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OFFICIAL REPORT
(HANSARD)

Monday, April 10, 2000

THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

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THE SENATE

Monday, April 10, 2000

The Senate met at 4:00 p.m., the Speaker in the Chair.

Prayers.

NEW SENATORS

The Hon. the Speaker: Honourable senators, I have the honour to inform the Senate that the Clerk has received certificates from the Registrar General of Canada showing that the following persons, respectively, have been summoned to the Senate:

John Edward Neil Wiebe
Thomas Benjamin Banks, O.C.

INTRODUCTION

The Hon. the Speaker having informed the Senate that there was a senator without, waiting to be introduced:

The following honourable senators were introduced; presented Her Majesty's writs of summons; took the oath prescribed by law, which was administered by the Clerk; and were seated:

Hon. John Edward Neil Wiebe, of Swift Current, Saskatchewan, introduced between Hon. J. Bernard Boudreau, P.C., and Hon. Joyce Fairbairn, P.C.

Hon. Thomas Benjamin Banks, O.C., of Edmonton, Alberta, introduced between Hon. J. Bernard Boudreau, P.C., and Hon. Nicholas W. Taylor.

The Hon. the Speaker informed the Senate that the honourable senators named above had made and subscribed the declaration of qualification required by the Constitution Act, 1867, in the presence of the Clerk of the Senate, the Commissioner appointed to receive and witness the said declaration.

• (1610)

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, it is with genuine pleasure that I welcome to this chamber our two new colleagues, Senators Jack Wiebe and Tommy Banks. Both have built careers that have made them very well known and admired in their respective fields.

Senator John Wiebe is very familiar with the rough and tumble of political life, particularly coming as he does from the province of Saskatchewan which has given the Senate some of its most illustrious members, past and present. Senator Wiebe was twice elected to the Saskatchewan Legislative Assembly in the 1970s, and, more recently, he has completed his term as Lieutenant Governor of the province. He is very familiar with public life.

He is equally familiar with the economic engine of Saskatchewan, namely, the agricultural industry. When he said that agriculture was something he had done all his life, he was not exaggerating. Senator Wiebe is a long-time farmer. He has been very involved with the cooperative movement and has served on the Main Center Wheat Pool Committee, the Herbert Credit Union, the Herbert Co-op, and the Saskatchewan Co-operative Advisory Board. From 1970 to 1986, he was owner and president of L&W Feeders Ltd.

His personal success, balanced with a strong commitment of public service to his province and to his community, has made Senator Wiebe sensitive to the aspirations and challenges of fellow citizens. As Premier Romanow said earlier this year:

> Jack Wiebe has a tremendous capacity to relate to the everyday issues and concerns of the people of this province.

It is this understanding and empathy, together with his undoubted expertise about agricultural matters in particular, that will make Senator Wiebe such a strong and welcome addition to this chamber.

Senator Banks has taken a less traditional route to the Senate but a route not any less interesting or worthy. The fact that he is popularly known as "Mr. Edmonton" tells us more about the man than a mere dissertation of honours he has garnered over the course of a long and rewarding musical career. This is not to say that a Gemini Award, a Juno Award, an officer of the Order of Canada, and an Honorary Diploma of Music from MacEwan College are not noteworthy in their own right. These are just a partial listing of the honours that have been bestowed upon our newest colleague.

The title of "Mr. Edmonton" is an indication of the popular acclaim and affection he enjoys in his home province and hometown.

Given that my background is law, I would be the last to suggest that there are too many lawyers in the Senate. However, with the arrival of Senator Banks, we add a new talent and a new perspective to our endeavors. A country is not held together by laws alone; it needs a culture, a soul. Senator Banks, Mr. Edmonton, has nurtured that soul of our country for more than 40 years and, in my view, it is high time that he take his place in this chamber, not only in his own right but also as a representative of a community that has brought so much enrichment and so much joy to Canadians.

To him, and to Senator Wiebe, I say: Welcome to the Senate. We all look forward to the addition that you will make to our work.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I am pleased to join with the Leader of the Government in welcoming our new colleagues on behalf of all senators of the P.C. caucus. There is little that I can add to what Senator Boudreau has already said. His was an excellent summary of the qualities and experience which the new senators bring to this place.

