Debates of the Senate

2nd SESSION • 36th PARLIAMENT • VOLUME 138 • NUMBER 44

OFFICIAL REPORT
(HANSARD)

Thursday, April 6, 2000

THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

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

Thursday, April 6, 2000

The Senate met at 2:00 p.m., the Speaker in the Chair.

Prayers.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, before I call for Senators' Statements, I should like to bring to your attention a group of students in our gallery.

[*Translation*]

They are a group of 25 students from the Montagnais community in Senator Gill's region. They are visiting Ottawa in connection with their course. Fortunately, they have decided to include the Senate in their visit. I welcome them on behalf of all honourable senators.

[*English*]

SENATORS' STATEMENTS

NUNAVUT

FIRST ANNIVERSARY CELEBRATIONS

Hon. Willie Adams: Honourable senators, I wish to make an announcement. Last week, on Saturday, we had a celebration in Nunavut on the one-year anniversary of its creation. I was in Iqaluit last Friday through Sunday. While I was there, I met with the Governor General and escorted her around Iqaluit. She was scheduled to be in Iqaluit for the anniversary day.

One of our former commissioners, Helen Maksagak, attended. The Governor General and Premier Paul Okalik hosted a dinner for our outgoing commissioner. We now have a new commissioner for Nunavut, Peter Irniq, who was sworn in last Saturday. At the same time we were celebrating our winter carnival, Toonik Tyme, in Iqaluit.

The Governor General's trip continued up to the High Arctic, to Pangnirtung, Pond Inlet, Grise Fiord, and from there up to Repulse Bay and Rankin Inlet. Honourable senators, I wish to congratulate the Governor General for making her trip up to Nunavut last week.

[*Translation*]

YOUTH MANIFESTO

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I am rising today to remind all members of this house that a very special ceremony will be held here on Monday next, April 10, at 9:30 a.m.

The Speakers of the Senate and the House of Commons, as well as the Deputy Prime Minister, the Honourable Herb Gray, and Mrs. Ndèye Fall, the UNESCO representative to Canada, will be receiving on behalf of the Parliament of Canada a document that has been drafted by young people from all over the world, the Youth Manifesto.

[*English*]

This historic document is a declaration of hope and fellowship, written by the youth of the world, as we enter the new millennium. The ceremony of the presentation of the Youth Manifesto will be televised on CPAC and will take place in the company of more than 150 students who are attending the fourth session of the Forum for Young Canadians.

In fact, honourable senators, these students will be occupying your seats. Nonetheless, it is important that senators be present to witness this momentous event. The Parliament of Canada is the first national assembly in the world to undertake this follow-up initiative after the World Parliament of Children in Paris last autumn. Seats will be placed in the central aisle of this chamber for your use. I hope that many honourable senators will be able to attend this important ceremony.

SPEECH ON NISGA'A FINAL AGREEMENT

Hon. Pat Carney: Honourable senators, yesterday I read into the Senate record some of the letters and e-mails that were sent to the Senate through my office from some British Columbians who are concerned with the provisions of Bill C-9, dealing with the Nisga'a Final Agreement. One of the correspondents was a P.J. Brabazon. Today I received another message from this correspondent, which said simply "Thank you." I thought that those senators who listened to these concerns should like to know that their attention was appreciated.

THE LATE SIR STANLEY MATHEWS

Hon. Francis William Mahovlich: Honourable senators, please excuse me for the belated recognition of the passing of a great Canadian friend and British ambassador of sport to Canada, Sir Stanley Mathews.

Sir Stanley was known as a "wizard of dribble" and, in 1956, was the first winner of the European soccer player of the year award. People used to joke and say that he could turn off the bedroom light and be under the bed covers before the room became dark.

In the twilight of his career, Sir Stanley came to Toronto to play for Toronto City, a professional soccer team, and lived in Burlington. This is when I had the opportunity to find out what a great athlete he was. We met on the tennis court at a celebrity tennis match at the Inn at Manitou. Sir Stanley was 70 years old at the time — 23 years my senior. My strategy was to place my shots all over the court so that I would tire him out. What happened still to this day amazes me. Every time I tried to place the ball in a vacant area, he showed up before the ball did, which makes me believe that he really could get under the sheets before the lights turned off.

His great anticipation and instincts made Sir Stanley a professional at the age of 17. At the age of 50, he was knighted by the Queen and made his last professional appearance. At his eightieth birthday celebration, a former England captain, Jimmy Armfield, praised his skills and sportsmanship. He said:

> You could kick him and do anything with him and he would never retaliate. He was a perfect example of self-discipline. I never remember a referee speaking to him once — and he didn't speak to them.

May I add that hockey today is in need of Sir Stanley Mathews' discipline.

Hon. Senators: Hear, hear!

Senator Mahovlich: Lord Wilson of Rievaulx, who was prime minister when Mr. Mathews was knighted, wrote:

> Stanley Mathews was a symbol of the country which gave football to the world, and internationally a symbol of English sportsmanship in the days when that was a quality acknowledged worldwide.

His Canadian friends will always remember Sir Stanley Mathews.

CANADA POST

REFUSAL OF COMMEMORATIVE STAMP
ON SEVENTY-FIFTH ANNIVERSARY OF UNITED CHURCH

Hon. Lois M. Wilson: Honourable senators, I regret the action of Canada Post in refusing requests for a stamp to commemorate the seventy-fifth anniversary of the United Church of Canada on June 9 this year. This church is a uniquely Canadian church and is the first United Church in the world, brought into being by an act of Parliament in 1925.

The United Church of Canada brought together the majority of Presbyterian, all of the Methodist, Congregationalist, Local Union, and Evangelical United Brethren in this country. Seventy-five churches in 75 countries have modelled their United Churches on ours.

The basis of union, which was what this newly created church should be about, said it should foster the spirit of unity in this country, and the church will continue on that course.

This Canadian church relates internationally in a very unique way. It works programmatically and financially with a wide variety of partners internationally, including the Roman Catholic Church, the Anglicans, the Mennonites, the Friends and the emerging independent African churches.

Through the World Council of Churches, the United Church of Canada bonds with a wide variety of ecumenical partners, as well as the partners with other historic faith communities, such as Muslim, Hindu, Sikhs, Parsis, Jews and Buddhists. It fosters unity, not division.

Honourable senators, there is a frequent reference to the United Church of Canada in the books of Margaret Atwood and Alice Munro, for instance, although not totally complimentary sometimes, but recognizing that with all its faults, it has played a significant role historically as part of the Canadian landscape.

Many Canadians would have related positively to such a commemorative stamp and I regret its omission. Failure to mark the seventy-fifth anniversary on the part of Canada Post reflects poorly on its appreciation of the history of a uniquely Canadian religious community in this country.

• (1420)

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, before we proceed to the next item on the Order Paper, I should like to introduce another group of students who are here today.

[*Translation*]

They are the Forum of Young Canadians, and were received here in the Senate this morning by the Honourable Senator Losier-Cool.

[*English*]

Students of the Forum of Young Canadians, on behalf of all my colleagues in the Senate, I bid you welcome.

Hon. Senators: Hear, hear!

ROUTINE PROCEEDINGS

CANADIAN INSTITUTES OF HEALTH RESEARCH BILL

REPORT OF COMMITTEE

Hon. Michael Kirby, Chairman of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Thursday, April 6, 2000

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

SIXTH REPORT

Your Committee, to which was referred Bill C-13, An Act to establish the Canadian Institutes of Health Research, to repeal the Medical Research Council Act and to make consequential amendments to other Acts, in obedience to the Order of Reference of Tuesday, April 4, 2000, has examined the said Bill and now reports the same without amendment.

Attached as an appendix to this Report are the observations of your Committee on Bill C-13.

Respectfully submitted,

MICHAEL KIRBY
Chairman

(*For appendix to report, see today's* Journals of the Senate, *p. 477.*)

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

On motion of Senator Carstairs, for Senator Grafstein, bill placed on the Order of the Day for consideration on Monday, April 10, 2000.

BUSINESS OF THE SENATE

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I should like to rise on this item of our Order Paper to explain, if I have leave to do so, what I anticipate will be taking place in terms of house business.

The Hon. the Speaker: Is leave granted?

Hon. Senators: Agreed.

Senator Hays: Honourable senators, we will sit tomorrow, Friday, which is a little unusual for us. Therefore, I will ask for leave to revert to government notices of motion later this day for purposes of giving a notice of motion to the effect that when we adjourn tomorrow, we adjourn to Monday at four o'clock. Without approval by this chamber of such a motion, we would sit in the normal course at two o'clock.

The Hon. the Speaker: Is leave granted to revert later this day for the purpose of Government Notices of Motions?

Hon. Senators: Agreed.

Senator Hays: I would give notice of the motion now but I do not have it yet. When it is in my hands, at the end of the day, I will give notice of the motion.

The reason for sitting on Friday and Monday is that the government would like to give as much time as possible for debate on two important bills that are on our Order Paper, Bill C-9 and Bill C-20.

I do not want to get into debate on this matter but I did want to let honourable senators know that that is the reason for the government not moving the normal adjournment that we have when we sit on Tuesday, Wednesday and Thursday.

There is also the likelihood that next week a motion by the government to allocate time on Bill C-9 will be introduced.

Some Hon. Senators: Oh, oh!

Senator Hays: If that takes place, notice will likely be given early in the week. Debate on it will occur next Wednesday, which, for purposes of organizing committee work and the Senate's business at that time, would mean that Wednesday would not be a short day but, rather, a normal sitting day. In other words, we would sit at two o'clock and perhaps later in the evening.

Honourable senators, that is my only purpose in rising. I would be happy to deal with questions to signal to you what I expect will happen so you can better order your affairs.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, we always thank the Deputy Leader of the Government when he shares with us, for planning purposes of schedules, et cetera, the rough view of our future business.

However, I should like to correct one point for the record. The Deputy Leader of the Government said that the government will allow the senators to have so much debate, et cetera. The government does not run the Senate. Honourable senators run the Senate.

Some Hon. Senators: Hear, hear!

Senator Hays: Honourable senators, I agree with Senator Kinsella. I will scrutinize the record carefully. As Deputy Leader of the Government, I have a role on behalf of the government, and that is what is behind the statement I made about future business. This is a responsibility of the Leader and the Deputy Leader on this side. Obviously, the opposition have their role to play, and they play it very well. They represent a group that has seats in both Houses. We on this side represent a group with seats in both Houses. It happens that we have the most members in the House of Commons and therefore form the government.

I do not want anyone to be disabused here. I am not confusing the Senate with the government or any of us on this side with the government, with the sole exception of my colleague to the left, and I emphasize to the left, Senator Boudreau.

Senator Kinsella: He wants to go to the House of Commons.

CANADA-EUROPE PARLIAMENTARY ASSOCIATION

REPORT OF CANADIAN DELEGATION TO THE ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE PARLIAMENTARY ASSEMBLY STANDING COMMITTEE MEETING IN VIENNA, AUSTRIA

Hon. Jerahmiel S. Grafstein: Honourable senators, I have the honour to table in both official languages the report of the Canadian Delegation of the Canada-Europe Parliamentary Association, OSCE, to the Organization for Security and Cooperation in Europe Parliamentary Assembly (OSCE PA) Standing Committee Meeting in Vienna, Austria, January 13 and 14, 2000.

NATIONAL FINANCE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO APPLY DOCUMENTATION ON STUDY OF EMERGENCY AND DISASTER PREPAREDNESS FROM PREVIOUS SESSION TO CURRENT STUDY

Hon. Lowell Murray: Honourable senators, I give notice that at the next sitting of the Senate I will move:

> That the papers and evidence received by the Subcommittee on Canada's Emergency and Disaster Preparedness in the First Session of the Thirty-sixth Parliament be referred to the Standing Senate Committee on National Finance for the completion of the study.

[*Translation*]

QUESTION PERIOD

ACADIAN NATIONAL HOLIDAY

OMISSION OF NOTIFICATION ON CANADIAN CALENDAR

Hon. Gerald J. Comeau: Honourable senators, could the minister tell us why, for the second year in a row, the government has neglected to include the Acadian National Holiday in its calendar of official events? June 24, Saint-Jean-Baptiste Day, is, however, deemed worthy of mention in the Canadian calendar.

Given his Acadian origins, Minister Boudreau ought to be offended by this omission. Do we have his commitment today that he will ensure it does not happen again?

[*English*]

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, while I am not specifically familiar with the matter to which the honourable senator refers, I certainly sympathize with the sentiment. It is a sentiment that I will convey to the appropriate authorities.

[*Translation*]

• (1430)

Senator Comeau: Honourable senators, I hope that the Leader of the Government in the Senate will lend a sympathetic ear to my question. I would like the authors of the calendar to forget the attitude often expounded by the Quebec separatists, who want to give the impression that there are no Acadians in the other provinces of Canada.

I would remind you of the comment by Suzanne Tremblay in the other House, who said: "Ah, those people are finished. There aren't any more of them." I assure you that the Acadians exist and are here to stay. Could the Leader of the Government in the Senate remind his colleagues in cabinet and departmental officials not to forget us?

[*English*]

Senator Boudreau: Honourable senators, I certainly have no hesitation in joining with the honourable senator in conveying that message, both on this occasion and in the future.

HUMAN RESOURCES DEVELOPMENT

GROWTH OF EMPLOYMENT INSURANCE FUND—DISBURSEMENT OF SURPLUS FUNDS

Hon. Terry Stratton: Honourable senators, my question is addressed to the Leader of the Government in the Senate. It would appear that the EI surplus is now reaching close to $35 billion and that it has grown by close to $7 billion this last fiscal year. Can the Leader of the Government in the Senate verify those numbers? Are they accurate?

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, the honourable senator will appreciate that I do not have those figures at hand. However, I will take note of his question and provide a response in due course.

Obviously, there is a surplus. We are very fortunate to have a healthy surplus, which exists because our economy is performing this year as it has not done so in decades. The real rate of growth in our country and the number of jobs created represents a remarkable record on behalf of the government. That is good news. It is one of those problems that you prefer to have, namely, a surplus accumulating in the fund because our economy is performing so well.

Senator Stratton: Honourable senators, if that is the case, the government has reduced the debt by $6 billion. Over the last two years, that $6 billion has been paid out of the surplus of $3 billion a year. If the government has $35 billion in surplus in the EI fund and you deduct $6 billion to pay the debt, where has the rest of the money gone? It is not sitting in a reserve. It has not been paid to do anything but put the government in a surplus position because you have not cut government spending.

Senator Boudreau: Honourable senators, I am sure the honourable senator appreciates that one must always exhibit a level of prudence with respect to the administration of the EI fund. While we rejoice in the performance of the economy at the moment, we cannot be sure that it will always perform this well. Perhaps some future government will not carry out policies that result in robust economic activity.

The Business Council on National Issues, an independent group which comments on the economy and various issues of government policy, in their letter prior to the 2000 budget, recommended that EI premiums be reduced by 15 cents for the year 2000. In fact, that occurred. In the view of one organization that has some credibility, there has been appropriate reduction of EI premiums. There was a reduction last year and there will be one next year. This is a matter that the government, and the minister involved, will continue to monitor very closely.

Everyone will appreciate that EI premiums have come down and will continue to come down. We will always have a difference of opinion on how much, when and what exactly is appropriate, but to date this government has been very careful to adopt a prudent, staged and consistent practice in the reduction of premiums.

Senator Stratton: Honourable senators, there is a $29-billion surplus in the EI fund, plus the other $6 billion that was used to pay down the debt. That is $35 billion. That is not your money. It belongs to the Canadian people who sweated for it and were surcharged by your government. When will you pay that money back to them?

Senator Boudreau: Honourable senators, the honourable senator says that the $6 billion that went to pay down the debt is still our money. Unfortunately, it is not. Over the years, we have accumulated a huge debt in this country, and never in greater amounts than when the honourable senator's party was last in power. We are now required to pay that debt. Hopefully, that $6 billion was used appropriately to pay down the debt, and hopefully we will be able to pay it down further. We have simply accumulated this debt and have left a burden on future generations. We have left that bill for our children and our grandchildren to pay. The least we can do is try to pay a little of it now.

THE ECONOMY

INFLUENCE OF PROVINCES GOVERNED BY PROGRESSIVE CONSERVATIVE PARTY ON CURRENT GROWTH TREND

Hon. Consiglio Di Nino: Honourable senators, in response to my friend about where all that money has gone, certainly I think a good chunk of it went to Minister Stewart and HRDC.

The honourable minister has given his government a certain amount of credit for the economic success that has occurred in this country over the last number of years. Would the minister at least give some credit where credit is due, namely, to the economies of Alberta and Ontario, where two Conservative governments have put into place the kind of fundamentals that have created the success for which he is taking the credit?

An Hon. Senator: What about Nova Scotia?

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, I will try to be fair and balanced about this question. I realized a long time ago that governments probably do not deserve all the blame they receive in certain situations and all the credit they receive in other situations.

There is no question that there are other factors involved. I mentioned the story once before about the parson who, while walking by, commented to the farmer, “You have a wonderful garden,” to which the farmer replied, “Yes. I did a wonderful job. I worked hard and look at my results.” The parson said, “Yes, but you must remember that you did not do that by yourself, you had help. Remember that the Lord was there helping you with that garden.” The farmer thought for a moment and responded, “That is true, but you should have seen it when he had it on his own!”

There are other factors involved, such as the American economy, which has done well. Other factors are involved, but there is no question that the major factor here has been the responsible, productive approach adopted by this federal government. This approach has resulted in unprecedented growth in the economy, which has yielded surpluses and given us to wonder about whether the EI surplus is too big. No one asked that question a few years ago. In fact, I do not recall anyone asking if the EI surplus was too big 10 years ago.

The honourable senator is asking legitimate questions, and they are questions we should be thinking about, but they are also very nice problems to have.

• (1440)

FINANCE

ACCUMULATION OF SURPLUS FUNDS—INFLUENCE OF GOODS AND SERVICES TAX AND FREE TRADE

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, as the minister is allocating credit for the budgetary surpluses, could he evaluate how much the GST and free trade have contributed to the surplus?

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, to be very blunt, I do not know. However, I would say clearly that if it were not for the responsible fiscal management of this government and in particular of the Minister of Finance, Paul Martin, we would not be in the situation we are today.

Some Hon. Senators: Oh, oh!

Some Hon. Senators: Hear, hear!

Hon. J. Michael Forrestall: Honourable senators, that surplus, of course, would twin Highway 101 and buy the fleet of helicopters we have been awaiting on for 10 years. One would not even notice the dent in the funds. I draw to the minister's attention another tragic, near-fatal accident on Highway 101 just yesterday.

UNITED NATIONS

KOSOVO—RESOLUTION ON RETURN OF SERBIAN FORCE—GOVERNMENT POLICY—REQUEST FOR ANSWER

Hon. J. Michael Forrestall: Honourable senators, is the minister able to respond to my questions of yesterday with respect to Canada's position about returning Serb forces to Kosovo? Will Canada continue to support that policy?

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, I am not in a position to give any more specific an answer than I did yesterday. I have asked my staff to contact the office of the minister, but we have not yet had a response. I will have to relay to the honourable senator, perhaps over the next couple of days, the specific answer from the minister.

CANADIAN BROADCASTING CORPORATION

NOVA SCOTIA—EFFECT OF PROPOSED CUTBACKS ON EMPLOYEES IN HALIFAX

Hon. Donald H. Oliver: Honourable senators, my question is to the Leader of the Government in the Senate. Earlier this year, I asked him a question about jobs following an announcement that the Royal Bank was eliminating several positions in Halifax. I now have another question to ask about jobs, this one regarding the CBC's intention to drop local news and cut 500 jobs. One of the cities to be included in these job cuts is Halifax. The story says:

> CBC television is headed towards a radical overhaul of its local and regional programming — changes that will mean the elimination or downsizing of stations across Canada and the loss of up to 500 jobs.

How many of those jobs will be in Halifax and what if anything is the minister doing to ensure that we do not lose valuable high-paying jobs in this city once again?

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, I thank the Honourable Senator Oliver for that question. I appreciate his concern regarding the loss of any single job in Halifax, the city where we both live.

With respect to the specific plans of the CBC, I am not in a position to indicate in detail to the honourable senator what those plans would be at the moment. I will certainly make inquiries and will give as much information in the most specific terms I can with respect to any plans that the CBC may have for changing its structure or, indeed, downsizing in Halifax.

We would, of course, regret any significant change in the CBC's operations in Halifax. The quality of those operations has been without parallel in the country. I may be a little prejudiced about that, but I think they have done extremely well with the productions and personnel they have in Halifax. I would very much regret seeing significant changes in the present structure.

I must add that while we regret and sympathize with the loss of a single job in any industry, anywhere, the city of Halifax, in terms of its unemployment rate, has done very well lately. It continues to show signs of robust growth. Specifically, new employers have come to the area and have seen tremendous success and growth in that city. For that, we should be very grateful.

TRANSPORT

PROPOSED INCREASE IN NUMBER OF DRIVING HOURS FOR TRUCK DRIVERS

Hon. Mira Spivak: Honourable senators, there has been a development, and I am not sure the Canadian people know about it. The Canadian government is en route to changing the national safety code governing trucking regulations to increase the numbers of hours that truckers can legally drive every week from 60 hours to 84 hours, even higher under special circumstances.

Transport Canada's legal department is preparing the new hours-of-service standard that was adopted last November by the Canadian Council of Motor Transport Administrators, which is made up of federal, provincial and territorial officials. This means that truckers can drive their mammoth rigs having been on the job for 80 hours or more in a seven-day period.

Honourable senators, parent groups, industry insurance representatives and citizen groups are speaking out against this change to allow more sleepless drivers on our highways — but they are not Canadians. They are Americans who do not want our sleep-impaired drivers crossing their borders.

As I understand it, Transport Canada will not be holding consultations on this process. They are leaving that to the provinces.

Why is the Government of Canada backing an 84-hour work week for truckers? Will the Leader of the Government in the Senate use his good offices to ensure that federal officials are instructed to conduct full public consultations on this very important matter?

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, I thank the Honourable Senator Spivak for bringing this matter to the floor of the Senate. As she knows, commercial driver hours are regulated federally under the Motor Vehicle Transport Act, which involves motor carriers moving interprovincially. Within a given province, the regulations — I do not profess to be an expert in this area — are controlled by the provincial regulators.

My notes indicate that options for review of the existing regulations have been undertaken by the Canadian Council of Motor Transport Administrators, or CCMTA, incorporating recent studies with respect to driver fatigue. Draft options for changes will be coming forward. I am also told that the drafting of a new standard is in progress and will be followed later this year, perhaps in the summer or the fall, with public information sessions conducted by the various jurisdictions. The project group is a federal-provincial industry group under the auspices of the CCMTA.

I appreciate the concerns raised by the honourable senator, who must know that this matter is still a work in progress. I will convey those concerns to the minister and, through him, to the relevant officials.

Senator Spivak: Honourable senators, this “work in progress” is being codified under regulations. The regulations are moving in the direction of a greater number of hours, I think, at the request of the truckers’ associations. The proposal is for a higher number of hours than is allowed in the United States and represents a danger to the driving public. This immensely important matter is moving forward not with any parliamentary scrutiny but through regulation. The federal government is not even holding public consultations.

It is not sufficient that the honourable leader consult his notes. This is a very important safety issue and I would ask that he look into it a little deeper than simply having the department advocate its actions as being the best of all possible worlds.

