to exclude the Senate is undertaken overtly, under the guise of claiming that the Supreme Court said that only "elected representatives" should play this role when, in fact, the court said no such thing.

• (1700)

Honourable senators, let us now turn our attention to the historic collateral damage that this bill threatens; that is, the threat of damage to the Senate, perhaps unintentionally. Nevertheless, Bill C-20 will, in its present form, do historical damage to the position of the Senate in our bicameral Parliament. Unless it is dealt with by the majority of the current sitting senators in this place, we will be judged by history as being accomplices to a serious impairment of the position of the Senate in the process of providing the oversight to government executive action. Unless the majority in this chamber acts, it will be during our watch that the Senate of Canada ceased to be an important part of the checks and balances which kept Canada a parliamentary democracy.

I must once again note that second preambular paragraph of Bill C-20, which states:

> Whereas any proposal relating to the break-up of a democratic state is a matter of the utmost gravity and is of fundamental importance to all of its citizens;

It is simply inconceivable, honourable senators, that the Senate of Canada, one-half of our bicameral Parliament, would not have a determinative role in matters of the utmost gravity. If one is to accept this proposition, then one is diminishing the role of the Senate to deal with only the unimportant issues of the day.

Honourable senators, the consent of the Senate and the consent of the House of Commons constitutes the consent of Parliament. Where the consent of one house is sought, the consent of the other house must be secured before legislation can be given Royal Assent. An attempt to secure the consent of only one house on matters of "the utmost gravity" would be a very serious intrusion on the right of Parliament to have its consent protected.

In fact, if we follow the argument advanced by Senator Fraser last Thursday to its logical conclusion, we will have a two-tier legislative system in Parliament. At page 914 of last Thursday's *Debates of the Senate*, the honourable senator stated:

> We do not block the clearly expressed popular will, even in matters where, in law, we have the power to do so.

The rest of the honourable senator's argumentation is so interesting that I think I should quote it in full:

> Then there is the class of matters where we did not have that power — a class that is so fundamentally political that it is the exclusive prerogative of the House of Commons, the chamber of the people's elected representatives.
>
> Essentially, that class consists of the two most basic elements of democratic government: The decision about who shall form the government, and the power of the purse. I find myself, however, powerfully affected by the argument that the focus of Bill C-20, the government's approach to the possible secession of a province of Canada, is another such subject, something that is so fundamentally, inherently political, so directly and intimately bound up with the will of the people, that it, too, falls into that small but crucial class where it is the House of Commons and not Parliament as a whole that must take the decision and, of course, bear the responsibility for doing so.

Now, honourable senators, by that thesis, we have a crucial class of statutes, so crucial that one of the two Houses of Parliament can have no role. May I remind honourable senators that just in the last Parliament alone, on the Pearson bill and on the Electoral Boundaries Adjustment Act, two constitutionally flawed statutes, that the Senate did exercise its legislative power and defeat them. Are we now to ask to which class statutes belong when they arrive in the Senate, as well? We may have no power to initiate money bills; they are sent here to be dealt with. Are we now to inquire whether these fall into the untouchable class?

My colleague Senator Beaudoin, in his questions, developed that point very clearly. If we are to have a constitutional amendment to limit the power of the Senate of Canada, then let us have it, but surely the government should not be proceeding in this way by a simple statute. However, I will leave that argument to be developed further by Senator Beaudoin.

Political writer J.E. Hodgetts has written that the bicameral Parliament has a major responsibility to provide oversight and supervision of the government's actions. In quoting from Hodgetts:

> Parliament is the legislature's capacity to act as the great debating, if not educational forum for the nation. This capacity, joined with the historic right to have grievances settled by the Crown before approving money in support of the Crown's activities, vests in the legislature not only the formal responsibility for approving statutes but also a continuing critical overseeing of executive actions.

Honourable senators, let us focus for a moment on the judgment or assessment by the Senate, whether on legislation or on resolutions, the judgment of the Senate. The assessment of this house on legislation or government actions has resulted in qualitatively different judgments than those judgments that are rendered by the House of Commons. We, in this chamber, would do well to recall that the Senate was established to provide what George Étienne Cartier called "a power of resistance to oppose the democratic element."

Honourable senators, on the wall of the Senate Speaker's chambers is that famous quote from Cicero:

> Principum munus est resistere levitati multitudinis.

Translated, it means that it is our principle duty, honourable senators, to oppose the fickleness of the multitudes.

Honourable senators, it is Senator Boudreau's theory that because the House of Commons could adopt a motion of non-confidence in the government, this is the only leverage at play to ensure the principle of responsible government. I submit that is simply false. There are many elements at play under our system of governance and in which the principle of responsible government has evolved. Some scholars argue that with the shift of power to the centre and the control exercised by the executive over the legislature, there has been a significant lessening of governmental accountability to Parliament — certainly, little in the House of Commons. However, the power of the Senate to analyze and critique the government is an essential element in the series of checks and balances which keeps that awesome power of the government somewhat responsible, somewhat accountable. Indeed, the defeat of a major government measure in this place would speak directly to the legitimacy of that government's ability to continue.

The free trade agreement required a general election to intervene before the Liberal-dominated Senate agreed to adopt that measure. Had the GST not been adopted by the Senate, there surely would have been a question of confidence raised in the minds of Canadians. As honourable senators know better than I, governments are seldom defeated by Parliament. The fate of a government today is typically determined by a general election rather than a vote in Parliament.

• (1710)

The author Punnett wrote that, "the evolution of the Westminster system of government has left Parliament with the vital function of criticising and publicizing government activities." Thus, the modern role of Parliament is not to seek to overthrow the government but, rather, to hold the government accountable. That is what responsible government means in the world of the 21st century.

The argument of our colleague Senator Boudreau, that the Senate should not have a determinative role in Bill C-20 because it is not a house of confidence is not persuasive.

Let me make a comment, and respectfully so, on the role of the minister in the Senate. The principle of our system of governance is that the ministers of the Crown are responsible to Parliament. The acceptance of the responsibility of ministers to Parliament as well as to the Monarch forms a main aspect of cabinet development in the Westminster system.

The fact that ministers are drawn typically from both Houses of Parliament demonstrates the capacity of the legislature to influence the executive. Many honourable senators are asking the following questions: What representations, if any, did the minister in the Senate bring to the cabinet table when this idea of trying to exclude the Senate from a determinative role in Bill C-20 was first raised? Did the minister articulate the purpose and place of this chamber in our bicameral Parliament? Did he explain the historic role of the Senate and the principles of consent, second sober thought, and protection of minority rights upon which the Senate operates? Did he underscore the oversight function that the Senate has in the series of checks and balances that keep within control the exercise of executive power? Or, honourable senators, did the Leader of the Government in the Senate find himself in a conflict situation? Did the impossibility of serving the Senate and aspiring for a place in the House of Commons place him in a conflict role and cause confusion?

The confidentiality that surrounds cabinet deliberations will not let us know what happened. What we do know is that the process that has led to the drafting of Bill C-20 has failed the Senate of Canada.

Honourable senators, Senator Boudreau attempts to argue that, because the Senate has only a 180-day suspensive veto on matters of amendments to the constitution, therefore, it should not have a determinative role to play under Bill C-20. That argument, honourable senators, fails on several accounts. First, the fact that there is a six-month veto for the Senate in matters of constitutional amendment is no small power. Our colleague Senator Molgat, who chaired the Committee of the Whole examining the Meech Lake Accord, will recall the effectiveness of the six-month delay period. Indeed, it was during this period that the Meech Lake Accord began to unravel. When one adds this Senate delaying check for constitutional integrity to the additional checks provided by the requirement for support from resolutions adopted by provincial legislatures, numbers depending on which amending formula, then Senator Boudreau's case is weak indeed. Let us note that, with constitutional amendments, the provincial political actors have a real determining function, not merely a consultative role, as in the determining of the question of the majority in this bill.

Second, Senator Boudreau's argument also fails in its appreciation of the Senate's delaying power. At a time in Canadian history when the Prime Minister's Office dominates the House of Commons through a party majority that is controlled by its whip, the Senate of Canada remains the only real parliamentary limitation on the government's power. Furthermore, the Senate plays a critical role in explicating and analyzing government initiatives such that the people of Canada can be better informed of the issues before Parliament or the undertakings by the government.

Senator Boudreau asserts that it would be difficult "to fit the Senate in." Honourable senators, there are so many ways in which the Senate's judgment on the clarity of the question could be secured without delaying the time line envisaged by the bill. For example, there could be a fixed number of sittings in which each House of Parliament would make its determination, or we could consider a process by which both houses sit jointly in the determination of the clarity of the question. Honourable senators, with the talent in this chamber and with a minimal degree of creativity, other such models could and must be developed to maintain and secure the integrity of this house.

Let me conclude, honourable senators, by noting that the history of the Canadian adventure is a story of diverse peoples from diverse regions of the world living across a vast land in which regional and provincial differences have been accommodated by compromise and flexibility. This bill is a gift to the secessionist movement. This bill is a way out for the international community. This bill is a straitjacket for future prime ministers. Macdonald, Laurier, Pearson and Diefenbaker have, no doubt, turned over in their graves. Trudeau and Mulroney are surely saddened by this give-away to the secessionist movement.

Honourable senators, people of goodwill do not win battles either of weapons or of ideas by remaining perpetually on the defensive. To want no more than to stop secession thereby ensures that ultimately secession cannot be stopped. Far more important than any purported steps taken to lessen the threat or limit the challenge of secession are the positive aims, policies and visions which all the peoples of Canada wish to achieve themselves.

The appeal of the secessionist movement can only be challenged by providing all the peoples of Canada with something better to live by, something worth living for as Canadians. Our country cannot endure by negative measures. Rather, it will survive if it continues to be inspired by the enabling faith of our predecessors.

Canada now needs a new generation of political actors, men and women of goodwill, to draw more closely together in understanding, creativity and collaboration. Rather than presenting a bill that facilitates secession, rather than promoting legislation that, for the first time in the 133-year history of Canada, makes secession legal, rather than accepting the assumption that Canada is divisible, the government should be recognizing the right of the peoples of Quebec to self-determination and through positive, persuasive programs, based on the successful Canadian device of persuasion and compromise, fulfil the aspirations and dreams of all within an indivisible Canada.

• (1720)

The Supreme Court was asked for its opinion on what is essentially a socio-political question. The pith and substance of the Quebec reference case is situated within the historic claim of Quebec as a distinct society. What the government has given us in Bill C-20 is a statute that will make legal, for the first time in our history, a secessionist claim from any province and on any ground, even the simple ground of an economic objective.

In my opinion, honourable senators, the government, sadly, has lost its way, and the Canadian people, under the seductive guise of clarity, might well lose their country.

Some Hon. Senators: Hear, hear!

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, would the Honourable Senator Kinsella permit a question or two?

Senator Kinsella: Of course, as many as the honourable senator wishes.

Senator Boudreau: The Honourable Senator Kinsella draws some scenarios and reaches some conclusions with which I take some exception. I will not follow all of the trails he set out, but there were two fundamental principles upon which he built his case.

The first fundamental principle was that Canada is indivisible. If we accept that principle, then what is the point of having legislation that deals with whether the question is clear or not clear and whether the required majority is 50 per cent plus 1, or 80 per cent, or 90 per cent or whatever?

Senator Lynch-Staunton: Is the Leader of the Government asking himself that question?

Senator Boudreau: That is exactly the question.

Senator Kinsella is rejecting the bill on the principle that Canada is indivisible, and he cites the American constitution as an example.

Senator Kinsella: As well as the Mexican constitution.

Senator Boudreau: I am not sure the American constitution is an example that the Canadian people would be willing to follow. The Americans fought a civil war. In that civil war, more Americans were killed than in all of the other wars in their history put together. They fought that war because they believed that under no circumstances was their country divisible. I am not sure that is a principle that the people of Canada or, perhaps, honourable senators can accept.

On the honourable senator's point of rejecting the bill altogether, does he disagree with the leader of his party who favours a 50 per cent plus 1 test? Does he reject that test? As well, does he reject any formula, for example, that would see a two-thirds majority of all eligible voters casting a Yes vote on a clear question? Does he reject both of those options?

Senator Kinsella: I thank the honourable leader for his question. My position is that this bill ought not be proceeded with because it is *ultra vires* to the power of this house and, indeed, *ultra vires* to the power of the other place. That is my starting point. I do not think we have the authority to pass a law that is not in the best interests of Canada. Any law that has as its ultimate objective an orderly, legal breakup of Canada is not in the best interests of Canada.

Honourable senators, we only have authority to pass laws that are in the best interests of Canada. That is why I say I do not think we have the power, which was the question asked by Senator Nolin. Perhaps someone can point out to me where in the Parliament of Canada Act or the Constitution Act, 1867 or 1982, that authority is given to Parliament. I cannot find it.

The *realpolitik* we are dealing with in this house is that the opposition is in the minority. Thus, this bill is an awesome burden because of the collateral damage to the Senate of Canada. If not corrected, it will become an awesome responsibility on the shoulders of my colleagues, particularly my colleagues opposite. Hopefully, we will find the creativity to deal with that responsibility. If the majority decides to go forward, assuming that the matter is not *ultra vires* to Parliament, it seems to me it is a responsibility of the opposition to continue, in the epistemological sense of criticism, to improve a bad situation. It is much the same as the guidance we received from St. Augustine, who taught that even in evil we can find good. We must, therefore, deal with the kinds of amendments that could be brought forward. This is why we must amend the provision that has relativized the Senate. It is wrong-headed and not necessary. The same objectives can be achieved without doing that, and I have suggested a few such ways.

On the fundamental principle of my assumption that Canada is indivisible, clearly, I find fault with the opinion of the Supreme Court. To the extent this bill is resting on that foundation, if the foundation has fault lines, then this bill is being erected on those fault lines.

The burden of proof on those who wish to make this change is to prove that the country is divisible. My position is that it is indivisible, and I will sustain and argue that position. I believe that the people of Canada share the view that Canada is indivisible rather than divisible.

Senator Boudreau: Honourable senators, I appreciate that position. What I was asking for is the honourable senator's personal view. In this place, from time to time, we all make compromises on the result that emerges. I was interested in hearing his personal view on the issue of Canada being indivisible and that, therefore, no vote on any question with any percentage would lead to secession. I must say that I disagree with him. I am glad, however, that his personal view is clearly before us.

If this legislation is *ultra vires*, then the Supreme Court will pass the ultimate judgment on that point. It will probably do so much more capably — and I speak for myself — than I would be able to do.

However, now that we have established our fundamental disagreement on whether any result would justify negotiations, I wish to pose a second question. It, too, relates to the fundamental principle on which I think the honourable senator takes objection to the role of the Senate. He said that the Senate has traditionally exercised a supervisory role over constitutional negotiations by the executive. I can check that fact in the *Debates of the Senate* tomorrow. However, that was roughly the way I wrote down the honourable senator's remark. I said to myself at that point: How? What is the supervisory role that the Senate exercises today or has exercised in the recent past over constitutional negotiations? The honourable senator cannot mean legislative supervision because the bill does not impact on that capacity. It will still remain. Thus, since he is not talking about the legislative process, he must be talking about something else.

Sure enough, in the next two or three sentences, the honourable senator cleared up what he was talking about. He said that in Question Period in the Senate, the Leader of the Government, as a minister, must stand up and answer the questions of honourable senators. In fact, that was one of the supervisory roles.

The second example the honourable senator gave had to do with our passage of supply bills. I suppose if we refused to pass such bills, that would create all sorts of problems. Currently, that is how the Senate apparently exercises a supervisory role over constitutional negotiations by the executive. My question is: How does this bill affect that supervisory role as outlined by the honourable senator? We will still have those examples tomorrow, next month, next year, and long after this bill passes. In fact, the bill has no impact, first, on the legislative side of the Senate's role and, second, on the supervisory role to which the honourable senator refers. In neither case does the bill have any impact on facets of our supervisory role. Where will the supervisory role of the Senate, traditionally exercised on the right of the executive to negotiate, be damaged?

• (1730)

Senator Kinsella: Honourable senators, this thrust had to be developed because of the faulty theory of responsible government the Leader of the Government in the Senate advanced during his second reading speech. The leader put forward that theory to attempt to justify the fact that the Senate would not have a determining role on the matter of the clarity of both the question and the result.

Honourable senators, it is my view that the Senate of Canada has a supervisory role. The Senate of Canada and the other place each have a responsibility and a duty to hold the government accountable. In our system, honourable senators, governments are not non-accountable. Some would like not to be held accountable, but our whole system of parliamentary democracy is based upon the principle of ministerial accountability.

This house, contrary to the view in some quarters — and this is a view that might have received some impetus in your theory of responsible government — has a supervisory role over the exercise of executive power. With reference to the exercise of executive power in the matter of constitutional negotiations, I agreed with the honourable senator when he said that it was not necessary for the government to have the approval, by legislation, of Parliament, to exercise that executive power to hold constitutional negotiations. I would have preferred that the government not bring in the bill and not try to fetter, but, even if it did not, it would not have been absolved from oversight by this house and from oversight by the other place. The executive power is not unaccountable power, even when the exercise of that executive power deals with constitutional matters. This is different from the amending process under the Constitution, which requires a resolution of both Houses, although the resolution in this house, if not given, is effectively suspensive for 180 days.

Honourable senators, we must not allow the myth to be perpetuated that the Senate of Canada does not have both a supervisory responsibility and a responsibility to hold to account the exercise of executive power, because we do.

Senator Boudreau: I do not think I disagree with the honourable senator on that at all. The Senate and the House of Commons have a supervisory role, and there are executive powers, as referred to by the honourable senator in the main body of his speech. Where we disagree is that this bill will make any difference at all to the role of the Senate in exercising that supervisory power. At this point, I fail to see what difference it makes. How will the role of the Senate be different, in terms of all the powers and the important role it now enjoys? How will that role be changed by this legislation?

Senator Kinsella: It will be changed fundamentally, and in a historically damaging fashion. The Senate of Canada will have become relativized and made second class in its view on the determination of what would constitute a clear question in a referendum and what would constitute a clear majority. By excluding the Senate of Canada from a determinative role where the House of Commons would have a determinative role would cause fundamental damage to the Senate of Canada, in its usages and its practices. It would be decisively fatal to the tradition of parliamentary consent.

Hon. B. Alasdair Graham: Honourable senators, I have one question, for the purpose of clarity. The Honourable Senator Kinsella made reference to the principle of 50 plus one. Is it the honourable senator's opinion that one vote should be sufficient to break up this country?