I wish to stress Senator Wiebe's familiarity with the western agricultural situation, which will be of particular value at a time when comparisons with the Depression are, sadly, not exaggerated. His colleagues from Saskatchewan on both sides, led by Senator Gustafson, have been giving western farmers the highest of priorities, and another knowledgeable voice at this time is more than welcome in the Senate.

Senator Boudreau, in outlining Senator Banks' background, neglected to mention, no doubt as an oversight, one of the highlights of his career. In 1983, our new colleague took out membership in the Progressive Conservative Party of Canada. This is not a day to indulge in too much partisanship, but I want to tell Senator Banks that if at any time he wants any help in renewing that membership, any one of us on this side would be more than willing to lend a hand.

• (1620)

I should like to say to both of our new colleagues: I wish you the very best and look forward to your participation as you assume your new responsibilities in the Senate.

Congratulations.

SENATORS' STATEMENTS

APOLOGY TO THE HONOURABLE RON GHITTER

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I should like to read to you a statement that will be published in the *Calgary Herald, The Calgary Sun* and *The Edmonton Journal* on Friday, April 14. It will be entitled, "Apology to Senator Ghitter from Rob Anders, M.P., and Ezra Levant."

> In September of 1998, we unfairly and inaccurately described the character, statements, commitment and work of Senator Ghitter in a fundraising letter circulated to 31,000 Albertans in connection with the Alberta Senatorial Election. The letter was prepared by Ezra Levant and signed by Rob Anders on behalf of the Reform Party of Alberta.
>
> The letter was insulting and demeaning of Senator Ghitter who has dedicated over 30 years of his life to public service both as an elected member of the Legislature of Alberta, a member of the Senate of Canada, a spokesman for minorities, and a volunteer in many capacities.
>
> On September 25, 1998, Senator Ghitter requested that we retract our statements and donate $2,500.00 to the Alberta Cancer Society. We refused to do so, and instead made further inaccurate and demeaning public statements about Senator Ghitter through various media outlets. On October 21, 1998, Senator Ghitter commenced a defamation action against us.
>
> Our attack on Senator Ghitter was unfounded and we now admit having defamed Senator Ghitter. We further acknowledge that some of our statements were based on facts that were false and on out of context interpretations.
>
> We regret preparing and sending the letter and wish to apologize to Senator Ghitter and his family for our lack of civility and our inappropriate actions and comments.
>
> Rob Anders, M.P.
> Ezra Levant

NATIONAL VOLUNTEER WEEK

Hon. Sharon Carstairs (Acting Deputy Leader of the Government): Honourable senators, National Volunteer Week is a special time set aside in April to honour the people who donate their time and energy to the benefit of their fellow citizens. It is also meant to raise awareness of the vital contribution volunteers make to our communities and to the identity and values of our country.

In the fall of 1997, more than 18,000 Canadians, aged 15 and over, were interviewed by Statistics Canada as a supplement to the national labour force survey. The National Survey of Giving, Volunteering and Participating found that almost one in three Canadians volunteer their time. Almost three in four Canadians help people directly by doing housework, driving someone to appointments, or providing some other assistance. Four in ten Canadians give money directly to people who live outside of their home.

Canadians gave more than $4.5 billion in donations in 1997, with an average donation of $239. Canadians spend an additional $1.28 billion on non-profit goods, raffle or lottery tickets, and charitable gambling.

I should like to pay tribute today to all Canadians who work to better their community through volunteering. In particular, though, I should like to pay special tribute to a volunteer from Calgary by the name of Margaret Newell. Margaret Newell is the Chair of the Prairie*action* Foundation. In partnership with donors, the Prairie*action* Foundation supports solutions to violence and abuse by sustaining RESOLVE and other Canadian charities seeking solutions to violence and abuse.

Margaret has worked tirelessly over the past three years to establish an endowment fund to provide long-term research funding to issues of family violence and violence against women. Through the work of Margaret and other volunteers with the Prairie*action* Foundation, the foundation has now raised $4.6 million of its $5-million goal.

I salute her and all volunteers who individually and collectively work to make Canada the very best country in the world in which to live.

YOUTH MANIFESTO

Hon. Mabel M. DeWare: Honourable senators, I was privileged to attend a special ceremony this morning. Here in this chamber, delegates from the World Parliament of Children presented to the Parliament of Canada — to Senator Molgat and Speaker Parent — a "Youth Manifesto for the 21st Century."