• (1450)

If you do not mind, would you use your offices for what, on the face of it, looks like a very retrograde step for Canadian safety? It is even higher than the level allowed in the United States. Please do something.

Senator Boudreau: Honourable senators, I do not think it will come as any surprise to honourable senators that I have not read the regulations of the Canadian Council of Motor Transport Administrators. I take the expression of concern from the honourable senator quite seriously, but I also have an indication that there is a process which continues to be followed, and is based on scientific information and scientific study.

That is not to say that I am dismissing the concerns that the honourable senator raises. I will follow up on the matter, and I will address the concerns that have been highlighted by the honourable senator to the Minister of Transport and through him to his officials. I may even review the regulations in some detail myself so that, at a future date, we will be able to discuss them in more detail.

Senator Spivak: I apologize for not letting your office know about this question. I did not expect you to know the details of the regulations. However, there is a principle here, that all kinds of changes take place through regulations without the scrutiny of the people’s representatives. In a case like this, I think we need to say, “Whoa, hang on.” This looks, on the face of it, quite Draconian.

Senator Boudreau: I will follow that up in the manner I have indicated, with Treasury Board and, perhaps more to the point, with a special committee of cabinet that deals with regulations. I would think a case like this will probably require pre-publication before any implementation, although I am not sure of that. I will certainly check that avenue of it as well.

BUSINESS OF THE SENATE

Hon. Lowell Murray: Honourable senators, my question is directed to the Honourable Senator Milne in her capacity as Chairman of the Standing Senate Committee on Legal and Constitutional Affairs. My question arises from the statement made earlier this afternoon by the Deputy Leader of the Government to the effect that next Wednesday will not be a short day, but rather that the Senate will continue to sit Wednesday afternoon and probably Wednesday evening.

If that is the case, does the Chairman of the Standing Senate Committee on Legal and Constitutional Affairs intend to reschedule the meeting that had been planned for that day, at which we were to hear various witnesses, including Canada’s Chief Electoral Officer, on Bill C-2, an important piece of legislation?

Hon. Lorna Milne: Honourable senators, since we do have, in the Standing Senate Committee on Legal and Constitutional Affairs, a long list of confirmed witnesses who have already rearranged their businesses and lives in order to be here next Wednesday afternoon, I intend to rise at the proper time and place to ask leave to sit even though the Senate may then be sitting. It is my hope that the leadership on both sides of this chamber will confer and agree to allow us to meet.

Senator Murray: Honourable senators, my friend will know that hers is not the only committee that has meetings scheduled for next Wednesday. The committee that I chair, the Standing Senate Committee on National Finance, was to have sat at 5:45 p.m., to continue its study of Bill S-13, Senator Kinsella's whistle-blowing bill.

Let me then ask the Deputy Leader of the Government, and perhaps the question should also be addressed to the Leader of the Opposition as an officer of the house, what the position is with regard to requests for leave by committees to meet while the Senate is sitting.

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I would require leave of the Senate to respond, in that I am not a committee chair. Perhaps the leader would like to venture a response.

Senator Murray: Honourable senators, it is a serious question that I am putting to the Deputy Leader concerning house business, and I think it is perfectly proper for me to ask the question and perfectly reasonable for me to expect an answer.

The Hon. the Speaker: Is leave granted for the honourable deputy leader to respond?

Hon. Senators: Agreed.

Senator Hays: Honourable senators, on Wednesday next, the following committees have scheduled meetings: Legal and Constitutional Affairs, on Bill C-2; Foreign Affairs, on Bill S-18, the child soldier legislation; Banking, if they receive Bill S-19, amendments to the Canada Business Corporations Act; Transport, on Bill S-17, amendments to the appropriate legislation concerning marine liability, and, as Senator Murray has mentioned, National Finance.

The simple answer, of course, is to have agreement from the opposition to deal with Bill C-9 as we hope. In any event, that is not something I expect, nor should honourable senators object to my putting that position, because that is what gets us where we are.

There should be room for some committees to meet while the Senate is sitting, but it will be a matter for us to decide. If one committee is meeting, I suspect that that is tolerable. If two or more committees meet, then it becomes an issue that we have discussed in this chamber many times — committees meeting when we are dealing with important business here. If things go as I have suggested, we will be dealing with Bill C-9, and whether or not the house should abridge the time within which we deal with that bill is an important matter. We must be very careful. Hopefully, committee chairs will be able to carry on with their work without being inconvenienced too much, although I acknowledge that this will inconvenience them.

However, Monday is available, for instance, for committee meetings. We traditionally schedule witnesses for Wednesday because of our practice, and I gave the notice today of what I expect will happen so that it would not be a surprise next week. Hopefully meetings can be rescheduled. Monday might be a day available for committees, and perhaps tomorrow. In any event, that is the best answer I can give.

Senator Murray: Honourable senators, always remembering that leave means unanimous consent and that the matter is not entirely in the hands of my friend, do I understand his position to be that, as far as the government is concerned, they would give leave for one committee to meet while the Senate is sitting but not for more than one committee? If so, on what basis will he select the lucky committee?

Senator Hays: Honourable senators, normally we see these as requests for leave. They can be requested pursuant to motions. I gather that Senator Milne had in mind that she would give a notice of motion requesting permission of the whole Senate to meet even if the Senate is sitting. That would be a debatable motion, as I read the rules. When it comes time to debate that motion, perhaps we will need to assess how many committees wish to meet. Obviously, Senator Murray would take the position that, if one committee is to be selected, it should be the Standing Senate Committee on National Finance. Senator Milne would say it should be the Standing Senate Committee on Legal and Constitutional Affairs.

I made the suggestion because, as a practical matter, a single committee could meet without causing a problem, but if five committees were to meet, then the Senate could not function. That is why I suggested one, or perhaps two. If a motion is moved, or if leave is requested to deal with it without a motion being moved, then we will decide it at the time.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, we are getting beyond Question Period, but in all fairness to the committees, we should know what the intentions of the government are. There are witnesses waiting to testify next Wednesday, I assume. As far as we are concerned, unless there is a very valid reason, committees should not meet while the Senate is sitting.

• (1500)

INTERGOVERNMENTAL AFFAIRS

VISIT OF PREMIER OF QUEBEC TO FRANCE—SPEECH OUTLINING PROVINCIAL GOVERNMENT'S POSITION ON REFERENDUM CLARITY BILL—GOVERNMENT POSITION

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, the Leader of the Government in the Senate is concerned that the first minister of the province of Quebec is speaking today to members of the Senate of the French Republic. Among the matters that he will be discussing with the President of France, Jacques Chirac, is his view that Bill C-20 is null and void.

Will the Government of Canada be expressing its view on the views expressed by the Premier of Quebec, both to the President of France and in the speech he will deliver today to the members of the Senate of the French Republic?

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, with regard to the first part of the honourable senator's question, I am always concerned when the Premier of Quebec rises to make a speech.

It would be hope beyond belief that, if we presented this bill, Premier Bouchard would embrace it and say, "Yes, I believe Bill C-20 is a legitimate and valid exercise of the federal jurisdictional prerogative." It is no surprise to us that Premier Bouchard does not like Bill C-20. In fact, he has said so publicly on a number of occasions, and will say so to members of the French Senate. Predictably, he will say the same thing on every public occasion at which he is given the opportunity. We simply do not agree with him. We think he is wrong. There is no secret that we believe that his comments with respect to that legislation are clearly wrong.

FOREIGN AFFAIRS

FRANCE—POSSIBLE ENDORSEMENT OF SECESSION BY QUEBEC—GOVERNMENT POSITION

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, if the Government of France gives international recognition to a seceding Quebec, would that be a cause of concern to this government?

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, the situation set out by the honourable senator is hypothetical in the extreme. If it were to happen today, or two years from now, or if it had happened last week, or two years ago, and regardless of the country, it would be a matter of concern. We firmly believe that it will never happen and that the people of Quebec will never endorse separation from Canada, as long as they are given a clear question to answer. I say that with the greatest of confidence. I do not think we will ever face the hypothetical situation that the Deputy Leader of the Opposition raises.

REFERENDUM CLARITY BILL

COMMENTS BY PREMIER OF QUEBEC DURING VISIT TO FRANCE

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, the Premier of Quebec is quoted in *The Globe and Mail* of today as having said to President Jacques Chirac that his government, namely, the Government of Quebec, has had this whole issue on the back burner for the past four years, and it is only because this ill-considered piece of legislation has been brought forward that the matter is returning to the forefront.

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, earlier in my life I was accused of being gullible. I do not know if I would ever have bought that story.

The Premier of Quebec is saying, "If they had not mentioned it, we never would have mentioned it. We would never have thought about separation again. The separatist movement in Quebec would never have arisen if those people in Ottawa had not mentioned it." This defies credibility.

A statement such as that from Premier Bouchard demonstrates better than anything we are likely to say in this assembly how desperate he is, having realized that the people of Quebec will not follow him out of Canada.

FISHERIES AND OCEANS

UCLUELET-TOFINO, BRITISH COLUMBIA—REQUEST FOR REPLACEMENT OF LEASEHOLD FISH LICENSING SYSTEM

Hon. Pat Carney: Honourable senators, my question is addressed to the Leader of the Government in the Senate.

Last week, some members of the Senate Fisheries Committee visited some of our coastal communities to identify some of the problems they have with federal fisheries policy. The group included the Chair of the committee, Senator Comeau, my B.C. colleague Senator Perrault, Prince Edward Island Senator Perry, and Senator Mahovlich, who did more to thaw east-west relations than anyone since the Vancouver Canucks were in contention for the Stanley Cup. It was a terrific group and because of the "Big M" we were particularly well received.

One specific issue was raised with us of immediate concern to the people in Ucluelet-Tofino. They are trying to organize a community licensing scheme with aboriginals and non-aboriginals — the band and the community — so as to gain access to their fishery, which is now allocated under a system whereby a dentist in Toronto could be a licence holder. They want to replace these absentee leaseholders with a community fishing licence.

They have been unable to get any response from the Department of Fisheries and Oceans. Because they are a volunteer group and the fishing season is coming and they are experiencing burnout, they say they need an immediate reply to this issue. Could the minister use his good offices to ensure that they do receive a reply to this issue? If they do not, the consensus could break down, and there is the potential for some sort of fish war on the water. I would ask the minister to expedite his response.

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, I thank the honourable senator for her question. I certainly agree with her that the members of the Fisheries Committee have done great work in dealing with some very difficult issues across the country. I must confess I am a little more familiar with the situation on the East Coast than I am with that of the West Coast. However, I am familiar with the particular area to which the honourable senator refers. I have been there, and it is absolutely magnificent.

I will, of course, take the honourable senator's inquiry and bring it to the attention of the minister and his department and ask for a response in due course. I will convey to the honourable senator the reply.

DELAYED ANSWER TO ORAL QUESTION

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I have a response to a question raised on March 28, 2000 by Senator Robertson regarding the possibility of lowering thresholds for cities to achieve metropolitan status.

STATISTICS CANADA

POSSIBILITY OF LOWERING THRESHOLD FOR CITIES TO ACHIEVE METROPOLITAN STATUS

(Response to question raised by Hon. Brenda M. Robertson on March 28, 2000)

1. Statistics Canada consults its data users prior to every Census (every 5 years) to see whether there is any need to update any of its geographic definitions, including the census metropolitan area (CMA) definition. Consultations in preparation for the 2001 Census generated some suggestions to lower the CMA population threshold below 100,000, but there was not a clear majority for change. The definition was therefore left unchanged for the 2001 Census, and planning of the Census, as well as programs that make use of the metropolitan definition, has proceeded on that basis.

2. With respect to conformity with the U.S. definition, Statistics Canada has been liaising with the Bureau of the Census in the U.S. on the possibility and benefits of harmonizing the definitions of geographic areas in the two countries. Currently the Census Bureau is right in the middle of taking the 2000 Census and so not able to focus on this issue at the moment. Within the U.S. government there is discussion on revising their own definitions and introducing several categories of metropolitan area according to population size. We intend to pursue the potential for Canada-U.S. harmonization with the Americans as soon as possible.

3. In the meantime Statistics Canada is ready and willing to state publicly, in whatever publication or forum it is useful, which urban areas in Canada would be CMAs under two alternative U.S. definitions. Moncton would be one such area under either definition.

4. Statistics Canada is working with Industry Canada to ensure that information on urban centres of 50,000 and above is included on their *Invest in Canada* site, and that these centres are identified as meeting the U.S. definitions of metropolitan areas.

5. Finally it should be noted that the redesignation of an urban centre as metropolitan would not in itself increase the amount of data available for that centre. We already make available all data we have about all urban centres. To increase the amount of data available for smaller urban centres, for example by increasing sample size in some surveys, could require significant additional budget allocations.

In summary, Statistics Canada feels that it cannot reopen the issue of metropolitan area definition in time for the 2001 Census. The necessary consultations, Census program adjustments, and adjustments to other programs, within and outside Statistics Canada, that make use of the metropolitan definition could not be completed in time.

However, Statistics Canada is ready and willing to identify the urban centres that would be designated "metropolitan" under U.S. definitions. In particular, it is working with Industry Canada to ensure that this information is prominently displayed on their *Invest in Canada* site, and is ready to work to the same end with any other organization engaged in attracting business to Canadian urban centres.

BUSINESS OF THE SENATE

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, it is usually at this time that there is an exchange, when it is necessary to have one, on how the business of the house will proceed over the next few days. We already have before us, and honourable senators are considering, the discussion raised by Senator Murray during Question Period about the suggestion of the Deputy Leader of the Government with regard to the sitting of the Senate Wednesday next. Some committees that have planned business have lined up witnesses to appear before them assuming they would meet when the Senate rises at 3:30 p.m.

• (1510)

It seems to me that we should not follow the route indicated by some honourable senators, that of classifying issues that come before this place under those of utmost gravity and concern and those of a lower class. I submit that the same principle applies to committees. How will we say that some committees can sit because their issues, for whatever reason, are more grave than the issues before another committee?

Honourable senators, this side would have a great deal of difficulty in granting leave. The principle we have used in granting leave for committees to sit even though the Senate is sitting is when a minister is to appear as a witness. We have recognized the scheduling problems of ministers as an exceptional circumstance.

Several committees next week have ordinary, regular important business. We would be hard pressed to find a reason to not continue with our practice of rising at 3:30 on Wednesdays in order that those committees may do their work, as opposed to allowing debate to continue and granting leave for committees to meet even though the Senate is sitting. That was one matter touched upon by my honourable friend, the Deputy Leader of the Government.

The other matter relates to a warning that time allocation might be brought in with reference to Bill C-9. The rules are clear. If the government decides to bring down the guillotine with a government measure, a notice of motion will be given to that effect. There will be a debate on that motion. If the motion succeeds — and to succeed, it requires the majority of senators — the guillotine will be in place on that matter.

Honourable senators, this is the first time since I have been in this place that we have received a warning of the guillotine. My understanding, according to the rules, is that negotiations take place. Indeed, they have been ongoing between the two sides. I am of the view that I left the discussions with a counter-proposal. I am awaiting the reaction to the counter-proposal and would prefer that these negotiations continue.

If these negotiations break down, then, pursuant to the rules, the deputy leader can rise and say, “We have had negotiations, but they broke down.” I am clearly of the view that I made a counter-proposal while in the midst of negotiations. It is with the Deputy Leader of the Government. I do not think the rules provide for a warning of the guillotine.

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I am pleased Senator Kinsella acknowledges that we have been in a negotiation as that is a condition to the use of rule 39 dealing with the limitation of debate.

Each of us must interpret the status of the negotiation in which we find ourselves. My interpretation of the status of the negotiation is that we do not have an agreement that I can accept as meeting the expectation on this side as I represent it. I will not refer to the government.

As to signalling for next week the likelihood of a difficulty on Wednesday, I am not sure, but Senator Kinsella may be saying he would rather this be a surprise — in other words, that the motion materializes with notice, as opposed to what I am doing here today. I am simply signalling members of this chamber, who all have an interest in this matter. After all, we are sitting on Friday and will be sitting on Monday, which is a little unusual for us. Perhaps Senator Kinsella would prefer if we left these things until the very last moment.

It may well be that our negotiations will bear fruit and something will happen such that it is not necessary to have a long or regular day on Wednesday. However, I must interpret where I am at in terms of our objectives.

Hopefully our negotiation will continue. We have had a good relationship and I hope it continues. My interpretation is that we are at least three weeks apart in terms of where we should be in terms of our objective. That is why I have taken these steps to signal the chamber where I think we will be next week. Hopefully I am wrong and an agreement will come out of our negotiation. It is my intention to leave this expectation until the latest possible date, in terms of achieving agreement.

In any event, given the alternatives of surprising honourable senators on Monday or Tuesday or letting them know today what is likely to happen, my choice is to signal today what will likely occur.

Senator Kinsella: Honourable senators, I thank the honourable senator for that. It assists all honourable senators if they know the state of play.

Also, it may be helpful to recall that our sitting times typically are from 2 p.m. until 6 p.m.. We stop at 6 p.m. and come back at 8 p.m. The other day, attempting to have sufficient hours in this place for debate, we did not see the clock, which caused some problems in terms of planning.

Our agenda has not been that full of government business for a period of time, and we are now looking at adding Friday, Monday and possibly the following Friday as sitting days. If we sit those three extra days and use all of the hours we are entitled to use in the run of a day, I think it might obviate the Wednesday afternoon.

My main concern is interfering with committee activities, as raised by Senator Murray. If we consider that we are adding sittings Friday, Monday and the following Friday, and if all honourable senators realize that we could sit from 8 p.m. to 12 a.m., we might get through the complete Order Paper. Many senators have been complaining to me that they have inquiries that always wind up being stood.

Senator Hays: Honourable senators, we will see how it goes. I am suggesting what I think will happen, not what will happen. We may find ourselves with nothing more to say come next Tuesday. If that is the case, the world will unfold as Senator Kinsella suggests. However, if we are still busy with our debate, it is quite possible, if not probable, that the schedule will unfold as I have suggested. Senator Kinsella indicates that the opposition would not likely support consent for a committee to sit on Wednesday if we have a regular day. It is difficult to choose, although we are here and make choices all the time, but we could choose, if we wanted, to allow some committees to sit. In any event, we must wait and see what plays out.

ORDERS OF THE DAY

CANADA BUSINESS CORPORATIONS ACT CANADA COOPERATIVES ACT

BILL TO AMEND—SECOND READING

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. David Tkachuk: Honourable senators, I rise to speak on second reading of Bill S-19, to amend the Canada Business Corporations Act and the Canada Cooperatives Act. I was supposed to give this speech a week ago Thursday. When one has extra days and time, one adds a paragraph here and a paragraph there, so please abide with me. Much has happened in the last week and a half.

I listened with great interest to Senator Kirby's fine speech last Tuesday. I should like also to acknowledge the work of the committee under his leadership when he was chairman and the deputy chairmanship of Senator Angus and myself.

The work that the committee did on corporate governance, with particular emphasis on institutional investors and the role and work of boards of directors, was extremely good. I commend the government for following many of the recommendations the Standing Senate Committee on Banking, Trade and Commerce put forward.

• (1520)

Our committee's focus has always been on the goal of improving Canada's corporate climate to help create capacity and support Canada's search for competitiveness on the world stage, especially amongst the OECD countries.

Honourable senators, in spite of what Senator Boudreau has said about Bill C-20, I believe, and I am sure most colleagues on the Banking Committee believe also, that this is one of the most significant government bills to be dealt with in the Senate for some time. I will have more to say on this issue with respect to Bill C-20 next week, but I would reiterate that this is one of the most significant government bills to be dealt with in this Senate for some time, and it is one that the Senate is well positioned to study, because of the expertise we have built up and the institutional knowledge we have gained from previous studies.

The Banking Committee has already done much work on the potential changes to the Canada Business Corporations Act and the Canada Cooperatives Act through earlier hearings and reports. The Senate is the logical first place for this legislation to be given what I would call "sober first thought," and I congratulate the government for having the foresight to send this bill here first.

I will cover today specifically four matters that are of concern to me before we begin our committee study of the legislation over the next few weeks. I am concerned with the issue of global competitiveness, the lack of the parliamentary review mechanisms, the general trend of devolution of parliamentary powers by the use of regulations through Orders in Council, and with some matters concerning insider liability for directors and officers of corporations.

I should like to begin my first point, regarding global competitiveness, by examining the aim of the government, as outlined by the press release, that this bill will help our corporations compete and make Canada a choice destination for headquarters of global corporations.

Honourable senators, the current Canada Business Corporations Act pales in comparison to some of the other competitive barriers faced by Canadian business. Unfortunately, this government is not doing enough to address those other barriers.

In an article in the *National Post* on April 4, there was a joint statement by the Business Council on National Issues spokesperson, David O'Brien, who is Canadian Pacific President and CEO, Jean Monty, BCE Inc. President and CEO and John Cleghorn, Royal Bank Chairman and CEO. They stated that Paul Martin's five-year reduction plan for corporate tax rates in his February budget demonstrates a "breathtaking short-sightedness and timidity." They also said that only through continuing prosperity can Canada maintain its values and key social policies. Global competition and the integration of business on a continental and world scale are leading to a post-industrial era in which Canada is extremely vulnerable. "If the government does not move quickly," Tom D'Aquino, President of the BCNI, warned, it will not be long before Canada is a "worse-off northern suburb of the USA." They called for an end to "wishy-washy half-measures" and an immediate move to "sharply lower taxes, a vigorous plan to attack the $575-billion federal debt, and bold policies that promote world-scale Canadian companies, including banks."

In particular, not only does our tax system rely more heavily than our competitors' upon taxes that have nothing to do with profit levels, as capital and property taxes, but we have more punitive income tax rates.

Canada has not followed the lead of other nations in reducing corporate taxes, with the result that this year we will have the second highest general corporate tax rate in the world. The recent budget cuts corporate taxes by all of 1 per cent, with only a promise of further reductions between now and the year 2004. Can we continue having corporate tax rates that are 7 per cent above the OECD average for another four years?

As long as our business tax system is not competitive, other nations are more attractive places to invest and to earn income in. Capital today is highly mobile and moves more rapidly than ever, in response to actual or anticipated changes in tax policy. The business world will not stand still and wait for Canada to bring its taxes into line with those of our competitors. Business will not locate here in the hope that, one day, taxes will come down.

Similarly, our personal income tax rates make Canada a less attractive place for talented professionals and managers to earn income. We are losing our best and our brightest — that is, the people we need to compete — to higher after-tax income south of the border and across the sea. The recent budget did not go far enough to cut taxes.

Honourable senators, we must remember that the people who make decisions about where to locate their head office will consider both the tax consequences on the corporation and the tax consequences upon themselves, as individuals, as they will likely reside in the same country as the head office.

In short, the government's suggestion that these corporate law changes will make Canada a choice destination for the headquarters of global corporations flies in the face of reality because it ignores the fact that our taxes are simply just too high. There remain other challenges to be met if we are to become more competitive. For example, within the G-7, Canada has the second lowest level of research and development as a percentage of its economy.

While the government, in its most recent budget, may make impressive sounding claims about money for things like genome research and research chairs, that money will be spread out over a period of several years and it is really quite small when you compare it to the magnitude of the R&D gap with our competitors. Government money alone will not close the research and development gap so long as risk is better rewarded elsewhere.