Senator Kinsella: Absolutely not. I tend to agree with my colleague Senator Lynch-Staunton, who spoke to this particular issue. I make the point that, with reference to the facade of security that this bill is presenting, we must take seriously what the Supreme Court has told us. We can go through all these steps, but unconstitutional and illegal unilateral declaration of independence is still a possibility. The court is warning us. Therefore, when you examine each of these steps and examine the step concerning what will constitute a clear majority, there will be very few countries around the world that will be looking for the high standard of 66 per cent when they are asked to give international recognition to a secessionist province. Few countries around the world would also refuse to give international recognition to a secessionist province if it was 50 plus one, Indeed, as I mentioned in parenthesis, there are many countries with which we have good relations — governments that operate without anything close to a 50 per cent plus one support.

Senator Graham: I am glad that Senator Kinsella clarified that point. In the presentation notes, the honourable senator made reference and linked 50 plus one to the dictator who had 12 per cent but also had an army. I took that reference to mean that 50 plus one, would be sufficient. That is the impression I got from your remarks to break up the country.

Senator Kinsella: I thank the honourable senator for that input. The serious issue involves the "political actors" referred to by the court, namely, the international political actors. At the end of the day, they will determine whether or not we will have Canada broken up into a series of countries. The court has told us that. This bill is ill-advised because it lays out these steps, which at each point are destined to failure. Thus, at each point, a gift or golden opportunity is handed on a silver platter to the secessionist movement. This is a very foolish approach to dealing with the matter. Certain principles were identified in the advisory opinion. We should have left well enough alone. This only makes matters worse.

• (1740)

Hon. Joan Fraser: Honourable senators, I should like to return to the question of indivisibility. This absolutely crucial question goes to the very heart of what we are as a country. I am afraid that I still do not quite understand Senator Kinsella's position. He began by saying, and I am sure we would all agree, that there are only two ways to hold a country together — by force or by persuasion. He went to say, and again I expect we would all agree, that we would not support the use of force. Then he went on to cite, with apparent approval, a number of regimes where it is not permissible to secede. He cited the United States, which had recourse to force for four years to prevent secession. He cited Mexico, which has had recourse to force. He could have cited other federations — Russia, India and perhaps some others.

Senator Kinsella did not explain how one could keep a country together or how one could enforce his principle of indivisibility if persuasion has failed and if, despite the best efforts of us all, the people of a given province by an indisputably clear majority in response to an indisputably clear question say, "We have listened to your persuasion and we are sorry, but we still want to go." It seems to me that the logical conclusion to which he leads us is force. Could he clarify that position, please?

Senator Kinsella: I thank the honourable senator for that question. First and foremost, I reiterate my view that Canada is indivisible. Second, when one examines the theory and the argumentation in the advisory opinion of the Supreme Court, it is based upon an analysis of constitutionalism, the rule of law, democracy and federalism.

These exact same values are shared by the other two federations with which we share the North American continent — the United States and Mexico. In both those federations, there is no admission in their constitutional law of the breakup of their countries. That is their starting point.

My argument is that we ought to have the same foundation. The indivisibility of Canada should be our starting point. If that is our starting point, then the chances are that our self-fulfilling prophecy will be the ongoing unity of this country with all the ups and downs that we have gone through for the past 133 years.

If, however, our starting point is the divisibility of Canada and we set out a process and erect a stage, then that act will be played out. If our response to the secessionist movement is always one of defence, then at the end of the day, the secessionist movement will succeed.

I suggest, honourable senators, that the solution lays in the generation of new ideas, recognizing that there is great diversity among the peoples of Canada. I do not want to use the jargon of Plan A and Plan B, but others find that jargon attractive. Clearly, as the leader of the Liberal Party of Quebec so metaphorically describes it, we are going into a big black hole.

Hon. Gérald-A. Beaudoin: By way of supplementary to the question of Senator Boudreau, if a simple statute can give a power to one house and not to the other, is it not the case that if this is done five or six times in a certain period of time, the powers of the other house are reduced considerably? I refer to the Senate, our house. This would be done without any amendment to the Constitution.

Senator Kinsella: I could not agree more. I am hopeful that Senator Beaudoin will develop that particular theme clearly. We have the written acts. We have the Constitution Act of 1867, the Constitution Act of 1982, and we have customs and usages, just as within Parliament we have the Parliament of Canada Act and the rules of this chamber. We also have customs and usages that would develop very rapidly for a whole variety of reasons, including the current selection process of members of this house. We will be the ones who will be held accountable for the relativizing in our time, during our watch, of the Senate of Canada vis-à-vis the House of Commons.

Honourable senators, I cannot see how we could do anything but work together to at least solve that problem. It is solvable.

Hon. Jerahmiel S. Grafstein: Honourable senators, I listened with great care to Senator Kinsella. I congratulate him on his ability to set out these issues from his perspective. He has two constitutional objections, as I hear them. One is the diminution of the power of the Senate, which has been echoed by Senator Beaudoin, based on the Constitution and the conventions of the Constitution.

I will not comment on that issue at this time, but I am interested in the senator's first proposition, which is the *ultra vires* nature of the legislation. He bases it, if I am correct, on his view that the advisory judgment of the Supreme Court may have some fault lines.

The question of *ultra vires* as it applies to the bill, as opposed to the issue of the Senate — I want to separate the two — is this: Given that the Supreme Court has given an advisory, in all its splendour or flaws, and given the fact that the government, for good or bad, has decided to exercise its discretion in the form of this piece of legislation, which we have been told carefully mirrors the advisory, how does Senator Kinsella still say that this bill might be *ultra vires* or unconstitutional?

Senator Kinsella: Honourable senators, unfortunately, in the advisory opinion in the Quebec Reference case, the court does not attend to the issue of where Parliament might or might not have the authority to bring in this kind of legislation. Indeed, nowhere in the decision is the court recommending that this kind of legislation would even be brought in. Indeed, the former chief justice expressed surprise that a statutory provision was brought in along this line.

If that matter were to be pursued, we would need to ask the court its opinion on whether there is a constitutional basis or where the authority exists for Parliament to pass a law that has the effect of breaking up Canada. The court does not tell us that.

• (1750)

I argue that this matter is *ultra vires* on the basis that the tradition of our parliamentary system is one where the consent of the Houses of Parliament is given to the Crown on measures that are in the best interests of the people of Canada. This bill could never be in the best interests of Canada because, at the end of the day, it is leading to the breakup of Canada.

Senator Grafstein: Again this gives me some concern. I want to keep separate the question of Senate powers. I do not think there is anyone in this chamber who was sworn at this table who would deny the premise that no one would like to see, in any way, shape, or form, the breakup of Canada. I cannot believe that anyone who has ever come to this chamber would have that as an objective. I think we all have the shared value, based on our constitutional oath, to uphold the Constitution and uphold the unity of the country.

However, now we are faced with an advisory, and the advisory has raised questions. If the executive chooses, as the Leader of the Government has suggested, to exercise its discretion in a particular way, and perhaps limit its discretion in a particular way, how is that constitutionally objectionable, laying aside the role of the Senate?

Senator Kinsella: That is precisely the point. The executive did not have to seek the approval of the House of Commons to go through this process. The executive does not need this legislation to do whatever it wants to do in this area. However, each House of Parliament will have the duty and responsibility to hold accountable the government of the day for whatever it does in this field. Here, the House of Commons is being co-opted into this process. How will the House of Commons hold accountable the executive in a process into which they are now co-opted?

Hon. John. G. Bryden: Will Senator Kinsella take yet one more question?

Senator Kinsella: Yes.

Senator Bryden: I listened to Senator Kinsella's presentation and paid particular heed to the part about the country being indivisible and the part where he said that we cannot use force to keep Canada together. We do not have the power to do it by any other means, except, I guess, persuasion.

As I listened, I was reminded of someone who for many years was a professor at St. Thomas University, and perhaps still is. He was a follower of Aristotle. While listening to the remarks, it occurred to me that the logic, at least in Aristotelian terms, gets a little convoluted. We are saying that the country is indivisible; that it cannot be broken up. We have no jurisdiction. There is nothing in our laws to deal with that. The United States cannot be broken up, but they used force to do so. We would not do that. Mexico cannot be broken up, but they used forced to so. Canada would not do that.

Will the problem be like that of the man who had a psychological fixation that he was dead? An Aristotelian logician said, "I can force him to recognize that he is not dead. I can force him to recognize that he is alive. Just give me a few minutes with him." It was agreed and he went to see the man who said that he was dead. The logician asked, "Do you believe that you are dead, that you are not alive?" The man replied, "Yes, I do." The logician said, "Let me ask you a question. Do dead men bleed?" The response was, "No, sir, dead men do not bleed." The logician said, "Give me your hand." He cut the man's hand and squeezed it, then asked, "What do you think of that?" The fellow said, "My God, dead men do bleed!"

My concern, Senator Kinsella, is that, following your logic, you will wake up someday and find more than one country that used to be Canada, and you will say, "My God, Canada is divisible!"

Senator Kinsella: I think that Senator Bryden's argumentation is not so much Aristotelian as sophism.

He did mention the Angelic Doctor, Saint Thomas Aquinas. Aquinas defined law as the ordinance of right reason. I argue that there is no right reason in this legislative proposal because, if we adopt this bill and make it part of the Statutes of Canada, and all the steps are followed for the legal secession of a part of the country, it might all be very nice legally, although I do not believe that could ever happen. However, even with that, Canada will be gone.

I will use a different metaphor to that of Senator Bryden's. I will use as my metaphor the beautiful Victorian home that Senator Robichaud used to have on Waterloo Road in Fredericton. The house would last for hundreds of years, except that its wiring was the old cloth wiring from the turn of the century and the place was a fire trap. Does Senator Robichaud hire an electrical contractor to rewire the place, or does he buy fire insurance? I suggest, honourable senators, that this measure of the government is "buying fire insurance."

On motion of Senator Hays, debate adjourned.

BUSINESS OF THE SENATE

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I should like the orders of Government Business to be called in the following order: Item No. 6, Bill S-17, which I think Senator Angus will address; Item No. 5, Bill S-18, which I believe Senator Meighen will address; Item No. 7, Bill C-13, which I believe Senators Carstairs and Keon will address; Item No. 3, Bill C-10, to which Senator Moore will speak; and then Item No. 4, Bill S-19.

Before we proceed, however, honourable senators, I should like to ask leave that we not see the clock for one hour. If we are done before that, all the better, but assuming leave is granted, I have one other matter which I should like to raise.

The Hon. the Speaker: Is there leave that I not see the clock for one hour?

Hon. Senators: Agreed.

The Hon. the Speaker: Therefore, at seven o'clock I will leave the Chair, unless there is further agreement.

• (1800)

FISHERIES

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Leave having been given to revert to Notices of Motions:

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

> That the Standing Senate Committee on Fisheries have power to sit at 6 p.m. today even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

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

Hon. Senators: Agreed.

Motion agreed to.

MARINE LIABILITY BILL

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Furey, seconded by the Honourable Senator Fraser, for the second reading of Bill S-17, respecting marine liability, and to validate certain by-laws and regulations.

Hon. W. David Angus: Honourable senators, I am somewhat hesitant, even humbled, to introduce my rather technical subject after listening to the learned debate this afternoon on Bill C-20. The quality of the debate has been unusually high and fascinating, given the nature of the subject matter — the very survival of our great nation. I hope you will bear with me. This subject pales beside the other.

I rise to make a few comments on Bill S-17, which was introduced by the Honourable Senator Boudreau and received first reading in this chamber on March 2, 2000. The bill was addressed and proposed for second reading on Tuesday, March 21 by Senator Furey.

Let me say at the outset, honourable senators, one, that I firmly support this legislation and advocate its expeditious passage through the parliamentary process, including appropriate study by the Standing Senate Committee on Transport and Communications, and by the transport committee in the other place.

Two, I note with great pleasure that the government has once again taken steps to move forward with this now long-overdue legislation, and all the more so, honourable senators, because it has chosen to initiate the process here in the Senate. It is an initiative of which I hope we will see more.

Three, I deplore the government's repeated ham-handed parliamentary mismanagement of this particular legislation, both in its present form and in its earlier manifestations, leading to unfortunate and substantial delays, so that Canada's otherwise excellent image in the domestic and international maritime law and insurance community has been tarnished and called into question, both at home and abroad.

As a number of honourable senators I believe are aware, I have devoted the bulk of my 38-year career as a lawyer to the practice of maritime law in all its aspects. I served from 1988 through 1991 as president of the Canadian Maritime Law Association, and I am currently, and have been since 1994, a member of the executive council of the Comité Maritime International, the CMI, in Antwerp, Belgium, which is the private-sector international marine law association that brings together as constituent members some 50 national maritime law associations from around the world.

I have for many years been interested in and, indeed, committed to the development of uniform Canadian and international maritime law, and the harmonization globally of its principle rules and regulations. Thus, I am very pleased to have this opportunity to associate myself with and support the principles and objectives of Bill S-17.

I say this not only to indicate to honourable senators my special interest in this legislation, but also to demonstrate a modicum of first-hand knowledge of the matters and issues in the bill, especially of the on-going importance of both national and international uniformity of laws, such as those that establish regimes of marine liability, and rules and standards relating to the safety of ships and life at sea. Canada has for decades participated actively and with distinction in international organizations dedicated to promoting uniformity and harmonization of maritime law, including the International Maritime Organization, the IMO, and the CMI.

This bill is a combination of substantive new law in four of its elements, as seen in Parts 1, 2, 4 and 5 of the bill. For the rest, it consists largely of legislative modernization, rearrangement, and related housekeeping measures. More important, though, the bill, as it purports to create a new marine liability statute for Canada that can be added to and/or subtracted from as may be appropriate over the years going forward, falls into the category of framework legislation; part of an overall restructuring, modernization and simplification of the main statutory elements of Canadian maritime law. In this sense, honourable senators, I believe Bill S-17 to be a positive and constructive initiative.

The substantive aspects of the bill concern, one, the long overdue adoption into Canadian law, in Part 4 of the bill, of the Athens Convention, relating to the carriage of passengers and their luggage at sea, which sets forth an internationally accepted comprehensive regime of ship owners' liability for loss of life or personal injury to passengers travelling on board ships. Existing Canadian domestic legislation deals only with global limitation of liability for maritime claims, including passengers' claims, but it fails to establish a basis upon which liability for passengers may be established, thus leaving shipboard passengers to rely on Canada's various and, in some cases, uncertain provincial laws of negligence to solve their claims and obtain compensation.

The Athens Convention was adopted by the IMO, with Canada's full approval, in December 1974 as a uniform convention, which was amended in 1990 by a protocol updating its limits of liability. It is now high time that Canada implements this convention by incorporating it into our domestic law.

The substantive aspects also concern, two, the adoption under federal law, which includes that certain body of law now known as "Canadian maritime law", in Part 2 of the bill a new regime for apportioning liability for marine claims, thus clarifying what is presently a difficult and confusing area of Canadian law. If enacted, Bill S-17 will provide a uniform regime for the apportionment of liability applicable to all civil torts governed by Canadian maritime law. This regime follows the 1997 and 1998 decisions of the Supreme Court of Canada in *Bow Valley Husky (Bermuda) Ltd. v. St. John Shipbuilding Ltd*. and in *Ordon v. Grail*, which held *inter alia* that Canadian courts may apportion damages based on the degree of fault determined by the court as between claimant and defendant, or amongst defendants in the case of joint liability.

Three, Part 1 of the bill also contains substantive new law in that it purports to update Canadian maritime law so as to reflect recent developments in provincial fatal accidents legislation. In this regard, Bill S-17 confirms that claims for wrongful death and injury in the marine domain may be made against persons as well as against ships *in rem*, thus enabling the relatives of deceased and injured persons to claim for loss of care, guidance and companionship; and, finally, to modernize the language of the legislative provisions that govern such claims. Otherwise, Part 1 generally re-enacts those provisions concerning fatal accidents that presently appear in Part 14 of the Canada Shipping Act. This, honourable senators, is also an integral part of the aforementioned overall project to simplify and modernize Canada's maritime laws.

I understand from officials at Transport Canada that another very important marine bill, a modernized and revitalized Canada Shipping Act, will shortly be introduced in Parliament as a companion to Bill S-17. I hope this will take place once again here in the Senate.

Four, Part 5 of Bill S-17 basically incorporates word for word into the new Marine Liability Act, Canada's Hague Rules Statute, the Carriage of Goods by Water Act, which deals with shipowners' and operators' liability for cargo damage. However, one substantive and welcome change has been introduced in Bill S-17, namely, a new provision that broadens the jurisdiction of Canadian courts to deal with cargo claims, especially those of Canadian exporters and importers and their insurers. This should improve recovery costs for Canadian claimants, while at the same time providing badly needed new business for the down-and-out Canadian maritime lawyers.

• (1810)

Honourable senators, as I have indicated, Part 4 of Bill S-17 establishes the basis and amounts of liability of shipowners to their passengers for personal injury and loss of life.

The new regime will apply to both domestic and international carriage of passengers by ship and, accordingly, will finally bring Canadian law in this field into line with that of most of our trading partners.

In most developed maritime nations, the laissez-faire system of liability in the marine transportation sector has long been replaced by some form of statutory liability. The Athens Convention is now the leading international model in the area of passenger claims.

In Canada, contracting out of liability by shipowners and operators, especially in marine passenger contracts issued by foreign carriers serving Canada, has been more the rule than the exception. Bill S-17, if enacted, will obviate this practice. Such exculpatory clauses are no longer recognized in France, the United Kingdom, the United States and elsewhere. They are also generally absent from contracts of carriage in other transportation systems here in Canada or are expressly prohibited, as in the air mode, pursuant to the Carriage By Air Act.

Canada's marine industry enjoys a relatively good safety record. However, accidents can, and often do, happen. Thus, it appears to be a good thing that the government is finally proceeding to ensure that Canadian law is up-to-date and in line with that of our sister nations and our trading partners.

What is troubling, however, honourable senators, is that we are only getting around to doing this now. A major passenger ship disaster in Canadian waters today would doubtless generate a public outcry for fair and adequate compensation to victims precluded from being indemnified for their loss. Frankly, the risk of such a casualty has been increasing through the use of large car ferries with substantial passenger capacity on both the East and West Coasts, as well as the growing popularity of giant cruise liners which now regularly carry thousands of passengers inside and adjacent to Canadian coastal waters. I submit that good public policy demands the resolution of this problem now and without further delay.

Why is it, then, that Bill C-59, entitled Carriage of Passengers by Water Act, introduced in the Second Session of the Thirty-Fifth Parliament, containing the exact same provisions as those set out in Part 4 of Bill S-17, was permitted by this government to die on the Order Paper in April 1997? This was indeed unfortunate, not to say risky and imprudent, if not impudent. Let us all, in both Houses, take heed for past government mismanagement and give this bill the serious and expeditious treatment it merits.

To save time, honourable senators, I make reference to but will not repeat *in extenso* here today the comments I made in this chamber on October 21, 1997, respecting the inexcusable delays which preceded the enactment of Bill S-4, another key statute dealing with marine liability, specifically, shipowners' liability for maritime claims in general, and for marine pollution in particular, and the right to limit such liability and to what extent. One cannot help but wonder why marine policy and legislation in Canada has heretofore seemingly had such a low priority on the government's agenda. After all, Canada is a major maritime nation, with one of the world's most extensive coastlines.