The Youth Manifesto was read to us this morning by young people from Canada, Australia, the Bahamas, Bulgaria, Burkina Faso, France, Kenya, Northern Ireland, Norway, the Republic of Korea, Russia and Sri Lanka. It is a compelling document, and I invite all honourable senators to read it for themselves.

The Youth Manifesto defines young people's expectations in terms of how they want the world to be in the century that has just begun. They envisage a world of peace, and that is very fitting because 2000 is the International Year for the Culture of Peace, and the International Decade for a Culture of Peace and Non-violence for Children of the World starts next year. They see affordable, universally accessible education as one of the keys to that world of peace, along with the fulfilment of the basic human needs, and solidarity, which they define as caring for others and respecting them. They point, as well, to the need to respect the environment, to promote culture, communication, and intercultural dialogue.

However, the Youth Manifesto does not just set forth a series of grand ideals — it also proposes some well-thought-out, concrete ways in which the people and governments of different countries can help make these expectations a reality.

The "Youth Manifesto for the 21st Century" resulted from the first World Parliament of Children, which was sponsored by the United Nations Educational, Scientific and Cultural Organization. It brought together 380 high school students from some 175 countries — I believe they were from age 12 to 16 — who met in Paris, France, last October. The Youth Manifesto was presented to UNESCO's General Conference on October 26, 1999. This year, it is being presented to all heads of state or government and to the speakers of Parliaments. Today, the Canadian Parliament had the honour of being the first Parliament in the world to receive the Youth Manifesto since it was presented to UNESCO.

It is clear that the young people from Canada and other countries who drafted the "Youth Manifesto for the 21st Century" are the leaders of tomorrow. I know that all honourable senators will join me in applauding their enthusiasm, insight and commitment.

To end, I should like to read to you a small passage that was written by Ralitza Houbanova, from Bulgaria. On her invitation to Canada, she wrote:

> Thank you from the whole of my heart for making this dream come true!!! You have just warmed a few passionate hearts beating strongly and impatiently to meet once again in a country called Canada under the protective "wing" of a maple leaf.

NATIONAL VOLUNTEER WEEK

Hon. Catherine S. Callbeck: Honourable senators, I, too, rise to highlight that this week, April 9 to 15, is National Volunteer Week.

It is interesting to note that National Volunteer Week was first proclaimed in 1943 by the Women's Voluntary Services, to draw the public's attention to the vital contribution women made to the war effort on the home front. From that day forward, it has grown in importance and now the third week in April is firmly established as the highlight of the year for paying tribute to Canada's volunteers.

It is important for this chamber to recognize volunteers during this week and throughout the year because of the essential contribution they make to the quality of life in our communities and in society as a whole. On that note, every year the Governor General honours volunteers with the Annual Caring Canadian Award. This award is given to individuals for their unpaid voluntary contributions, which most often take place behind the scenes and at the community level.

A number of the honourees this year — five to be exact — were from Prince Edward Island. I should like to recognize these individuals for their efforts and dedication to their community. They are Mr. Tom DeBlois, from Charlottetown, for his outstanding contributions to health care on the Island; Ms Helen Flora MacIsaac, from Souris, who organized the first door-to-door canvass in the Souris area for the Canadian Cancer Society and was a founding member of Literacy Canada; Ms Darlene Harper, Ms Cathy Carragher and Ms Gina Rankin, from Cornwall, who all spent a year planning, promoting and fundraising for the building of the Eliot River Dream Park, a place for children to play.

• (1630)

The work accomplished by these five individuals is an excellent example of the type of work being conducted in this country and of the impact an individual can make on the lives of others.

With volunteerism on the rise among all age groups, in fact doubling among those between the ages of 15 to 24, I am confident that the future is in good hands.

[*Translation*]

ROUTINE PROCEEDINGS

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

EIGHTH REPORT OF COMMITTEE PRESENTED

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

Monday, April 10, 2000

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

EIGHTH REPORT

Your Committee wishes to inform the Senate that an action plan on Accessibility for Persons with Disabilities has been adopted. This action plan, which was established in close co-operation with representatives of the disabled community, includes the following achievements to date:

i) On December 2, 1999, a *Senator's Guide to Disability* was tabled in the Senate;

ii) A draft *Trainer's Guide* was developed aimed at complementing the Senator's Guide to Disability*;*

iii) A Co-ordination Office was created to implement the action plan and to ensure the continuity of this project;

iv) On February 24, 2000, the Honourable Senator Carstairs and the Honourable Senator Robertson presented to the Committee on Internal Economy, Budgets and Administration the *Senate Action Plan on Accessibility for Persons with Disabilities*, which was subsequently approved by the Committee;

v) On March 30, 2000, an Information Kit was released, which included not only the *Senator's Guide to Disability* but also the 12 point and 16 point printed versions of the Senate Action Plan plus an audio tape and CD versions of this action plan; and

vi) Your Committee is in the process of developing a Braille version, which will be available by mid-April 2000 and will be included in the Information Kit.