Another challenge that we must overcome, if we are to become more competitive, is the barriers to trade within Canada. It is easier to sell goods and services to another country than to another province. We do not need to have our small domestic market further fragmented with trade barriers, such as margarine colouring laws.

If a Saskatchewan business has a problem with an American company, it can go to the NAFTA panel or to the WTO. If it has a problem with Ontario or Alberta, it is out of luck. Our internal trade agreement has no teeth, no enforcement mechanism. My colleague Senator Kelleher, who has particular expertise when it comes to WTO matters, I am sure would echo my concern.

A third example is the regulatory environment. Most small businesses would probably tell you that the way government regulates is a far bigger problem than the Canada Business Corporations Act, although the changes that eliminate duplication are a step in the right direction.

Honourable senators, a regulatory environment that subjects business to regulations only where and when needed is vital to the creation of a vibrant and competitive economy. This government is far too fast to regulate when alternatives such as a negotiated compliance could be implemented, and regulations are rarely passed with any kind of cost-benefit analysis, either before or after they are in place.

That brings me to my second and third points: the need for a parliamentary review mechanism and the concern I have with the devolution of parliamentary powers through the use of regulation rather than legislation to regulate the business environment.

The Senate Banking Committee supports the increased scope of regulations in order to facilitate the access of businesses to quick answers and regulations that clarify and simplify the rules that govern business. However, the committee has never recommended that those regulations not be scrutinized by Parliament. A review mechanism should be mandatory and should reoccur on a regular basis. It could then be determined if repeal or adjustment is necessary to ensure effectiveness.

Many regulations are written in such complex terms that you need to be a Bay Street lawyer to read them. Far too often, small businesses are not even aware of what the regulations are until they have broken them. Small business operators do not make a habit of reading the *Canada Gazette* while they sip their morning coffee.

I will also question the officials about posting the regulations, which are awkward in this bill; not only should they be posted electronically, as you will currently find, but they should also be tabled before Parliament concurrently. We need to develop mechanisms whereby regulations are tabled in both Houses, perhaps 30 days before they are to come into effect. If deemed necessary, they could be studied in committee, and those amended in committee would obviously not come into force, but would be withdrawn with the view that, when the bureaucracy gets it right, they come back again.

A concern I have had for some time is that we are slowly abandoning Parliament. While the previous act, which was passed in 1974 or 1975, contained a mechanism to allow for a review by Parliament, that mechanism is missing from this bill.

• (1530)

More and more regulations that do not need parliamentary approval are governing what regulates our economy, and this concerns me. Perhaps it is just the way this government thinks. An example is what happened today. We will be dealing with a bill where closure will come into effect on Wednesday if we do not hurry up and pass it, when there seems to be no necessity to pass it at all. We can wait until May 3 or May 10 or May 15 to pass it. There is no national emergency awaiting us.

Honourable senators, we are being bypassed by the Langevin Block. This little issue about regulation is symbolized by big issues such as Bill C-9, on which debate has just begun. We are told that it must be out of here on Wednesday. Therefore, we have to sit extra days and extra hours because we cannot possibly debate the bill in May. However, we are given no good reason as to why it must pass on Wednesday. We should all be concerned about that.

I am also concerned about a fourth problem in Bill S-9 that will, to paraphrase a government document, impose civil liability on persons who communicate undisclosed confidential information regardless of whether a transaction occurs — that is, if you are an insider in a corporation. I am not a lawyer, so when I go through this bill, I do not know why it matters if no transaction takes place and information is released. Will it cause problems if members of boards of directors or insiders inadvertently release information that may be communicated by someone else, thus exposing them to civil liability, when no profit has been taken and no self-interest has occurred?

In order for the provisions of the bill to apply, in reference to a particular amendment that I am concerned about, someone must say that information has been passed on. The government that has yet to honour its promise to pass whistle-blowing legislation is now encouraging it for the private sector. How else will anyone find out who talked to whom? Perhaps the officials appearing before the committee can allay my fears, but again, I fear that this clause will make a lot of people nervous about taking any responsible role in a corporation, which is a situation we want to avoid.

Honourable senators, I should like to reinforce my earlier comments about the role of Senate committees by talking about the ability of the Senate committee structure to produce results that have a profound effect on the actions of the executive branch. Bill S-19 is a testament to this fact. The Senate Banking Committee has undertaken studies on corporate governance and the governance of institutional investors, both on its own initiative under the previous chairmanship of Senator Kirby and its review of legislation, such as Bill C-2, the Canada Pension Plan Investment Board Act, and Bill C-78, the Public Sector Pension Investment Board Act.

It is clear that in Bill S-19 the government chose to include many of our recommendations, both minor and major, particularly those that refer to joint and several liability, rights of shareholders and residency requirements for directors. It is gratifying that Bill S-19 is reflective of the work done as it relates to the private sector.

However, the government ignores our recommendation when it comes to establishing public sector corporations. This was apparent because the government got into trouble in this place on Bill C-2 and Bill C-78 relating to the government institution that handles the people's money. Good corporate governance and laws that satisfy business interests and shareholders' interests are enacted to protect those participating in the corporation by work or monetary investment from those who would exploit the system and commit fraud on their person, company or pension plan, or deviate from good and honest business practices.

In a government, of course, money is extracted by law, and, in this country, punitively. The government, including the members opposite, saw fit to ignore many of the Banking Committee's recommendations in relation to requirements for pension investment expertise on the board of directors and the oversight by the Auditor General in relation to government institutions.

In conclusion, I look forward to dealing with this legislation in committee. At the outset, I do feel this legislation is positive and goes a long way to improving the CBCA and the CCA. Let us hope after our committee deliberations that we will return to this place legislation that we can be proud of on both sides of this chamber.

Hon. Michael Kirby: Honourable senators —

The Hon. the Speaker *pro tempore*: Honourable senators, I must inform the Senate that if Senator Kirby speaks now, his speech will close debate on the second reading of Bill S-19.

Senator Kirby: Honourable senators, I do not intend to give a speech, just to thank Senator Tkachuk for his speech and, in particular, for reminding this chamber about the work the Banking Committee has done on the issue of the governance of public institutions. Let us hope that by continuing to keep pressure on the government, we can get it to ultimately adopt our views with respect to the governance of public institutions, as we have with respect to private sector institutions.

I also thank Senator Wilson, who is not here but who gave a very interesting speech several days ago laying out a suggested amendment to the bill. It is an intriguing idea that I hope the committee will look at seriously.

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 Kirby, bill referred to the Standing Senate Committee on Banking, Trade and Commerce.

NISGA'A FINAL AGREEMENT BILL

THIRD READING—MOTION IN AMENDMENT—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;
>
> And on the motion in amendment of the Honourable Senator St. Germain, P.C., seconded by the Honourable Senator Andreychuk, that the Bill be not now read a third time, but that it be read a third time this day six months hence.

Hon. Pat Carney: Honourable senators, I rise on a point of order. Senator Austin is not in his seat. He has been in the habit of answering questions raised in debate. Yesterday, I asked questions related to the issue of the rights of native women. Will they be answered by the government today?

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, on behalf of Senator Austin, I inform you that he will be absent today and tomorrow. He will be back next week. If he follows the practice of earlier this week, he will deal with questions he has not already dealt with when he is next in the chamber.

The Hon. the Speaker *pro tempore***:** Honourable senators, Senator Sibbeston will resume his speech from yesterday.

Hon. Nick G. Sibbeston: Honourable senators, I was interrupted yesterday part way through my speech, so I will briefly capsulate what I said.

The Nisga'a bill before us is the result of an evolution of the views of the courts and the federal government on aboriginal rights. The 1973 Supreme Court of Canada case of *Calder* was instrumental in changing government policy. Since then, various parliamentary and government bodies — Penner is one — have studied the subject, each in their own way advancing the notion of aboriginal rights and what they entail in our country.

My comments are in support of the bill being debated, voted on and quickly implemented. I do not support the amendment to cause a six-month delay or hiatus. The Nisga'a have waited a long time. While I appreciate that the amendment is aimed at providing time to resolve the boundary overlap issue, I seriously do not think that the delay will accomplish that. The overlap matter is internal to the Nisga'a and the neighbouring First Nations, and I trust that through negotiations, through good-spiritedness, and through time this issue will be resolved. The Nisga'a bill is too important for the general good of the Nisga'a and aboriginal people of our country to delay.

• (1540)

Honourable senators, in 1986, following the federal task force report which was titled "Living Treaties, Lasting Agreements," the Conservative government indicated a willingness to discuss legislative proposals to replace the Indian Act with local self-government arrangements with individual First Nations. Federal policy, however, did not permit any major change from the municipal government model. Instead, it focused on enhanced bylaw powers and economic development.

Delegated powers, however, have never been acceptable to aboriginal peoples. Aboriginal people need the same powers as other governments to be self-determining and to have control over their lands and resources. I believe there has been an evolutionary process toward these types of powers that we see in the Nisga'a agreement.

In March 1992, a joint parliamentary report recommended the inherent power of self-government be entrenched but in a manner consistent with a view that section 35 of the Constitution might already recognize that right. In July 1992, a political accord was reached between aboriginal leaders and provincial premiers along those lines. The Charlottetown accord was rejected by Canadians in a national referendum. We do not know precisely which parts of the accord the voters rejected. Nevertheless, it shows the government thinking and the support for aboriginal self-government which has grown over the years.

The federal Liberal government has taken a very different and progressive turn in its policies on issues of aboriginal self-government than its predecessors. The Liberal Red Book pledged to act on the basis that section 35 both recognizes and affirms an inherent right to self-government. It pledged to make such changes as could be made under existing laws, proceeding on the basis that the inherent right is an existing right protected by section 35.

That view is supported by the evolving jurisprudence on section 35 rights. In 1996, in *Van der Peet*, the Supreme Court of Canada stated that the purpose underlying section 35(1) was:

> ...the protection and reconciliation of the interests which arise from the fact that prior to the arrival of Europeans in North America, aboriginal peoples lived on the land in distinctive societies, with their own practices, customs and traditions.

In *Regina v. Pamajewon*, the court held that, "Claims to self-government made under s. 35(1) are no different from other claims to the enjoyment of aboriginal rights." In the landmark case of *Delgamuukw*, the court urged the resolution of these difficult and complex issues through negotiated settlements, with good faith, and give and take, on all sides, as a means of achieving a basic purpose of section 35(1) — "the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown."

We are here today, honourable senators, because changes in the federal government's comprehensive claims policy recognize an inherent right of self-government, together with the evolution of Canadian jurisprudence in the understanding of aboriginal rights. The Nisga'a treaty is a culmination of this process. It represents a full-blown agreement in lands and resources characterized by self-government or, as Pierre Trudeau said, "...the transformation of ill-defined aboriginal rights into clearly stated, justifiable written rights."

In the Northwest Territories, there has been a number of land claim agreements — the Inuvialuit in 1984, the Gwich'in in 1992, the Sahtu in 1994, and the Inuit in the Eastern Arctic through the creation of Nunavut in 1999. These land claims agreements have been positive and have resulted in aboriginal peoples gaining ownership of lands, resources and having control over resource development, environment and wildlife through various management boards. The agreements are in various stages of implementation and development.

I wish to speak briefly about the Inuvialuit who occupy the Delta, the western part of the Northwest Territories. Since their claim in 1984, they have successfully managed their lands and resources. They have used their monies in appropriate investments and business opportunities. Today, the Inuvialuit are a driving force in the Delta region and western NWT. They have spread their investment tentacles throughout Western Canada. They have invested in all kinds of projects and businesses. They own office buildings. They have an oil and gas exploration company, regional airlines, barging and trucking companies and a multitude of businesses which provide employment for their people and others. In June 1999, the Inuvialuit completed a 30-mile natural gas pipeline from a gas field on their lands to Inuvik which now provides fuel for heating and power production.

I noticed in a recent magazine article that the Inuvialuit are offering some lands for oil and gas exploration through a bid process. In 1999, they signed $180 million worth of contracts for exploration work on their lands. The 1998 annual report of the Inuvialuit Regional Corporation, the latest report available, outlines the success of all the various corporations as being $8 million in profit.

Except for the Inuit people in the Eastern Arctic, self-government was not a part of the land claims to which I referred, but we have been fortunate in the Northwest Territories because we have a legislative assembly in which all peoples of the North, particularly the aboriginal people, participate. Today, Premier Stephen Kakfwi, a Dene from the Sahtu, and aboriginal people form the majority of elected MLAs.

From experience, I know what self-government is. I was an MLA for 16 years and a member of the cabinet for six years during which I was government leader for two of those years.

The process of aboriginal people achieving self-government is no different from the process of achieving responsible government in the Northwest Territories. The history of the government in the Northwest Territories since 1970 has been to struggle for responsible government. This struggle is no different than the struggle that went on in the western part of our country when Alberta, Saskatchewan and Manitoba struggled for responsible government. The process is one of wresting control from the federal government. Nothing is simply given to people. They must fight and win responsible government. That is the way that I see things happening for the aboriginal peoples in our country.

When I came upon the political scene in 1970, the executive of the Northwest Territories government consisted solely of non-elected federal appointees. The executive was made up of the commissioner, the deputy commissioner and the assistant commissioner. The territorial council of which I became a part consisted of nine elected and five federally appointed people. Through the years, the legislative assembly became fully elected and the executive cabinet became fully elected. I had the honour of taking from the commissioner the last portfolio he held in 1986.

The Hon. the Speaker: I regret to interrupt you again, Honourable Senator Sibbeston. Your 15 minutes of speaking time has expired. Are you asking leave to continue?

Senator Hays: I wonder if I might propose that we grant 15 minutes further.

Senator Lynch-Staunton: No limit. This is too important a debate.

Senator Sibbeston: I have two more pages.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): As a point of order, I would like to know what the foundation is in the rules of Senate for such a motion. Either leave is granted or leave is not granted. Where does the deputy leader find the proposal for 10 minutes or 15 minutes? I do not think he found it in the rules.

• (1550)

Senator Hays: Honourable senators, I do not believe there is any specific rule providing for how leave is granted, but when leave is granted, leave can be granted on the basis of a period of time. This is something that I think is important to have in mind when we consider the orderly business of this chamber. It is my thought that, when leave is requested, rather than simply granting leave and leaving the time unlimited, stating a specific period of time is more appropriate. The rules provide for 15 minutes. I think it is logical, when granting leave, to indicate a specific time for which leave to proceed is granted.

Also, it depends upon which order we are dealing with. If we are dealing with Senators' Statements, which are to be of no more than three minutes, a short time extension is appropriate. If we are dealing with a speech, doubling the time provided for under the rules is appropriate.

I submit that it is entirely appropriate to grant leave for a specific period of time.

Hon. David Tkachuk: Honourable senators, I do not really care how long the good senator speaks. My point is that the deputy leader told us that he is going to impose time allocation next week, yet he is prepared to extend the 15 minutes provided for speeches. We could extend it to an hour by unanimous agreement. A limitation on debate is being imposed on the opposition while an extension of debate is being given to government members.

Will we all get half an hour to speak? If we are granted an extension, will it be 45 minutes or five minutes? This is highly irregular. I would not oppose this if we were not operating under the threat of closure. Every minute of extra time given to a government member takes time away from the opposition. If we were all given an hour, that would be good.

Senator Hays: Honourable senators, the rules provide for time allocation, which I said would probably be imposed next week. It may well be that the motion for time allocation will be refused. It will depend on the will of this chamber, which I cannot prejudge. I assume that our side will carry the day, but it may not.

The rules provide for unlimited speaking time for the leaders of the government and the opposition. They provide for 45 minutes for the sponsors of bills. I believe that also applies to speeches on matters that come to the Senate floor through a committee. However, the rules provide for only 15 minutes for other speakers. I think that is too short a time. This is a creature of the revision of the rules carried out under the leadership of Senator Robertson, when she chaired the Privileges and Rules Committee. I think it is unfair to say that we are taking time away from members of the opposition. You have seen me stand in my place and agree to the extension of time for members opposite, and I intend to continue to do so.

The question before us is whether, when we grant leave for senators to continue speaking, we give them unlimited time or we give them a period of time that we think is reasonable. I believe that we in this chamber have the right to grant leave in whatever way we wish. I have proposed that we grant leave for 15 minutes, doubling the time that Senator Sibbeston would have under the rules, and I would be supportive of doing that for members on the other side as well.

I do not think that unlimited time should be granted. We must keep some control over the time allotment for speeches in the interest of orderly process in this chamber.

Hon. Herbert O. Sparrow: We have used up a great deal of time on this discussion. We need only ask the honourable senator how many minutes he requires. I think he would request only three or four additional minutes, because he said that he had only two pages left in his speech.

I do not believe that we have abused the privilege of asking for extensions of speaking times. If there is no abuse, why are we so concerned about this? I believe that 15 minutes is too short and that the rule should be changed. Why are we making such a big issue of this? Let Senator Sibbeston speak. It is an important subject. Let us get at it.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I should like to endorse the remarks of Senator Sparrow, particularly since Senator Sibbeston is bringing to this debate an insight that is not shared by other colleagues. He was there at the time and played a particular role. I am most interested in his assessment of our concern about the constitutionality of section 35. I have been interested in the quotations he has read from certain reports. I, along with others, am gaining much from his contribution. I believe that it would be wrong to cut him off simply because the rules specify a certain time limit — or at the whim of the deputy leader. Those remarks apply to all senators, but in this case the senator has a special contribution to make.

Let us give him leave for as long as he needs and let us have leave for as long as we need to get better insight through questions and comments.

Senator Kinsella: Honourable senators, I agree with what the Leader of the Opposition has just said, obviously, but I wish to put on the record that the rule provides for 15 minutes. Leave is requested to ignore the rule. We cannot decide to give Senator A an extra 5 minutes and Senator B an extra 10 minutes. Leave is requested to ignore the rule, which provides for 15 minutes. The logic is the negative of the rule, which is not 15 minutes. You cannot turn that into a positive to say that it is 25 minutes or 35 minutes. It is the simple logic of A versus non-A.

Hon. Eymard G. Corbin: Honourable senators, there are days when I do not understand spokespeople for the official opposition. Why did they bring forward the 15-minute rule in the first place? It was to prevent abuse. It was to keep control of the house in tense situations. I can feel tension building up. That rule was imposed on the Senate by the people who now sit on the other side. We should take the consequences of our actions. I find it entirely reasonable that, if we are going to extend the allotted 15 minutes, it ought to be contained and not left open-ended. Otherwise we will find ourselves in the situation that those now on that side of the house wanted to avoid when the rule was imposed. Let us be logical.

• (1600)

Hon. Anne C. Cools: Honourable senators, 15 minutes for an important speech is simply insufficient. When the honourable senators on the other side were on this side, they brought in this rule. I have some confidence in and respect for some individuals on the other side and I sincerely suggest that the chamber ought to act as soon as possible to change this silly 15-minute time limitation so that the opinions and points of view of senators can be stated fully for the consideration of all.

I especially look forward to hearing the rest of what Senator Sibbeston has to say, because he is a very important man.

Senator Hays: If I can close this, I, too, am looking forward to the comments of Senator Sibbeston, and I regret that his speech has been interrupted by this exchange.

Honourable senators, I am not being whimsical, and I think my record as deputy leader in this place substantiates that. I do not believe I have ever, not even once, done other than agree to extend time when time has been requested on the other side. Increasingly, I have been making it a practice to say that the time should be for a specific and reasonable period of time. Doubling the time provided of what is in the rules falls into that category.

I fail to follow Senator Kinsella's logic. If the speed limit is not 50 miles an hour, then it is 1,000 miles an hour. I do not follow that line of reasoning.

I agree with Senator Cools that we should change the rules. The sooner we do it, the better. In fact, the Speaker has a rules advisory committee to which that very suggestion has been made. When the agenda of the Rules Committee is clear, hopefully this matter will be addressed expeditiously.

Hon. Marcel Prud'homme: Honourable senators, I am absolutely astounded and happy and cheerful that Senator Hays, for whom I have great respect, is considering the proposal of Senator Cools to look into the possibility of changing the rules. The deputy leader is opening up an interesting debate about revising the rules. Perhaps he thought that I had lost my energy, which is possible. However, when he decides to revise the rules, would he look into another very important matter, the role of independent senators? Some of us have not given up. We have just decided to keep our powder dry, if that is the expression, until some day when we decide that enough is enough.

Senator Wilson once said to me, "Do not speak on behalf of the independents", so I would not dare to do so. However, I do not mind them speaking on my behalf if it is for a good cause.

In due course, perhaps in May, we should start looking at what an independent senator can do to help save our country and produce something that the House cannot produce. I have a multiplicity of suggestions. However, since the debate at this point is not on the independents, I will stop voicing my views. However, the deputy leader opened the door. When I see an open door, I do not need a written speech. Do not open too many doors. It will eventually be interesting. I suggest that he not answer me, because it will become a debate.

Hon. Francis William Mahovlich: Honourable senators, I have not made too many recommendations in the one-and-one-half years that I have been here, but I should like to say, if I can quote my wife, "Less is more."

The Hon. the Speaker *pro tempore*: Honourable Senator Sibbeston, are you asking for leave to continue your speech?

Senator Sibbeston: Yes.

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

Hon. Senators: Yes.

Senator Sibbeston: I thank —

Senator Lynch-Staunton: Just a moment now. Did Senator Hays get up and grant leave under condition or without condition?

Senator Hays: I am sorry that this issue has arisen during Senator Sibbeston's speech in this important debate. However, I would like to make it a practice on both sides that when we grant leave, and I believe it should be granted, we extend the time for 15 minutes. If we want a ruling as to the appropriateness of that, I think we should seek one. However, I do not wish to see it interfere with the rights of senators to debate on this important matter, although that is up to senators opposite.

Senator Kinsella: Senators opposite agreed that leave be granted to Senator Sibbeston to continue.

On the point of leave being granted with condition, that would be out of order.

Senator Hays: Honourable senators, I ask, then, for a ruling from the Chair on the orderliness of granting such an extension of leave.

Senator Lynch-Staunton: On the point of order, we cannot make up the rules as we go along. Let us give Senator Sibbeston a chance to finish what he has to say. That is the least this chamber can do. He did not know when he came into this chamber, as far as I know, that he would be limited, should he ask for leave. Perhaps he only needs five more minutes. We have wasted half an hour on this, during which we could have heard him and the beginning of another speaker's remarks.

Senator Hays: Senator Lynch-Staunton said "we". The position I am taking is an eminently reasonable one, an important one for the carrying out of orderly business in the chamber. However, I see an impossible position here. I will characterize my granting of leave in this way: It is done without prejudice in any way to my ability, upon the completion of Senator Sibbeston's speech, to rise in this place on a point of order and ask for a Speaker's ruling on this subject.

The Hon. the Speaker *pro tempore*: Honourable senators, on that point of order, I am told that there must be unanimous consent in order to grant leave. I do not see unanimous consent to grant leave. I will ask again: Is there unanimous consent to grant leave?

Hon. Senators: Yes.

Senator Hays: I will not repeat myself, but I leave the record as it is, to be read when the matter is completed.

Senator Sibbeston: Thank you, honourable senators. I am sorry that I caused such a delay.

In the Northwest Territories, we have gone through a process where responsible government was achieved by the people. We fought for it and strived towards it, and eventually the Northwest Territories became a fully responsible government.