The Athens Convention is not the only international maritime convention which Canada has approved at the diplomatic level and then been subjected to delayed implementation into our domestic law. Another striking example is the HNS Convention dealing with the carriage of hazardous and noxious substances and a liability regime which is related thereto. These conventions in most cases deal with the economic and legal consequences of maritime accidents or casualties and are designed to harmonize the international law and practices of different nations so as to achieve uniformity of law and procedure and a level playing field in the marine arena, which is international by its very nature. Once approved by our government at the diplomatic level, they should, as a matter of comity, at the very least, as well as for compelling practical reasons, be implemented with all due dispatch.

Many dedicated private Canadian citizens and highly skilled bureaucrats have worked long and hard to achieve international consensus and to make these conventions good and valid realities. Surely, it is now our duty as legislators to complete their fine work. Let us not let them down again, either now or in the future.

In this same vein, I would be remiss if I did not point out that those provisions of Part 1 of Bill S-17 which deal with fatal accidents were also previously introduced in Parliament as Bill C-73, to amend the Canada Shipping Act and other acts in consequence, which was also allowed by the Government, for what appeared to many as self-serving partisan and political reasons, to die on the Order Paper in April 1997 — the Government's priority apparently being to call an uncommonly early general election on June 2, 1997, rather than diligently completing its important legislative program first.

Honourable senators, as far as I can determine, the new substantive maritime laws contained in Bill S-17 are noncontroversial and unopposed by any group or interest which had been identified to date. By contrast, the legislation is eagerly awaited by all elements of Canada's marine industry, including shipowning, shipping, cargo, passenger, insurance, and maritime law interests alike. Indeed, full and complete discussion papers have been circulated by government officials to all interested parties, and the main elements of what is now Bill S-17 have already received wide stakeholder approval and interest.

Honourable senators, the same may be said of the creation through Bill S-17 of a framework for a new Canadian marine liability statute as a companion statute to the forthcoming modernized Canada Shipping Act.

The current legislative system, whereby liability regimes are set forth in various pieces of legislation, is not practical, effective, or satisfactory, and certainly is not user-friendly.

A single statute devoted exclusively to issues of marine liability, present and future, will help all members of the marine community to better understand the responsibilities and the rights of those who are or will be affected by the laws in question. Dare I say it, honourable senators, such consolidation may also significantly simplify, and perhaps even expedite, the work of many of Canada's maritime lawyers. Can this be a bad thing?

I have just one caveat to bring to your attention, honourable senators. That is the indication in the department's briefing papers that this bill contains so-called housekeeping provisions designed retroactively to validate certain bylaws made under the Canada Ports Corporation Act and certain regulations made under the Pilotage Act. Honourable senators, not only do we, as a general rule, look askance at retroactive legislation, but one must also query why invalid bylaws and regulations were enacted in the first place. Hopefully, these issues will be raised and satisfactorily answered at the committee stage.

Honourable senators, subject to this one caveat, I have no hesitation at all in recommending speedy passage of this legislation through Parliament. It is my sincere hope that it will not founder on such rocky shoals as those which terminated the voyages of Bill C-59 and Bill C-73 in April of 1997.

Hon. George Furey: Honourable senators —

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

Senator Furey: Absent a few rather scathing swats which the honourable senator took at timeliness, I endorse his comments and thank him for his agreement in treating this bill as expeditiously as possible. Indeed, the rather technical questions raised at the end of Senator Angus' comments with respect to retroactivity will be addressed at committee.

Therefore, honourable senators, I commend this bill to you.

• (1820)

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

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Furey, bill referred to the Standing Senate Committee on Transport and Communications.

NATIONAL DEFENCE ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Pearson, seconded by the Honourable Senator Finestone, P.C., for the second reading of Bill S-18, to amend the National Defence Act (non-deployment of persons under the age of eighteen years to theatres of hostilities).

Hon. Michael A. Meighen: Honourable senators, I rise to speak briefly on the second reading of Bill S-18, to amend the National Defence Act.

I am sorry that our colleague Senator Pearson is not here at the moment. However, I was not here when she introduced this legislation. I suppose, then, what is fair for the goose is fair for the gander.

I am pleased to be speaking on a bill the government has seen fit to introduce in the Senate. Recognizing the usefulness of proceeding in this fashion, I encourage the government in its high counsel to do more of this.

I have read with great interest the remarks of Senator Pearson. I congratulate her, *in absentia*, on the succinctness and clarity of her exposé. I will try to do likewise.

When Senator Pearson introduced the bill, she said that she thought honourable senators would be surprised that a senator such as herself would be introducing an amendment to the National Defence Act. Frankly, I do not find that surprising at all. However, she may be surprised to know that I agree with just about everything she said. I venture to say that all honourable senators on this side of the chamber feel the same way.

Senator Pearson pointed out in her introduction that the proposed amendment before the Senate will put into law that which is the current practice and policy of the Department of National Defence and will ensure that Canada does not send persons under the age of 18 years into a theatre of hostilities.

This amendment will also put Canada in compliance with the recently negotiated Optional Protocol to the United Nations Convention on the Rights of the Child. The Convention on the Rights of the Child was adopted by the United Nations in 1989 and has since been ratified by 191 countries.

The government of the Right Honourable Brian Mulroney was very closely involved in negotiation and development of the convention. It was signed by Prime Minister Mulroney in 1990 and ratified by Parliament in 1991. I cannot pass up the opportunity to note that in this area, as in so many others, the current government is carrying on with important initiatives introduced by its predecessors.

As stated by Senator Pearson, the optional protocol will establish new international standards that will require its signatories to set 18 years as the minimum age for compulsory recruitment; to take all feasible measures to ensure that members of their armed forces who are under the age of 18 years do not take direct part in hostilities; and to raise the minimum age for volunteer recruitment to at least 16 years of age and to deposit a binding declaration to this effect upon ratifying the optional protocol.

Under the terms of the optional protocol, signatories that permit voluntary recruitment of persons under the age of 18 years are required to maintain safeguards to ensure that recruitment is genuinely voluntary and that it is done with parental consent and reliable proof of age, something which I cannot help but mention seems to have been missing in 1939 and 1940 when many citizens, perhaps citizens familiar to members of this house, knowingly lied about their age in order to take part in combatting the spread of fascism. One cannot be critical of their motive in that case. Finally, recruited candidates must be fully informed of the duties involved in military service.

[*Translation*]

Honourable senators doubtless know that the Canadian Forces are currently recruiting individuals aged 16 and 17. However, sign-up is strictly on a volunteer basis and parental consent and proof of age are required. In addition, all candidates are informed of their duties as military personnel.

It is interesting to note that, like Canada, the U.S. is recruiting 16- and 17-year-olds. However, unlike Canada, the U.S. is deploying these young soldiers in conflict zones. In recent years, these 17-year-old soldiers have been deployed by the United States in the Gulf War, in Somalia and in Bosnia. I am pleased to note that the U.S. recently agreed to put an end to the deployment of young soldiers under the age of 18 in combat zones.

The problem of the use of children in an active military role is not insignificant. As I speak, hundreds of thousands of child soldiers are being used in armed conflicts around the world. Human Rights Watch, an American human rights organization, reports that child soldiers are taking part or have taken part in 33 current or recent conflicts in almost all regions of the world.

[*English*]

As I indicated earlier, honourable senators, our practice in Canada is already fully in line with this optional protocol. However, I commend the government for acting to bring our legislation into line with our practice.

We urge the government to work aggressively at the United Nations to ensure that this protocol is adopted by the General Assembly at an early date and that it is subsequently signed and ratified by the UN member states.

Honourable senators, there is much work yet to be done to bring the optional protocol into force. However, Bill S-18 is an important and helpful first step. I urge all senators to support it.

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

Hon. Senators: Agreed.

Motion agreed and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Hays, bill referred to the Standing Senate Committee on Foreign Affairs.

CANADIAN INSTITUTES OF HEALTH RESEARCH BILL

SECOND READING

Hon. Sharon Carstairs moved the second reading of Bill C-13, to establish the Canadian Institutes of Health Research, to repeal the Medical Research Council Act and to make consequential amendments to other Acts.

She said: Honourable senators, I have the honour to rise in support of Bill C-13, to establish the Canadian Institutes of Health Research.

Canada's health research community already has a reputation for excellence throughout the world. Major health discoveries have been made by Canadians, such as Dr. Henry Friesen, the present Chair of the Medical Research Council, who discovered the human hormone prolactin that affects fertility among women.

• (1830)

Canadians also lead in researching innovative approaches to help policy and administration. For example, Winnipegers like Drs. Les and Noralou Roos and Dr. Charlyn Black have developed databases that provide policymakers with an understanding of the health needs of populations and the role of health care as a determinant of health.

Each year, Canadian researchers win more than half the grants made available to foreign researchers by the United States National Institutes of Health.

[*Translation*]

In order to continue and sustain health research in Canada, we must recognize that the nature of modern health research is changing, and we need a health research system capable of understanding these complex new challenges.

[*English*]

We need to be able to address emerging and re-emerging threats to our health. We must be able to take on challenges as diverse as the mysteries of mental health, as complicated as the development of antibiotics to combat new strains of bacteria, and as complex as determining the health impacts of family violence.

In addition to studying illness and disease, our health research system needs to support the study of the social and environmental determinants of health. We need to integrate our findings with other research on the many factors that affect the health of communities and populations.

We need, honourable senators, to position ourselves to take full advantage of the revolution in genetic technology that is opening up new avenues for treating disease. We must be able to make use of innovative methodologies and health services research that make it possible to better evaluate how well we are providing services to Canadians through our health care system.

These are challenges that will define how we promote, protect and improve the health of Canadians over the next decades.

Honourable senators, Bill C-13 would create the Canadian Institutes of Health Research to respond to these challenges. It takes a fundamentally different approach to health research through the creation of institutes that will provide a strategic direction to research in thematic areas such as chronic diseases or aging.

Institutes will give the CIHR new tools to support health research that are not available in the current granting-council structure — the Medical Research Council. Through institutes, the CIHR will provide research in a specific scientific field to promote excellence and achievement. Institutes will provide the opportunity to link and integrate research in different disciplines as part of a coordinated focus on a specific health issue. They will give the CIHR the ability to identify national health needs and emerging critical health issues, and to develop strategies to link these priorities with research activities.

Institutes will give the public and other key stakeholders, through institute advisory boards, the opportunity to have direct input into research priority setting, and they will facilitate partnerships on strategic initiatives among the public sector, the health charities and the private sector.

Honourable senators, as outlined in the bill:

> The objective of the CIHR is to excel, according to internationally accepted standards of scientific excellence, in the creation of new knowledge and its translation into improved health for Canadians, more effective health services and products and a strengthened Canadian health care system.

[*Translation*]

This objective contains a key phrase — nationally accepted standards of scientific excellence. With CIHR, as with the present system, these standards will be achieved through a process of peer review. All major extra-mural health research organizations rely on peer review.

CIHR will build on the excellent reputation already enjoyed by Canada's existing peer review system. The provisional governing council of CIHR is looking at the possibility of extending the peer review process in order to allow the participation of non-specialist members on peer review committees. The governing council will also have to promote innovation and risk-taking as part of the peer review process.

[*English*]

In this way, the CIHR will continue to enhance Canada's reputation for excellence in health research.

Honourable senators, excellence in health research is all very well, but if the results of this research are not applied, then the question of excellence becomes solely academic. Research findings can be translated into better practice of health care, helping to prevent, treat and cure diseases. They can be translated into a more efficient health care system that delivers services that will benefit all Canadians.

Researchers in Canada have already succeeded in creating our thriving health research environment. Michael Smith won the Nobel Prize for his contribution to our genetic understanding of diseases. Leigh Field has discovered two genes that produce susceptibility to juvenile diabetes, the most severe form of the disease. Salim Yusuf headed up a study that found that an anti-hypertensive drug called ramipril substantially improved survival after heart attack and lowered the risk of subsequent heart attacks. These findings could prevent 1 million premature deaths, heart attacks and strokes each year.

The investment in the CIHR is an investment in new knowledge about our health and our health care system, which will benefit all Canadians. While this investment supports research in the academic community, the products of this investment will benefit us all.

In the cycle of innovation that characterizes health research, research results can also lead to new research efforts. For example, the initial endowment of the research arm of the Hospital for Sick Children in Toronto is a direct result of the discovery of Pablum, several decades ago, that has helped children in Canada and throughout the world grow to be strong and healthy.

A crucial challenge for establishing the CIHR has been to have programs ready for the first year of its existence. The programming is now in place, administered by the existing granting councils until such time as the CIHR is officially established. Applications are already coming in and some awards have already been made. The response to these transition programs has been very encouraging, signalling that there is great potential for capacity building and willingness among researchers to work in collaborative research projects with the CIHR. The success of these programs demonstrates the degree to which the entire research community is excited about the opportunities of the CIHR and ready to take on the challenge of conducting health research in a new, more integrated and more targeted way.

Honourable senators, one of the most important decisions the Minister of Health will have to make in the weeks to come is who will direct this new organization. The new president and governing council must be individuals of the highest calibre, capable of commanding the respect of all who are involved with the CIHR. Nominations for these positions were actively sought, not only from stakeholders but also from the general public, because the CIHR belongs to all Canadians.

[*Translation*]

When the president and members of the governing council are appointed, one of their first priorities will be to identify the first CIHR institutes. This is no small task. Institutes must meet the health care needs of Canadians. They must have broad scope and the ability to excel in research and, finally, take various approaches to health research.

[*English*]

The new governing council will not be starting from scratch. They will benefit from the best thinking of the health research community and input from the interim governing council, which has focused on how the interests of the health research community as a whole will best be served.

Having said that, honourable senators, I believe it is incumbent upon each and every one of us, during our deliberations on this bill, to give our best advice as to the future directions of these new research institutes. In my view, there are four areas of health research that have been seriously neglected in the past in Canada.

• (1840)

Honourable senators, one in five Canadians will suffer from mental illness in their lifetime. It may be a relatively light depression, easily treated, if treatment is indeed sought; or it can be bipolar disease or schizophrenia, both of which can have lifelong effects. We know of the devastating impact that these diseases have on individuals and their families, but there are also enormous social costs. For example, many of the homeless in our society suffer from mental illness. Yet we have done little health research in this country in the areas of causes, impacts and effects of mental illness. The new CIHR offers us an excellent opportunity, which should not be missed.

A second issue of concern in the health area is that of our aging population. Honourable senators, the demographics in our country are changing. According to estimates by Statistics Canada, in 1998 there were over 400,000 people over the age of 85. In 2041, it is estimated that there will be over 1.6 million over the age of 85 in Canada. We know that many will suffer from Alzheimer's, dementia or other degenerative diseases. Our aging population will put pressure on our health care system for palliative care beds, acute care beds, personal care homes and home care services. Research is needed not only to seek a cure for these diseases but also to help us plan for these enormous changes.

No one in this chamber, I know, would want us to neglect the very serious issue of aboriginal health. I will give you just one statistic alone, honourable senators: Three times the number of aboriginal men and five times the number of aboriginal women suffer from diabetes. It is a serious form of diabetes that strikes the people in aboriginal communities, to some degree because of the quality of their housing and their lack of medical care. Many of them suffer from renal failure. Many of them require the removal of limbs. This is an intolerable situation and one that we must address.

Honourable senators, as a woman, I would not be fair to my gender if I did not mention the concern that many women have about our health. Cardiovascular disease, for example, is the number one killer of women in Canada; yet women are tested and treated far less frequently for heart conditions than are men — unless, of course, we are lucky enough to have access to Dr. Keon.

We also know that women who are infected by HIV are infected in different ways. Women are the principal paid and unpaid caregivers in our society but the health consequences of this are poorly understood. There is no doubt in my mind that my mother died seven months after my father because she had spent the ten previous years looking after my father.

We need to examine whether an institute on women's health is the way to go. Is that the correct route? Perhaps another option is to have clear gender analysis in every single one of the institutes, gender analysis that will reflect the conditions of men and women.

We hear a great deal in this chamber, and most eloquently recently by Senator St. Germain, about breast cancer. We do not hear nearly as much about prostate cancer. Yet, if you polled the male senators and the spouses of female senators, you would find that prostate cancer is, in fact, a more frequent occurrence than breast cancer, because one in eight men are affected by prostate cancer and only one in nine women suffer from breast cancer. However, very little money is spent on prostate research in this country. I would suggest that that kind of gender analysis might be extremely useful, not just for one health institute but for all health institutes, to ensure that, when we are looking at disease in all of its dynamics, the gender of the patients involved is also a significant department.

Honourable senators, even now in the planning phases of CIHR, historic new relationships and partnerships are being established. Meetings are being held among health research groups and organizations across the country. The ties are being created that will connect researchers from different disciplines and different areas of the country, that will bring together research funders and research users in CIHR.

The result, honourable senators, I have no doubt, will be a better health care system and better health for all Canadians. Honourable senators, I urge you to support Bill C-13.

Hon. Senators: Hear, hear!

Hon. Wilbert J. Keon: Honourable senators, it is with a great sense of excitement and enthusiasm that I stand before you today to speak to Bill C-13. The vision, values and principles upon which this bill has been drafted set the stage for the development of a renewed national research structure capable of being responsive to the changing realities and needs of the Canadian population.

The establishment of the Canadian Institutes of Health Research is an event of immense significance to the nation, an event that carries with it enormous potential and opportunity to build on this country's strong foundation of excellence in health research.

The creation of the CIHR will fundamentally and structurally transform the way research is conducted across this country. Much of CIHR's work will be built on a broad range of strong and cooperative partnerships. These partnerships will be developed, in large part, through the formation of a number of institutes. These institutes will represent nodes of scientific leadership in Canada and will be the mechanisms for linking national health charities, provincial health charities, other voluntary organizations, the private sector, provincial health services agencies and those who deliver health care.

In effect, the institutes will move the support for health research beyond the confines of a traditional granting agency through a system of partnerships and alliances that will open up a range of new opportunities — opportunities that will shape the Canadian research agenda and expand and enhance the impact of health care and health services research; opportunities that will integrate the activities of researchers across the country who are focused on meeting common goals; opportunities that will attract private-sector funding for research and help to expedite the commercialization of research results leading to health, economic and social benefits for all Canadians; opportunities that will speed the identification of new, more effective health discoveries, treatments and practices that will improve the health of Canadians; opportunities that will open up new avenues to translate and disseminate research findings into health care practice through improvements in health services, health service products and a strengthening of the health care system itself; opportunities, my fellow senators, to enhance Canada's competitiveness in the global economy, generating unforeseen economic opportunities and at the same time promoting excellence of Canadian health research on an international stage.