Your Committee is proposing the following initiatives be implemented during the fiscal year 2000-2001:

vii) A Disability Information Kit will be finalized and sent at large by the Speaker to provincial Legislative Assemblies in addition to all our Commonwealth counterparts, inviting them to highlight their respective initiatives taken towards disabled persons;

viii) A Senate Disability Guide for staff will be developed;

ix) A series of training sessions on disability issues for managers and staff will be developed and conducted;

x) A proactive access to the Senate Internet will be also developed; and

xi) Accessibility issues will be incorporated with the Senate Intranet.

Your Committee wishes to thank Senators Carstairs and Robertson for their work on this project and recommends the adoption of this report by the Senate.

Respectfully submitted,

PIERRE CLAUDE NOLIN
Deputy Chair

The Hon. the Speaker: When shall this report be taken into consideration?

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

[*English*]

A BILL TO CHANGE THE NAME OF CERTAIN ELECTORAL DISTRICTS

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-473, to change the names of certain electoral districts.

Bill read first time.

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

On motion of Senator Carstairs, bill placed on the Orders of the Day for second reading on Wednesday next, April 12, 2000.

[*Translation*]

TRANSPORT AND COMMUNICATIONS

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

Hon. Lise Bacon: Honourable senators, I give notice that on Tuesday, April 11, 2000, I will move:

That the Standing Senate Committee on Transport and Communications have power to sit at 5:30 p.m. on Wednesday, April 12, 2000, for its study of Bill S-17, respecting Marine Liability, and to validate certain bylaws and regulations, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

[*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

NOTICE OF MOTION TO INSTRUCT COMMITTEE TO AMEND

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I give notice that tomorrow, Tuesday, April 11, 2000, I will move:

That upon committal of Bill C-20 to committee, the committee be instructed to amend Bill C-20 to rank the Senate of Canada as an equal partner with the House of Commons, and report back accordingly.

QUESTION PERIOD

PUBLIC WORKS AND GOVERNMENT SERVICES

ALLEGED INVOLVEMENT OF PRIME MINISTER'S OFFICE IN PURCHASE OF PROPERTY IN HULL, QUEBEC

Hon. Marjory LeBreton: Honourable senators, last Friday, in the *National Post*, there was a very interesting story involving the Prime Minister's Office; the Prime Minister's chief of staff; several ministers of the Crown; the head of the Prime Minister's election strategy group, Mr. John Rae; and an Ottawa lobbyist and personal friend and golf buddy of the Prime Minister, Mr. Hugh Riopelle. The article reported on the efforts of those people to ensure that the government purchase an office building in Hull from a well-known Liberal businessman, Pierre Bourque, Sr.

As I mentioned last week, there appeared to be a great deal of activity going on behind the scenes on Mr. Bourque's behalf. It is reported that Mr. Bourque, who contributed a "substantial sum" of money to Mr. Chretien's 1990 leadership campaign, has fallen on hard times and has said he needs to make $8.3 million on the sale of the Louis St. Laurent building in Hull in order to get out of debt.

It is of particular interest that in February Mr. Bourque met with Mr. John Rae, the head of Mr. Chrétien's election strategy committee, who is reported to have said:

> I have known him for a long time. We are not intimate friends at all.... It is not a secret that he has had some financial difficulties and I did give him some assistance.

Why would one of the Prime Minister's closest confidants give money to Mr. Bourque in the midst of negotiations regarding the sale of a building in Hull? How much money was involved and what could possibly be the reason behind this? Are we to assume that Mr. Rae is involved in the negotiations for the sale of the building?

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, neither I nor anyone occupying my office would be in a position to respond to some of the honourable senator's questions. I can make no judgment upon what Mr. Rae's relationship may have been with any individual. I can only say that I am not aware of any representations made by Mr. Rae on behalf of the individual in question. I believe that the decision to which the honourable senator refers was not made by the government. In fact, that decision has not been made. Therefore, I am not sure in what manner the honourable senator feels it is important for a representative of government to comment on the matter.