I wish to turn now to the Nisga'a. The Nisga'a, through their Nisga'a government provisions, will have self-government. They will have responsible government over facets of their lives that will obviously be important to them. They will have the power to define their citizenship and have control over education, health and social services, the police and the judicial system. These are all matters of local concern. I applaud them and trust that they will use their powers wisely to create economic opportunities and a dynamic society for their people. Speaking from my experience in the Northwest Territories, it seems that when opportunity is given to people, they rise to the occasion and act responsibly. I have no doubt that this will happen with the Nisga'a people.

The way that land claims and self-government can be a positive force in the lives of aboriginal peoples in the North is illustrated by the example of the natural gas pipeline in the North. I spoke of this topic early in February when I spoke for the first time in the Senate. I told honourable senators that there is a new attitude, a new strength, and a new feeling of optimism among the aboriginal peoples in the North since land claims and responsible government has come to the North. Twenty years ago, many of the native people in the North were against developments such as gas pipelines. That was because the people of the North felt they did not have control of the lands or the resources to handle such a massive project. Now, 20 years later, they are much better prepared to handle such development. It is positive to see people of the North now supportive of a major project such as this major pipeline from the Arctic. This is something that is occurring in part because of land claims and self-government in the North.

• (1610)

I say this to illustrate that, when land claims are made and self-government agreements are reached, the people really come alive and their ideas come to fruition. I cannot help but think of the people in the Eastern Arctic who have responsible self-government. They have problems because it is a difficult area of the country to govern. They do not have trees or resources. Yet, they have a sense of optimism and spirit. Their culture is coming alive, and their language is strong. The people feel good about what has happened there.

I do not agree with some of the witnesses who appeared before the committee, who said that the bill is unconstitutional because it would create a third level of government. I believe in the notion of the inherent right to self-government. I believe that right is contained in section 35 of the Constitution. The Nisga'a bill gives expression and detail to precisely what those rights are.

I believe the aboriginal peoples of Canada can best achieve their goals and create a strong independent society by having full and responsible self-government. As for delegated powers, what we have now in the Indian Act is not working. The status quo is not working. It is simply not good enough. Full responsible government is what is called for.

Honourable senators, when all is said and done, after we have debated this measure for the time that we will debate it and when all the constitutional discussions and technical arguments have been made and are over, the important consideration that we must make is whether this bill will improve not only the lives of many of the Nisga'a people, but the lives of the aboriginal people of our country. I have heard many people say that Canadians have a bad history in terms of their dealings with aboriginal people. This Nisga'a bill is a turn for the positive. This bill is something that has been negotiated by the Nisga'a with the provincial and federal governments. Therefore, it will surely work, because it is the result of many years of discussion and negotiation.

From my knowledge and from my experience, I believe the Nisga'a will be better off. I only need to look at what has happened with aboriginal people in the North, in the Eastern Arctic, to see that. I have some knowledge of the Navajo in the United States. They have their own self-government and have control over many aspects of their society. I looked at their justice system when I was working in that area. I see that, through the years, they have brought back their own laws and their own system of justice. Their society is growing and beginning to flourish.

Honourable senators, I was present in the House of Commons when the vote on Bill C-9 was taken. I was proud to see our government and representatives of most of the parties support the bill. That was a proud moment for Canada. It will be a proud moment for Canada when members of the Senate also stand in support of this bill. I stand proudly today in support of it. I trust that all honourable senators will support it.

Hon. Sheila Finestone: Honourable senators, I listened to Senator Sibbeston and was proud to hear him speak with such a sense of pride and purpose. He has been closely involved in this matter. I recall a very pleasant visit to the Northwest Territories and being his guest at one point on my trip. It gives me great pleasure to hear what is going on.

I was involved with Bill C-31, which dealt with aboriginal women and their rights. We all share the lands of our aboriginal people. Within our Charter of Rights and Freedoms is the concept of equality and fairness for the men and women of this country. Were the rights of women considered on an equal footing when this bill was considered? Do they fall under our Charter, given the documents that have been signed?

Senator Sibbeston: I appreciate the question posed by Senator Finestone. The state of women in the Northwest Territories has improved over the years as our society has changed and aboriginal people have become more involved. In the Northwest Territories, under our land claims agreements and in our role of responsible self-government, women have taken their equal place in society.

With respect to this Nisga'a agreement, I am aware that the agreement says that women and men will be treated equally. Section 25 of the Charter will apply. Apart from that, it is in the hands of the Nisga'a in terms of how women fare. I trust that women will have a good life and equality under the agreement.

Senator Carney: Honourable senators, I should also like to congratulate Senator Sibbeston on his speech.

I wish to refer again to a question raised yesterday by Wendy Lockhart Lundberg, who is a member of the Squamish band. I referred to her yesterday in my speech and I have spoken to her since. She wants to know where this matter is referred to in Bill C-9. She wants to know how property rights will apply to native women under Nisga'a law as regards inheritance and matrimonial disputes. There is no mention of that in the treaty. Native women have been unable to establish those rights on many of the band lands to date.

Senator Sibbeston: Honourable senators, I certainly do not wish to mislead anyone, but my understanding of the Nisga'a agreement is that with respect to matrimonial property and related matters, B.C. matrimonial property law will apply. I know that that is one aspect of society to which the provincial law will apply.

I appreciate that in any society there are always those who fall through the cracks or who are dissatisfied. I suppose in the Nisga'a situation there are some people, including women, who are dissatisfied and are expressing their views. The hope is that the Nisga'a government and its society will deal fairly with all people.

It is a fact of life that we cannot seem to have 100 per cent satisfaction. Even in our society there are people who fall through the cracks. We have people who live on the streets and who do not seem to fit into society. Native society is no different.

• (1620)

Senator Carney: I am sure that my friend and esteemed colleague Senator Sibbeston is not suggesting that native or aboriginal women are a sector of society that is falling through the cracks. It would be distressing if we were to enshrine that concept in this bill.

First, where in the proposed legislation does it refer to the B.C. Family Relations Act that will determine the division of matrimonial property under Nisga'a law?

Second, Wendy Lockhart Lundberg wishes to know that since native women do not have the right to inherit property now and they cannot get their inheritance, what good is that if B.C. legislation subsequently applies? If they do not have it and cannot get it, how can it be divided?

Senator Sibbeston: Honourable senators, I am not suggesting that women as a group will fall through the cracks in terms of the Nisga'a government. I was saying that there are always individuals who have a hard time in any society.

I do not have the agreement before me, but my understanding is that the Nisga'a government will deal with the issue of matrimonial property and matters of that sort. I do not doubt that they will have the power and be able to deal with such matters. However, I do believe there is a provision in the agreement where provincial legislation dealing with matrimonial property will apply.

Senator Lynch-Staunton: I thank the senator for his presentation, which I found, as I said earlier, most helpful. However, despite his eloquence, I am still not convinced that section 35 does allow what we are being asked to do. I will not go into the argument that I will present tomorrow or next week on this subject. I want to ask the honourable senator if he agrees with me. He probably will not, but let me share my thoughts with him.

A government that I supported promoted the inherent right of self-government. Thus, the senator knows where I come from on that topic. It was our government that eventually achieved unanimity across the country from all the premiers and governments on the Charlottetown accord, and our government was the first to be distressed that the accord was turned down by a referendum. As Senator Carney pointed out yesterday, 30 of 31 ridings in British Columbia turned down the Charlottetown Agreement by a significant majority.

If the government of the day took the risk of a Charlottetown Agreement with the political perils surrounding it, it was because it felt that only through a constitutional amendment could the inherent right to self-government be confirmed and then acted upon. Were that inherent right in the Constitution today, we would not be having this argument about constitutionality. It would be clear in the Constitution. However, self-government is not included. All parties at the time felt that self-government should be included in the Constitution.

The question is, since self-government is not included in the Constitution, would Senator Sibbeston not agree to clarify the ambiguity of the situation? The arguments on both sides are very strong. I read Mr. Molloy's testimony. I read the Statement of Claim made by the Liberal Party of British Columbia. I read Mr. Estey's presentation. I was influenced by the latter two arguments because I found them more detailed. Still, there is an argument on the other side that is also strong.

Can we not agree that a reference to the Supreme Court to allow a resolution of the matter before the agreement is signed would eliminate an extraordinary amount of uncertainty and frustration, that court hearings would be preferable to this agreement being approved now, knowing the proposed legislation will be challenged? Passing this agreement without clarifying the constitutionality issue means that negotiations with more than 50 nations in British Columbia waiting for a similar agreement will need to be delayed, perhaps indefinitely. No government will be willing to get involved in another agreement of this sort as long as uncertainty prevails.

If that issue could be resolved, whether it takes a year or two, the wait would be worthwhile for all parties concerned. If the government was willing to take a hypothetical case of separation as a reference to the Supreme Court, surely it should be even more willing to take an actual case of a precedent-setting treaty to the court to clarify its constitutionality in order to allow other nations waiting for similar treatment to have the same consideration. I am afraid that by approving this proposed legislation with that uncertainty, we will cause more difficulties not only for this agreement but for those that may follow.

Senator Sibbeston: Honourable senators, in a perfect world it would be useful to get clarity from the Supreme Court of Canada. However, I rely on the federal government to satisfy itself that it is acting constitutionally in bringing forward this bill in the House of Commons and eventually having it end up here in the Senate.

Witnesses from both sides appeared before us. I tend to agree that section 35 permits self-government agreements as we have seen occur in our society. While there may be a technical or constitutional question, in my own life and experience I have no doubt about the merits of aboriginal people achieving self-government. I have spent a lot of time in the North dealing with self-government and responsible government, and those dealings have been successful. Therefore, I have no doubts about the government acting properly in this case and giving responsible self-government to the Nisga'a.

I believe that when the air has cleared, when the constitutional matters, court challenges and so forth are over, that Canada is perfectly within its legislative right to legislate in such a fashion. I referred in my speech to a number of court decisions that not only make reference to the constitutionality of self-government but also provide some relief and satisfaction that the courts will ultimately agree that self-government is contained in section 35.

Hon. A. Raynell Andreychuk: Honourable senators, Senator Sibbeston has been very eloquent on the need for inherent rights to be recognized. As Senator Lynch-Staunton said, a negotiated settlement and a need to settle these issues and acknowledge inherent rights is not in dispute here.

I was a bit troubled by the senator's last remark. The aboriginal people that I know have always relied on the rule of law. That has been their mainstay — to prove that they have these rights.

Does the honourable senator believe that what we are talking about is not a technicality but rather a fundamental issue? What we want to know is: Have we adhered to the rule of law, the Constitution, to ensure this inherent right? If inherent self-government is within constitutional bounds, it will be the aboriginal peoples' right forever. If it is not within constitutional bounds, we are back to the bargaining table. That is my worry. I want clarity and I want respect for the rule of law that the Constitution gives us.

Would the honourable senator agree that we will be doing a disservice to the aboriginal peoples of this country if the constitutional test fails?

• (1630)

To preface my question, I believe the Nisga'a did what was absolutely necessary within their own rule of law, and no one has challenged it. They followed the rules within their own nation to come up with this agreement. What we are saying is: Have we, on our side, followed the rule of law — that is, the Constitution — to ensure that the two meet, nation to nation, and respect the laws of the land?

Senator Sibbeston: I appreciate the honourable senator's question. If the Supreme Court ultimately finds that section 35 does not contain a right to self-government, then the government of the day will need to deal with the issue. Hopefully, they will do whatever is required to amend the Constitution and include, in section 35, the detail that it also provides for self-government. That is a technicality with which the federal government would deal.

However, if the court challenge in B.C. is successful, surely the whole bill will not be struck down but only certain aspects of it. Life would still go on. The Nisga'a would carry on and implement the agreement as best as possible. There may be certain aspects of it that the court finds to be unconstitutional. The federal government will need to deal with that.

I truly believe that you cannot take away a peoples' right either to self-government or to responsible government. It is not something that I see either the courts or the government taking away from the people. I have trust in the House of Commons and faith in the Senate and in our parliamentary system that what we are doing is right. I look forward to going to the Nisga'a country 5, 10 or 20 years from now and seeing what we have done and how their society has become vibrant and improved over what it is today.

Senator Andreychuk: Honourable senators, I would certainly like to share that optimism with Senator Sibbeston, but I should like to go back to another point. The Charter of Rights and Freedoms applies here. There are a whole host of protections contained in the Charter of Rights and Freedoms, but it does say in this agreement with the Nisga'a, "bearing in mind the free and democratic nation." I do not have my copy of the agreement in front of me either, but there are qualifying words contained in the Charter which place me in a conundrum. I wish to understand whether women's rights are being protected or the customs and traditions and the governance systems of the Nisga'a will supersede women's rights. Aboriginal women have come to me and said, "If you go back and recognize the laws of our nation, they were frozen when you interrupted our governance. Will you make us fight for another 100 years to gain back our rights?" There is a real fear with the Charter of Rights and Freedoms because it has this qualifier for First Nations government. Aboriginal women are afraid that the sections dealing with women's rights will be subject to the laws of the Nisga'a, which may or may not protect Nisga'a rights.

At committee, Dr. Gosnell said that it will depend on the will of the majority in the Nisga'a nation. That answer gave me some trouble in that it was not an answer that said, definitively, "Yes, women's rights will be protected."

Senator Sibbeston: I cannot do any better than the information that has been provided and what the honourable senator read in the agreement, which states that the Charter applies and, more specifically, that the rights of equality between men and women apply.

Unfortunately, I do not know the Nisga'a society. I have never been amongst them to find out their customs and practices with respect to women. In our part of the North, women's rights are equal to those of the men in our society. Among the Dene, respect for women is great and women have a significant role to play in our society. They are very much respected as the giver of life to society. I suspect that some of those thoughts and beliefs would be the same for the Nisga'a.

I am at a loss as to how all these rights and freedoms, which are clearly stated in the agreement, will play out in real life. Undoubtedly, the Nisga'a will be placed under a microscope. They will be carefully scrutinized and I am sure that their government will have a great deal of concern to ensure that all segments of their society — and women are a significant part of it — are treated fairly.

Hon. Jerahmiel S. Grafstein: Honourable senators, I oppose the Conservative amendment to hoist this bill for six months as it fails to answer my concerns, and worse, intensifies uncertainty in British Columbia and impedes legal redress.

I will not reiterate my views given at second reading, which I do not believe have as yet been fairly satisfied. My concerns with respect to the constitutionality of this bill rests on the power architecture of the governance provisions and the grants of power to the Nisga'a. These concerns cause me to differ with the advocates of this measure.

The constitutional opinions given in evidence are deeply divided on the reach of section 35 of the Charter and the bill's impact on the exercise of federal powers under section 91, as well as the residual or extended powers of "peace, order and good government" remaining unfettered in the hands of the federal government. To what extent, if any, are both Parliament's express powers and residual or extraordinary powers limited or curtailed by the grant of powers to the Nisga'a, and to what extent may they be altered without express constitutional amendment? Also, what of the federal power of disallowance in the Constitution as a historic prophylactic against unjust or extreme provincial laws?

On a different yet related matter, I would ask Senator Austin, who is not here today but has undertaken to respond to questions raised, to specifically respond to the legislative concerns addressed by Professor Stephen A. Scott of McGill Law School. On page 3 of his brief given in testimony, entitled, "The Rule of Law", he talks about the inadequate provision or preservation of legislative and administrative archives of the Nisga'a government and the apparent lack of obligatory provisions for the publication of legislative and executive acts.

Professor Scott went on, properly in my view, to criticize the federal government for failing to annex to Bill C-9, the final agreement and related instruments to the bill, as they form the pith and substance of this legislation. I share Professor Scott's concern as to the legislative appropriateness of the bill as tabled and published before us since, apparently, it will not be published in one combined document in the Statutes of Canada.

I raise this issue because it has not been previously raised, and I would hope that the advocates for the government measure will respond either in this debate or on third reading.

As for the constitutional divide, the key issue centres around the division and exercise of powers under the Constitution. Can the federal government abdicate express powers and retreat from its residual power by granting concurrent power to the Nisga'a government architecture, where 14 powers are placed in the hands of the Nisga'a government to be paramount? Whether or not the federal government can, as some argue, grant or abrogate its powers without an expressed constitutional amendment lies at the heart of the arguments of Professor Scott of McGill, former Mr. Justice Willard Estey, and two former attorneys general of B.C. given when they or their representatives appeared before the committee.

• (1640)

As for myself, I fear most reluctantly that I share those concerns. I have asked myself whether the federal government has the constitutional power to give up its residual or modernizing or extended powers of override under "peace, order and good government."

These include the question of the future reach of federal power to fill future gaps in legislative powers, which I do not believe has been satisfactorily answered by our colleague Senator Austin. Nor has the question of section 96 of the Constitution, the provision of the independence of federally appointed judiciary and the apparent conflict in the appointment of judges under Chapter 12, paragraph 37, of this treaty.

Let me reiterate more expansively one question that intrigues me that I am not sure has been fully answered by Senator Austin. Are both Parliament and the federal cabinet in its capacity supreme and unobstructed in the case of a national emergency — be it hyperinflation, pollution, economic distress, or even war and possibly conscription under Bill C-9? Would the federal government be able to exercise overriding powers with respect to those powers now said to be paramount in the hands of the Nisga'a without infringing this treaty proposed to be constitutionally protected under section 35 of the Charter? Was the original intent of section 35 to give constitutional protection to the rights of self-government beyond the reach of federal powers as well as land claims?

I think not. I do not believe that the 1982 Constitution, the original intent thereof, sanctioned constitutionally protected non-delegated self-government to aboriginals. I regretfully say, Senator Sibbeston, that I do not believe that was the case.

Let me point to another substantive issue that gives me deep concern. There are, on the Nisga'a lands, between 90 and 100 or more people who are non-Nisga'a residents, residents under the Nisga'a Constitution. They have the right, under the Nisga'a Constitution, to be heard on matters affecting them. Under the Nisga'a Constitution, there are no transparent rules to allow those non-Nisga'a to become voters. They are a minority. They are subject to manifold and paramount powers of the Nisga'a government in everyday life, yet are not allowed the right to vote. As I pointed out to the minister, since they are a small and changing minority of non-landowning residents, they would in no way threaten the Nisga'a in terms of their culture, lifestyle or day-to-day life.

On page 36 of the evidence before the committee on March 23, 2000, the minister responded to my concerns with these concluding comments:

> My political preference is to allow people to make those decisions and to include a non-native person as a citizen if they are involved in the culture and not just a passerby. I know there have been suggestions that if you have a teacher or a nurse that happens to come for a few years they should have the same rights as a Nisga'a person. I would say no, that is not the case. However, if you are a lifelong person, living there for your whole adult life, or your childhood, then I believe there is room for them to be part of the democratic process.

I responded by saying we have a five-year rule in Canada. By that I meant that, when it comes to immigrants to Canada, we have a five-year transparent rule.

Turn then to page 63 of the evidence of the committee on March 23, to the eloquent Dr. Gosnell, speaking on behalf of the Nisga'a. I say "eloquent" because I have the deepest respect for Dr. Gosnell and his extraordinary powers, and how far and how long and how arduous his path has been to this place. It gives me deep regret to differ with him. Let me quote what he says in full:

> I shall now turn to the subject of minority rights. Much has been said about the minority rights of those individuals who will work within our communities following the effective date. At the last committee meeting that we attended, I listened to Senator Grafstein. He said that never in the foreseeable future could this minority ever overwhelm the majority. This is a question of minority rights.
>
> Mr. Chairman, my views differ from Senator Grafstein's. History has taught the aboriginal people across North and South America well. Five hundred years or so ago, a group of explorers, the so-called discoverers of our lands, stumbled upon North and South America and they ventured onto the shores of this great country of ours.
>
> I believe that the views of the aboriginal people then were the same views expressed by the honourable senator, that we were never to be overwhelmed by these people coming off these ships. However, here we are in the year 2000, 500 years after the discovery of North and South America, and we are completely overwhelmed. I need not remind you of the statistics in Canada that we form 2 per cent of the population. We are completely overwhelmed in our own country. That is what we fear, honourable senators, with respect to the total recognition of minority rights within our lands.
>
> Aboriginal people of both North and South paid a devastating price for this march, which we know today is a march towards progress. We have paid a terrible price for that.
>
> Why have we not gone the extra distance the honourable senator indicated? Why did we not go 100 per cent and grant everyone within our lands the right to vote and participate in our government?

> I just indicated to you one of my views. However, by way of comparison, would any of you seated across this table in this room allow strangers or individuals who stay with you temporarily to decide how your family's internal assets would be handled? Would you do that? This is the problem that faces us. There are people who come into our community maybe for a year, two years or three years and then are gone. Would you allow that to happen? I ask you the same thing. If you were in our shoes, would you do that? Would you allow someone to handle your family's personal assets? I do not think so.

Dr. Gosnell continued on women's and minority rights:

> Honourable senators, we left the door open for the government of the future to have the ability to make a decision after reviewing the situations of some of our people who have been married to non-Nisga'a; how well they have fit into our society, how well they abided by the laws of our people and participated in our culture. They will have the ability to grant the right to those people at some time in the future. I cannot make that determination. It is not for me to do that. I will leave that topic at that point. I am sure there may be further questions.

Honourable senators, I thought it was most important to quote Dr. Gosnell fully in context. Let me humbly suggest that I disagree with both the minister and Dr. Gosnell on this crucial point. The right to vote and choose is the most important of all political rights. That is the very heart and soul of all minority rights. Dr. Gosnell, I respectfully suggest, is not correct when he says, "Would you allow someone to handle your family's personal assets? I do not think so." With all due respect to Dr. Gosnell, what we are talking about here is not anyone's personal assets. These are not family assets. These are public assets that are held in trust as fiduciaries. What I am talking about here is the right of a citizen to fully participate and vote on matters affecting his life and the area in which he chooses to reside. In Canada, we adopted a transparent five-year rule for citizenship that gives the right to vote. The right to vote goes to the heart of any right to participate in a civic society.

Given the circumstances, and, most regretfully, given the nature of my concerns, I have no choice but to oppose the Conservative amendments and to abstain on Bill C-9.

Hon. Lowell Murray: The concerns that the honourable senator has expressed are very serious and in both cases bear upon the constitutionality of the bill. Yet he began his speech by indicating that he could not support the amendment proposed by Senator St. Germain. I appreciate that. I am sure he does not want to vote against the bill; he does not want to defeat the bill any more than I do or anyone on this side does.

That being the case, the question I will ask him is this: What is his advice to the government? Abstaining, while it is permitted under our rules, does not solve very much. Is he familiar with the cases that have already been launched in the lower courts? Do they bear directly on the concerns he has expressed? Does he believe that this situation is extraordinary enough for the Governor in Council to exercise its right of reference to the Supreme Court of Canada now?

• (1650)

Senator Grafstein: The honourable senator raises a number of issues. Let me give my personal views because each one of them I have turned over in my mind since I started reading about this issue. Let me start with the Conservative amendment.

I do not believe a hoist of six months will do anything. I do not believe that there will be time to correct this. I believe, from what we have heard, that the current constitutional challenges will be impeded while this matter is in abeyance. It is not fair to the Nisga'a nor to the residents of British Columbia, and it is not fair for certainty.

In my view, and I know this seems convoluted, we should let the Senate have its will on this matter, rather than hoist this bill for six months. Then if there are those who will choose to attack this bill from a constitutional perspective, that will be the case. There is a failsafe within the bill. It will be severable. The treaty will not go down. It will be changed, possibly, or be renegotiated, in part, if in fact the courts come to that decision.