The federal government's contribution and funding for the financing of health research excellence in Canadian hospitals, universities, health research centres and institutions will effectively be doubled. This time we will not just be looking at a simple increase in funding. Instead, funding will flow into a well-designed, nationally integrated health research system that will maximize our human, intellectual and physical resources. As a result, it will provide a knowledge base for national health policy and superb health care for continuing our healthy nation.

Honourable senators, under Bill C-13, the Medical Research Council Act will be repealed and 40 years of the existence of the Medical Research Council will come to an end. Indeed, I worked with and served on that council for 25 years, and, although I am sorry to see it go, I am truly excited about what has come in its place. The fact that this is being done with the full support of the MRC community in and of itself speaks strongly to the trust this community has in the vision and proposed structure of CIHR.

• (1850)

It has been a wonderful experience to see the medical, scientific, health care, academic, industrial and other communities come together to make the CIHR a reality.

The CIHR concept emerged in 1998 from the work of a task force broadly representative of many diverse interests in health research. Plans to proceed with the proposal of the task force were announced in the 1999 budget, which set aside an additional $225 million, over the current MRC funding, by the year 2001-2002 for the new CIHR.

Bill C-13 was tabled by the Minister of Health and received first reading in the other place on November 4, 1999.

The CIHR would take over from the MRC, as well as adopt a broader focus. It is, therefore, to be expected that the legislation for the CIHR be more comprehensive than that of the MRC. Most of Bill C-13 deals with the transfer of human resources, assets, liabilities and legal proceedings from the MRC to the CIHR. In terms of the actual functioning of the CIHR, the bill proposes that it would have several powers and functions additional to those of its predecessor. It should be noted that the MRC has, in fact, already undertaken to perform some of these additional powers and functions on its own; however, the remaining powers and functions would set the CIHR apart from the MRC. These functions would include working with the provinces as well as with the people and organizations both within and outside of Canada, and keeping government and the public informed on issues of health and health research. In addition, the Governor in Council could assign to the CIHR any other function necessary for that body to achieve its objective.

There have been some concerns expressed about the administrative costs of the CIHR. Administrative costs are the basic costs of keeping the organization functional. They include the costs of the governing council, the president's office, core secretariat costs, including costs for financial and information systems and rents, and costs of managing and administering research programs. In the Medical Research Council, these costs have been kept below 5 per cent of the total budget. In other agencies, such as the Social Sciences and Humanities Research Council, these costs are about 8 per cent.

The CIHR is designed to be a transformative organization, and some additional strategic management investments will be needed to support that transformation. New institutes will be created that will focus on the health needs of Canadians, and these will have scientific directors and small staffs. There will also be an emphasis on the translation of new knowledge into new clinical applications, health services and products. As a result, much better results for each resource dollar will accrue.

There are two assurances that all expenses will be kept at a minimum. First, the research community itself is very vigilant, and it has proven that in the past. Second, CIHR estimates will come to the standing committee every year.

There have also been some concerns raised about the appointment process. The process of appointments for the CIHR president and the governing council has been remarkable in its openness and in the engagement of the Canadian public. The traditional process is for the potential candidates to be both nominated and selected by the government. However, in the case of the CIHR, there has been a process of public identification of suitable candidates for the leadership of the CIHR.

In December of 1999, a public call for nominations was issued for both the president and governing council. Respondents were encouraged to nominate candidates through either the submission of their curricula vitae or through a Web-based application process. The response to this call for proposals was tremendous. Over 450 high-quality nominations were received for these positions.

Following the nomination process, selection committees were established to significantly narrow down the list of candidates for the president and for the governing council. The committees were made up of outstanding leaders in research, presidents of universities, voluntary sector organizations and international research leaders. The committees, in essence, certified that the remaining candidates would meet the threshold of qualifications to hold the positions outlined in Bill C-13.

The recommendations of these committees have been transmitted to the government, which will make the final decisions upon proclamation of the CIHR Act.

This unique process is substantially different than the appointment process for other federal organizations. It has engaged the community and has ensured that the best nominations for the Canadian research community are included in the process.

Before I conclude, honourable senators, I wish to take this opportunity to recognize and pay tribute to the strong leadership of Dr. Henry Friesen, Chair and President of the MRC. Indeed, I was with Dr. Friesen at the meeting of the Medical Research Council that we hosted at the Heart Institute the night the concept was born and presented to Minister Rock. In many ways, Dr. Friesen's foresight and energies have served as the catalyst for moving us closer toward achieving the vision of creating a new national institute that will transform, modernize and link health research organizations across this country. I must say his efforts were absolutely tireless and his genius shone throughout the entire process.

Honourable senators, it is with strong conviction and a great sense of pride that I support Bill C-13 and ask for your endorsement.

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

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

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

PAYMENTS IN LIEU OF TAXES BILL

SECOND READING—DEBATE ADJOURNED

Hon. Wilfred P. Moore moved the second reading of Bill C-10, to amend the Municipal Grants Act.

He said: Honourable senators, I rise this evening to speak on second reading of Bill C-10, the short title of which is the Payments in Lieu of Taxes Act. As a former municipal politician, I am pleased to be sponsoring this legislation on behalf of the government.

Bill C-10 addresses a longstanding need to modernize the program by which municipal governments are compensated for the services they provide to federal facilities. This is a bill of good government that will strengthen the relationship between the Government of Canada and close to 2,000 local communities from coast to coast to coast. I am, therefore, hopeful that honourable senators will give this bill their unanimous support.

We are all familiar with the large number and tremendous variety of facilities operated by the Government of Canada across the country. These Parliament buildings are perhaps the most recognized and best known of these facilities, but there are many others. The Government of Canada owns office buildings in provincial and territorial capitals and other municipalities throughout Canada.

The Hon. the Speaker *pro tempore***:** Senator Moore, I am sorry to interrupt, but it is now seven o'clock.

Is it your pleasure, honourable senators, that I not see the clock for another hour?

Hon. Senators: Agreed.

Senator Moore: The Government of Canada also operates wharves, docks, airports, penitentiaries, museums, interpretative centres in national parks and recreational facilities. The Government of Canada maintains defence establishments, court buildings, historic sites, and the list goes on. Virtually all of these facilities place demands on the municipal service infrastructure — demands for water and sewer services, road maintenance, waste disposal, public transit, and so on. The Government of Canada has a moral obligation to pay a reasonable portion of the costs of these services to ensure that federal facilities are an asset at the community level rather than a liability.

• (1900)

Yet, honourable senators are no doubt aware that the Government of Canada is exempt from local taxation under section 125 of the Constitution Act, 1867. In order to protect this important constitutional principle while paying its fair share of the cost of local services, for the past 50 years the Government of Canada has been paying municipalities grants in lieu of taxes.

The program is managed by the Department of Public Works and Government Services, and it has worked very well for many years, serving the interests of municipalities and the Government of Canada alike. Payments in lieu of taxes to municipalities now exceed $375 million annually. This money is helping local communities maintain or improve services and support economic development. It brings a tangible federal presence and influence to the communities that receive it.

However, as is the case with all good programs, there is room for improvement. Many far-reaching changes have been made in municipal taxation regimes over the past 20 years, changes that have resulted in significant increases in payments in lieu of taxes for federal properties. While the government has an obligation to pay its share of the cost of municipal services, it must also protect the broad interests of federal taxpayers by avoiding excessive program costs.

With that in mind, honourable senators, I believe that Bill C-10 strikes an excellent balance of fairness, equity, and predictability in the management of federal payments in lieu of taxes. Its goal is not to subvert the existing approach but to build on it for the new millennium.

Let me quickly explain the key elements of Bill C-10, which is intended to ensure that federal payments in lieu of taxes are as much like the taxes levied against private landowners as possible while still recognizing the government's constitutional exemption from local taxation.

Perhaps the most obvious impact of Bill C-10 is that it will change the name of the legislation and of the program itself. In future, we will use the terminology "payments in lieu of taxes" instead of "grants in lieu of taxes." This is not merely a superficial change, honourable senators. It implies a more explicit and respectful relationship between the two levels of government and indicates that the Government of Canada is accepting the same responsibilities as are other property owners. This change in name is underscored by a goodwill clause in Bill C-10 that states the government's commitment to fairness and equity and the administration of federal payments in lieu of taxes.

Substantive changes in the legislation include a requirement that the Government of Canada pay a supplementary amount to a municipality when a payment is unreasonably delayed. This will encourage federal departments and agencies to meet the payment schedules put in place locally, ensuring more equitable treatment of municipalities. The Minister of Public Works and Government Services will have the sole discretion to decide whether or not a payment was late, and he has already indicated that he will be seeking a high level of compliance by federal property holders.

Bill C-10 will also improve the fairness of the process by establishing in law a dispute advisory panel through which municipalities can challenge federal decisions on payments in lieu of taxes. The Federation of Canadian Municipalities and municipal assessment authorities will be consulted on the makeup of the panel.

Honourable senators, I am pleased to say that Bill C-10 also addresses the issue of tax defaults by tenants of federal properties. The proposed legislation includes a new discretionary power that allows the Minister of Public Works and Government Services to make payments in lieu of taxes on tenant-occupied property when the minister is convinced that the municipality has made reasonable efforts to collect from the tenant.

Another notable change is the expanded definition of "real property" contained in Bill C-10. This means that, in future, such structures as employee parking lots, outdoor swimming pools and golf courses, which are currently excluded from the legislation, will be subject to making payments.

This proposed legislation also ensures that First Nations governments will have the same access to federal payments in lieu of taxes as do other taxing authorities. To this end, the amendments contained in Bill C-10 will address certain barriers that limit the ability of First Nations to take advantage of these payments in their quest for greater financial independence.

Honourable senators should also be aware that the Government of Canada is undertaking administrative changes to the Municipal Payments Program that are not part of Bill C-10. For example, a program advisory council will be established to advise the Minister of Public Works and Government Services on administrative and policy issues related to the management of the payments in lieu of taxes program.

As well, Public Works and Government Services Canada has engaged national professional appraisal associations to draft best practices for unusual types of federal properties, such as penitentiaries, airports, defence establishments and national parks. The goal is to reduce the number of valuation disputes related to these properties and to ensure consistent valuation treatment of similar properties across Canada.

Honourable senators, Bill C-10 is simply confirming that the Government of Canada respects the standards set for other property owners, that it values the services it receives from municipal governments, and that it is committed to being a responsible property owner and a conscientious member of the community.

I mentioned at the outset that Bill C-10 responds to a longstanding need to reform the grants in lieu of taxes program and legislation. In fact, Bill C-10 culminates several years of review and discussion. Many of the provisions originate from a joint technical committee of representatives from the Federation of Canadian Municipalities, the Treasury Board Secretariat, and Public Works and Government Services Canada. The committee was established in 1995 and has produced two reports.

Other suggestions were put forth by municipal leaders, appraisal professionals and other stakeholders who met with the Minister of Public Works and Government Services during a series of 11 round table discussions held in the summer of 1998. These meetings took place in major centres across Canada. At stop after stop, the minister was told that the municipal payments program is crucially important to local communities, that it bolsters the relationship between the Government of Canada and the municipalities, and that it can and should be strengthened.

On behalf of the municipalities who depend on this program, and in the interests of fairness, equity, and predictability, I would ask honourable senators to heed that message today and support Bill C-10.

On motion of Senator Atkins, for Senator Grimard, debate adjourned.

CANADA BUSINESS CORPORATIONS ACT
CANADA COOPERATIVES ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Kirby, seconded by the Honourable Senator Cook, for the second reading of Bill S-19, to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence.

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I know that Senator Wilson wishes to speak to this order. However, I observe that Senator Tkachuk is the member opposite officially responding on this bill and, as such, he is entitled to a 45-minute time allocation. I would ask honourable senators for leave for that time allocation to be reserved to him, even though Senator Wilson speaks now on this bill.

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

Hon. Senators: Agreed.

• (1910)

Hon. Lois M. Wilson: Honourable senators, I wish to speak briefly to Bill S-19, particularly on clause 137(5)(*b*)(1). My interest is motivated by an increasing awareness that Canada needs to look carefully at the relationship between corporate social responsibility and investment, particularly internationally, and the role of shareholders in corporations. The bill, as amended, is a vast improvement on the former bill and I support it. It encourages and allows shareholders to communicate more freely with each other and with corporations. It greatly expands the rights of shareholders.

However, while I welcome the proposed amendment that requires a company to circulate proposals from beneficial shareholders and to amend the act so as not to narrow the grounds for a company to exclude a shareholder proposal, I have some concerns.

Honourable senators, I believe that Bill S-19 could be detrimental to shareholder issues on corporate responsibility that some small shareholders may wish to raise. For example, Christian Brothers Investment Services, Inc., in New York, although supportive of the main direction of the bill, as am I, has this to say:

> The issue of Talisman Energy Inc.'s human rights record in Sudan is an issue that can have financial consequences to us as shareholders, and therefore is an appropriate concern for this process... Please know that our investors would be very concerned about investing in Canada if they were not assured of a system that supported their rights as shareholders to bring matters of concern to corporate management.

Yet, Talisman Energy refused to circulate a proposal in 1999 on the grounds that the proposal was submitted for political, religious, social or similar cause.

Retaining the corporate social responsibility exclusion without establishing a right of administrative appeal is, in my judgment, not wise. Small minority shareholders who may have a genuine interest and concern that could properly be the subject matter of a shareholder proposal but whose proposals have been excluded will likely not be able to have the resources to fight their exclusion in the courts. The inclusion of the phrase "unless the person who submits the proposal demonstrates that the proposal relates in a significant way to the business or affairs of the corporation" to the tail end of the present corporate social responsibility exclusion is positive only if it is made clear that the initial onus is on the corporation to justify the exclusion. Otherwise, the company holds all the power and the shareholder is at its mercy.

Moreover, if the social responsibility exclusion is retained, the shareholding and time holding requirements must be removed. Otherwise, small shareholders will face a two-pronged test to bring forward shareholder proposals. If social responsibility is excluded, then minimum shareholding and time holding requirements are appropriate.

Honourable senators, much effort has gone into meeting concerns that a more open process would lead to abuse by shareholders, but these concerns need to be revisited for the sake of responsible small shareholders. According to documents obtained from Industry Canada through the Access to Information Act, eliminating the present corporate responsibility exclusion was supported by a number of smaller, socially responsible investment groups. It was opposed by the larger corporations such as the Coalition on CBCA Reform, Imperial Oil, Nova Corporation, Osler Hoskin and Harcourt, and TransAlta Corporation. To be small is not necessarily to be irresponsible.

I hope that the Senate committee examining this bill will indeed give the bill serious sober second thought in its deliberations in order to demonstrate more equitable access by all the shareholders.

Some Hon. Senators: Hear, hear!

On motion of Senator DeWare, for Senator Tkachuk, debate adjourned.

FINANCING OF POST-SECONDARY EDUCATION

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Atkins calling the attention of the Senate to the financing of post-secondary education in Canada and particularly that portion of the financing that is borne by students, with a view to developing policies that will address and alleviate the debt load which post-secondary students are being burdened with in Canada.—(*Honourable Senator Callbeck*).

Hon. Catherine S. Callbeck: Honourable senators, it is a pleasure to rise today and participate in the debate on this inquiry. I first wish to thank Senator Atkins for bringing it to the floor of the chamber. This issue has not been formally debated in this house since the Special Senate Committee on Post-Secondary Education presented its final report in December 1997. However, I do not believe that there can be any doubt in the minds of honourable senators about the significance of this issue.

National surveys repeatedly put education, along with health care, in the top areas of importance and concern for Canadians. A reason for this concern is the high debt loads accumulated by students upon graduation. Debt loads are increasing mainly because students are now required to pay a greater portion toward the cost of their education. For example, if we look at 1982, tuition fees represented 8 per cent of the university's operating revenues, where in 1998 they represented 17 per cent of such revenues. However, even with rising tuition fees, figures from Statistics Canada show that the new enrolment has increased on average by 20 per cent between 1987 and 1997.

Honourable senators, one must ask the following question: If debt loads are so high, then why is that enrolment figure increasing? That question is difficult to answer, for it attempts to find out why individuals decide to pursue higher education. It is known from various studies that such a decision is complex and involves a variety of motivations and barriers. However, one thing is clear: In many sectors of the economy today, a post-secondary degree has replaced high school as the minimum requirement for entry into the workforce. Therefore, the predominant view appears to be that while the cost of studies and debt load are definitely problematic, most students do not see that cost as reason enough to give up their studies after high school. In other words, given the choice of incurring debt or not attending a post-secondary institute, the majority of students seem prepared to incur the debt and pay what it takes to position themselves for better employment opportunities in the future. Students appear to view post-secondary education for what it is — an investment in themselves and in their future.

How does the prospect of large amounts of debt affect the decision of a student from a low-income background? Do tuition fees and student debt have any impact on accessibility?

In its report to this chamber, the Special Senate Committee on Post-Secondary Education also asked that question. It recommended that the federal government and the Council of Ministers of Education Canada evaluate the effect that the prospect of high debt has on accessibility. These two parties made a joint announcement in November of 1999 highlighting their intention to conduct such a study. Unfortunately, the results are not yet available. However, the Maritime Provinces Higher Education Commission conducted a similar study and published its results in October 1997.

• (1920)

It found that there was a growing debt problem among the maritime student population but that high levels of debt did not, in general, deter students from studies beyond high school. However, they did find that the weight of student debt was unequally borne by those in less fortunate financial situations.

This study found that 52 per cent of students in the maritimes from lower-income families stated that they would have second thoughts about higher education as a result of debt concerns. Only 29 per cent of students from middle- to high-income families had the same concern. These figures, honourable senators, are of concern, for all the relevant data points to the fact that one of the best ways to get out of poverty, or to improve your income situation, is through education. Therefore, if high debt levels are seen by some as a barrier to post-secondary education, something must be done to alleviate this and, in turn, to encourage all young people to pursue higher education. For, if nothing is done, we will be creating a society of haves and have-nots, the haves being those who can afford financially to pursue higher education, and the have-nots being those who feel they cannot.

We are now at a time when an undergraduate or college degree has become a minimum standard of employment in many areas. This is due, in part, to the shift in the focus of our economy. Our economy has shifted from one based mainly on industry and natural resource extraction to one that is information-based, where the use of knowledge by highly mobile workers is more important than the machine-driven production of goods. As a result, education is becoming even more crucial, not just for individuals but for society as a whole.

The Organization for Economic Cooperation and Development, or OECD, underscored this in their 1996 report entitled "Lifelong Learning for All," when they said:

> Education plays a critical role in...raising the skills and competencies of the population, thereby improving the capacity of people to live, work and learn well. A well educated and well-trained labour force is critical to the social and economic well being of countries.

All this is not to say that Canada is not doing an excellent job in providing for the education of its citizens. On the contrary, Canada's emergence as a highly educated society is not new. Our standards, already high by international comparisons, improved substantially during the 1990s. According to a report released on Monday, February 21, 2000, by Statistics Canada, more young people than ever before graduated from high school, and more of these graduates went on to higher education.