Senator LeBreton: Honourable senators, I did not say the decision was made by the government. I said that there was pressure put on the government.

Honourable senators, the same story states that several ministers resisted pressures from the Prime Minister's Office, Minister Gagliano, and the Prime Minister's lobbyist friend to go along with this deal but that several did go along with it, including the Minister of Justice, the Solicitor General of Canada and the Leader of the Government in the Senate. Is this true? Did the Leader of the Government in the Senate agree to support this? Can he explain why there is so much interest in solving Mr. Bourque's financial difficulties?

Senator Boudreau: Honourable senators, I believe that the deliberations referred to in that article were deliberations of the Treasury Board, which is a committee of cabinet. All such discussions remain confidential regardless of speculation about what was said and who supported which measure. It has always been the case, and I hope always will be, that those discussions remain confidential.

I can, however, tell the honourable senator two things. First, with regard to the suggestion that John Rae exerted pressure, he exerted no pressure on myself. Second, a decision was not taken by Treasury Board.

Senator LeBreton: Honourable senators, are we missing something here? Why would Mr. John Rae, one of the Prime Minister's closest confidants, intervene to assist Mr. Bourque financially? Why are people consumed with resolving the financial difficulties of Mr. Bourque? Why would someone in Mr. Rae's position be involved? What is going on here?

Senator Boudreau: Honourable senators, I have no idea why Mr. Rae or anyone else might support an individual. I can only say, as a person involved in the Treasury Board committee, that there were no representations made to me or, to my knowledge, anyone else. I must qualify that by saying that I can speak only of my own knowledge. There were no representations made to me by Mr. Rae on behalf of that individual. The decision speaks for itself.

Hon. Pierre Claude Nolin: Honourable senators, apart from the discussion that the Leader of the Government in the Senate had at the committee of Treasury Board, what is his personal knowledge of the status of that building in Hull? What does he know about that story?

• (1640)

Senator Boudreau: Honourable senators, any knowledge I have of the status of the building would have come from discussions within Treasury Board. I have no knowledge of it otherwise, so I cannot make any further comment.

Senator Nolin: Has the honourable senator met with Mr. Bourque or any of his representatives?

Senator Boudreau: I have never met with Mr. Bourque. I would not know him if he walked into the room.

Senator Nolin: Has the honourable senator met, been called or been contacted by any of his representatives?

Senator Boudreau: No.

Senator LeBreton: Honourable senators, I have another supplementary question.

Did the Prime Minister's Chief of Staff, Mr. Pelletier, or Mr. Hugh Riopelle lobby Minister Boudreau on behalf of Mr. Bourque?

Senator Boudreau: I was not lobbied by anyone. I do not know the first individual you mentioned — Mr. Riopelle?

Senator LeBreton: Mr. Pelletier?

Senator Boudreau: I do know Mr. Pelletier, but no one lobbied me on behalf of Mr. Bourque. Discussions take place within cabinet committees, as one might expect, and they remain confidential. I can only come back to the fundamental point, once again, that whatever the suggestions might be by some, a decision was clearly taken by the Treasury Board.

ORDERS OF THE DAY

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. Gerald J. Comeau: Honourable senators, over the years I have had a keen interest in fisheries issues. This is because I have seen first-hand the profound impact that government actions can have on the lives of people of resource-dependent communities. These are my neighbours and my friends.

What some may view as simple bureaucratic decisions can sometimes make or break communities and permanently alter the way of life of generations of families. Decisions made in far-away Ottawa — quota controls, licensing, regulations, allocations of stocks — are not abstract actions. They can profoundly impact the lives, well-being and futures of countless families.

Urban-based parliamentarians, who make up the majority of federal parliamentarians, may be amazed at the magnitude of even the most simple changes of the rules. For this reason, I review all bills that refer to fisheries. It was with this in mind that I initially reviewed the Nisga'a treaty, the basis of Bill C-9. I had no axe to grind. The Nass River Valley is far away from my home province. Who am I to question the need to solve a long-standing conflict to do right by the Nisga'a nation?

Furthermore, it is evident that the Nisga'a have a historical attachment to the fisheries resource of the Nass Valley. It is only fair that they should be assured of continued access.