I am unhappy with the bill because of something that I did not mention in my speech. Constitutional approaches to this bill are not permitted by the attorneys general. They cannot participate in a constitutional offence, but they can defend it. I leave that aside. It is regrettable, but I leave it aside.

I have made my view clear in this respect. We understand from the courts of British Columbia that they will not deal with this matter until it is the law. The sooner the law exists, the better.

Former justice Willard Estey gives his approach on the advisory and it is echoed by the honourable senator opposite. I do not believe in advisories. They are fundamentally in conflict with parliamentary supremacy. We take our duties here; we legislate here. It is not fair for us to criticize the courts, as we have done, and then turn an issue over to the courts. That is why I do not believe in advisories. We take our responsibilities here and let the courts, in their independence, take their responsibilities.

I wish to add to the points made by Senator Sibbeston and Senator Gill's point. We face a conundrum. Recently, senators had on their desks an analysis of all the actions before all the courts in Canada. I am quoting from memory and I may not be correct, but somewhere between 20 and 30 of the full court calendars are clogged with aboriginal claims precisely because of what Senator Sibbeston has suggested. We have not been able to come to a constitutionally effective method of government.

Honourable senators, this is where he and I fairly part company. I believe that the existing models, which are illustrated to work well in the Northwest Territories and Yukon, would continue to work well without an abrogation of federal power. Hence, we part company.

I have also examined very carefully the Navajo experience in the United States. I believe that under the Navajo experience there are fulsome powers, but the American Congress never decided to abrogate its overriding responsibilities. There is a difference.

If I am wrong, I hope that others will debate these issues later on in third reading.

The Hon. the Speaker *pro tempore***:** Honourable senators, time for questions and comments has expired. Is there unanimous consent to continue?

Senator Hays: Honourable senators, before we go to the question of unanimous consent, could I ask Senator Grafstein — and Senator Murray, for that matter — how long he thinks this exchange will take?

The Hon. the Speaker *pro tempore***:** Many senators have indicated a desire to speak.

Senator Murray: I will try to be brief.

The Hon. the Speaker *pro tempore***:** Is there unanimous consent to continue?

Hon. Senators: Agreed.

Senator Murray: I agree with the honourable senator, as a general rule, with regard to direct references to the Supreme Court of Canada. I have no more desire than he has to make the Supreme Court of Canada a third house of Parliament, but on reflection I think he will agree that this is a power to which we resort only in the most extraordinary circumstances. I think of Bill C-60 in 1978, of the patriation initiative, and the secession reference that we are now discussing in connection with Bill C-20. Those were direct references. The question is whether this is extraordinary enough to warrant the reference.

The honourable senator says, "Let the bill become law but I will abstain." With the greatest respect, that is not very helpful. How can he tell the rest of us to vote it into law but he will abstain? Does he not recommend that all of us abstain and follow his example and, if not, why not, if he thinks that is the right position to take?

Senator Grafstein: Honourable senators, I am not very happy with my position. I think it is colourable, to say the least. Let me be candid. I started out in my exploration wanting to support this bill. That was my original premise. Quite frankly, I am not being fair to myself by merely abstaining. I accept that. My own position is somewhat colourable.

I want to say this to the honourable senator. I was the only senator in this chamber who abstained on second reading because I had serious doubts about the principles of this bill. At least in that sense my position has been consistent, unlike that of other senators.

Hon. Serge Joyal: Honourable senators, the interpretation of section 35 is, of course, at the heart of the debate. It has been said on many occasions on both sides that the interpretation is not as clear as one would expect from a section of the Constitution that is so fundamental to this debate.

With all due respect for the opinion of the honourable senator, how does he arrive at the conclusion that section 35, as now drafted, is contrary to the interpretation in Bill C-9? On which study of section 35 or which aspect of section 35 does he base his interpretation of the bill that is contrary to section 35? He made that statement without developing it.

Senator Grafstein: Again, the honourable senator has the better of me in this but let me answer. I would hope that those who were directly involved in the 1982 debates would give the Senate the benefit of their views on the most serious question of original intent.

Under the Constitution, there is a doctrine of the living tree. There is also the doctrine of *stare decisis,* but the key doctrine in constitutional interpretation is the original intent. What was the intent of the signatories to the Constitution at the time?

I looked at those debates. I read some of the material, but not all. Based on my examination of the debates and the discussions of the various participants, I came to the conclusion that there was a question in the minds of the drafters. They could not, at the time, figure out the extent of inherent aboriginal rights. Therefore, they decided to limit, at the time, the definition of aboriginal rights, saying "aboriginal rights, including those related to land claims."

• (1700)

I was a second-hand observer of all those debates. I ask myself why, if Senator Sibbeston is correct, self-government was not added at the time. I think I know the answer, and that is that it would never have carried.

Why, under Charlottetown and Meech, which I opposed, were those issues articulated as a constitutional amendment and why were they ultimately dealt with in the way that they were? If I consider original intent and government actions since, on the overwhelming balance of probabilities and the overwhelming evidence I could not come to the conclusion that self-government — undelegated, untrammelled paramountcy — would have been granted to aboriginals. I do not think one would have come to that conclusion.

On the other hand, what are we left with to deal with Senator Sibbeston's concerns about responsible government? I believe that there is responsible government in Nunavut and Yukon, and I agree with everything he said. However, if you examine those models of governance, they did not curtail federal power.

I agree wholeheartedly with everything Senator Sibbeston said. Yet, to me this particular model goes beyond the original intent of the drafters. Let us hear from others. If they believe that the original intent was as the advocates of this bill suggest, let them quote the speeches. Senator Sibbeston was very fair. He said that this was extension of rights and growing rights, but was it the rights granted at the time and was it the intent?

It is a fundamental issue. I read as much as I could and I regretfully concluded that it was not the original intent.

Senator Andreychuk: I wish to ask Senator Grafstein about the amendment that he does not support. I believe that he is absolutely right, that we need to clarify section 35. Contrary to other references that got the courts into policy matters, a full interpretation of section 35 would be put to the court. That would put this argument to rest. There seem to be good opinions on both sides. It is universally agreed that the court has yet to rule, and I believe that the court should definitively rule on this.

By not putting a reference before the court, people will have to fight one position or the other after the fact. We have been told by the B.C. Liberal Party and by the Gitxsan and Gitanyow that there will be court challenges. That will create winners and losers. I thought no one disagreed that the best result was negotiated settlement. If that is so, do you not believe that a six-month hoist would be desirable to allow either clarification or a reference?

Senator Grafstein: I believe that the fastest way to be fair to all parties is to allow those who seek redress to obtain redress. I do not want the perfect to drive out the good. As Senator Sibbeston, Dr. Gosnell and Senator Gill have said, this is not a perfect document. It is a conundrum. I should like to give the senator more solace and consolation, but I can go no further. I have explained myself as best I can.

Senator Sparrow: Senator Grafstein tried to explain to Senator Murray his reason for abstaining. He said that the Senate has a responsibility. It is not clear to me what he deems that responsibility to be. If the bill is passed, of course there will be court challenges of it.

Does Senator Grafstein think that if the majority in this chamber believes that the bill is unconstitutional, it should be defeated here? In response to Senator Murray's question, the reply was that we should all abstain. We know that that may not work, although we all have the right to abstain under our rules. Does Senator Grafstein believe that the Senate should accept its responsibility to defeat this bill?

Senator Grafstein: At second reading, the Senate said that it would approve the bill, and I start from that premise.

Each senator must answer to his own conscience. The best that I can do for my conscience is to clearly express my reservations. I have raised them as concerns. If I were wholly satisfied with my views, I would go all the way. However, there is a deep divide in constitutional opinion. I have opted for one side of the equation. It does not make me feel comfortable taking the rather indefensible position that I have.

You can lacerate me all you want. However, my first duty was to fully explore the issues, which I tried to do in committee. We had very good committee hearings. No one in British Columbia can say that there was not a fair and adequate hearing. I hope that in the course of this debate all senators can express their views so that there will be a full record of this. After that, honourable senators, we are left to God's mercy.

Senator Sparrow: Honourable senators, I understand Senator Grafstein to be suggesting that, because the Senate gave the bill second reading and sent it to committee, it was a fait accompli and there would be no opportunity for us to vote against it on third reading. I do not think that is accurate. It has certainly happened before that a bill was agreed to in principle at second reading, was referred to committee, was reported back to the Senate, and was defeated.

Did I misunderstand what the senator said? Did he say that we have an obligation, because the bill was given second reading, to give it third reading?

Senator Grafstein: Honourable senators, that does not apply in all instances, but in this instance we have a very comprehensive treaty in front of us. I looked at it before. It took me some weeks to read it and understand it. I came to the conclusion that I had serious reservations about it. I remain in exactly the same place now as I was on second reading.

• (1710)

You are right, honourable senators. I will not give you the answer that you would like, because I cannot give it for myself.

Senator Kinsella: Having participated as an advisor to the New Brunswick delegation during that period, I did go and look up some of my notes in that period. I found written words that included, "We are talking about municipal government." When the court examines this question, if the court examines the travaux préparatoires, I am sure that your view will be vindicated.

I have a problem similar to Senator Murray's. Having that concern, and sharing the concern that you have, are there other ways in which the Senate could advise the Crown? The Crown is seeking our consent on this matter.

Senator Grafstein: Once again, let us be factual. Let us be functional. The government has said clearly, in no uncertain terms, both in that place and this place, that there will be no advisory. They have said that. That is a fact. The government has said that it will not countenance amendments. They have said that. Although they allowed one amendment, they did say that. Let us be pragmatic. Let us be fair to the Nisga'a and fair to the process. The government has said that.

My view is that rather than dealing with a further delay, if such is the case and such is the will of government supporters for this measure, then it would be better to allow the courts a fair redress as soon as possible. I see no other way of dealing with this in the regrettable circumstances in which I find myself.

Senator Kinsella: I cannot recall whether Senator Grafstein was here when I asked Senator Austin his view as to the repealability of this bill, but I wonder if he has a view on that question.

Senator Grafstein: I have not looked at that question independently, but I am not sure I agree with Senator Austin.

Hon. Gérald-A. Beaudoin: Honourable senators, the intervention of Senator Grafstein is very important, in my opinion, and I agree to a great extent with him on the constitutional problem. The question of the advisory opinion is another matter.

For the purposes of the record, and before this bill comes to a vote, I wish to say as a preliminary remark that I agree entirely that the rights of the aboriginal people and nations should be recognized by Canada. They were in Canada long before the Europeans arrived, and there is no doubt that they have collective rights under section 35 of the Constitution Act of 1982. In 1867, we did not pay enough attention to their rights, and I am glad that section 35 was enshrined in our Constitution in 1982.

Section 35 concerns not only the existing rights, but also the rights given by treaties and accords to come. Senator Murray, Senator Joyal and others referred to what took place when section 35 was enshrined in the Constitution, and I understand that some other senators will be saying something on section 35.

I have only one doubt about Bill C-9, and it is only on one point — the paramountcy given to aboriginal peoples in 14 areas of concurrent powers. In the debate we are in now on a six-month hoist, I wish to add that aspect of Bill C-9. Nothing in the federation is more central or more important than the division of powers, and that is where my doubt resides.

We are dealing with powers. We already know that in our federation we have provincial and federal powers. Some powers are exclusive; some others are concurrent. Sometimes we give paramountcy to the provinces, and sometimes we give paramountcy to the federal authority. For the first time, I now see a legal text that is talking about concurrent powers with paramountcy that is neither federal nor provincial but is for the aboriginal people.

Experts on the Constitution were heard in committee in March, and some were in favour of the bill. Dean Hogg and Professor Monahan, who appeared before another committee, were of that opinion. I have the greatest respect for both opinions. Some others, like Professor Stephen Scott and the Honourable Bud Estey, have said that the bill is *ultra vires* in that area.

Most of the bill is perfect, but one area is causing a problem. To that extent, it is unconstitutional. I agree that it is severable. If ever the court says it is unconstitutional, the rest of the accord will be declared valid.

Interesting questions were raised on both sides of the committee by senators. It is a very difficult point of law. The chances are that the bill will be challenged in court, if that has not already happened.

The Supreme Court has already rendered many rulings on section 35, and more than one federal-provincial conference has taken place. The Supreme Court has not yet stated that in section 35 there is a third order of government that is implicit. I regret that, but they have not said it. They may say that in the future, but they have not done it yet. The Supreme Court has been generous to the aboriginals, and I agree with that entirely, but it has not gone so far as to say that there is a third order of government.

Of course we can do that by a constitutional amendment. We can amend any section of our Constitution by a constitutional amendment. However, we are not concerned with a constitutional amendment now; we are concerned with the statute and an accord.

The work of the Supreme Court is impressive. Contrary to Senator Grafstein on this, I am in favour of reference cases. I think they are very important. In Bill C-20, we have already had a reference to the Supreme Court. I think that reference cases are useful.

• (1720)

In view of the difficulty of the present question, the chances are that the court will be invited to rule again. Some people have proposed a reference to the Supreme Court. The government believes there is no need to refer the matter to the courts for an opinion. Sometimes the government says yes; sometimes the government says no. In the case of this decision, it said yes; in the case of the Nisga'a, it said no.

Bill C-9 will constitute a precedent of vital importance. Many other accords will take place in the years to come. Therefore, we must be prudent as parliamentarians and adopt the best possible legislation.

Some of us have serious doubts about the division of powers in one part of Bill C-9. However, as I said, in a federation, is there anything more important than the division of powers?

It is true that the Criminal Code and the Charter of Rights and Freedoms both apply in this case. I am glad to see that. That is something on which I agree. This has no effect on the division of powers. If we read section 31 of the Charter, it states, "Nothing in the Charter extends the legislative powers of any body or authority." That does not change the division of powers. This means that the question of the paramountcy in 14 areas of concurrent power is still there.

In view of the decision not to go to the Supreme Court, I think it was appropriate to express our opinion on the question of paramountcy in 14 sectors of the concurrent legislative powers referred to in this accord. That is of a fundamental importance.

[*Translation*]

Hon. Aurélien Gill: Honourable senators, I have already spoken to the Nisga'a final agreement. In recent weeks, I have listened to so many speeches and opinions on the subject that I will long be assured of the virtues of our democracy. However, at the stage we have reached, I think it my duty to intervene once again to point out several crucial elements raised by these debates.

When I heard the opponents of the agreement as it stands say that it sets a dangerous precedent for the country as a whole, because it embodies a diminishing of the sovereign powers of the Crown, and that such was unthinkable, I smiled.

When I heard it argued that this historic agreement could not be implemented because it contained too many uncertainties, grey areas and imperfections, I smiled.

When I saw certain legal experts become busy bodies and legal quibblers, deliberately playing on words and concepts and raising a flurry of abstractions that would obscure any horizon, I smiled again.

You may say I did a lot of smiling instead of weeping and you will be right. A smile is wise and there is no point in getting upset. You should know, too, that the smile is dear to the heart of the Indian. All too often in history, that is all we were left with.

On the loss of sovereign powers, need I remind you that the First Nations are the first experts on the matter? Originally, we abandoned sovereign powers in order to share with the newcomer a world that, until then, was ours alone. Our historic realism, our flexibility and our creativity were royally had, because the Canadian treaties were not respected, as we all know. Nobody can lecture us on the abuse of sovereignty, but we might be able to give a few lectures on our dreams for sharing.

Once and for all, we must affirm that rights and reason cannot dance together to different drums. Our inherent rights predate the Constitution of Canada, which recognizes the authenticity of our rights.

[*English*]

The famous third order of government has always existed in Canada — it simply has been crushed and ignored until now. Responsible aboriginal government is not a dangerous or unproven novelty. It is restoring, confirming and updating an act of law.

[*Translation*]

A strong group that claims to be conciliatory — but which is not at all — would have the First Nations' new powers restricted to the political framework of regional municipalities, whose jurisdictions would not in any way affect the Crown's absolute power. These people want a simple delegation of powers, nothing more. They need to be better informed. That stage was reached in 1975 in the province of Quebec. The James Bay and Nothern Quebec Agreement was the first example in Canada. This year, we are celebrating the twenty-fifth anniversary of that agreement.

If there is a lesson to be learned from the James Bay agreement, it would be about the ups and downs of the autonomy that is sought. The municipal level is grossly inadequate and it puts First Nations in a situation of chronic powerlessness at the political level.

The Cree, and in particular the Inuit of Northern Quebec, are now turning their energy to the creation of responsible self-government. The municipal level, even at the territorial level, may have been a necessary stage in the recent history of our political claims, but those stages are now behind us. We must take new steps. The Nisga'a agreement is, right now, that next step.

The history of British Columbia is short. Until 1970, the province's positions on First Nations' lands and rights were very harsh and consequently unfair. The Nisga'a, among other nations, were humiliated and rebuffed at some infamous meetings. In the old days, they were denied access to the provincial legislature, their claims were ridiculed and they were publicly called "primitive". The province long resisted the very idea of treaties and it traditionally argued over every acre of land given to the Indians as part of federal reserves under the Indian Act.

Thus, the step that we could now take is a giant one and is entirely to British Columbia's credit. It corrects a historic flaw and has a great historic impact. But history is not our forte, our society has more rights than it has memory. Some raise the argument of uncertainty while fearing the worse for our grandchildren, who will have to live with these fundamental changes.

I heard that comment. As I said, I smiled. Are we not the grandchildren of those who drafted the Indian Act? Are we not the grandchildren of those who bequeathed us this national disgrace, namely, the plight of First Nations in this country?

Who are they to ask for a perfect, pure and watertight agreement, a sure treaty, an act void of any flaws, risks or grey areas? Do you think that the Fathers of Confederation were pure and perfect when they designed Canada in 1867? Remember the concept of Canada as two nations.

The first confederation had a minor flaw in that it buried the First Nations. Was it a perfect law?

• (1730)

Where do you get the idea that our Canadian political system is without flaws? What is more, that First Nations should not be entitled to make mistakes. Granted, the agreement is imperfect and does not provide an answer to all of the questions and all of the problems of the past, but this is no reason to tear it up. There can be no progress without risk, and the search for immediate perfection is an argument made in bad faith, which cannot do otherwise than to paralyze or block any action aimed at improving our situation. Progress is a gradual process.

Let us take the example of overlap in the borders of the Nisga'a ancestral lands. Should this difficulty be an excuse to jeopardize the agreement? Some would like to see this and are making a big thing of it. The Gitanyow themselves, however, who claim to be affected negatively by this, are not insisting that the Nisga'a treaty be blocked. It is important that this conflict be resolved, but this should be done in some other framework. Disputed borders are commonplace, and are found everywhere in the Canada of the First Nations. There are also disputes between provinces and within provinces. There are some in Quebec between the Innu and the Cree. In the Northwest Territories, there are some between the Dene and the Inuit. As soon as an agreement is negotiated with a nation, the neighbouring nations will start clarifying their borders. This is normal. Why should we be surprised at it? As we people got scattered about and isolated in our own tiny enclaves, certain borders became unclear.

One way or another, why would we, the First Nations, not have our own set of problems? We have found solutions in the past, and we can do the same in the future. We are updating our ancestral geography. Let the First Nations clarify these matters. Just give things time.

Above all, let us stop using all sorts of excuses to side-track and delay a historic process of the utmost importance to Canada. Yes, the Nisga'a treaty sets a precedent: it restores collective pride. Yes, there will be other agreements and they will be better, for the benefit of all. We cannot wait to find the ideal formula to give effect to principles that have long been recognized.

Debate is important and democracy requires it. Words count, as we know. We also know that the written word shapes our relations. This is why we have fora, committees, parliaments and commissions. We sign agreements and treaties, laws and social contracts. The Canadian Charter of Rights and Freedoms protects us. We have a contract of incorporation, the Constitution. However, there comes a time when we must look at the concrete application of our words, when we must judge our actions against our words. We must deliver.

Governments have always cloaked our rights in words and pressure. We should remember. We should tell ourselves over and over that these words must be put into effect. Around 1830, during the dispute between the Cherokee Confederation and the State of Georgia in the United States, Justice Marshall ruled that the Cherokee, like all the other First Nations identified, were a domestic nation with whom an international type treaty, or treaties, must be negotiated.

In this same country, under Presidents Jackson and Monroe, serious consideration was given to creating a confederation of aboriginal states within the American nation. Barely were these fine intentions and principles uttered than the Cherokee, along with the Creek-Seminole, the Choctaw and the Chikasaw, were driven out of their ancestral lands in Georgia into inhumane conditions in Oklahoma, to the great disgrace of the nation. These fine words having been uttered around about 1830, the Americans would spend the next 60 years engaging in war, fraud and all manner of wrongdoing in order to erase the existence of the First Nations from the now American territory.

[*English*]

Canada was certainly less violent in its history. However, its policies toward us have rarely, if ever, reflected its principles. That is why we have traditionally been betrayed. It is time to move from words to action — and generous action, too. If our rights exist, power must be shared, and it is as a founding First Nation that we belong to Canada.

[*Translation*]

This reality, discovered from rights that have always existed, is indeed the one that makes it possible to be a Nisga'a in a province called British Columbia in a confederation called Canada. In all good faith, it is possible despite all the problems we will have to resolve together — and there will be problems, but their resolution will be interesting. There are others that are outdated. Stop keeping us in insufferable dead ends with your legal quibbling and bad faith.

The Nisga'a agreement, while certainly less than perfect, represents a hope, and its importance must be recognized. It is better to work to improve it afterward than to have to negotiate its abortion. We are a law-abiding society. We must rejoice in this. We are a just society. We must celebrate this. However, have we resolved all the problems, met all the challenges of a modern, complex and changing society? Of course not. We have law in order to advance, not back up. We have justice in order to continue our quest for justice and not to distance ourselves from it. Recognition of their inherent rights represents a catching up, in terms of justice, for the First Nations. They are not new rights invented to suit current circumstances. They have nothing to do with political opportunism. We are talking about the updating of ancient rights long trampled on. How can we cite the Constitution and then deny what it affirms?

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

[*English*]

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. Donald H. Oliver: Honourable senators, I am pleased to join the debate on this important matter.

Few issues are more important than the preservation of Canadian unity and the maintenance of a strong and vibrant federation that includes Quebec. In introducing Bill C-20 and passing it in the House of Commons on March 15, 2000, the federal government claims to be promoting the cause of Canadian unity by implementing the advice of the Supreme Court of Canada tendered in the *Reference re Secession of Quebec*. In particular, the government claims to provide clarity on the preconditions to an obligation to negotiate secession — namely, a clear majority vote on a clear question. The government also claims to include Canadians as a whole by assigning to the House of Commons the legislative role of determining what constitutes a clear question and a clear majority.

Honourable senators, it may be ominously appropriate that Bill C-20 passed third reading in the House of Commons on March 15, 2000 — the ides of March. Like the soothsayer in *Julius Caesar*, it behooves the Senate to warn the Canadian people — beware the ides of March and Bill C-20 that accompanies it. Like the assassins of Julius Caesar, who claimed to be his friends, Bill C-20 is not what it claims to be. It delivers confusion in the name of clarity and exclusion in the name of inclusion. Furthermore, it is not simply implementing the advice of the Supreme Court of Canada but interpreting it and applying it in a way that runs counter to the spirit of rational decision-making and good faith negotiation that permeate the much praised *Reference re Secession of Quebec*.