In 1990, 20 per cent of people aged 25 to 29 in Canada had less than high school education. By 1998, that percentage had dropped to 13 per cent. Also, between 1990 and 1998, the percentage of individuals in this age group who had university degrees rose from 17 per cent to 26 per cent.

Canada also does well under international comparisons. According to recent OECD indicators, 48 per cent of our population aged 25 to 65 had completed some form of post-secondary education in 1998. That is well above the OECD average of 23 per cent, and also considerably higher than the United States, the second highest ranked country, at 34 per cent.

As you can see, honourable senators, Canada continues to be ahead of the curve in terms of educating our citizens. However, because of climbing student debt loads, as well as an increase in the loan default rates, we are failing some students, namely, those who opt not to attend because they feel they cannot afford to, and others who have difficulty with repayment after graduation. Therefore, the solution should focus on providing students with more options and flexibility when repaying their debt, with particular provisions geared to those in disadvantaged situations so as to ensure accessibility.

The federal government and the provinces have begun to introduce such methods. In 1998, the Canadian Opportunities Strategy was introduced in the federal budget. There were a variety of new measures to help manage student debt, including: tax relief for interest on all student loans; extension of interest relief after graduation; extended repayment periods for those who need it; a reduction in the loan principal for those who are still in financial difficulty; and finally, millennium scholarships. These measures have ensured that hundreds of thousands of students have had an easier time with respect to repayment. Furthermore, they also answer some of the recommendations made by the special Senate committee.

Provincial governments have also instituted programs to assist students with their debt. These are in the form of loan remission programs. A loan remission is a grant awarded to students upon successful graduation. These amounts vary by province. For example, in my own province of Prince Edward Island, on any amount borrowed over $6,000, up to a maximum of $2,000 per year is forgiven.

These programs are positive initiatives, and they should be built upon. Unfortunately, it is too early to assess what impact they have had on accessibility. However, given today's default rate of one in three, it appears that some students are falling through the cracks.

I would like to see a system where loan payments are tied to a student's starting salary, and then adjusted accordingly with salary increases as career and experience grow. In addition, I think loans should be awarded interest-free status for a fixed period of time after graduation.

A similar system is presently in use in Australia, and it appears to be working well. In order to counteract fraud and save administration costs, payments, pegged to a person's annual income, are collected through the income tax system.

I would like to see a system that would continue to enable young people in every province to reach beyond high school toward higher levels of learning if they so choose. In order to assist those who may not attend because the fees are high, I suggest a fixed period of interest relief, greater loan remission payments, and flexible repayment options, including loan payments tied to a student's salary. These initiatives would further demonstrate our belief in our students and our confidence in their futures in the knowledge-based economy.

Honourable senators, the challenge is to build on the system that we have, to develop a coordinated, equitable framework for the financing of post-secondary education across Canada so that every student who chooses can go on to higher levels of learning after high school. This is an important issue. I encourage other senators to participate in this debate.

Hon. Norman K. Atkins: Honourable senators, would the Honourable Senator Callbeck entertain a question?

Senator Callbeck: Of course, honourable senators.

• (1930)

Senator Atkins: First, I wish to thank the honourable senator for her presentation. It was excellent. We all have our own solutions to the problems of student debt. My question is simple: Do I take from what the honourable senator has said that anyone who graduates from high school, regardless of their demographic circumstances, should have the right to attend post-secondary education?

Senator Callbeck: I do not know what the honourable senator means by that. Is he saying that they should be able to attend free of charge?

Senator Atkins: I am talking about some form of financial support.

Senator Callbeck: Yes, I think there should be some form of financial support. However, it is obvious that some students were not accommodated.

As I mentioned, various initiatives were undertaken by the federal government in the 1998 budget, but it is too early to know how many students will be affected. However, there will probably be thousands of students to whom those initiatives will be helpful in paying down their debt.

In answer to your question, yes, I think some students are falling through the cracks and we could be doing more.

Senator Atkins: The statistics that I have show that almost 1 million students now qualify for post-secondary education in one form or another and 300,000 are in a situation where they need financial support. There seems to be a problem with many of those 300,000. Whether they have the opportunity to proceed is questionable. Not only does it affect them personally, but we now are hearing incredibly bad stories about how students in their fourth year are anywhere from $25,000 to $30,000 in debt. The spinoff is also affecting their parents, especially those who live in Atlantic Canada. That is an incredible amount of debt for anyone to carry.

Is it possible to provide grants so that students can receive some support? Repayment of that loan would then take effect only after the student graduated and began a permanent job. Furthermore, there should be some period of grace before a student would have to pay back that loan with interest.

Senator Callbeck: That is what I suggested. The payment should be geared to the salary. There should be a fixed period of time before interest begins to accumulate on the debt.

Having said that, the government has taken great initiatives along this line to assist our students. Many were spelled out in the 1998 budget. The report of the Special Senate Committee on Post-Secondary Education recommended looking at this entire area to determine whether students who come from low-income families are particularly disadvantaged. That is being done at present by the provincial ministers and the human resources department, which announced that study in November of 1999. It will be interesting to see those results.

Senator Atkins: In the most recent budget, scholarship deductibility has been increased from $500 to $3,000. Does Senator Callbeck not think that any scholarship should not be considered a taxable benefit? Frankly, it penalizes not only the students but also the institutions because the institutions raise the money for scholarships and then pass them on to their students. There is, then, a taxable repayment to government. Do you not think we should eliminate that altogether?

Senator Callbeck: I was happy to see the government take that initiative. I do not know about eliminating it altogether. There must be some figure. It is now at $3,000. It may be that the figure should be higher, but let us see how it works out.

On motion of Senator Graham, debate adjourned.

RELIGIOUS FREEDOM IN CHINA IN RELATION TO UNITED NATIONS INTERNATIONAL COVENANTS

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Wilson calling the attention of the Senate to religious freedom in China, in relation to the UN international covenants.—(*Honourable Senator Andreychuk*).

Hon. A. Raynell Andreychuk: Honourable senators, I am pleased to note that the inquiry of which Senator Wilson gave notice on November 17, 1999, led to an interesting debate in this chamber. I should like to add some of my own comments.

As could be expected, Senators Austin, Di Nino and Poy have enlarged the debate beyond the scope of Senator Wilson's inquiry and into such issues as human rights and trade and the so-called Asian values debate.

Honourable senators will recall that in December 1998, the Standing Senate Committee on Foreign Affairs tabled its report entitled "Crisis in Asia: Implications for the Region, Canada, and the World." In debating human rights and trade and Asian values, I wish to reiterate some of the points I made in my speech on Thursday, May 13, 1999, in addressing that Senate report.

With respect to human rights and trade, Professor Brian Job of the Institute of International Relations, University of British Columbia, pointed out:

> The basic argument in my remarks is that we Canadians in academic, government and private sectors cannot simply define our relationship...in narrow economic terms, that is, as jobs, jobs, jobs and trade, trade, trade. I argue that if we do define our foreign policy and our bilateral relations with Asia solely in economic terms, we would be myopic because we will eventually undermine our economic interests and our success in the region.

He went on to state:

> Increasingly, Canada will find that its economic interests have social, political and security implications.

Further, page 105 of the Senate report reads as follows:

> The Committee believes that the dichotomy between trade and human rights is a false one in the sense that the two entities are interwoven. What is coming to be realized by governments, policy makers, and businesses alike is that the usual acceptance of the rule of law, the outlawing of corrupt practices, respect for workers' rights, high health and safety standards, and sensitivity to the environment are not only morally justifiable; they are good for business. By promoting and complying with human rights, a country fosters the political and consumer stability for economic prosperity and the fulfilment of trade commitments.

> Business also has an important role to play, both in human-rights promotion and in ensuring that it itself does not contribute to abuses.

The committee then went on to state that Canada should not "Leave its human rights values at the door" in its commercial and other dealings with countries.

Effectively, the committee — and I concur — stated that economics does not come first and human rights second, that they go hand in hand.

Recommendation 18 in the Senate report states:

> That Canadian foreign policy include the following group of principles as a minimum requirement in enunciating a clear stance on human rights:
>
> - Adherence to the Universal Declaration of Human Rights is the responsibility of all states. As such, Canada has the responsibility to encourage Asia Pacific countries to adhere to and comply with the international human rights declarations and, in particular, instruments that they have signed.
>
> - Canada has an important role to play in assisting its Asia Pacific partners in boosting their reform efforts and fostering their human rights capacity to develop their own human rights strategies. Canada should foster multilateral, regional and bilateral dialogues with other countries to draw them more fully into the international human rights system...

I shall come back to this point in a moment.

• (1940)

The second aspect that I should like to address is the misleading Asian mystique that somehow makes us think of the Asian countries and China in particular as different from all others. Surely, every country, including those in Africa, in South America and elsewhere, has its own unique history, culture and background. Why is it that we have little difficulty in forcefully raising human rights issues in countries in Africa and South America, and indeed in the former Soviet Union, but we are reticent to do so in Asia-Pacific and, more important, in China? Size seems to be the answer. However, from a human dimension, surely the life of an individual in China is equal to and as important as any life in Africa or Canada.

We must be reminded that the Universal Declaration of Human Rights is a declaration for peoples and not for nations. Minister Axworthy himself recently made that point in his quest for the new human security agenda. He has pointed out that there are two cornerstones in the United Nations, one being the declaration, which is a declaration protecting individuals, while national sovereignty is the basis of the charter. His inclination — and I would have thought to be, on the side of the individual in the protection of their rights — is the right one irrespective of the country in which they find themselves.

This Asian-values debate has certainly lessened since the Asian financial crisis. Prior to that, as our report indicated, it was an excuse not to make the changes required. As we pointed out in our report:

> The Asian financial crises in 1997 has proven that there is no mystique in Asia-Pacific, or put another way, that Asian countries have found no way around the usual economic forces and rules.

Therefore, when Asian countries ran into difficulty, they were quite willing to enter into a dialogue to make the kinds of changes that would be compatible with good governance and human rights adherence that they had previously not been prepared to do.

The only country that seems reluctant is China. We should note that, while there have been economic gains in China and while China has made remarkable progress in opening its markets and other institutions, China still has the largest army in the world, with wealth being siphoned off for weapons. The real need is to encourage de-escalation.

As a subpoint to this, I find it troubling that, every time human rights is raised as an issue for analysis in China, some individuals jump to the conclusion that sanctions are being suggested and state that sanctions are much more destructive than dialogue. First, I am inclined to agree that constructive dialogue is better than isolation through sanctions, but it is not an either/or situation. Dialogue must, in fact, be constructive and it must produce results. Otherwise, it is merely a facade to ignore human rights and to deflect from the real agenda.

Further, there is a whole host of measures between constructive dialogue and sanctions that should be utilized. Many of them are existing mechanisms within the international community and, therefore, it is a disservice to balkanize the debate.

Senator Poy has laid out her analysis of Asian values, reminding us of our own poor record in the past on human rights and indicating that the collectivity argument has weight. I can only state over and over again my belief that the Universal Declaration of Human Rights embodies principles, values and rights that are, in fact, universal in nature and not unique to the Western World.

This is why I have been very conscious not to accept the government's position that we are projecting our values abroad. Rather, I personally subscribe to the policy of furthering the universal values to which China agreed when it entered the United Nations; and, while not yet ratified, they have gone so far as to sign the two main covenants.

I, for one, am not an expert on Asian values and do not presume to be one. However, I turn to some eminent sources who put out the alternate position. Professor Amitav Acharya, associate professor at the Department of Political Science at York University and also professor at the University of Toronto/York University Joint Centre for Asia-Pacific studies, has responded to the question of Asian values and human rights by stating:

> My definition of Human Rights is rights that every person enjoys simply by being human. There are no cultural conditions attached to this. Governments say that there will be a core group of human rights, but whether they observe it in practice is another question, the issue becomes very complicated. Much research has been done on the question of human rights in different cultures and they have come up with the same point that you have made. Every culture acknowledges and respects the dignity of human beings. We just have to make sure that political authorities do not abuse it.

Amartya Sen, winner of the 1998 Nobel Prize for Economic Science, the author of *Development as Freedom: Human Capability and Global Need* and an economist with the World Bank, stated the following in the *Journal of Democracy* in July 1999 with respect to the Asian values. I should also note that Sen was instrumental in building the human development index for the UNDP on which Canada came out to be number one. I believe him to be well versed in understanding the human dimension of this issue. He states:

> Confucius is the standard author quoted in interpreting Asian Values...Confucius himself did not recommend blind allegiance to the state. When Zilu asks him "how to serve a prince," Confucius replies —

Here, Mr. Sen adds, in brackets, that this is a statement that the censors of authoritarian regimes may want to ponder.

> "Tell him the truth even if it offends him." Confucius is not averse to practical caution and tact, but does not forego the recommendation to oppose a bad government (tactfully, if necessary): "When the (good) way prevails in the state, speak boldly and act boldly. When the state has lost the way, act boldly and speak softly." Indeed, Confucius provides a clear pointer to the fact that the two pillars of the imagined edifice of Asian values, loyalty to the family and obedience to the state, can be in severe conflict with each other. Many advocates of the power of "Asian values" see the role of the state as an extension of the role of the family, but as Confucius noted, there can be tension between the two. The governor of She told Confucius, "Among my people, there is a man of unbending integrity: when his father stole a sheep, he denounced him." To this Confucius replied, "Among my people, men of integrity do things differently: a father covers up for his son, a son covers up for his father — and there is integrity in what to do."

• (1950)

He goes on to state:

> The monolithic interpretation of Asian values as hostile to democracy and political rights does not bear critical scrutiny...

Finally, I quote Ms Maureen O'Neill, president, at the time, of the International Centre of the Human Rights and Democratic Development Centre when she testified before a committee and stated:

> It has become increasingly clear that issues of trade and investment ought not to be discussed in isolation from human rights and democracy.

Ms O'Neill further stated that the ideas of human rights, as being translated to us through APEC members, were not the ideas of the citizenry but were really the ideas of the leaders, and that the fundamental values that we call human rights were being echoed in those countries.

Therefore, I ask if it is really Asian values that preclude discussion of human rights, or is it the strategy of leaders to maintain absolute control for the purpose of their own position rather than for the benefit and welfare of the citizenry?

I now turn to the issue of religious freedom in China. I commend Senator Wilson for her initiative in working with her counterparts in China and for the assessments that both she and her counterparts have made. While she rightly points out that she saw no evidence of widespread intentional policy to persecute religious groups, I think she would agree that the broader picture is not one that her committee could justifiably analyze. In rereading Senator Wilson's remarks, I would at some later date ask what is meant by the term "main-line Christian churches in Canada," and what she would mean by the "highly privatized orientation of religious groups originating in Los Angeles or Taiwan."

Further, while I am on this train, I have some difficulty in referring to cults and then accepting the notion that not only are the Falun Gong a cult but that they are a destabilizing, harmful and foreign-influenced organization. It would have been more helpful if there was some evidence from Senator Wilson's counterparts as to how they came to this conclusion.

Succinctly stated, the issue of freedom of religion is guaranteed by the Universal Declaration of Human Rights, as is the freedom of association. An attempt by any government to sanction churches, in my view, is inappropriate, and the key to China's problems lies in the fact that it has recognized only five religions. I think I have at least identified the issue that it is not a question of individuality versus collectivity but rather whether the principle of collectivity is being manipulated by the government in such a way as to control the citizens. To rely very exclusively, or indeed heavily, on those churches that are functioning openly and sanctioned by the government is questionable. China still holds itself out to be a communist country but with some openness for the economy. We know now, but only after the Soviet Union collapsed, of the true difficulties that churches and believers faced under the Soviet system, and I believe it is a fair parallel to draw. Under the communist system, and I can use Ukraine as an example, there was the officially sanctioned Orthodox Church, the Orthodox Church that went underground, and the Orthodox Church that went into exile.

Even that church which functioned and was accepted to be one of the patriotic churches is now finally opening up to reveal what compromises were made for survival. I can only believe that some day in China the same will happen. While the communist government did not try to eliminate religious beliefs, it did create churches for both Catholics and Protestants as well as three other government-sanctioned churches free from any links with foreign governments.

The Hon. the Speaker *pro tempore***:** I regret to inform the honourable senator that her speaking time has expired. Are you seeking leave to continue?

Senator Andreychuk: I am seeking leave to continue.

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

Hon. Senators: Agreed.

Senator Andreychuk: Honourable senators. I will try to be as brief as I can.

In other words, they acknowledged five churches with stipulations. However unwelcome this may have been to many Protestants, I point out it certainly put the Catholics on a collision course, as the all-important ties with the Pope were at stake. In fact, the recently deceased Ignatius Cardinal Gong spent 30 years in Chinese prisons and labour camps for refusing to endorse a patriotic Catholic church. His struggle, it has been noted, was the concern for the proper source of authority in religious belief under a totalitarian government determined to mould the beliefs of its citizens and extract public affirmations of loyalty. One must not forget the struggle for all those prisoners of conscience who were imprisoned in the name of their faith, though it is true that China has changed course several times since then. In my opinion, even the so-called recognized churches cannot be taken as the sole source of determination of religious freedom, and particularly it would be unfair to put them in that kind of spotlight as their own security could be prejudiced. Therefore, there is a delicate balance of encouraging these groups while not making them the spokespersons for the issue of religious freedom totally in China. It is, therefore, necessary for all of us to look at other sources.

Despite what China has stated with respect to the Falun Gong, for example, as being a destabilizing and harmful foreign-influenced organization, there has been no factual evidence presented. The whole concept of Falun Gong practitioners must be reviewed. Certainly, international opinion supports that the Falun Gong practitioners have not violated any real laws and that the worst case scenario would be that perhaps some have resorted to civil disobedience to fight the government's claim that they are a cult of destabilization. There is certainly evidence that a crackdown has occurred, not only on the Falun Gong but on Tibetan monks and Buddhists particularly.

I would encourage Senator Wilson and the other Canadian members to contact the Falun Gong to hear their side of the story and to seek the opinion of a whole host of legitimate and recognized non-governmental activities familiar with China and the state.

One must look at the broader issue of freedom of expression, association and religion and rely on independent groups who have access to China and who have a credible reputation. I personally place lesser weight on the United States' human rights report, for obvious reasons, but do rely very heavily on human rights organizations such as Amnesty International, Human Rights Watch and others who reported that torture and ill treatment continues to be commonplace. In the words of the Secretary General of Amnesty International:

> Last year was unquestionably the most repressive year in China since the horrifying massacre at Tiananmen Square ten years earlier. Something must be done.

Further, former Liberal cabinet minister Warren Allmand, Director of the International Centre for Human Rights and Development, has said, as reported in *The Ottawa Citizen*:

> Canada is undermining the multilateral efforts to affect change in China, by pursuing its own bilateral efforts.