My reading, therefore, was simply to review the means — the instrument — by which the government would accomplish the allocation. I had also heard the suggestion that we should trust our government and pass the bill quickly. On the other hand, I subscribe to the old Arab saying, which goes something like this: "In God we trust...but it is still a good idea to tie your camel."

Honourable senators, I wanted to ensure that we did not create a precedent we might later regret. I must admit that I was also somewhat concerned that Minister Bob Nault was directing this file. I had witnessed the insensitive conduct of the minister following the Supreme Court *Marshall* decision in Atlantic Canada.

Without getting into the subject or the controversy surrounding the Supreme Court decision in Atlantic Canada, suffice it to say that there was a great deal of emotion immediately following the decision. While Atlantic Canadians were reeling in shock following the initial Supreme Court decision and while emotions were highest and concerns were the greatest, when calm and reason were required, Minister Nault was running around Atlantic Canada provocatively proclaiming that nothing was safe any more for the people who, for centuries, had depended on the resource of the land and the sea for their livelihood. Everything was up for grabs, according to Mr. Nault: provincial Crown forests and mines, fish, blueberries, mineral resources, natural gas, oil and hunting. He announced that the Supreme Court ruling would bolster treaty claims to national resources right across the country.

Few in Atlantic Canada will soon forget Minister Nault on prime time television during this explosive time, on a visit to an aboriginal community in Nova Scotia, symbolically feasting on lobsters like a modern-day Henry VIII, with Atlantic Canadians feeling like Anne Boleyn.

Minister Dhaliwal, to his credit — and God bless him — kept a low profile and allowed the shock to set in before he added his calm, soothing voice to settle the troubled waters, if you will allow me that metaphor. Minister Nault, therefore, did not inspire confidence to trust his judgment.

Honourable senators should be aware that the Crown and Parliament do not own the resources in tidal waters. The fish are owned by the public. It is a common property resource. The federal government is the steward of those fish. Therefore, it has no right to give that resource away as it sees fit.

I should like to cite once again, as I have done before in this chamber, former chief justice of the Supreme Court of Canada Antonio Lamer:

> It has been unquestioned law that since Magna Carta no new exclusive fishery could be created by Royal grant in tidal waters, and that no public right of fishing in such waters, then existing, can be taken away without competent legislation.

I refer to *R. v. Gladstone*, a decision of the Supreme Court of Canada on August 21, 1996.

The *Gladstone* decision went on to state:

> ...it was surely not intended that, by the enactment of s. 35(1), those common law rights would be extinguished in cases where an aboriginal right to harvest fish commercially existed.

Others interpret this Canadian position in the same way. I should like to refer to the journals of Maritime Law Association of Australia and New Zealand, which refers directly to the subject:

> In Canada, claims to exclusive fisheries have also met with equal lack of success.

I should note that section 7 of the Fisheries Act allows the cabinet to seek the consent of Parliament for legislative authority to reserve exclusive fisheries allocations.

As far as I have been able to determine, no such legislative authority has ever been requested in Canadian history. There has never been a request to create an exclusive fisheries allocation which would exclude other Canadians access. The Nisga'a agreement, therefore, is a historic precedent.

Disregarding for the moment the merits of the fish allocation to the Nisga'a — and I do not dispute the noble goal of providing access to the Nisga'a — senators should be aware that chapter 8 of the Nisga'a treaty reserves a permanent allocation of 17 per cent of the Nass River total allowable catch of salmon to Nisga'a citizens. Furthermore, paragraph 2 of chapter 8 provides that the allocation becomes a section 35 protected treaty right and, significantly, paragraph 71 of chapter 8 establishes paramountcy of the Nisga'a nation over this fishery. Other senators will be speaking on the subject of paramountcy in much more eloquent terms than I could.

Notwithstanding Justice Lamer's straightforward comments on the subject of exclusive allocations, an obscure Justice lawyer appeared before the committee to announce that an allocation of fish to the Nisga'a was not an exclusive fishery in the legal sense because the remaining stocks were open to others.

> The fact that those rights apply only to the Nisga'a would not, in law, amount to creating an exclusive fishery because it simply does not deny the public right of access to the fishery as well.