• (1740)

It is also important to remember that Bill C-20 deals with the right of any province to secede from the federation, not just Quebec. As a senator from Nova Scotia, I remind honourable senators that the first attempt to secede from Canada came from my province when Premier Joseph Howe, having soundly defeated Sir Charles Tupper in the post-Confederation provincial election, went to London and asked the Colonial Secretary to allow Nova Scotia to leave the federation, which was less than one year old. The request was denied on the basis of the new political and economic links between the federation partners. While Canada has matured beyond going cap in hand to London, we should pause and consider whether the House of Commons centred structure proposed in Bill C-20 is inclusive enough to be consistent with the free and democratic society that our Constitution claims to be.

As with any reference decision, what the Supreme Court of Canada said in *Reference re Secession of Quebec* is an advisory opinion and, in that sense, not directly mandatory. This is a rather academic distinction, however, because modern governments treat reference decisions in the same way they would any other court judgment. Moreover, the wisdom of the Supreme Court of Canada on this vital matter should be followed. In this regard, it is important to note what the court did and did not say in respect to clarifying the preconditions to a constitutional obligation to negotiate.

Many political commentators and academics have analyzed the wide-ranging and impressive decision of the Supreme Court of Canada on this matter, and I shall focus my brief comments today on the key matters relevant to Bill C-20. Where possible, I will quote extensively from the decision itself. Time and space prevent a proper analysis of what the Supreme Court of Canada had to say on the constitutionality of secession. It did conclude that it was not a matter for unilateral provincial action but, rather, a matter for good-faith negotiation among all the relevant political actors at both the federal and provincial level.

Honourable senators, one of the important contributions of the court is its delineation of the proper roles for courts and political actors in any secession process. The court is to provide the broad legal framework, but the detailed answers about what constitutes a clear question, what is a clear majority, and how any negotiations are to be conducted are properly left to the political rather than the judicial realm. In answering these questions, the political actors are to be guided by the underlying principles of the Constitution: federalism, democracy, constitutionalism and the rule of law, and last, but not least, the protection of minorities. I should like to briefly discuss each of these four.

Mary Dawson, one of the federal lawyers who litigated the *Reference re Secession of Quebec*, praises the court for its judicial restraint on the political aspects of the process in the following passage from her article on this case:

> The Court goes on to explain the rationale for its restraint in these matters. It notes that "only the political actors would have the information and expertise to make the appropriate judgment." The Court recognizes that, if a negotiation of the details of secession were to take place, the reconciliation of various legitimate constitutional interests belongs to the political realm "precisely because that reconciliation can only be achieved through the give and take of the negotiation process."

The Court has done us a great service in setting out these pragmatic considerations so directly, clearly and precisely.

In light of its deference to the political actors on how the details of the legal framework should be fleshed out, it is not surprising that the court left more unsaid than said. It did not suggest what would constitute a clear majority or a clear question. The court did not describe or proscribe the negotiation process; nor did the court advise when the political actors should flesh out the details of the preconditions to constitutional negotiations and who should be involved in the process of clarification.

The Supreme Court decision does not mandate legislation in the form of Bill C-20 or any other form but, at most, advises political action, which can take many forms short of legislation, as many other honourable senators have already outlined. This point was effectively raised by Senator Nolin, for instance, in the *Debates of the Senate* of March 23, 2000, and one to which Senator Boudreau, the Leader of the Government in the Senate, was rather evasive and unhelpful in his response. Thus, the Supreme Court of Canada did not mandate a clarity law and the government is not merely carrying out the mandate of the court but making a political choice of its own on how to proceed in this matter. By proceeding by way of legislation, the government may even pull the court back into the political realm it was trying to avoid.

One of the remarkable features of Bill C-20 is its focus on the House of Commons as the democratic representative of the Canadian people to the virtual exclusion of other political actors such as the Senate of Canada and other levels of government. In its vital passage on the setting of preconditions to the constitutional duty to negotiate, the court emphasized the underlying constitutional principle of democracy in referring to whom should take the political lead in the process of constitutional change. The court stated:

The federalism principle, in conjunction with the democratic principle, dictates that the clear repudiation of the existing constitutional order and the clear expression of the desire to pursue secession by the population of a province would give rise to a reciprocal obligation on all parties to Confederation to negotiate constitutional changes to respond to that desire.

There is no expressed reference to the House of Commons in the above passage. It more logically refers to the executive levels of government that would normally initiate the process of negotiating any constitutional change, including secession. Such exercise of executive authority has traditionally been unfettered by directions from the legislative arm of the state in any form, legislative or otherwise. The members of the cabinet at both the federal and provincial levels, who would normally be involved in initiating constitutional change, would indirectly be the "elected representatives of the participants in Confederation" referred to in the passage in from *Reference re Secession of Quebec*. This passage does not support the focus on the House of Commons to the exclusion of the Senate and other political actors.

The federal government also appears to be following a simplified version of the principle of democracy in concentrating power in the House of Commons to the exclusion of other political actors. The Supreme Court of Canada advocates a more nuanced version of democracy, one that is tempered by other principles such as constitutionalism and the rule of law. This point was emphasized in several areas of the *Reference re Secession of Quebec* decision, as indicated and highlighted by the following passage, which states:

Canadians have never accepted that ours is a system of simple majority rule. Our principle of democracy, taken in conjunction with other constitutional principles discussed here, is richer. Constitutional government is necessarily predicated on the idea that the political representatives of the people of a province have the capacity and the power to commit the province to be bound into the future by the constitutional rules being adopted. These rules are "binding" not in the sense of frustrating the will of a majority of a province, but as defining the majority which must be consulted in order to alter the fundamental balance of political power (including the spheres of autonomy granted by the principle of federalism), individual rights, and minority rights in our society.

• (1750)

The consent of the governed is a value that is basic to our understanding of a free and democratic society. Yet democracy in any real sense of the word cannot exist without the rule of law. It is the law that creates the framework within which the "sovereign will" is to be ascertained and implemented. To be accorded legitimacy, democratic institutions must rest, ultimately, on a legal foundation. That is, they must allow for the participation of, and accountability to, the people, through public institutions created under the Constitution.

I repeat:

...through public institutions created under the Constitution.

In the last quoted passage, "public institutions created under the Constitution" includes the Senate as well as the House of Commons at the federal level.

In its careful task of delineating the respective judicial and political roles in any secession process, the Supreme Court does not speak of "elected representatives" but rather uses the broader and more inclusive term "political actors." The following passage from the decision proves this point:

> The role of the Court in this Reference is limited to the identification of the relevant aspects of the Constitution in their broadest sense. We have interpreted the questions as relating to the constitutional framework within which political decisions may ultimately be made. Within that framework, the workings of the political process are complex and can only be resolved by means of political judgments and evaluations. The Court has no supervisory role over the political aspects of constitutional negotiations. Equally, the initial impetus of negotiation, namely a clear majority on a clear question in favour of secession, is subject only to political evaluation, and properly so. A right and a corresponding duty to negotiate secession cannot be built on an alleged expression of democratic will if the expression of democratic will is itself fraught with ambiguities. Only the political actors would have the information and expertise to make the appropriate judgment as to the point at which, and the circumstances in which, those ambiguities are resolved one way or the other.

The court says later on:

> The task of the Court has been to clarify the legal framework within which political decisions are to be taken "under the Constitution", not to usurp the prerogatives of the political forces that operate within that framework. The obligations we have identified are binding obligations under the Constitution of Canada. However, 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. Equally, in the event of demonstrated majority support for Quebec secession, the content and process of the negotiations will be for the political actors to settle.

Thus, one of the effects of Bill C-20 is the removal of the Senate and various other "political actors" from the process of clarifying the preconditions for a constitutional negotiation of secession. Not only is this exclusion of "political actors" not mandated by the *Reference re Secession of Quebec*, it runs counter to the spirit of the decision, which emphasizes political inclusion. The principles of constitutionalism and the rule of law suggest that all the existing governmental institutions should be involved in any process of clarification — not just the House of Commons.

I go now to protection of minorities and the role of the Senate. One of the underlying constitutional principles emphasized by the Supreme Court of Canada in the *Reference re Secession of Quebec* is the protection of minorities, broadly defined to include not only the religious and linguistic minorities that concern the Fathers of Confederation, but also aboriginals and ethnic minorities in a more modern context. This principle, too, is recognized by the Supreme Court as a tempering influence on the majoritarian aspect of democracy as a constitutional principle.

The court said:

> The democracy principle, as we have emphasized, cannot be invoked to trump the principles of federalism and the rule of law, the rights of individuals and minorities, or the operation of democracy in the other provinces or in Canada as a whole.

The Senate, as everyone here knows, has historically been regarded as an institution charged with the protection of minority interests under the Constitution. That point was highlighted by the Supreme Court of Canada in a reference case relating to the Upper House in which the court concluded that the Senate could only be amended by a process that involved the provinces as well as the federal government.

The Hon. the Speaker: Honourable Senator Oliver, I regret to interrupt you, but your 15-minute speaking time has expired. Are you requesting leave to continue?

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, before dealing with the question of leave, may I ask Senator Oliver how long he thinks he will be?

Senator Oliver: I will be eight or nine more minutes.

Senator Hays: Honourable senators, I also notice it is five minutes before six o'clock. Senator Oliver will take us beyond that. Perhaps we could deal now with whether or not we will see the clock so that we do not interrupt the honourable senator again.

The Hon. the Speaker: Is it your wish, honourable senators, that the Speaker not see the clock at six o'clock?

Hon. Senators: Agreed.

The Hon. the Speaker: Is leave granted for the Honourable Senator Oliver to continue?

Hon. Senators: Agreed.

Senator Oliver: The following passage from the 1980 authority reads as follows:

> It is, we think, proper to consider the historical background which led to the provision which was made in the Act for the creation of the Senate as part of the apparatus for the enactment of federal legislation. In the debates which occurred at the Quebec Conference in 1864, considerable time was occupied in discussing the provisions respecting the Senate. Its important purpose is stated in the following passages in speeches delivered in the debates on Confederation in the Parliament of the Province of Canada.

Sir John A. Macdonald:

> In order to protect local interests and to prevent sectional jealousies, it was found requisite that the three great divisions into which British North America is separated, should be represented in the Upper House on the principle of equality. There are three great sections, having different interests, in this proposed Confederation. ...To the Upper House is to be confided the protection of sectional interests: therefore it is that the three great divisions are there equally represented for the purpose of defending such interests against the combinations of the majorities in the Assembly.

George Brown also made a similar quote at pages 35 and 38.

> But the very essence of our compact is that the union shall be federal and not legislative. Our Lower Canada friends have agreed to give us representation by population in the Lower House, on the express condition that they shall have equality in the Upper House. On no other condition could we have advanced a step; and, for my part, I am quite willing they should have it. In maintaining the existing sectional boundaries and handing over the control of local matters to local bodies, we recognize, to a certain extent, a diversity of interests; and it is quite natural that the protection for those interests, by equality in the Upper Chamber, should be demanded by the less numerous provinces.
>
> Bearing in mind the historical background in which the creation of the Senate as part of the federal legislative process was conceived, the words of Lord Sankey...are apt:
>
> Inasmuch as the Act embodies a compromise under which the original Provinces agreed to federate, it is important to keep in mind that the preservation of the rights of minorities was a condition on which such minorities entered into the federation, and the foundation upon which the whole structure was subsequently erected. The process of interpretation as the years go on ought not to be allowed to dim or to whittle down the provisions of the original contract upon which the federation was founded, nor is it legitimate that any judicial construction of the provisions of ss. 91 and 92 should impose a new and different contract upon the federating bodies.

Nor is the above described role merely an historical anachronism as Professor Patrick J. Monahan argues that the more independent role played in the Senate in the 1990s can be explained with reference to the Senate's role as the protector of minorities. I quote from Professor Monahan in his book *Essentials of Canadian Law: Constitutional Law,* Toronto, 1997, when he says at page 85:

> The Senate has justified its independent stand on these issues on the basis that it was protecting the constitutional rights of individuals or minorities. In the debate over the Pearson Airport legislation, for example, the Conservative senators emphasized that their concern was not with the policy of the government to the effect that certain contracts should be cancelled, but rather with the right of the developers to seek redress through the courts for the contract cancellation. A Senate committee held extensive hearings on the issues of whether access to the courts was constitutionally guaranteed, with a majority of the scholars consulted concluding that such access was implicit in a constitution founded on the rule of law.

• (1800)

In the Newfoundland schools amendment, senators objected to the proposal on the ground that it altered constitutionally protected rights of the Roman Catholic minority without their consent. These recent precedents suggest that the Senate may be attempting to define a role for itself as a legitimate protector of the constitutional rights of individuals or minorities.

In light of the range of minority interests likely to be affected by any secession process, such as provincial, regional, ethnic and aboriginal interests, it would appear contrary to the protection of minorities principles enunciated by the Supreme Court in *Reference re Secession of Quebec* to exclude the Senate from the process of clarifying the preconditions to constitutional negotiations.

It is ironic that the so-called clarity bill, Bill C-20, may produce more confusion than clarity in respect to the proper political process for settling preconditions to constitutional negotiations on secession. This irony has been emphasized by many opponents of Bill C-20, including the Leader of the Progressive Conservative Party, Joe Clark. At most, the bill provides a political framework rather than clear answers to the vital questions raised by the Supreme Court of Canada.

In *Reference re Secession of Quebec*, for instance, the court was deliberately silent about how the political actors should clarify the preconditions to negotiation or when they should do so. Mary Dawson, in her article from which I quoted at the outset of my remarks, underscores this point when she says:

> On what would constitute a clear question, we have little guidance from the Court. It would seem apparent that the question asked must be free from ambiguity and must relate directly to what is to be negotiated. If one question is asked, negotiations would not be mandated for another question. What would seem to be of great importance would be broad acceptance of the clarity of the question.

Bill C-20 is also problematic for what it says as well as for what it does not say. It sets a specific timetable for responding to a secession question once it has been raised. By so doing, it restricts the flexibility of the federal government in responding to a situation, should one arise.

Professor Monahan, in a study done for the C.D. Howe Institute, argues that Bill C-20 should provide more guidance on what constitutes a clear majority. On the other hand, he suggests that the bill goes beyond the Supreme Court's mandate by deeming any referendum question that includes references to post-secession economic or political arrangements "unclear". In his view, such references should be taken into account but not ruled out in advance.

There are many more problems with Bill C-20 that could be explored, but time does not allow for such elaboration.

In conclusion, honourable senators, Bill C-20, however well-intentioned it may be, is a flawed attempt to heed the advice of the Supreme Court of Canada in its reference decision. Not only does it produce confusion rather than clarity, but, by its exclusion of the Senate and other constitutionally recognized political actors, it runs counter to the underlying constitutional principles of constitutionalism and the protection of minorities enunciated in the very Supreme Court decision that Bill C-20 claims to implement. The bill must be amended, at the very least, if it is to accord with the language and spirit of the *Reference re Secession of Quebec*.

[*Translation*]

Hon. Marie P. Poulin: Honourable senators, like all of you, I took a long look at Bill C-20, the clarity bill, and like some of you, I wondered about the role the Senate would play.

I therefore paid close attention to our debates on the possible impact of this bill, and I am grateful for the insightful comments that were made.

After many discussions and serious reflection, I want to say that I fully agree with the principles of Bill C-20. This bill gives us an opportunity to define our own role in the unfortunate context of a referendum.

Like you, I sincerely hope that this situation will not arise again, because, like most Canadians, I am concerned about how little the separatists care about the democratic process.

Twice they held a referendum in Quebec, and both times a majority of Quebecers chose to remain an integral part of our Canadian federation. Like you, I was relieved by the result, because Quebec plays a unique and essential role in that federation. Honourable senators, how many times will Quebecers have to say no to the separatists?

This reminds me of the days when I was in primary school. There was always someone who wanted to change the rules when we were playing marbles and the opponent was losing. Now, thanks to Bill C-20 on clarity, all Canadians, including the separatists, will know the rules of the game.

Generally speaking, Canadians are in favour of this constitutional and legislative framework for secession. The 1980 and 1995 referendums in Quebec deeply shook our certainties, and in more ways than one. For example, we now had to recognize that the secession of a province was a possibility that could no longer be dismissed.

These two referendums also provided an opportunity for all Canadians to witness the political opportunism of which the secessionist forces are capable. They cleverly took advantage of the absence of constitutional rules and federal legislation and took over the process of secession. Need I point out that this PQ process, which is based largely on the principle that the end justifies the means, takes no account of Quebec's partners in the Canadian federation?

In such a context, the Government of Canada could no longer continue to navigate the troubled waters of this desire to secede unilaterally from our federation without something to guide it. The federal government had to take concrete action and indicate clearly to Canadians what it would do if one province asked its citizens to vote on secession.

The Government of Canada did something that shows great political wisdom. First, it sought the opinion of the highest court in the land, and, in the full assurance of the legitimate role of the political players, as confirmed by the Supreme Court, it then introduced a bill giving effect to that opinion.

[*English*]

The Supreme Court of Canada gave Parliament the responsibility of defining the rules. That is what Bill C-20 does. In the regrettable event of a referendum, motions would be presented in the other place regarding the clarity of the wording and the required majority. The Senate would not vote on those motions that would be put before the other place. However, we would not be out of the picture because we would be expected to give strong advice to the other place. In this chamber, there is a very strong common thread that binds every one of us, whether Liberal, Conservative, or independent, and that is our belief in the strength of a united Canada, a federation of 10 provinces and three territories in this new world without borders.

I am sure that none of us wants to utter a single word of encouragement to those who would break up this country. There are enough of those in the other place. We should let them know clearly and without reservation where we stand at the right time. As senators, we would be in a position to strongly influence public opinion and, thereby, the provinces.

We should begin to think of using the authority of our office constructively by building on the opportunity that has been provided in this clarity bill; that is, the opportunity of making our views known to the government and the people of Canada.

The government has committed itself to taking our views into account. Thus, we should do our utmost to make them as valuable and reliable as we possibly can. Therefore, the real challenge is for this chamber to identify the mechanisms which would immediately become activated in the Senate in the context of a referendum. This is on what we should be concentrating our efforts.

We must reconcile the perception that we would have no responsibility if ever this legislation were acted upon. My view is quite the contrary. Not only does the clarity bill say that the government would take note of formal statements or resolutions passed by the Senate in regard to the clarity of a referendum question — I refer to clause 1(5) — it would also extend this responsibility to the issue of what constitutes a majority — I refer to clause 2(3).

Honourable senators, I ask myself, and I ask you: What mechanisms will we adopt to ensure that the upper house of the Parliament of Canada has its own clear plan to fulfil its role as key advisor on the motions that may be put before the other place if ever, unfortunately, there were a referendum?

• (1810)

Hon. Douglas Roche: Honourable senators, we are faced in the debate on Bill C-20 with the momentous question of how to preserve the unity of Canada. We are also faced with a diminishment of the role of the Senate, which will have profound consequence for the future working of the Parliament of Canada.

These are two issues that clash in Bill C-20. The bill's implications affect not only the future of Canada but also the future of the Senate.

As one member of Canada's Parliament — for that is what I am — I am torn. Part of me wants to go one way on the bill; part of me wants to go another. What shall I do?

I have, of course, studied the eloquent speeches of the Leader of the Government and the Leader and Deputy Leader of the Opposition. The opposing views are so powerfully presented — each side makes such a strong case — that one is tempted to hide. As an independent senator, I cannot hide. In the end, I have to vote for or against this bill using, God help me, my own intellectual resources.

The only way that I can, in an orderly way, approach the bill is to separate for the moment the two issues: the requirement for clarity and the role of the Senate.

First, as to the requirement for clarity, I begin by asking myself a key question that has been brought forward: Is Canada divisible? Those who hold that Canada is indivisible make the point that the bill is *ultra vires*. They say that the government has no right to introduce legislation that would make secession legal. Therefore, they oppose the principle of the bill.

However, I maintain that there is nothing in our Constitution that says that Canada is indivisible. All states are, in theory, inviolable, but practical politics over the past 30 years have, if nothing else, given de facto legitimacy to the idea of separation. The whole Quebec debate has turned on the fact that if Quebecers get serious about secession, they have the legal right to seek it through constitutional amendment. That is, in effect, what the Supreme Court said. Thus, I recognize the objective of the bill.

Honourable senators, it behooves the Government of Canada to address any question of secession in a responsible manner — before the event, rather than just picking up the pieces as best it could, as would have occurred had a narrow margin of Quebec voters gone the other way in 1995.

Let us cast aside immediately the spurious notion that Canada has to have a Plan A or a Plan B to hold Quebec in Confederation, as if they were mutually exclusive. Canada needs a Plan A, showing the benefits of this great country to the people of all provinces; and it needs a Plan B, spelling out the ground rules if any province decides to negotiate its departure.

Underlying Bill C-20 is the recognition that something went wrong in the 1995 Quebec referendum. At that time, there were false beliefs that a Yes vote would merely lead to negotiations between Quebec and Ottawa. There were false beliefs that a majority Yes vote would only act as a bigger bargaining chip for Quebec within future Canadian constitutional negotiations.

These dangerous illusions came close to creating the most serious constitutional crisis in Canadian history. We discovered later that the secessionist Government of Quebec indeed intended the referendum to lead to a unilateral declaration of independence. The referendum question was, in fact, ambiguous in its wording and its intent. Polls demonstrated that the people of Quebec voted in confusion in what was one of the most important decisions they could ever make.

As a result, there has been a drastic change in attitude among Quebec's people toward their politicians. Their trust in them has weakened. Federalists in particular, whether anglophone, aboriginal or allophone, feel their representatives failed to defend their constitutional rights. It is for the Government of Canada to defend the rights of its citizens under the principles of federalism, democracy, constitutionalism and the rule of law, and the protection of minorities. This is what has been done in the new federal guidelines that Bill C-20 would legislate.

In Bill C-20, honourable senators, the government has exercised its responsibility to recognize the demands for a clear legal framework that safeguards the constitutional rights of the people of Quebec and all other provinces, as recognized by the Supreme Court. This bill will give legislative effect to the opinion handed down by the Supreme Court in the *Reference re Secession of Quebec* of August 20, 1998. The Supreme Court then ruled that Quebec's secession from Canada, in order to be legal and constitutional, would have to be based on a clear democratic expression of the will of the people of Quebec through a clear question put to them in a referendum.

Bill C-20 states the circumstances under which the federal government would be obliged to enter into negotiations on the possible secession of a Canadian province. The bill does not establish a framework for a referendum. Rather, it sets a framework for the federal government in entering negotiations. The bill specifically asks for political decisions on two pivotal issues: the clarity of the question and the clarity of the result of any referendum.

No province can secede unilaterally; an amendment to the Constitution would be required. An amendment cannot be introduced by the federal government until a series of negotiations ranging from the division of assets and liabilities to changes in borders, aboriginal claims, and minority rights is completed and accepted.

• (1820)

In short, by eliminating uncertainties, Bill C-20 will do a service to the people of Quebec and to all Canadians by restoring the rule of law to any future referendum process.

Opponents of the legislation charge that it is undemocratic, that it straitjackets Quebec, and that it is but a legal solution to an entrenched political problem. I do not accept this. We should welcome the principle of Bill C-20 because it ensures that the law, as it should, informs and shapes political debate — in this particular case, the unity of Canada.