He says it is Prime Minister Jean Chrétien's single-minded approach to boosting trade that has watered down Canada's previously harder line on Chinese human rights abuses. He goes on to state:

> We think many of these things are probably decided in the Prime Minister's Office and probably not in the Department of Foreign Affairs.

The Hon. the Speaker *pro tempore***:** Honourable senators, is it your wish that I not see the clock for another hour?

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, not having seen the clock for two hours and it now being 8 o'clock, I can interpret that two ways, I guess. Under our rules, when we are sitting, we rise at 6 and return at 8, or we have given leave to sit for two hours. I sense a certain restlessness in the house, and perhaps the latter interpretation would be the better approach. Shall we allow Senator Andreychuk to complete her remarks?

• (2000)

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I suggest that we not see the clock and go through the Order Paper today, because there may be more restlessness, should it be suggested that we must come back here Friday morning. If we continue and finish the Order Paper today, it may help us greatly later this week in terms of the schedule.

Hon. Eymard G. Corbin: Honourable senators, there must be a sense of fairness in extending time. We were originally told that we would continue until seven o'clock. It is now eight o'clock and 23 seconds. We try to plan our lifestyles in a way in which we can maintain decent health while working these abnormal hours. It is enough to have sandwiches at noon-hour, and in committee or caucus meetings; it is pretty tough to have sandwiches again in the evening. At my age, I cannot take that too often. I know that the press will make fun of this, but I do not give a damn about the press. They are never here anyhow.

All I want is that we be able to manage our time such that we can plan our lives in a decent way, as everyone else does. This is no way to run a shop. I attach a great deal of importance to progress of legislation, but surely other things can wait.

I do not wish to be unfair to Senator Andreychuk. She believes absolutely in human rights, but this is not the first instance that she has spoken to us about human rights, and I am sure we will hear more speeches on the topic. However, is it justifiable to continue to speak about human rights at this time of the day? Why did we not adjourn at six o'clock and come back at eight o'clock? So what if we sit on Friday? I am not against a five-day or six-day week. However, let us have a lifestyle that enhances our health rather than being a detriment to it.

Hon. Lois M. Wilson: Honourable senators, I have an inquiry on Sudan on the Notice Paper to which I wanted to speak last Tuesday. It has not been possible to speak to it because we have run out of time each day, and apparently we are running out of time again. My next opportunity to speak to this will be when we reconvene after our break in May, which is fine. Sudan will not go away. However, I need direction on this because I was to speak to it tonight.

Senator Hays: I have commented on the restlessness of the house, as has Senator Kinsella. I do not know how Senator Corbin is disposed on this. We are sitting with leave. If leave is not granted, the house will automatically adjourn.

Senator Corbin: Senator Hays knows that he can always count on me. I am one of the senators who is always here.

Senator Hays: That is true and very much appreciated.

Therefore, I would ask for leave to complete our routine of business.

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

Hon. Senators: Agreed.

Senator Andreychuk: I thank the honourable senators, and particularly Senator Corbin, for those comments. I have spoken previously on human rights and I will continue to speak on this subject, as I feel strongly about it. I beg the indulgence of honourable senators one more time because I think there is some merit in proceeding now.

I strongly support Mr. Irwin Cotler, a Liberal Member of Parliament, and a coalition of 11 human rights groups in Canada that called on Canada to express concern about China's behaviour in the Human Rights Commission. Simply constructive engagement on this point is not working. Minister Axworthy has been ambivalent on these issues and it certainly would not be in line with his human security agenda to take this regressive stance. Therefore, it is clearly the Prime Minister of Canada who must take the initiative to join forces with other like-minded countries in supporting a resolution expressing concern.

After all, the present resolution that is circulating, which will probably be put to the Human Rights Commission this week, is not a condemning resolution, but rather one expressing concern and encouragement. If China is truly interested in working cooperatively and adhering to its obligations, and if China were truly interested in a dialogue on human rights, it would not be lobbying, as we speak, to continue only the pleasant sounding but ineffectual rights dialogue.

If Canada is not prepared to accept the United States resolution, it could put forward one of its own. Simply to continue to indicate that they are constructively engaged is not working and is not sufficient. Therefore, it is not only China that has something to account for, but also Canada.

In our report on the Asia-Pacific region, we clearly stated that it was Canada's responsibility to encourage her partners to adhere to international human rights instruments, as we are obliged to do so. To continue to buy time for China in constructive engagement and to talk about the long-term solutions by virtue of other means has not borne fruit but is jeopardizing the human security of many citizens in Canada.

As one person in an authoritarian country once said to me: It is easy for you to be compassionate to government leaders and to give them more time while you persuade them, but would you feel the same way if it were you, your child, your brother, your friend that was losing his life or being tortured or ill-treated? Would you have the same patience?

I therefore urge the Canadian government to institute its own resolution at the Human Rights Commission this week and to join forces with others concerned about the human rights record, particularly with respect to religious freedom and freedom of association or, alternatively, to put in meaningful, constructive engagement at the prime ministerial level. The Prime Minister should not lead another Team Canada delegation to China this year without first advising the Chinese government that human rights would be a high and concurrent agenda.

I apologize if this statement was long. I wanted to cover the points that are important. I urge the government and members opposite, who have some influence, to join with Mr. Cotler to see whether we can make a difference in the lives of individuals in China.

On motion of Senator Kinsella, debate adjourned.

SUDAN

INQUIRY—DEBATE ADJOURNED

Hon. Lois M. Wilson rose pursuant to notice of March 21, 2000:

> That she will call the attention of the Senate to the situation in the Sudan.

Hon. Lois M. Wilson: Honourable senators, a year ago, on March 23, 1999, I initiated an inquiry on the situation in Sudan, with an update on December 7, 1999. My initial inquiry gave much of the background of the current conflict, and I encourage any who will be speaking to this inquiry to refer to that intervention.

We now find ourselves, a year later, with Sudan in the news, with hundreds of more lives lost in the interval — more lives lost than in Kosovo, Bosnia and Rwanda combined — with the brutal war continuing unabated, with Canada and other Western countries continuing to pour thousands of dollars of humanitarian aid into the country annually, with the media finally paying attention, but to only two aspects of the protracted civil war — the extraction of oil by Talisman Oil and the allegations of slavery. Either allegation could be the subject of an inquiry on its own.

The international community has not given attention commensurate with the enormity of human suffering taking place. What attention there is has been focused almost exclusively on oil extraction and not on the current peace strategies for this wartorn country. While for some stopping the flow of oil would be a giant step toward peace — although that is based on the premise that international sanctions would have to be in place as Malaysia and China own large shares in the pipeline — a significant body of opinion thinks that other aspects of the situation of Sudan have not been fully enough explored. It is those aspects I wish to raise.

• (2010)

Canada supports the formal process of peace negotiations between the Government of Sudan and the Southern People's Liberation Army, SPLA, presently being brokered by Special Envoy Daniel Mboya and his secretariat, acting on behalf of the regional African initiative called the Intergovernmental Authority on Development, IGAD. IGAD was formed in the early 1990s by African countries that wanted to get at the root of the conflict. Beginning on the premise of underdevelopment, it then began to focus efforts on a peace process for the Sudan. Currently, Western countries, including Canada, fund the IGAD secretariat through CIDA and support its work diplomatically through the International Partners Forum, IPF, where I represent Canada. The 1994 Declaration of Principles, the only document agreed to by both warring parties, constitutes the basis for the resolution of the conflict in Sudan. It is on the basis of these principles that current peace negotiations are being conducted.

Two negotiation sessions have taken place, with a third scheduled for April. My recent visit to the Horn of Africa left me cautiously optimistic about the IGAD process. At least the framework for an agreement exists and the envoys from neighbouring countries have been active since the beginning of this year. The country has been in conflict since 1956, so one can hardly expect a speedy peace settlement. IGAD has wide African support and should be fully supported until either a peace agreement is brokered or the whole process breaks down, making other mechanisms necessary.

Honourable senators, to say that things did not go smoothly in the negotiations so far is the understatement of the year. Two major issues seem intractable: the separation of religion and the state, which the Government of Sudan has not yet accepted given its strong Islamic orientation, and the right of the south to self-determination should agreement on the unity of the country fail. Dispute persists on the geographic borders between north and south, particularly as to the status of "marginalized territories," Abyei, the Southern Kordafan, and the South Blue Nile. Moreover, the government has begun to insist that IGAD is confined strictly to the south and that the issues of the territories under dispute must take place apart from the IGAD table.

After the last round of negotiations, the SPLA, out of frustration, no doubt, announced that it will move directly to an interim arrangement before self-determination, which would probably mean the separation of the south from the north. If this happens, it will leave unanswered all the issues for a comprehensive peace. It must be noted, however, that SPLA has agreed to a third round of negotiations.

We have always said that the Sudan situation is extremely complex, and now we are beginning to appreciate that fact. Libya and Egypt have decided that IGAD has taken too long to work, and have proposed a parallel peace initiative, which unfortunately does not recognize the declaration of principles, particularly the clause on self-determination for the south, should efforts at unity fail.

Egypt is suggesting a national reconciliation process with or without IGAD. Although this runs the danger of recognizing a horizontal northern Arab solidarity that will further exclude and alienate the south, the Libyan-Egyptian initiative appears to be gaining wider acceptance. Kenya has intense possessiveness of the IGAD process and does not brook interference from other African countries; nor does Ethiopia.

A number of countries, including Canada, think that eventually all affected parties need to be party to the peace agreement, including a role for Egypt and the opposition NDA coalition. Nigeria and South Africa have also indicated interest. It is not yet clear how this will be accomplished, but any peace initiatives need to be rolled into the IGAD process. Nor is the role of the OAU and its conflict resolution unit clear.

There is broad acknowledgement that it is not possible to end the brutal war in Sudan with a series of separate, that is, piecemeal, initiatives, but the position taken by the Government of Sudan toward IGAD as a narrow, geographically defined peace forum forces the international community to do some hard thinking.

In an attempt to redefine the context, strength and support for a comprehensive peace process, Canada will try to raise the profile of the Sudan situation and the peace process in international forums such as the Security Council and at the UN Human Rights Commission in April. The objective of the Security Council is twofold: One is to address the problem of access to southern Sudan for humanitarian groups, including the UN, which access has been highly restricted over the last year or two; the second is to seek an endorsement of IGAD's mediation efforts. These initiatives may be unacceptable internationally because of the self-interest of particular countries in the Sudan. However, Canada will persist in its efforts.

Does either side really want peace? The Government of Sudan is unlikely to support an outcome in which Sudan becomes secularized, or one in which power devolves to the principal parties to the current conflict. Does it believe it can sustain the status quo indefinitely through low-level military actions and through deliberate bombing of civilian hospitals and schools? Perhaps. It speaks of the conflict as the "southern problem."

The south speaks of its "war of liberation" against government that came to power through a coup. It insists on the separation of the state and religion, and the right of self-determination, even though no government structures are in place for that eventuality. Conflict over resources such as oil and water will continue. Arabism versus Africanism will create contradictions difficult to overcome. What is at stake is the possible dismemberment of the largest country in Africa, and regional destabilization.

What steps has Canada taken or could take, given the fact that Canada is not brokering the peace but is supporting the African regional authorities who at this point are charged with that task? Already, through CIDA, Canada supports the Inter-Africa group, an IGAD resource think tank, as well as IGAD itself. It supports peace and reconciliation efforts through Waterloo's Project Ploughshares and Quebec's Alternatives that bring together warring tribes in the process of reconciliation.

Support continues for the new Sudan Council of Churches in its facilitation of reconciliation between the warring tribes of the Nuers and the Dinkas. Canada supports the Dutch Embassy's Sudanese Women's Peace Initiative, which brings together Africans and Arabs, south and north, Christian and Muslim, which movement is sponsoring an international meeting in April in the Netherlands. Of course, said the Dutch Embassy, they could never have mounted such a program without being fully present on the ground in the Sudan.

This initiative is the most hopeful sign I saw in the Sudan. The women are tired of having their husbands killed, their sons fighting a war, and a lifetime of despair and misery. Their energy, if expressed in programmatic form, could well contribute to tipping the balance of power.

Canada has also made available, through CIDA, a person skilled in conflict resolution and a political analyst to work full time in the Sudan. These efforts contribute toward consolidation of southerners, so that eventually a critical mass might emerge that could correct the imbalance of power between the north and the south.

The need for a small Canadian presence in the south has certain advantages. It does not mean that Canada is tilting in favour of Khartoum. Rather, it will allow Canada to monitor and more adequately assess the situation, including the human rights violations of both the Government of Sudan and the SPLA, and support the activities of the NGOs active on the human rights and abductions fronts. It would be able to support NGOs formerly active in the south but now temporarily withdrawn in protest against the SPLA requirement to place all humanitarian aid under their control. It could also better provide political reporting.

Canada could support a human rights desk focused on the oil regions, insisting on independent peace and human rights experts, possibly drawn from the international community through the UN. It should think about eventual compensation for internally displaced persons. It could support efforts to engage progressive Christians, Muslims, and animists in proposing solutions to both warring parties on the role of religion, provided such efforts are not a showcase for either side of the conflict. Canada could bring its experience in multiculturalism and in multi-faith communities to this situation. As well, our experience in federalism, flawed as it may be, can be a contribution.

The massive, longstanding suffering continues, as word continues to come of the government continuing to deliberately target and bomb civilians in hospitals and schools, and to use roads built for oil extraction to move troops. The problems seem intractable, but a conflict of many years' standing will not come to an end easily or soon. As long as it appears that Canada can have a constructive role, our country intends to remain fully engaged.

Thank you for your patience.

Hon. Senators: Hear, hear!

On motion of Senator Andreychuk, debate adjourned.

ADJOURNMENT

Leave having been given to revert to Government Notices of Motions:

Hon. Dan Hays (Deputy Leader of the Government), with leave of the Senate and notwithstanding rule 58(1)(*h*), moved:

> That when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, April 5, 2000, at 1:30 p.m.;
>
> That at 3:30 p.m. tomorrow, if the business of the Senate has not been completed, the Speaker shall interrupt the proceedings to adjourn the Senate;
>
> That should a division be deferred until 5:30 p.m. tomorrow, the Speaker shall interrupt the proceedings at 3:30 p.m. to suspend the sitting until 5:30 p.m. for the taking of the deferred division; and
>
> That all matters on the Orders of the Day and on the Notice Paper, which have not been reached, shall retain their position.

Motion agreed to.

The Senate adjourned until Wednesday, April 5, 2000, at 1:30 p.m.

APPENDIX

Officers of the Senate

The Ministry

Senators

(Listed according to seniority, alphabetically and by provinces)

Committees of the Senate

THE SPEAKER

THE HONOURABLE GILDAS L. MOLGAT

THE LEADER OF THE GOVERNMENT

THE HONOURABLE J. BERNARD BOUDREAU, P. C.

THE LEADER OF THE OPPOSITION

THE HONOURABLE JOHN LYNCH-STAUNTON

OFFICERS OF THE SENATE

CLERK OF THE SENATE AND CLERK OF THE PARLIAMENTS

PAUL BÉLISLE

DEPUTY CLERK, PRINCIPAL CLERK, LEGISLATIVE SERVICES

GARY O'BRIEN

LAW CLERK AND PARLIAMENTARY COUNSEL

MARK AUDCENT

USHER OF THE BLACK ROD

MARY MCLAREN

THE MINISTRY

According to Precedence

(April 4, 2000)

The Right Hon. Jean Chrétien	Prime Minister
The Hon. Herbert Eser Gray	Deputy Prime Minister
The Hon. Lloyd Axworthy	Minister of Foreign Affairs
The Hon. David M. Collenette	Minister of Transport
The Hon. David Anderson	Minister of the Environment
The Hon. Ralph E. Goodale	Minister of Natural Resources and Minister responsible for the Canadian Wheat Board
The Hon. Sheila Copps	Minister of Canadian Heritage
The Hon. John Manley	Minister of Industry
The Hon. Paul Martin	Minister of Finance
The Hon. Arthur C. Eggleton	Minister of National Defence
The Hon. Anne McLellan	Minister of Justice and Attorney General of Canada
The Hon. Allan Rock	Minister of Health
The Hon. Lawrence MacAulay	Solicitor General of Canada
The Hon. Alfonso Gagliano	Minister of Public Works and Government Services
The Hon. Lucienne Robillard	President of the Treasury Board and Minister responsible for Infrastructure
The Hon. Martin Cauchon	Minister of National Revenue and Secretary of State (Economic Development Agency of Canada for the Regions of Quebec)
The Hon. Jane Stewart	Minister of Human Resources Development
The Hon. Stéphane Dion	President of the Queen's Privy Council for Canada and Minister of Intergovernmental Affairs
The Hon. Pierre Pettigrew	Minister of International Trade
The Hon. Don Boudria	Leader of the Government in the House of Commons
The Hon. J. Bernard Boudreau	Leader of the Government in the Senate
The Hon. Lyle Vanclief	Minister of Agriculture and Agri-Food
The Hon. Herb Dhaliwal	Minister of Fisheries and Oceans
The Hon. Claudette Bradshaw	Minister of Labour
The Hon. George Baker	Minister of Veterans Affairs and Secretary of State (Atlantic Canada Opportunities Agency)
The Hon. Robert Daniel Nault	Minister of Indian Affairs and Northern Development
The Hon. Maria Minna	Minister for International Cooperation
The Hon. Elinor Caplan	Minister for Citizenship and Immigration
The Hon. Ethel Blondin-Andrew	Secretary of State (Children and Youth)
The Hon. Raymond Chan	Secretary of State (Asia-Pacific)
The Hon. Hedy Fry	Secretary of State (Multiculturalism) (Status of Women)
The Hon. David Kilgour	Secretary of State (Latin America and Africa)
The Hon. James Scott Peterson	Secretary of State (International Financial Institutions)
The Hon. Ronald J. Duhamel	Secretary of State (Western Economic Diversification) and Francophonie
The Hon. Andrew Mitchell	Secretary of State (Rural Development) (Federal Economic Development Initiative for Northern Ontario
The Hon. Gilbert Normand	Secretary of State (Science, Research and Development)
The Hon. Denis Coderre	Secretary of State (Amateur Sport)

SENATORS OF CANADA

ACCORDING TO SENIORITY

(April 4, 2000)