Honourable senators, it is difficult to sustain the argument that the bill prevents the people of Quebec from freely choosing their own destiny. The bill does nothing of the sort, as its principles apply only to the federal government. Any province may hold a referendum any time it likes, on any question, under any rules, but the federal government cannot accept the result as a basis for negotiations, except on the terms handed down by the Supreme Court and given effect in Bill C-20.

The only constraint upon a secessionist province that could be discerned in this legislation is that the act of secession must be negotiated. It is difficult to accept that the federal government is acting undemocratically by insisting that such monumental negotiations, should there ever be any, take place within the law.

It is not only for the separatists to set the terms of the unity debate. All Canadians naturally have a stake in the future of the country. Their interests must be effectively voiced by their representatives in Ottawa.

Honourable senators, I now come to the role of the Senate. Here the government has made a grave error, and that error must be corrected by the Senate itself.

As Bill C-20 reads, in the determination of clarity, the Senate is able only to give its views to the House of Commons. Yes, the House of Commons "shall take into account" such views. However, in the end, it will be the House of Commons that determines whether clarity exists. Hence, the House of Commons alone will have the capacity to legally permit or prohibit the Government of Canada from entering into negotiations on the secession of any province.

I must say, as a former member of the House of Commons, that I think this is not a good idea. To restrict to one chamber the determination of clarity on a question of monumental importance to the country shortchanges the national interest. Also, the bisection of a bicameral legislature in Canada's Parliament thwarts the very Constitution that has made the Senate an integral part of Canada's Parliament.

Much has been made of the Supreme Court's references to "elected representatives" who must determine the conduct of negotiations for constitutional separation, but the Supreme Court did not exclude the Senate from fully participating in the determination of clarity, a determination that must be made prior to any such negotiations.

In using the term "political actors" as a synonym for elected representatives, this bill is too clever by half. The obfuscation practised by the drafters of the bill in trying to pretend that only the House of Commons should have a determinative role, with the Senate relegated to an advisory role, poisons the legislation. The constitutional structure of the country's governance is weakened by the very bill that purports to save the country. The Supreme Court wants "political actors" who have the "information and expertise" to make appropriate judgments. Well, the Senate is a constitutionally based political actor.

Let us be very clear on what the Senate can and cannot do. As with any piece of legislation, the Senate has a determinative role in the assessment of political issues. It will be a political judgment whether a question and a majority vote possess clarity. The Senate must be inextricably involved in such a political decision. However, the Senate cannot exercise a permanent veto in constitutional questions. It is for the House of Commons, comprised of elected representatives, to supervise constitutional negotiations concerning secession.

Therefore, let us separate out the Senate's necessary action in the political determination of clarity and the inability of the Senate to permanently veto constitutional change. The government must stop confusing the legal identification of clarity with the conduct of constitutional negotiations.

The bill must be amended to make it clear that the Senate equally shares with the House of Commons in the determination of clarity. That is the only way this bill can be saved with any integrity.

I respectfully propose that the determination of clarity be entrusted to a joint committee of the House of Commons and the Senate. This special committee, composed of representatives of both Houses of Parliament, would make the decision on clarity, which would, of course, be sent to the House of Commons and the Senate for ratification.

Let us not hear that this bill is closed to amendments because the government does not want to reopen the debate in the House of Commons. Let us not hear that those senators who have genuine concerns based on their experience and expertise will not be allowed to voice and vote those concerns. Let us not hear that the government leadership in the Senate is impervious to this flaw in Bill C-20, a flaw so serious that it will open the door to continued diminishment of the Senate.

In order to give this bill the proper attention such an extraordinary piece of legislation demands, I further respectfully propose that, upon second reading, the bill be referred to the Senate's Committee of the Whole for the purpose of hearing witnesses and making a report. Within Committee of the Whole, all senators can have the opportunity of appraising Bill C-20 in an inclusive setting. This action would itself make the point that the Senate of Canada has a structural, an instrumental and an indispensable role to play in deciding questions that cut to the heart of the future of Canada.

I have shared with honourable senators my hopes and fears engendered by Bill C-20. I do not shrink from my duty as a senator to help bring clarity to any future referendum on secession. I do not shrink from my duty to uphold the constitutional role of the Senate. We must bring our political processes together in Canada. To do that, Canada's Parliament — the whole Parliament — must work together.

The need for clarity is uppermost. The consequences of persistent uncertainty over the status of Quebec given a Yes vote in any future referendum have been seriously detrimental to the province and to Canada as a whole. Political uncertainty has led to economic decline, stunted investment, and the relocation of many businesses and the fracturing of families.

Quebec columnist Alain Dubuc has insisted that the beginning of the 21st century must be seized to "turn the page" and change political priorities and traditions in the province. He called for the beginning of a new chapter in Quebec's history to free itself from the vicious circle of federal-provincial quarrels and constitutional wrangling.

The Hon. the Speaker: Honourable Senator Roche, I regret I must inform you that your 15-minute speaking time has expired.

Senator Roche: I am on the last page of my speech, honourable senators.

Senator Hays: Could I ask Senator Roche how long he thinks he will be?

Senator Kinsella: He just told us — one page.

The Hon. the Speaker: Senator Roche advises he is on his last page.

Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Roche: Alain Dubuc called for the beginning of a new chapter in Quebec's history to free itself from the vicious circle of federal-provincial quarrels and constitutional wrangling. I want to see this sentiment extended to the entire country. Together in unity, Canada, with its rich natural and physical resources, will be ideally placed to work for a humane, just and peaceful world.

[*Translation*]

• (1830)

Hon. Jean-Claude Rivest: Honourable senators, given the importance of this bill, I should like to share with you a few rather simple thoughts.

I willingly agree that the Canadian government can, must even, express its opinion on the clarity of the referendum question and the majority required. It can also determine the way it will do so, with the House of Commons and the Senate. I trust that the government is aware of the fact that the Senate must be more than a mere lobby group when such an important matter is at stake.

This unacceptable action by the Government of Canada is deceiving the people of Canada. A number of senators have expressed similar opinions. This bill would guarantee Canadians and Quebecers that the next referendum would, of necessity, address solely and exclusively secession or the creation of an independent Quebec.

Everyone needs to clearly understand that, independent of the existence or non-existence of this bill, whether we like it or not, whether we pass it or not, if there is another referendum in Quebec — which is not something I want to see — it will be on article 1 of the Parti Québécois platform, which calls for the sovereignty of Quebec coupled with an association or partnership with Canada.

This bill tells Canadians that partnership cannot be mentioned, because the referendum question would not be clear. Canadians, Quebecers, the Parliament of Canada, the Senate, everyone, will have to face up to this reality, even if the bill should be passed. If there is a referendum at some point, that is what its focus will be.

What will the reaction of Canadians be? The government has sent Canadians the message that Bill C-20 is not complicated, and that any future referendum will be only on separation. The reaction of Canadians will be: "But Mr. Chrétien told us that if there were a referendum it would be on separation. Now there is one, but it is on the Parti Québécois platform; Mr. Chrétien has deceived us". Thought needs to be given to how credible the Canadian public will perceive the Prime Minister of Canada to be when he has misled them.

Can a senator in this house guarantee that the question resulting from this bill could be: "Do you want Quebec to become an independent country, yes or no?" If so, I will support the bill. However, you are unable to guarantee that. Canadians understood that, as evidenced by the polls.

This is the constitutional policy of the current federal government on this issue and it does not make sense. You should reflect on what the Prime Minister told Canadians before the 1995 referendum. He said there was no longer any problem, that we would no longer talk about the Constitution. Remember what he said during the 1993 election campaign. Canadians believed him because the Prime Minister of Canada is a man to be trusted. They voted for him and they ended up with the closest possible referendum result. At that point, the same Prime Minister came and told them that he had a historic project to ensure that the next question would be clear and would be on independence. That is not true. The next referendum will be on the platform of the Parti Québécois. No one in the Senate or in the House of Commons can tell me that there is a single Quebecer who would accept that Jean Chrétien or Stéphane Dion rewrite section 1 of the Parti Québécois platform. Forget it, it will not happen! This expression of the Canadian government's policy on the national unity issue upsets me. This serious problem is not due to three or four people like Lucien Bouchard or Jacques Parizeau, but to two or three million Quebecers who voted for sovereignty on a question which, supposedly, is not clear. They did not vote yes by accident or because they did not understand the question. These same two or three million Quebecers elected a separatist government, and they have done so a number of times. Why? Because the electoral issue is not clear?

The problem of national unity raised by the presence of sovereignists in Quebec has nothing to do with the clarity of the question. We can make all sorts of assumptions as to why such an artificial and useless bill as this was put forward before the convention of the Liberal Party of Canada when the leadership of the Prime Minister was in doubt.

I am quite indifferent to the fact that many Quebecers argue that this bill infringes on the powers of the National Assembly. I do not think this the case, because the National Assembly may continue to do what it will quite freely. Minister Dion has said so, and I think he is right. Sovereignists will put a question on sovereignty association and sovereignty partnership, you can be sure of that.

Mr. Dion is the Minister of Intergovernmental Affairs and he is very pleasant, very learned and very interesting. However, all he does, from Quebec's standpoint, is go after the PQ. It is his policy, he answers the PQ. It is interesting and always well documented, but it does not further the cause of federalism in Quebec.

In Canada, from a historic standpoint, this is not a problem to be settled soon. All the prime ministers, from Macdonald to Laurier, have talked about national unity. It is hard to maintain national unity in Canada. This country has a history, two peoples, two nations, First Nations and, geographically, it is very big. National unity will be a constant element of the Canadian reality. To unify this country requires listening skills, understanding, openness and generosity toward all the regions and nations comprising Canada.

It does not require short-lived bans as unnecessary as this bill. Look at what recent prime ministers did when the problem first began to arise. Mr. Pearson set up the Laurendeau-Dunton commission. He organized the Canada Tomorrow Conference. He gave Canada its own flag. He had a national unity policy. Mr. Trudeau reformed the public service in order to convince Quebecers and francophones that they had a place. He told Quebecers that they could play an important role in the decisions of this country, a role commensurate with their importance. As part of globalization, Mr. Mulroney left Acadians and Quebecers with a free hand in the international Francophonie. It was a necessary solidarity. He proposed the Meech Lake Accord, which was a decisive document. Those who sabotaged it committed an historic and catastrophic error. They are not sitting on this side of the house.

It matters little that these policies did not completely resolve the problem of Canadian unity. It is an almost permanent problem in this country's very structure. Whatever one may think, these prime ministers had a national unity policy. I do not wish to say that the Prime Minister is not convinced of the importance of national unity — it is his passion. I have great respect for him on this topic. However, his policy is not on a par with his convictions and tricks like this unnecessary bill will lead the Canadian people astray. He will give them guarantees he is not in a position to deliver on. This will have a boomerang effect on his credibility and on that of the Canadian government.

The way this bill will work is not ideal. The question will be on sovereignty association. As I said to the government critic, will federal ministers take part in the referendum campaign? Will federal political parties, including Quebecers, take part? No, because their parliament will have decided that the question is not clear and that it does not meet the conditions of the legislation it has passed. You thus weaken federalist forces in Quebec.

Then the government is going to say that it will not negotiate, that the book is closed. Let us assume that the question is on sovereignty association, as it will be. This is a fact, like it or not, and let us assume that 60 per cent or 65 per cent vote in favour. Your reaction will be that the question is not clear, that you will not negotiate, and that is it. That is what the bill says. What will this have solved? The three or four million people who have voted are not going anywhere. They cannot be made to disappear with pepper spray!

I strongly disapprove of this bill. It appears to be aimed at safeguarding national unity. I do not want to see it ever applied. I, like everyone else in the Senate, do not want to see any referendum. If, however, we are obliged to apply it, it will create problems that will be destructive to national unity. It will have the opposite of its desired effect. Today, no one is particularly bothered about this bill. It is not getting people riled up. This is further evidence of the fact that application of this bill will have a negative effect. No one in Quebec or in the rest of Canada is interested in this bill. It has come out of nowhere.

If the Parti Québécois held a referendum, it would be as if this bill never existed. There will be a referendum. No one wants it. It will be on sovereignty association. It will be said that it is muddled, and the question is not clear. Naturally, they can say that. This bill provides no help at all. It will not change a single yes vote to a no. It will change absolutely nothing. It is all very well to have the bill and the Parliament of Canada say the question is not clear, the Parti Québécois will say there will be sovereignty and then association. It will not change its tune. This bill does not change anything on that score. The impact on voters will be unchanged; the electors' understanding of the issues will be the same. The voters will listen to speeches and announcements on TV, all the elements of a democratic debate. The Parti Québécois will sell its line, and we will find ourselves exactly where we left off. The bill is useless.

I will vote against this bill, which deceives Canadian public opinion and, more damaging yet, misleads Canadians. It is doubtless unintentional, but it is a fact. The Prime Minister of Canada told the Liberal Party convention that this was the most important bill of his career, because with it he was sure the question would be clear. That is not true. The question will be one the PQ has chosen, despite this bill that deceives Canadians.

An institution like the Senate should be able to tell all Canadians that this bill is a mistake. No one can contradict me on that. If I am right, the senators who are aware of their responsibility should tell the government and Canadians to be careful, because this bill will not achieve its goals. It sidesteps the basic question of the relationship between Quebec and Canadian society. It contributes absolutely nothing apart from the squabbling of the PQ Minister of Intergovernmental Affairs.

As a Quebec and Canadian senator, I will vote against this bill.

On motion of Senator Robichaud (*L'Acadie-Acadia*), debate adjourned.

[*English*]

• (1850)

DIVORCE ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Cools, seconded by the Honourable Senator Chalifoux, for the second reading of Bill S-12, to amend the Divorce Act (child of the marriage).—(*Honourable Senator Cools*).

Hon. Anne C. Cools: Honourable senators, I rise to speak to Bill S-12, to amend the Divorce Act. This bill is about the legal obligation imposed by the Divorce Act on divorced parents to pay child support for their children who are older than the age of majority and who are, in fact, adults at law. Bill S-12 will address that category of persons now inappropriately styled as adult children. The term “adult children” is an impossible schizoid legal concept that is only possible in family law.

Honourable senators, I dedicate my bill to our retired colleague Senator Duncan Jessiman, who was a soldier in the cause of children of divorce and in the cause of fairness and balance in divorce law.

On 1997's Bill C-41, that famous Senate fight on the Divorce Act, it was said that we two, Senator Jessiman and I, were a multitude. We in the Senate amended Bill C-41, trying to avert many of the terrible social and family problems that have been caused by the child support guidelines and by also the wrong — nay false — legal concept termed “adult children.” This term provides its own legal condemnation. Bill S-12 will delete the words “or other cause” from the Divorce Act's definition of “child of the marriage.” Those are the three words that had troubled Senator Jessiman and that judges have pummeled into the opposite of Parliament's intention. This deletion will clarify the statutory economic obligations of divorced spouses to their adult offspring and, particularly, will clarify economic relations between divorced spouses to each other in respect of their adult offspring pursuant to the Divorce Act.

Honourable senators, I shall relate the background of Senator Jessiman's, other senators' and my 1997 work on that deeply flawed bill, Bill C-41, to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act, the Garnishment, Attachment and Pension Diversion Act and the Canada Shipping Act.

Bill C-41 had been an amendment to the l986 Divorce Act, whose primary purpose had been to create child support guidelines. The instrument for creating these guidelines was regulations, what we call delegated legislation. Clause 11 of Bill C-41 created section 26.1 of the current Divorce Act, which in turn established regulations to the Divorce Act, being a set of tables and table amounts, dollar quantums, as directives to the courts and judges.

These regulations were styled the child support guidelines. This method of giving direction to justices, by regulations and delegated legislation, was unprecedented, unparliamentary and was as questionable then as it is now. These guidelines instituted a new legal and economic regime in child support in family law. This regime devised calculations of child support guidelines that would disregard the custodial parent's income, mostly mothers, and would be based on and paid only by the non-custodial parent's income, mostly fathers.

To do this, Bill C-41, in its clause 2. and clause 5.(5), proposed, unsuccessfully due to the Senate, to repeal those provisions of the 1986 Divorce Act, being sections 15.(8) and 17.(8), which gave children of divorce their entitlement to financial support from both parents, both mothers and fathers, according to their means. Those sections were important, not only for the Divorce Act but also because they are one of only two federal statutes in which the entitlement of children was ever placed into law.

The proposed repealed provision, section 15.(8) as the similar 17.(8) read:

> An order made under this section that provides for the support of a child of the marriage should
>
> (*a*) recognize that the spouses have a joint financial obligation to maintain the child; and
>
> (*b*) apportion that obligation between the spouses according to their relative abilities to contribute to the performance of the obligation.

I repeat, Bill C-41 would have repealed mutuality — the mutual obligation of both parents to financially support their children — and instead would have substituted a regime that placed the burden for financial support on the shoulders of one parent only, the non-custodial parent, mostly fathers.

Honourable senators, those provisions, those sections of the Divorce Act, had been equality sections directed at economic independence and self-sufficiency for women. They had been part of the family law reforms of the late 1970s and early 1980s wherein marriage and divorce were intended to be founded on equality between spouses in assets, liabilities and parenting.

Bill C-41 rejected equality for women and created the guidelines by repealing the obligation of both parents, mothers and fathers, to financially support their children. In this regressive and backward action, it proposed that payments of financial support for children would be the liability and responsibility of the non-custodial parent, the paying parent, mostly fathers.

I vividly remember Senator Jessiman's distress as a lawyer and a senator when I brought this to his notice. Of interest is that Bill C-41 had also neglected, not accidentally, to address the relationship of the non-custodial parent, the paying parent, mostly fathers, with their children. It intentionally ignored the custody and access question.

Senator Jessiman and I adopted the position that Bill C-41 and its child support guideline regulations were deeply flawed. We upheld the need for fairness, balance and equilibrium in divorce and family law. Most Canadians are deeply indebted to him and to those senators who supported us. The public support for the Senate in those actions was unparalleled and unequaled before or since.

Honourable senators, then as now I assert that the econometric model on which the child support guidelines was based specifically and deliberately abandoned the objects of fairness and child-centredness. Bill C-41 was a blatant and unveiled attempt to increase the level and quantum of money payments made by support paying parents, mostly fathers, to support receiving parents, mostly mothers.

Bill C-41's child support guidelines had been constructed on a particular Statistics Canada econometric model that Statistics Canada itself had later described as arbitrary and inaccurate in its August 1999 publication "Low income measures, low income after-tax cut-offs and low income after-tax measures."

The expenditure model itself was inadequate to the task. In the Standing Senate Committee on Social Affairs, Science and Technology neither did then Liberal minister of justice Allan Rock nor his departmental officials provide the senators with sufficient information, explanation and justification about the model itself.

The evidence indicates that the child support guidelines were never about the best interests of children but were instead about a transfer of wealth from support-paying parents, mostly fathers, to support-receiving parents, mostly mothers, under the guise of child support.

The child support guidelines used a design model intended to punish support-paying parents and intended to drive non-custodial parents, mostly fathers, out of their children's lives, and reinforced the fracturing of relationships between children and parents in divorce.

The child support guidelines were bad economics, bad public policy and bad family law. That a purely feminist ideological theory on economic relations between men and women should be constructed into regulations under the Divorce Act, under the guise and title of child support, is a serious matter and deserves study.

Honourable senators, prior to the Senate's encounter with Bill C-41, Queen's University Law Professor Nicholas Bala wrote about the guidelines in a 1996 article entitled "Ottawa's New Child Support Regime: A Guide to the Guidelines." He said, at page 311:

> One of the most controversial aspects of the guidelines is that the assessment of child support will begin with the payer's income alone.... This focus on the payer's income and ignoring the custodial parent's income seems inconsistent with the objective of having the child benefit from 'the financial means of both parents'.

Good public policy and the best interests of the child dictate that the department's modelers should have utilized a econometric model that took account of both parents', both mothers' and fathers', incomes and household size. The department should have utilized an income-shares model.

As senators know, we amended clause 11 of Bill C-41 and reinstated into the divorce law that important principle that Bill C-41 had proposed to repeal, being that a child of divorce is entitled to the financial support of both parents, both mothers and fathers.

The result was that the current provision of the Divorce Act establishing the regulation guidelines, section 26.1(2), now reads:

> The guidelines shall be based on the principle that spouses have a joint financial obligation to maintain the children of the marriage in accordance with their relative abilities to contribute to the performance of that obligation.

• (1900)

Honourable senators, children are little persons who need the financial support of both their parents. Both parents must have meaningful relationships and meaningful involvement in their children's lives.

I turn now to the subject of Bill S-12, the adult offspring of divorce, a favourite concern of Senator Jessiman's. The issue is the age to which parents are compelled, by force of law, by statute, by the Divorce Act, to financially support their offspring. From 1968 to 1997, that age was 16 years. In 1997, Bill C-41 raised that statutory age from 16 years to the age of majority for most offspring, and past the age of majority for the ill and disabled, and also proposed, unsuccessfully, support for those adult offspring who were pursuing post-secondary education. En passant, by the Divorce Act, the age of majority is the age set by the laws of the province in which the child ordinarily resides or, if the child ordinarily resides outside Canada, is eighteen years of age.

Honourable senators, support or maintenance of adult offspring bears some discussion. Many of us believe that after their children reach the age of majority parents of means have a moral, but not a statutory, obligation to support needy or distressed adult offspring. Conversely, needy adult offspring who are mentally and physically capable have a corollary moral obligation to negotiate such needed financial assistance with their parents from a cooperative, or at the least a non-hostile, posture.

Such negotiations, such mutual support and assistance, form an important role in most families, and rightly so, for that is the function of families — cooperation and support in need. Mutual support, mutual relations, and mutual cooperation are the essence of adult family relationships, particularly those with financial and economic dimensions. In financial matters in adult relationships between able persons, mutual agreement is the natural order. Mutual agreement is the natural order that governs the exchange of money and economic relations between human beings. That is especially true in families. The exchange of money and financial assistance between adult family members in all families is always vulnerable, but that is particularly so in divorced families.

These financial exchanges in families are highly responsive to particular human factors and peculiar human needs, which include humane consideration and interaction, and humane dialogue. Financial exchange is a function of human and humane exchange.

Now let us look at divorce, and what the Divorce Act has to say about adult offspring of divorced parents, adults who are the issue of the marriage, and their economic relationship to their divorced parents.

Honourable senators, I have explained the development of the definition of the legal term "child of the marriage" from 1968 until now for the purposes of court ordered child support. Like the 1968 act, the 1986 Divorce Act, section 2(1), defined "child of the marriage" as follows:

> ..."child of the marriage" means a child of two spouses or former spouses who, at the material time,
>
> (*a*) is under the age of sixteen years, or
>
> (*b*) is sixteen years of age or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessaries of life;

Bill C-41's definition of child of the marriage expanded the statutory age for parental support from 16 years to the age of majority, and also proposed artificially to expand it beyond the age of majority to include university students. It did so by including the words "pursuit of reasonable education" after the words "illness and disability" and before the words "or other cause", thereby enmeshing university education with serious uncontrolled disability, therein proposing to redefine the adult offspring university student as a child of the marriage.

Bill C-41's clause 1(2) stated that a child of the marriage is one that:

> (*a*) is under the age of majority and who has not withdrawn from their charge, or
>
> (*b*) is the age of majority or over and under their charge but unable, by reason of illness, disability, pursuit of reasonable education or other cause, to withdraw from their charge or to obtain the necessaries of life;

The Senate amended Bill C-41 to delete the words "pursuit of reasonable education" so that section 2(1) of the current Divorce Act reads exactly as did Bill C-41, minus those four words.

Honourable senators, on February 13, 1997, at third reading of Bill C-41, Senator Jessiman explained our deletion of the words "pursuit of reasonable education" from the definition of "child of the marriage". He also explained the problem with the interpretation of the words "or other cause" in the courts, saying, at page 1539 of *Debates of the Senate*:

> Another part of the bill we were unhappy with was a proposed amendment to the Divorce Act to codify what the courts have determined is the present law under the act — that is, that pursuit of reasonable education is, in some circumstances, a reason to compel a divorced, non-custodial spouse to continue to pay child support to the custodial spouse for a child even though the child has reached the age of majority and in some cases is in his late twenties.

Senator Jessiman told us that the judges had used the words "or other cause" to create parental obligation to pay child maintenance to ex-spouses for adult offspring through university. He continued:

> It is the words "other cause" that the courts have said allow such interpretation, that is, that the pursuit of reasonable education falls within "other cause". The courts have held that the *ejusdim generis* rule does not apply because the words "illness and disability" are all encompassing and "other cause" would be redundant or have no meaning, if the courts applied the rule. The courts have ruled that it must have been the intention of Parliament to give meaning to such words.
>
> It was the view of senators on this side of the chamber that the courts were wrong and have been wrong.

Honourable senators, Senator Jessiman showed clearly that the courts' interpretation was wrong because it would mean that a child of divorce would have greater rights than a child of an intact married couple. This very question was profoundly posed by Justices Tallis, Cameron, and Gerwing in the 1996 Saskatchewan Court of Appeal case *Bradley v. Zaba*. They said, at paragraph 10, Report of Family Law, Volume 1, Fourth Series:

> A further consideration is whether the child could have reasonably expected one or both of the parents to have continued to furnish support if the marriage had not broken down.

This pivotal point turns on the process by which divorced parents have acquired a statutory obligation that intact married parents do not have, and consequently, on the process by which children of divorce have acquired greater rights to university education than children of intact marriages have. It turns on the difference between legal obligations and moral obligations, and on how the courts have transformed the moral obligation of divorced parents to provide financial support to adult offspring during university years into a legal obligation by using the words "or other cause". Senator Jessiman told us that these obligations and duties are exclusive to divorced parents, and are not possessed by intact married families.

Honourable senators, the true nature of child support payments for adult offspring paid by non-custodial parents to custodial parents, pursuant to the statutory definition of adult offspring as children of the marriage who are in the custody of the custodial parent, is seen by examining the Income Tax Act and its treatment of child support payments and the 1997 Bill C-93 amendment to that act.

• (1910)

Bill C-93's long title was An Act to amend the Income Tax Act, the Income Tax Application Rules and another Act related to the Income Tax Act. Bill C-93 was a companion act to Bill C-41. From 1942 until 1997, the Income Tax Act had treated child support payments pursuant to divorce or court orders as a tax deduction for the paying parent. This allowed income tax to be paid at the lower earner's tax rate. That scheme was intended to benefit women, because they received the money, income from ex-husbands, and could pay little or at least less income tax. This scheme gave the advantage to women and maximized child support payments. It kept more money in divorced families' hands, especially women's.

In 1997, inspired by the Supreme Court of Canada's 1995 *R. v. Thibodeau* decision, Bill C-93 amended the Income Tax Act to end that regime. The result was a tax windfall to the government and a loss to divorced families, particularly lower income women. About this windfall, on December 12, 1996, then Minister of Justice Rock told the Senate Committee on Social Affairs, Science and Technology that it would amount to about $1 billion dollars over the next five years.

Honourable senators, from 1942 to 1997, the singular purpose for non-custodial parents, by agreement, to pay child support payments to the custodial parent for adult offspring in university had been this beneficial tax treatment. Under the Divorce Act, in financial support of adult offspring in university, the dominant issue has always been who should be the recipient of that money, the custodial parent or the adult child. Most adult offspring want that money paid to them directly. Most non-custodial parents wish to pay that money directly to their offspring. The singular purpose since 1942 for paying parents, mostly non-custodial fathers, to pay receiving parents, mostly custodial mothers, for adult offspring in university rather than the adult offspring directly, had been the tax treatment of such payments.

Honourable senators, Bill C-93 eliminated the tax treatment, the tax deduction. It eliminated the singular rationale, the singular incentive, that had ever existed for any divorced spouse to pay the ex-spouse money as child support for adult offspring in post-secondary education. A consequence of Bill C-93 was that the true interests of the adult offspring and the wishes of non-custodial parents emerged. Such should have prevailed to permit adult offspring to become the direct recipients of that money for their own maintenance for education from their non-custodial parent, mostly fathers. Further, the contributions to that same adult offspring from their custodial parent, mostly mothers, could be identified clearly. However, this was not to be. This natural, legal, economic and familial consequence, being the direct payment from mostly fathers to adult offspring was not to be. In fact, this natural result was wilfully blocked by Bill C-41. The natural result was averted and in its stead Bill C-41, by means of its definition of 'child of the marriage' by the Divorce Act, contrived to compel those parents, mostly fathers, to subordinate the financial interests of their adult offspring in university to the financial interest of the ex-spouse. It therein gave ex-spouses a new and greater financial interest than it did to the adult offspring. The deliberate redirection of this money, of these financial payments from the adult offspring to the ex-spouse, reveals the true nature of Bill C-41. It shows clearly that so-called child support for adult offspring is really spousal support for ex-spouses. The financial needs of the adult offspring were and are subordinate and secondary to the primary financial interests of the ex-spouse. This is what 1997's Bill C-41 did by proposing to insert 'pursuit of reasonable education' into the definition of "child of the marriage", and by defining "adult offspring" as "children still in the custody of the custodial parent." Imagine a parent having custody of a 25-year-old able-bodied and able-minded young man or woman.

Honourable senators, often the actual financial benefit to the adult offspring is minimal because, as we know too well, the paying parent has no guarantee that the adult offspring will benefit financially and, as is too common, the paying parent has no knowledge of the school or courses the offspring is enrolled in. Most often, the paying parent has little or no influence in the choice of university and courses. There is no accountability whatsoever. In order to correct the matter, the paying parent, mostly the father, is in the absurd position of trying to vary custody by a new custody order. Imagine, honourable senators, non-custodial parents, mostly fathers, going to court to vary a custody order to obtain custody of a 25 year old from the custodial mother. It is even more ridiculous than a custodial parent having custody of that 25-year-old young adult. The backwardness is made manifest. Financial maintenance of adult offspring is a matter of conscience for parents in both intact and divorced families. The parents' support of adult offspring attending university is a matter of conscience. It is not a matter of legal obligation.

Honourable senators, I shall turn now to some case law. The 1997 British Columbia Supreme Court case of *Garrow v. Garrow* was about a 24-year-old offspring on whose education and other items the father had spent over $50,000 in 1994 and 1995. The mother sought an additional $42,000 in child support, supposedly for this 24 year old's education. Mr. Justice Curtis granted her only $15,000 saying, at paragraph 22, Quick Law version:

> That which generosity or affection might motivate a person to pay to a child's support is one thing, that which the law ought to compel is entirely another matter.

Honourable senators, I move to the 1992 Nova Scotia Supreme Court case *Crook v. Crook*. The ex-spouse was seeking spousal support for herself of $2,000 per month plus child support for two adult offspring, a 23 year old and a 22 year old, both of whom already had university degrees. She was seeking a declaration that those two adult offspring were children of the marriage and in her custody. Mr. Justice Goodfellow said, at paragraph 24, Nova Scotia Reports, Volume 115, Second Series:

> ...however, the words of the Divorce Act "or other cause, to withdraw from their charge or to obtain the necessaries of life" has been interpreted by the courts to essentially crystallize a moral obligation to provide one's children with an education into a legal obligation.

Mr. Justice Goodfellow ruled that those two adult offspring were not "children of the marriage", saying, at paragraph 27:

> There is no doubt that the parents wished their children to pursue a university education. I have not conducted any exhaustive research; however, I do not recall ever seeing a case, other than by agreement, where an order for support was made for a child who had already obtained a university degree or where the child had already completed education to the level of a diploma in a trade or vocation. It seems to me there should be a reasonable prima facie limitation to the words 'other cause' and that in cases such as this where both children have already obtained university education to the bachelor degree level, there would have to be exceptional circumstances to warrant fixing of a legal obligation beyond that level. I find that neither Matthew or Michelle come within the definition of 'child' in the Divorce Act of Canada.

Mr. Justice Goodfellow also noted that Mr. Crook's financial abilities were greatly diminished and did not grant her child support for the adult offspring but did grant Mrs. Crook $1,300 per month in spousal support.

Honourable senators, as Senator Jessiman told us, the question turns on the judicial construction of the words 'or other cause' and Parliament's intention on enacting those words. Clearly, when the 1968 Divorce Act created its first definition of the "child of the marriage" to include adult offspring beyond the age of majority, Parliament intended that no seriously ill, mentally or physically disabled offspring should be left as the sole financial liability of one divorced parent or the other. The intention was physical or mental disability of such a kind as to render the "over the age of majority adult offspring" incapacitated and unable to support themselves. The intention of Parliament has always been disability and sickness caused by some cause or reason beyond the control of their persons; that is, disability caused by nature, accident or vicissitudes or life condition or act of God. Parliament, in its remedial provisions of the Divorce Act, has never intended to impose upon any divorced father, or any divorced mother, excessive legal responsibilities or any responsibilities in excess of those of non-divorced, still married parents. Parliament intended to create no economic privilege for children of divorce. Neither did it intend any economic opportunity for custodial parents, mostly mothers. Finally, a university education is not an incapacity or disabling life condition. Obtaining a university education is an enabling life-state and a self-induced state.

Honourable senators, I move now to parental alienation and the relationships between support paying parents and their adult offspring. Parental alienation is the shutting out of parents, mostly fathers, from their children's lives, and from any meaningful involvement in their children's lives. The 1986 Ontario Supreme Court case *Law v. Law* was about two adult offspring, Kimberly, aged 22, and Lisa, aged 19. The father on marrying the mother had adopted the two children from her previous marriage. Though only married for seven years, this man had faithfully paid child support for them until the eldest was 21, even though both of these adult offspring, instigated by their mother, had repudiated any relationship with him. The alienated father brought an application to terminate child support payments for these two adult offspring. Mr. Justice Fleury terminated the support and in his 1986 judgment said, at page 462, Report of Family Law, Volume 2, Third Series:

• (1920)

> Kimberley has certainly withdrawn from the applicant's charge as a result of her failure to maintain any contact with him. Although it is sufficient that she be in the custodial parent's charge, I am of the view that where, as here, a mature child unilaterally terminates a relationship with one of the parents without any apparent reason, that is a factor to be considered by the trial judge in determining whether it would be 'fit and just' to provide maintenance for that child. A father-child relationship is more than a simple economic dependency. The father is burdened with heavy financial responsibilities and the child has very few duties in return. It seems reasonable to demand that a child who expects to receive support entertain some type of relationship with his or her father in the absence of any conduct by the father which might justify the child's neglect of his or her filial duties.

Honourable senators, Senator Jessiman and I had explained that the courts had pressed the words "or other cause" prior to 1997. In 1997, in Bill C-41, the Senate, supported by the House of Commons, specifically rejected and defeated the concept "pursuit of reasonable education" as a ground for imposing legal obligations under the Divorce Act for the financial maintenance of adult offspring.

Despite this clear expression of Parliament's intention about the legal obligation of divorced parents and its clear instructions to the courts, the courts have continued to expand the words "or other cause" simply to include the claims of ex-spouses for child support payable to themselves. Therefore, my Bill S-12 proposes to delete those three words from the current Divorce Act to avoid judicial exaggeration of those words to mean that which Parliament never intended so as to attain outcomes contrary to Parliament's intention, outcomes not in the best interest of the children but certainly in the best interest of the ex-spouse, the custodial, recipient parent.

Senator Jessiman and myself had obtained a commitment that the Senate Standing Committee on Social Affairs, Science and Technology would monitor the implementation of the child support guidelines. On November 5, 1997, the Senate gave the committee the order of reference to do so. The committee addressed the issue of adult offspring of divorced parents and addressed it in its interim report, introduced in the Senate on June 18, 1998.

The interim report went to the heart of the matter. The heart of the matter is that financial obligations to adult offspring of divorce should be payable directly to the adult offspring by the divorced parent. The interim report's chapter entitled "Areas of Particular Concern, Part A: Special or Extraordinary Expenses" stated at page 9:

> When the Committee previously studied Bill C-41 and the then draft Guidelines, certain Senators were concerned, and have remained concerned, about the treatment of support for adult children who are pursuing post-secondary education.

The interim report continued:

> The Committee heard testimony as to some of the anomalous situations that can arise as a result of including these adult children within the basic table amounts. For example, it is possible for a custodial spouse to receive significant amounts of money for such a child, while the child attends university in another city. The degree to which the recipient of the money passes it along to the student is entirely discretionary.

The interim report concluded:

> Thus, both parents would be responsible according to their financial means, and the means of the child, and the recipient spouse would not be in a position to benefit unduly.... In most cases, we believe that the obligations of each parent would best be payable directly to the child.

The interim report's fifth recommendation recites this fact that the obligations of each parent would be best payable directly to the child, the adult offspring.

Honourable senators, Bill S-12 offers my solution, the deletion of those three words "or other cause" from the Divorce Act. I believe that this will remedy the present problems. This will uphold the maxim that, in law, a person cannot be both child and adult simultaneously. It also will uphold the principle that adult offspring should not be a source of economic enrichment for ex-spouses. This economic enrichment is often a financial disadvantage to the adult offspring.

The courts have transformed a moral obligation of parents to contribute towards the post-secondary education of their adult offspring into a legal obligation solely and singularly in instances of divorce. This transformation has created a class of adult offspring with exclusive economic rights to financial maintenance. Further, by the failure to take account of the financial means of the custodial parent, mostly mothers, and by focusing primarily, if not solely, on the income of the non-custodial parent, mostly fathers, the present situation has become a national crisis. Bill S-12 will place post-secondary education of adult offspring and the financing thereof into the field of mutual agreement between adults.

Most non-custodial parents of means will assist their adult offspring for post-secondary education, but they do so based on trustful and voluntary cooperation. As I said, the essential problem has always been the recipient of that financial assistance, the custodial parent, mostly the mother, or the adult offspring.

The evidence is strong and overwhelming that correction is needed in the administration of civil justice in family and divorce law. Senate committee reports have said this; the Special Joint Senate and House of Commons Committee on Child Custody and Access has said this; opinion polls have said this; the country's public opinion has said this; but still Minister of Justice Anne McLellan continues to say that she will take no action before the year 2002.

Honourable senators, the law of child support in Canada in divorce in respect of adult offspring is sadly in need of change and needs immediate attention and reform. I urge honourable senators to give Bill S-12 their due and proper consideration.

On motion of Senator Sparrow, debate adjourned.

BUSINESS OF THE SENATE

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I have consulted with colleagues opposite, on this side, and others, and I believe that the only item on the Order Paper that a senator wishes to address is the one standing in the name of Senator Prud'homme. Therefore, I propose, honourable senators, that following Senator Prud'homme's intervention on that item, we revert to Government Notices of Motion and then to the adjournment motion.

ONTARIO

REGIONAL RESTRUCTURING LEGISLATION— REFUSAL TO DECLARE OTTAWA OFFICIALLY BILINGUAL— INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Poulin calling the attention of the Senate to the decision of the Ontario Government not to adopt a recommendation to declare the proposed restructured City of Ottawa a bilingual region.—(*Honourable Senator Prud'homme, P.C.*).

Hon. Marcel Prud'homme: Honourable senators, this inquiry stands in the name of my colleague and friend Senator Poulin. If no one speaks to it today, it will fall from the Order Paper, something we do not want to happen.

First, I wish to draw the attention of honourable senators to the speech the Honourable Senator Rivest delivered earlier today. I hope all honourable senators will read his speech because he spoke very rapidly when delivering it. I have a great deal of respect for the interpreters who struggled to follow what he said. Although it was delivered rapidly, it is a speech that must be read. I am not saying that I am in favour or against the bill to which he spoke. As I say, I hope that everyone will take the time to read the speech of Senator Rivest. After all, all these speeches are related in one way or another to the motion which I am about to address.

• (1930)

It is inconceivable to me as a "Canadien français" — I hope they do not translate that as "French Canadian" — that the capital of my country, Canada, would be unilingual English.

I see Senator Finestone, who travels internationally and must defend Canada's position. She was elected recently to the executive of the Inter-Parliamentary Union. Senator Finestone and I often disagree, but I admire her because she is a great Liberal.

Having said that, there is no doubt that it is inconceivable that Ottawa be declared a unilingual capital and claim to be the capital of all Canadians. It is related to what Senator Rivest tried to tell us earlier.

It would totally defeat the principles of one of the greatest champions of "les droits Canadien français Acadien," the Honourable Senator Robichaud. I campaigned for him in 1960. He may not even remember. It would be inconceivable for him — and I can see by his motions that he agrees — that the capital of Canada not be bilingual.

I know that some people of Ottawa do not like "la langue française" or "les Canadiens français" or "la religion catholique," but they must realize that they live in the capital of Canada. It is not parochial. If Canada is to be Canada as we want Canada to be Canada, we must respect the specificities, one of which is highly augmented by Senator Robichaud. That specificity is augmented by our Speaker *pro tempore* who is from New Brunswick and is doing a fabulous job, by Senator Bacon, Senator Rivest, Senator Maheu and Senator Corbin. This is Canada at its best.

I look at the diversity of Canada. We must stop going around the world, as some of us will do, if we are not able when we come back to convince each other that at least Ottawa should be a bilingual capital. That does not mean everyone must speak to everyone else in a language they do not want to speak.

Honourable senators know where I stand. I saved the day for the Honourable Senator Poulin. With her permission, I wish to adjourn the debate in the name of Senator Carstairs. That had been agreed to with Senator Poulin earlier.

On motion of Senator Prud'homme, for Senator Carstairs, debate adjourned.

ADJOURNMENT

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

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I give notice that tomorrow, April 7, 2000, I will move:

> That when the Senate adjourns today, it do stand adjourned until Monday, April 10, 2000, at 4 p.m.

Perhaps I should clarify. I am giving notice today of a motion that I will put tomorrow. Normally we ask for leave on the same day, but I am doing it a little differently today. I am giving notice, as required by the rules, of a motion that I intend to put tomorrow, Friday, when we are sitting. That motion can be debated tomorrow.

The Senate adjourned until Friday, April 7, 2000, at 9 a.m.

CONTENTS

Thursday, April 6, 2000

PAGE

Visitors in the Gallery
The Hon. the Speaker 991

SENATORS' STATEMENTS

Nunavut
First Anniversary Celebrations. Senator Adams 991

Youth Manifesto
Senator Hays 991

Speech on Nisga'a Final Agreement
Senator Carney 991

The Late Sir Stanley Mathews
Senator Mahovlich 991

Canada Post
Refusal of Commemorative Stamp on Seventy-fifth Anniversary of United Church. Senator Wilson 992

Visitors in the Gallery
The Hon. the Speaker 992

ROUTINE PROCEEDINGS

Canadian Institutes of Health Research Bill (Bill C-13)
Report of Committee. Senator Kirby 993

Business of the Senate
Senator Hays 993
Senator Kinsella 993

Canada-Europe Parliamentary Association
Report of Canadian Delegation to the Organization for Security and Cooperation in Europe Parliamentary Assembly Standing Committee Meeting in Vienna, Austria. Senator Grafstein 994

National Finance
Notice of Motion to Authorize Committee to Apply Documentation on Study of Emergency and Disaster Preparedness from Previous Session to Current Study. Senator Murray 994

QUESTION PERIOD

Acadian National Holiday
Omission of Notification on Canadian Calendar.
Senator Comeau 994
Senator Boudreau 994

Human Resources Development
Growth of Employment Insurance Fund—Disbursement of Surplus Funds. Senator Stratton 994

PAGE

Senator Boudreau 994

The Economy
Influence of Provinces Governed by Progressive Conservative Party on Current Growth Trend. Senator Di Nino 995
Senator Boudreau 995

Finance
Accumulation of Surplus Funds—Influence of Goods and Services Tax and Free Trade. Senator Lynch-Staunton 996
Senator Boudreau 996
Senator Forrestall 996

United Nations
Kosovo—Resolution on Return of Serbian Force—Government Policy—Request for Answer. Senator Forrestall 996
Senator Boudreau 996

Canadian Broadcasting Corporation
Nova Scotia—Effect of Proposed Cutbacks on Employees in Halifax. Senator Oliver 996
Senator Boudreau 996

Transport
Proposed Increase in Number of Driving Hours for Truck Drivers.
Senator Spivak 996
Senator Boudreau 997

Business of the Senate
Senator Murray 997
Senator Milne 997
Senator Hays 998
Senator Lynch-Staunton 998

Intergovernmental Affairs
Visit of Premier of Quebec to France—Speech Outlining Provincial Government's Position on Referendum Clarity Bill—Government Position. Senator Kinsella 998
Senator Boudreau 999

Foreign Affairs
France—Possible Endorsement of Secession by Quebec—Government Position. Senator Kinsella 999
Senator Boudreau 999

Referendum Clarity Bill
Comments by Premier of Quebec During Visit to France.
Senator Kinsella 999
Senator Boudreau 999

Fisheries and Oceans
Ucluelet-Tofino, British Columbia—Request for Replacement of Leasehold Fish Licensing System. Senator Carney 999
Senator Boudreau 999

Delayed Answer to Oral Question
Senator Hays 1000

PAGE

Statistics Canada
Possibility of Lowering Threshold for Cities to Achieve Metropolitan Status.
Question by Senator Robertson.
Senator Hays (Delayed Answer) 1000

Business of the Senate
Senator Kinsella 1000
Senator Hays 1001

ORDERS OF THE DAY

Canada Business Corporations Act
Canada Cooperatives Act (Bill S-19)
Bill to Amend—Second Reading. Senator Tkachuk 1002
Senator Kirby 1004
Referred to Committee. 1004

Nisga'a Final Agreement Bill (Bill C-9)
Third Reading—Debate Continued. Senator Carney 1005
Senator Hays 1005
Senator Sibbeston 1005
Senator Kinsella 1006
Senator Tkachuk 1007
Senator Sparrow 1007
Senator Lynch-Staunton 1007
Senator Corbin 1007
Senator Cools 1007
Senator Prud‘homme 1008
Senator Mahovlich 1008

PAGE

Senator Finestone 1009
Senator Andreychuk 1011
Senator Grafstein 1012
Senator Murray 1014
Senator Joyal 1015
Senator Beaudoin 1017
Senator Gill 1018

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 Oliver 1020
Senator Hays 1022
Senator Poulin 1024
Senator Roche 1025
Senator Rivest 1027

Divorce Act (Bill S-12)
Bill to Amend—Second Reading—Debate Continued.
Senator Cools 1029

Business of the Senate
Senator Hays 1035

Ontario
Regional Restructuring Legislation—Refusal to Declare Ottawa Officially Bilingual—Inquiry—Debate Continued.
Senator Prud'homme 1035

Adjournment
Senator Hays 1036

If undelivered, return COVER ONLY to:
Public Works and Government Services Canada — Publishing
45 Sacré-Coeur Boulevard,
Hull, Québec, Canada K1A 0S9

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