Senator	Designation	Post Office Address
THE HONOURABLE		
Herbert O. Sparrow	Saskatchewan	North Battleford, Sask.
Gildas L. Molgat, Speaker	Ste-Rose	Winnipeg, Man.
Edward M. Lawson	Vancouver	Vancouver, B.C.
Bernard Alasdair Graham, P.C.	The Highlands	Sydney, N.S.
Raymond J. Perrault, P.C.	North Shore-Burnaby	North Vancouver, B.C.
Louis-J. Robichaud, P.C.	L'Acadie-Acadia	Saint-Antoine, N.B.
Jack Austin, P.C.	Vancouver South	Vancouver, B.C.
Willie Adams	Nunavut	Rankin Inlet, Nunavut
Lowell Murray, P.C.	Pakenham	Ottawa, Ont.
C. William Doody	Harbour Main-Bell Island	St. John's, Nfld.
Peter Alan Stollery	Bloor and Yonge	Toronto, Ont.
Peter Michael Pitfield, P.C.	Ontario	Ottawa, Ont.
William McDonough Kelly	Port Severn	Mississauga, Ont.
E. Leo Kolber	Victoria	Westmount, Que.
Michael Kirby	South Shore	Halifax, N.S.
Jerahmiel S. Grafstein	Metro Toronto	Toronto, Ont.
Anne C. Cools	Toronto-York	Toronto, Ont.
Charlie Watt	Inkerman	Kuujjuaq, Que.
Daniel Phillip Hays	Calgary	Calgary, Alta.
Joyce Fairbairn, P.C.	Lethbridge	Lethbridge, Alta.
Colin Kenny	Rideau	Ottawa, Ont.
Pierre De Bané, P.C.	De la Vallière	Montreal, Que.
Eymard Georges Corbin	Grand-Sault	Grand-Sault, N.B.
Brenda Mary Robertson	Riverview	Shediac, N.B.
Jean-Maurice Simard	Edmundston	Edmundston, N.B.
Michel Cogger	Lauzon	Knowlton, Que.
Norman K. Atkins	Markham	Toronto, Ont.
Ethel Cochrane	Newfoundland	Port-au-Port, Nfld.
Eileen Rossiter	Prince Edward Island	Charlottetown, P.E.I.
Mira Spivak	Manitoba	Winnipeg, Man.
Roch Bolduc	Golfe	Sainte-Foy, Que.
Gérald-A. Beaudoin	Rigaud	Hull, Que.
Pat Carney, P.C.	British Columbia	Vancouver, B.C.
Gerald J. Comeau	Nova Scotia	Church Point, N.S.
Consiglio Di Nino	Ontario	Downsview, Ont.
Donald H. Oliver	Nova Scotia	Halifax, N.S.
Noël A. Kinsella	New Brunswick	Fredericton, N.B.
John Buchanan, P.C.	Nova Scotia	Halifax, N.S.
Mabel Margaret DeWare	New Brunswick	Moncton, N.B.
John Lynch-Staunton	Grandville	Georgeville, Que.
James Francis Kelleher, P.C.	Ontario	Sault Ste. Marie, Ont.
J. Trevor Eyton	Ontario	Caledon, Ont.
Wilbert Joseph Keon	Ottawa	Ottawa, Ont.
Michael Arthur Meighen	St. Marys	Toronto, Ont.
Normand Grimard	Quebec	Noranda, Que.
Thérèse Lavoie-Roux	Quebec	Montreal, Que.
J. Michael Forrestall	Dartmouth and Eastern Shore	Dartmouth, N.S.
Janis Johnson	Winnipeg-Interlake	Winnipeg, Man.
Eric Arthur Berntson	Saskatchewan	Saskatoon, Sask.
A. Raynell Andreychuk	Regina	Regina, Sask.
Jean-Claude Rivest	Stadacona	Quebec, Que.
Terrance R. Stratton	Red River	St. Norbert, Man.

ACCORDING TO SENIORITY

Senator	Designation	Post Office Address
THE HONOURABLE		
Marcel Prud'homme, P.C.	La Salle	Montreal, Que.
Fernand Roberge	Saurel	Ville Saint-Laurent, Que.
Leonard J. Gustafson	Saskatchewan	Macoun, Sask.
Erminie Joy Cohen	New Brunswick	Saint John, N.B.
David Tkachuk	Saskatchewan	Saskatoon, Sask.
W. David Angus	Alma	Montreal, Que.
Pierre Claude Nolin	De Salaberry	Quebec, Que.
Marjory LeBreton	Ontario	Manotick, Ont.
Gerry St. Germain, P.C.	Langley-Pemberton-Whistler	Maple Ridge, B.C.
Lise Bacon	De la Durantaye	Laval, Que.
Sharon Carstairs	Manitoba	Victoria Beach, Man.
Landon Pearson	Ontario	Ottawa, Ont.
Jean-Robert Gauthier	Ottawa-Vanier	Ottawa, Ontario
John G. Bryden	New Brunswick	Bayfield, N.B.
Rose-Marie Losier-Cool	New Brunswick	Bathurst, N.B.
Céline Hervieux-Payette, P.C.	Bedford	Montreal, Que.
William H. Rompkey, P.C.	Newfoundland	North West River, Labrador, Nfld.
Lorna Milne	Peel County	Brampton, Ont.
Marie-P. Poulin	Northern Ontario	Ottawa, Ont.
Shirley Maheu	Rougemont	Ville Saint-Laurent, Que.
Nicholas William Taylor	Sturgeon	Bon Accord, Alta.
Léonce Mercier	Mille Isles	Saint-Élie d'Orford, Que.
Wilfred P. Moore	Stanhope St./Bluenose	Chester, N.S.
Lucie Pépin	Shawinegan	Montreal, Que.
Fernand Robichaud, P.C.	New Brunswick	Saint-Louis-de-Kent, N.B.
Catherine S. Callbeck	Prince Edward Island	Central Bedeque, P.E.I.
Marisa Ferretti Barth	Repentigny	Pierrefonds, Que.
Serge Joyal, P.C.	Kennebec	Montreal, Que.
Thelma J. Chalifoux	Alberta	Morinville, Alta.
Joan Cook	Newfoundland	St. John's, Nfld.
Ross Fitzpatrick	Okanagan-Similkameen	Kelowna, B.C.
The Very Reverend Dr. Lois M. Wilson	Toronto	Toronto, Ont.
Francis William Mahovlich	Toronto	Toronto, Ont.
Calvin Woodrow Ruck	Dartmouth	Dartmouth, N.S.
Richard H. Kroft	Manitoba	Winnipeg, Man.
Douglas James Roche	Edmonton	Edmonton, Alta.
Joan Thorne Fraser	De Lorimier	Montreal, Que.
Aurélien Gill	Wellington	Mashteuiatsh, Pointe-Bleue, Que.
Vivienne Poy	Toronto	Toronto, Ont.
Sheila Finestone, P.C.	Montarville	Montreal, Que.
Ione Christensen	Yukon	Whitehorse, Yukon Territory
George Furey	Newfoundland	St. John's, Nfld.
Melvin Perry Poirier	Prince Edward Island	St. Louis, P.E.I.
Nick G. Sibbeston	Northwest Territories	Fort Simpson, N.W.T.
Isobel Finnerty	Ontario	Burlington, Ont.
J. Bernard Boudreau, P.C.	Nova Scotia	Halifax, N.S.

SENATORS OF CANADA

ALPHABETICAL LIST

(April 4, 2000)

Senator	Designation	Post Office Address
THE HONOURABLE		
Adams, Willie	Nunavut	Rankin Inlet, Nunavut
Andreychuk, A. Raynell.	Regina	Regina, Sask.
Angus, W. David	Alma	Montreal, Que.
Atkins, Norman K.	Markham	Toronto, Ont.
Austin, Jack, P.C.	Vancouver South	Vancouver, B.C.
Bacon, Lise	De la Durantaye	Laval, Que.
Beaudoin, Gérald-A.	Rigaud	Hull, Que.
Berntson, Eric Arthur	Saskatchewan	Saskatoon, Sask.
Bolduc, Roch	Golfe	Sainte-Foy, Que.
Boudreau, J. Bernard, P.C.	Nova Scotia	Halifax, N.S.
Bryden, John G.	New Brunswick	Bayfield, N.B.
Buchanan, John, P.C.	Nova Scotia	Halifax, N.S.
Callbeck, Catherine S.	Prince Edward Island	Central Bedeque, P.E.I.
Carney, Pat, P.C.	British Columbia	Vancouver, B.C.
Carstairs, Sharon	Manitoba	Victoria Beach, Man.
Chalifoux, Thelma J.	Alberta	Morinville, Alta.
Christensen, Ione	Yukon Territory	Whitehorse, Yukon Territory
Cochrane, Ethel	Newfoundland	Port-au-Port, Nfld.
Cogger, Michel	Lauzon	Knowlton, Que.
Cohen, Erminie Joy	New Brunswick	Saint John, N.B.
Comeau, Gerald J.	Nova Scotia	Church Point, N.S.
Cook, Joan	Newfoundland	St. John's, Nfld.
Cools, Anne C.	Toronto-York	Toronto, Ont.
Corbin, Eymard Georges	Grand-Sault	Grand-Sault, N.B.
De Bané, Pierre, P.C.	De la Vallière	Montreal, Que.
DeWare, Mabel Margaret	New Brunswick	Moncton, N.B.
Di Nino, Consiglio	Ontario	Downsview, Ont.
Doody, C. William	Harbour Main-Bell Island	St. John's, Nfld.
Eyton, J. Trevor	Ontario	Caledon, Ont.
Fairbairn, Joyce, P.C.	Lethbridge	Lethbridge, Alta.
Ferretti Barth, Marisa	Repentigny	Pierrefonds, Que
Finestone, Sheila, P.C.	Montarville	Montreal, Que.
Finnerty, Isobel	Ontario	Burlington, Ont.
Fitzpatrick, Ross	Okanagan-Similkameen	Kelowna, B.C.
Forrestall, J. Michael	Dartmouth and Eastern Shore	Dartmouth, N.S.
Fraser, Joan Thorne	De Lorimier	Montreal, Que.
Furey, George	Newfoundland	St. John's, Nfld.
Gauthier, Jean-Robert	Ottawa-Vanier	Ottawa, Ont.
Gill, Aurélien	Wellington	Mashteuiatsh, Pointe-Bleue, Que.
Grafstein, Jerahmiel S.	Metro Toronto	Toronto, Ont.
Graham, Bernard Alasdair, P.C.	The Highlands	Sydney, N.S.
Grimard, Normand	Quebec	Noranda, Que.
Gustafson Leonard J.	Saskatchewan	Macoun, Sask.
Hays, Daniel Phillip	Calgary	Calgary, Alta.
Hervieux-Payette, Céline, P.C.	Bedford	Montreal, Que.
Johnson, Janis	Winnipeg-Interlake	Winnipeg, Man.
Joyal, Serge, P.C.	Kennebec	Montreal, Que.
Kelleher, James Francis, P.C.	Ontario	Sault Ste. Marie, Ont.
Kelly, William McDonough	Port Severn	Mississauga, Ont.
Kenny, Colin	Rideau	Ottawa, Ont.
Keon, Wilbert Joseph	Ottawa	Ottawa, Ont.
Kinsella, Noël A.	New Brunswick	Fredericton, N.B.

Senator	Designation	Post Office Address
THE HONOURABLE		
Kirby, Michael	South Shore	Halifax, N.S.
Kolber, E. Leo.	Victoria	Westmount, Que.
Kroft, Richard H.	Manitoba	Winnipeg, Man.
Lavoie-Roux, Thérèse	Quebec	Montreal, Que.
Lawson, Edward M.	Vancouver	Vancouver, B.C.
LeBreton, Marjory	Ontario	Manotick, Ont.
Losier-Cool, Rose-Marie	New Brunswick	Bathurst, N.B.
Lynch-Staunton, John	Grandville	Georgeville, Que.
Maheu, Shirley.	Rougemont	Ville Saint-Laurent, Que.
Mahovlich, Francis William	Toronto	Toronto, Ont.
Meighen, Michael Arthur	St. Marys	Toronto, Ont.
Mercier, Léonce	Mille Isles	Saint-Élie d'Orford, Que.
Milne, Lorna	Peel County	Brampton, Ont.
Molgat, Gildas L. Speaker	Ste-Rose	Winnipeg, Man.
Moore, Wilfred P.	Stanhope St./Bluenose	Chester, N.S.
Murray, Lowell, P.C.	Pakenham	Ottawa, Ont.
Nolin, Pierre Claude	De Salaberry	Quebec, Que.
Oliver, Donald H.	Nova Scotia	Halifax, N.S.
Pearson, Landon	Ontario	Ottawa, Ontario
Pépin, Lucie	Shawinegan	Montreal, Que.
Perrault, Raymond J., P.C.	North Shore-Burnaby	North Vancouver, B.C.
Perry Poirier, Melvin	Prince Edward Island	St. Louis, P.E.I.
Pitfield, Peter Michael, P.C.	Ontario	Ottawa, Ont.
Poulin, Marie-P.	Northern Ontario	Ottawa, Ont.
Poy, Vivienne	Toronto	Toronto, Ont.
Prud'homme, Marcel, P.C.	La Salle	Montreal, Que.
Rivest, Jean-Claude.	Stadacona	Quebec, Que.
Roberge, Fernand	Saurel	Ville Saint-Laurent, Que.
Robertson, Brenda Mary	Riverview	Shediac, N.B.
Robichaud, Fernand, P.C.	New Brunswick	Saint-Louis-de-Kent, N.B.
Robichaud, Louis-J., P.C.	L'Acadie-Acadia	Saint-Antoine, N.B.
Roche, Douglas James	Edmonton	Edmonton, Alta.
Rompkey, William H., P.C..	Newfoundland	North West River, Labrador
Rossiter, Eileen	Prince Edward Island	Charlottetown, P.E.I.
Ruck, Calvin Woodrow	Dartmouth	Dartmouth, N.S.
St. Germain, Gerry, P.C.	Langley-Pemberton-Whistler	Maple Ridge, B.C.
Sibbeston, Nick	Northwest Territories	Fort Simpson, N.W.T.
Simard, Jean-Maurice	Edmundston	Edmundston, N.B.
Sparrow, Herbert O.	Saskatchewan	North Battleford, Sask.
Spivak, Mira	Manitoba	Winnipeg, Man.
Stollery, Peter Alan	Bloor and Yonge	Toronto, Ont.
Stratton, Terrance R.	Red River	St. Norbert, Man.
Taylor, Nicholas William	Sturgeon	Bon Accord, Alta.
Tkachuk, David	Saskatchewan	Saskatoon, Sask.
Watt, Charlie	Inkerman	Kuujjuaq, Que.
Wilson, The Very Reverend Dr. Lois M.	Toronto	Toronto, Ont.

SENATORS OF CANADA

BY PROVINCE AND TERRITORY

(April 4, 2000)

ONTARIO—24

	Senator	Designation	Post Office Address
	THE HONOURABLE		
1	Lowell Murray, P.C.	Pakenham	Ottawa
2	Peter Alan Stollery	Bloor and Yonge	Toronto
3	Peter Michael Pitfield, P.C.	Ontario	Ottawa
4	William McDonough Kelly	Port Severn	Missassauga
5	Jerahmiel S. Grafstein	Metro Toronto	Toronto
6	Anne C. Cools	Toronto-York	Toronto
7	Colin Kenny	Rideau	Ottawa
8	Norman K. Atkins	Markham	Toronto
9	Consiglio Di Nino	Ontario	Downsview
10	James Francis Kelleher, P.C.	Ontario	Sault Ste. Marie
11	John Trevor Eyton	Ontario	Caledon
12	Wilbert Joseph Keon	Ottawa	Ottawa
13	Michael Arthur Meighen	St. Marys	Toronto
14	Marjory LeBreton	Ontario	Manotick
15	Landon Pearson	Ontario	Ottawa
16	Jean-Robert Gauthier	Ottawa-Vanier	Ottawa
17	Lorna Milne	Peel County	Brampton
18	Marie-P. Poulin	Northern Ontario	Ottawa
19	The Very Reverend Dr. Lois M. Wilson	Toronto	Toronto
20	Francis William Mahovlich	Toronto	Toronto
21	Vivienne Poy	Toronto	Toronto
22	Isobel Finnerty	Ontario	Burlington
23			
24			

SENATORS BY PROVINCE AND TERRITORY

QUEBEC—24

	Senator	Designation	Post Office Address
	THE HONOURABLE		
1	E. Leo Kolber	Victoria	Westmount
2	Charlie Watt	Inkerman	Kuujjuaq
3	Pierre De Bané, P.C.	De la Vallière	Montreal
4	Michel Cogger	Lauzon	Knowlton
5	Roch Bolduc	Golfe	Sainte-Foy
6	Gérald-A. Beaudoin	Rigaud	Hull
7	John Lynch-Staunton	Grandville	Georgeville
8	Jean-Claude Rivest	Stadacona	Quebec
9	Marcel Prud'homme, P.C	La Salle	Montreal
10	Fernand Roberge	Saurel.	Ville de Saint-Laurent
11	W. David Angus	Alma	Montreal
12	Pierre Claude Nolin	De Salaberry.	Quebec
13	Lise Bacon	De la Durantaye	Laval
14	Céline Hervieux-Payette, P.C.	Bedford	Montreal
15	Shirley Maheu	Rougemont	Ville de Saint-Laurent
16	Léonce Mercier	Mille Isles	Saint-Élie d'Orford
17	Lucie Pépin	Shawinegan	Montreal
18	Marisa Ferretti Barth	Repentigny	Pierrefonds
19	Serge Joyal, P.C.	Kennebec	Montreal
20	Joan Thorne Fraser	De Lorimier	Montreal
21	Aurélien Gill	Wellington	Mashteuiatsh, Pointe-Bleue
22	Sheila Finestone, P.C.	Montarville	Montreal
23			
24			

SENATORS BY PROVINCE—MARITIME DIVISION

NOVA SCOTIA—10

	Senator	Designation	Post Office Address
	THE HONOURABLE		
1	Bernard Alasdair Graham, P.C.	The Highlands	Sydney
2	Michael Kirby	South Shore	Halifax
3	Gerald J. Comeau	Nova Scotia	Church Point
4	Donald H. Oliver	Nova Scotia	Halifax
5	John Buchanan, P.C.	Nova Scotia	Halifax
6	J. Michael Forrestall	Dartmouth and Eastern Shore	Dartmouth
7	Wilfred P. Moore	Stanhope St./Bluenose	Chester
8	Calvin Woodrow Ruck	Dartmouth	Dartmouth
9	J. Bernard Boudreau, P.C.	Nova Scotia	Halifax
10			

NEW BRUNSWICK—10

	THE HONOURABLE		
1	Louis-J. Robichaud, P.C.	L'Acadie-Acadia	Saint-Antoine
2	Eymard Georges Corbin	Grand-Sault	Grand-Sault
3	Brenda Mary Robertson	Riverview	Shediac
4	Jean-Maurice Simard	Edmundston	Edmundston
5	Noël A. Kinsella	New Brunswick	Fredericton
6	Mabel Margaret DeWare	New Brunswick	Moncton
7	Erminie Joy Cohen	New Brunswick	Saint John
8	John G. Bryden	New Brunswick	Bayfield
9	Rose-Marie Losier-Cool	New Brunswick	Bathurst
10	Fernand Robichaud, P.C.	New Brunswick	Saint-Louis-de-Kent

PRINCE EDWARD ISLAND—4

	THE HONOURABLE		
1	Eileen Rossiter	Prince Edward Island	Charlottetown
2	Catherine S. Callbeck	Prince Edward Island	Central Bedeque
3	Melvin Perry Poirier	Prince Edward Island	St. Louis
4			

SENATORS BY PROVINCE—WESTERN DIVISION

MANITOBA—6

	Senator	Designation	Post Office Address
	THE HONOURABLE		
1	Gildas L. Molgat, Speaker	Ste-Rose	Winnipeg
2	Mira Spivak	Manitoba	Winnipeg
3	Janis Johnson	Winnipeg-Interlake	Winnipeg
4	Terrance R. Stratton	Red River	St. Norbert
5	Sharon Carstairs	Manitoba	Victoria Beach
6	Richard H. Kroft	Manitoba	Winnipeg

BRITISH COLUMBIA—6

	Senator	Designation	Post Office Address
	THE HONOURABLE		
1	Edward M. Lawson	Vancouver	Vancouver
2	Raymond J. Perrault, P.C.	North Shore-Burnaby	North Vancouver
3	Jack Austin, P.C.	Vancouver South	Vancouver
4	Pat Carney, P.C.	British Columbia	Vancouver
5	Gerry St. Germain, P.C.	Langley-Pemberton-Whistler	Maple Ridge
6	Ross Fitzpatrick	Okanagan-Similkameen	Kamloops

SASKATCHEWAN—6

	Senator	Designation	Post Office Address
	THE HONOURABLE		
1	Herbert O. Sparrow	Saskatchewan	North Battleford
2	Eric Arthur Berntson	Saskatchewan	Saskatoon
3	A. Raynell Andreychuk	Regina	Regina
4	Leonard J. Gustafson	Saskatchewan	Macoun
5	David Tkachuk	Saskatchewan	Saskatoon
6			

ALBERTA—6

	Senator	Designation	Post Office Address
	THE HONOURABLE		
1	Daniel Phillip Hays	Calgary	Calgary
2	Joyce Fairbairn, P.C.	Lethbridge	Lethbridge
3	Nicholas William Taylor.	Sturgeon	Bon Accord
4	Thelma J. Chalifoux	Alberta	Morinville
5	Douglas James Roche	Edmonton	Edmonton
6			

SENATORS BY PROVINCE AND TERRITORY

NEWFOUNDLAND—6

	Senator	Designation	Post Office Address
	THE HONOURABLE		
1	C. William Doody	Harbour Main-Bell Island	St. John's
2	Ethel Cochrane	Newfoundland	Port-au-Port
3	William H. Rompkey, P.C.	Newfoundland	North West River, Labrador
4	Joan Cook	Newfoundland	St. John's
5	George Furey	Newfoundland	St. John's
6			

NORTHWEST TERRITORIES—1

	THE HONOURABLE		
1	Nick G. Sibbeston	Northwest Territories	Fort Simpson

NUNAVUT—1

	THE HONOURABLE		
1	Willie Adams	Nunavut	Rankin Inlet

YUKON TERRITORY—1

	THE HONOURABLE		
1	Ione Christensen	Yukon Territory	Whitehorse

DIVISIONAL SENATORS

	Senator	Designation	Post Office Address
	THE HONOURABLE		
1	Normand Grimard	Quebec	Noranda, Que.
2	Thérèse Lavoie-Roux	Quebec	Montreal, Que.

ALPHABETICAL LIST OF STANDING, SPECIAL AND JOINT COMMITTEES

(As of April 4, 2000)

*Ex Officio Member

ABORIGINAL PEOPLES

Chair: Honourable Senator Austin
Deputy Chair: Honourable Senator St. Germain
Honourable Senators:

Andreychuk,
Austin,
*Boudreau, (or Hays)
Chalifoux,
Christensen,
DeWare,
Gill,
*Lynch-Staunton, (or Kinsella)
Nolin,
Pearson,
Sibbeston,
St. Germain,
Tkachuk.

Original Members as nominated by the Committee of Selection

*Andreychuk, Austin, Beaudoin, *Boudreau (or Hays), Chalifoux, Christensen, Comeau, DeWare, Gill, Johnson *Lynch-Staunton (or Kinsella), Pearson, Sibbeston, Watt.*

AGRICULTURE AND FORESTRY

Chair: Honourable Senator Gustafson
Deputy Chair: Honourable Senator Fairbairn
Honourable Senators:

*Boudreau, (or Hays)
Carstairs,
Chalifoux,
Fitzpatrick,
Gill,
Gustafson,
*Lynch-Staunton, (or Kinsella)
Oliver,
Perry,
Robichaud, *(Saint-Louis-de-Kent)*
Rossiter,
Sparrow,
St. Germain,
Stratton.

Original Members as nominated by the Committee of Selection

**Boudreau (or Hays), Chalifoux, Fairbairn, Fitzpatrick, Ferretti Barth, Gill, Gustafson, *Lynch-Staunton (or Kinsella), Oliver, Robichaud (Saint-Louis-de-Kent), Sparrow, Spivak, St. Germain, Stratton.*

THE SUBCOMMITTEE ON FORESTRY
(Agriculture and Forestry)

Chair: Honourable Senator Fitzpatrick
Deputy Chair: Honourable Senator St. Germain
Honourable Senators:

*Boudreau, (or Hays)
Chalifoux,
Fitzpatrick,
Gill,
*Lynch-Staunton, (or Kinsella)
St. Germain,
Stratton.

BANKING, TRADE AND COMMERCE

Chair: Honourable Senator Kolber **Deputy Chair: Honourable Senator Tkachuk**

Honourable Senators:

Angus,
*Boudreau (or Hays)
Fitzpatrick,
Furey,
Hervieux-Payette,
Kelleher,
Kenny,
Kolber,
Kroft,
*Lynch-Staunton, (or Kinsella)
Meighen,
Oliver,
Tkachuk.

Original Members as nominated by the Committee of Selection

*Angus, *Boudreau (or Hays), Fitzpatrick, Furey, Hervieux-Payette, Joyal, Kelleher, Kenny, Kolber, *Lynch-Staunton (or Kinsella), Meighen, Oliver, Tkachuk.*

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

Chair: Honourable Senator Spivak **Deputy Chair: Honourable Senator Taylor**

Honourable Senators:

Adams,
*Boudreau, (or Hays)
Buchanan,
Chalifoux,
Christensen,
Cochrane,
Eyton,
Finnerty,
Kelleher,
Kenny,
*Lynch-Staunton, (or Kinsella)
Sibbeston,
Spivak,
Taylor.

Original Members as nominated by the Committee of Selection

*Adams, *Boudreau (or Hays), Buchanan, Chalifoux, Christensen, Cochrane, Eyton, Furey, Kenny, *Lynch-Staunton (or Kinsella), Sibbeston, Spivak, St. Germain, Taylor.*

FISHERIES

Chair: Honourable Senator Comeau **Deputy Chair: Honourable Senator Perrault**

Honourable Senators:

*Boudreau, (or Hays)
Carney
Comeau,
Cook,
Furey,
Johnson,
*Lynch-Staunton, (or Kinsella)
Mahovlich,
Meighen,
Perrault,
Perry,
Robertson,
Robichaud, *(Saint-Louis-de-Kent)*
Watt.

Original Members as nominated by the Committee of Selection

**Boudreau (or Hays), Carney, Comeau, Cook, Doody, Furey, *Lynch-Staunton (or Kinsella), Mahovlich, Meighen, Murray, Perrault, Perry, Robichaud (Saint-Louis-de-Kent), Watt.*

FOREIGN AFFAIRS

Chair: Honourable Senator Stollery **Deputy Chair: Honourable Senator Andreychuk**

Honourable Senators:

Andreychuk,
Atkins,
Bolduc,
*Boudreau, (or Hays)
Carney,
Corbin,
De Bané,
Di Nino,
Finnerty,
Grafstein,
*Lynch-Staunton, (or Kinsella)
Poy,
Stollery,
Taylor.

Original Members as nominated by the Committee of Selection

*Andreychuk, Atkins, Bolduc, *Boudreau (or Hays), Corbin, Carney, De Bané, Di Nino, Grafstein, Lewis, Losier-Cool, *Lynch-Staunton (or Kinsella), Stewart, Stollery.*

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

Chair: Honourable Senator Rompkey **Deputy Chair: Honourable Senator Nolin**

Honourable Senators:

*Boudreau (or Hays)
Cohen,
Comeau,
De Bané,
DeWare,
Forrestall,
Kelly,
Kenny,
Kroft,
*Lynch-Staunton, (or Kinsella)
Maheu,
Milne,
Nolin,
Poulin,
Robichaud, *(Saint-Louis-de-Kent)*
Rompkey,
Stollery.

Original Members as nominated by the Committee of Selection

**Boudreau (or Hays), Cohen, De Bané, DeWare, Forrestall, Kelly, Kenny, Kroft, *Lynch-Staunton (or Kinsella), Maheu, Milne, Nolin, Poulin, Robichaud (Saint-Louis-de-Kent), Rompkey, Rossiter, Stollery.*

LEGAL AND CONSTITUTIONAL AFFAIRS

Chair: Honourable Senator Milne **Deputy Chair: Honourable Senator Beaudoin**

Honourable Senators:

Andreychuk,
Beaudoin,
Buchanan,
*Boudreau (or Hays),
Cools,
Fraser,
Ghitter,
Joyal,
*Lynch-Staunton, (or Kinsella)
Milne,
Moore,
Nolin,
Pearson,
Poy.

Original Members as nominated by the Committee of Selection

*Andreychuk, Beaudoin, *Boudreau (or Hays), Cools, Fraser, Ghitter, Joyal, Kelleher, *Lynch-Staunton (or Kinsella), Milne, Moore, Nolin, Pearson, Poy.*

LIBRARY OF PARLIAMENT (Joint)

Joint Chair: **Honourable Senator Louis Robichaud** **Deputy Chair:**
Honourable Senators:

Atkins,	Grafstein,	Poy,	Robichaud, *(L'Acadie-Acadia)*
Finnerty,	Grimard,		Ruck.

Original Members agreed to by Motion of the Senate
Atkins, Finnerty, Grafstein, Poy, Robichaud (L'Acadie-Acadia), Ruck.

NATIONAL FINANCE

Chair: **Honourable Senator Murray** **Deputy Chair:** **Honourable Senator Cools**
Honourable Senators:

Bolduc,	Doody,	Kinsella,	Moore,
*Boudreau, (or Hays)	Finestone,	*Lynch-Staunton, (or Kinsella)	Murray,
Cools,	Finnerty,	Mahovlich,	Stratton.
	Ferretti Barth,		

Original Members as nominated by the Committee of Selection
*Bolduc, *Boudreau (or Hays), Cools, Finestone, Finnerty, Ferretti Barth, Kinsella, *Lynch-Staunton (or Kinsella), Mahovlich, Moore, Murray, Perry, Stratton.*

OFFICIAL LANGUAGES (Joint)

Joint Chair: **Honourable Senator Losier-Cool** **Deputy Chair:**
Honourable Senators:

Beaudoin,	Gauthier,	Losier-Cool,	Rivest.
Fraser,			Robichaud, (*L'Acadie-Acadia)*

Original Members agreed to by Motion of the Senate
Beaudoin, Fraser, Gauthier, Losier-Cool, Meighen, Pépin, Rivest, Robichaud (L'Acadie-Acadia).

PRIVILEGES, STANDING RULES AND ORDERS

Chair: **Honourable Senator Austin** **Deputy Chair:** **Honourable Senator Grimard**

Honourable Senators:

Austin,
Beaudoin,
*Boudreau, (or Hays)
Corbin,
DeWare,
Di Nino,
Gauthier,
Grafstein,
Grimard,
Joyal,
Kelly,
Kroft,
Losier-Cool,
*Lynch-Staunton, (or Kinsella)
Robichaud, *(L'Acadie-Acadia)*.
Rossiter.

Original Members as nominated by the Committee of Selection

*Austin, Bacon, Beaudoin, *Boudreau (or Hays), DeWare, Gauthier, Ghitter, Grafstein, Grimard, Joyal, Kelly, Kroft, *Lynch-Staunton (or Kinsella), Maheu, Pépin, Robichaud (L'Acadie-Acadia), Rossiter.*

SCRUTINY OF REGULATIONS (Joint)

Joint Chair: **Honourable Senator Hervieux-Payette** **Deputy Chair:**

Honourable Senators:

Cochrane,
Finestone,
Grimard,
Hervieux-Payette,
Moore,
Rivest.

Original Members as nominated by the Committee of Selection

Cochrane, Finestone, Furey, Grimard, Hervieux-Payette, Moore, Perry, Rivest.

SELECTION

Chair: **Honourable Senator Mercier** **Deputy Chair:**

Honourable Senators:

Atkins,
Austin,
*Boudreau, (or Hays)
DeWare,
Fairbairn,
Grafstein,
Kinsella,
Kirby,
*Lynch-Staunton, (or Kinsella)
Mercier,
Murray.

Original Members agreed to by Motion of the Senate

*Atkins, Austin, *Boudreau (or Hays), DeWare, Fairbairn, Grafstein, Kinsella, Kirby, *Lynch-Staunton or (Kinsella), Mercier, Murray.*

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

Chair: Honourable Senator Kirby **Deputy Chair: Honourable Senator LeBreton**

Honourable Senators:

Beaudoin, Cohen, Gill, *Lynch-Staunton, (or Kinsella)
*Boudreau, (or Hays) Cook, Keon, Milne,
Carstairs, Corbin, Kirby, Roberston.
Fairbairn, LeBreton,

Original Members as nominated by the Committee of Selection

**Boudreau (or Hays), Callbeck, Carstairs, Cohen, Cook, Di Nino, Fairbairn, Gill, Kirby, Lavoie-Roux, LeBreton, *Lynch-Staunton (or Kinsella), Pépin, Robertson.*

THE SUBCOMMITTEE TO UPDATE "OF LIFE AND DEATH" (Social Affairs, Science and Technology)

Chair: Honourable Senator Carstairs **Deputy Chair: Honourable Senator Beaudoin**

Honourable Senators:

Beaudoin, Carstairs, Keon, Milne.
*Boudreau, (or Hays) Corbin, *Lynch-Staunton, (or Kinsella)

TRANSPORT AND COMMUNICATIONS

Chair: Honourable Senator Bacon **Deputy Chair: Honourable Senator Forrestall**

Honourable Senators:

Adams, Callbeck, Kirby, Perrault,
Bacon, Finestone, LeBreton, Poulin,
*Boudreau, (or Hays) Forrestall, *Lynch-Staunton, (or Kinsella) Roberge,
Johnson, Spivak.

Original Members as nominated by the Committee of Selection

*Adams, Bacon, *Boudreau (or Hays), Callbeck, Finestone, Forrestall, Johnson, Kirby, LeBreton, *Lynch-Staunton (or Kinsella), Perrault, Poulin, Roberge, Spivak.*

THE SUBCOMMITTEE ON COMMUNICATIONS
(Transport and Communications)

Chair: Honourable Senator Poulin **Deputy Chair: Honourable Senator Spivak**

Honourable Senators:

*Boudreau, (or Hays)	Finestone,	Kirby,	Poulin,
	Johnson,	*Lynch-Staunton, (or Kinsella)	Spivak.

CONTENTS

Tuesday, April 4, 2000

PAGE

SENATORS' STATEMENTS

Prime Minister of Japan
Condolences and Wishes of Early Recovery from Sudden Illness. Senator Hays 923

Plight of Street Children
Senator Carstairs 923

Senegal
New Government. The Hon. the Speaker 923

Cancer Awareness Month
Senator DeWare 924

Taiwan
New Government. Senator Di Nino 924

ROUTINE PROCEEDINGS

Internal Economy, Budgets and Administration
Seventh Report of Committee Presented. Senator Nolin 924

Scrutiny of Regulations
Second Report of Joint Committee presented Senator Hervieux-Payette 925

QUESTION PERIOD

Delayed Answers to Oral Questions
Senator Hays 925

Agriculture and Agri-Food
Farm Crisis in Prairie Provinces—Flooding Problem in Manitoba and Saskatchewan—Request for Response. Question by Senator Stratton.
Senator Hays (Delayed Answer) 925

Environment
Residency Requirement for Job Applicants. Question by Senator Atkins.
Senator Hays (Delayed Answer) 926

Export Development Canada
China—Influence of Environmental Policy in Granting of Funds to Three Gorges Dam Project. Question by Senator Andreychuk.
Senator Hays (Delayed Answer) 926

National Defence
Sea King Helicopters—Level of Flight Training for Pilots. Question by Senator Forrestall
Senator Hays (Delayed Answer) 926

PAGE

ORDERS OF THE DAY

Nisga'a Final Agreement Bill (Bill C-9)
Third Reading—Debate Continued.
Senator Austin 927
Senator St. Germain 928
Senator Murray 928
Senator Comeau 929
Senator Andreychuk 931
Senator Lynch-Staunton 932
Senator Cools 934
Senator Kinsella 934
Senator Beaudoin 935
Senator Grafstein 935
Motion in Amendment. Senator St. Germain 940
Senator Grafstein 940
Senator Austin 941
Senator Hays 942
Senator Beaudoin 942

Bill to Give Effect to the Requirement for Clarity as Set Out in the Opinion of the Supreme Court of Canada in the Quebec Secession Reference (Bill C-20)
Second Reading—Debate Continued. Senator Kinsella 942
Senator Boudreau 949
Senator Graham 951
Senator Fraser 951
Senator Beaudoin 952
Senator Grafstein 952
Senator Bryden 952

Business of the Senate
Senator Hays 953

Fisheries
Committee Authorized to Meet During Sitting of the Senate.
Senator Hays 953

Marine Liability Bill (Bill S-17)
Second Reading. Senator Angus 953
Senator Furey 956
Referred to Committee. 956

National Defence Act (Bill S-18)
Bill to Amend—Second Reading. Senator Meighen 956
Referred to Committee. 957

Canadian Institutes of Health Research Bill (Bill C-13)
Second Reading. Senator Carstairs 957
Senator Keon 960
Referred to Committee. 961

Payments in Lieu of Taxes Bill (Bill C-10)
Second Reading—Debate Adjourned. Senator Moore 961

Canada Business Corporations Act
Canada Cooperatives Act (Bill S-19)
Bill to Amend—Second Reading—Debate Continued.
Senator Hays 963

PAGE

Senator Wilson 963

Financing of Post-Secondary Education
Inquiry—Debate Continued. Senator Callbeck 964
Senator Atkins 965

Religious Freedom in China in Relation to United Nations International Covenants
Inquiry—Debate Continued. Senator Andreychuk 966
Senator Hays 969

PAGE

Senator Kinsella 969
Senator Corbin 969
Senator Wilson 970

Sudan
Inquiry—Debate Adjourned. Senator Wilson 970

Adjournment
Senator Hays 972

Appendix i