With no parliamentary reflection or public consultation, this obscure Justice lawyer therefore establishes historic exclusive fisheries parameters which may significantly and forever impact the lives of thousands of coastal residents. Minister Nault and Senator Austin repeat this flawed reasoning to justify their claim that this is not an exclusive allocation. They propose that all of the following conditions would have to be met in order for it to be an exclusive fishery in the legal sense contemplated by the Magna Carta: the resource in the water would have to be the "private property right" of the owner; 100 per cent of the fish would have to be the exclusive property of the owner; the exclusive owner would have the right to close off any part of the river to prevent others from fishing under ordinary law and to prevent navigation over the waters; the owner would have the exclusive rights to sell the resource; and the minister's duty to conserve the resources and set the TAC would be taken away. Pardon the nautical pun, but this is a red herring.

An exclusive fishery is created when a specific percentage of a fish stock is permanently reserved for the exclusive benefit of a particular group of people.

• (1650)

It is exclusive because others are forever denied the allocation and are forever denied the right to join that group. The exclusiveness arises from the fact that certain categories of Canadians are excluded from ever having access to the particular allocation. This is not rocket science.

Chapter 8, page 103 of the agreement refers to Nisga'a fish entitlements which are held by the Nisga'a nation. I invite Senator Austin to look up the words "entitlement" and "exclusive" in any dictionary. Regardless of how one wishes to define the allocation, there is a specific allocation of 17 per cent reserved for the exclusive benefit of the Nisga'a.

I wish to point out another significant precedent. Issue Paper 16, page 16, number 4 states:

> The Nisga'a Final Agreement provides a process for establishing allocations for non-salmon species after the effective date of the final agreement and provides criteria on which these allocations will be based....Crab, halibut, prawns and shrimp, herring and kelp have been identified as species for which allocations will be set, once the appropriate harvest and biological studies are compiled.

Parliament gives the power to cabinet over future allocations of other species — not only present ones but also future ones. In other words, Parliament is saying to the cabinet, "Here is a blank cheque — by the way, with our signature on non-salmon stocks. Do with it as you see fit. We trust you. Go ahead." Do we really want to create a regime whereby we say to cabinet, "Take the fish resources," which are not ours to give, "give it as you see fit and place it under section 35 protection so that we can never again reconsider our decision"? I ask honourable senators to reflect on the fact that this agreement is forever out of the reach of parliamentarians.

I also invite honourable senators to review the amendment provisions on page 23 of the agreement. I refer to section 37, which states:

> Canada will give consent to an amendment to this Agreement by order of the Governor in Council.

That, of course, is the cabinet.

Section 38 states:

> British Columbia will give consent to an amendment to this Agreement by resolution of the Legislature of British Columbia.

What I find interesting is that the judgment of B.C. legislators is trusted to approve amendments in the future but federal parliamentarians cannot be trusted to give their assent to future amendments. What else is new? The government has shown, in the clarity bill, that it does not trust our judgment on the breakup of the country. Why should it trust our judgment on treaties?

The legislation to implement the Nisga'a treaty cannot be amended by Parliament after it is passed. It permanently removes the 17 per cent Nass River stock and all non-salmon stocks from parliamentary jurisdiction and transfers this authority to the cabinet forever. The cabinet will then assume the legislative power to sign amendments to the treaty. I invite senators to cite any instances or precedents whereby Parliament has permanently abdicated such parliamentary responsibility. Given that Parliament is permanently abdicating all such legislative authority and responsibility over the salmon stock to the cabinet, is abdication of legislative power to the executive not a constitutional amendment?

I suggest that we do not have the legislative authority to remove forever the public right to fish allocation by placing it under section 35 protection. We cannot abdicate forever our responsibility and jurisdiction of stewardship over this common property resource.

Honourable senators will know that Minister Nault has been appointed lead minister to settle the questions on East Coast native long-term allocations. I must admit to the fear that Minister Nault may be tempted to apply this new-found allocation scheme to East Coast fisheries to settle native demands for access. The danger is that the Nisga'a salmon allocation will become the precedent or model for the government to solve the East Coast lobster dispute created by *Marshall*. This is even more alarming considering the fact that Minister Nault is the advocate of aboriginals in cabinet.

I remind honourable senators that the government is of the view that this is not an exclusive fishery and that it is quite normal for government to allocate exclusive fish resources to groups and remove the legislative responsibility of parliamentarians over these stocks. When I expressed these concerns to Senator Austin in this chamber the week before last week, the senator responded that this was a political decision and that he did not wish to discuss the extension of this policy. Indeed, if this is now the policy of this government, I fear that there may not be a future for Atlantic Canada's existing fishing communities.

What stops this government or future governments from creating these entitlements with respect to other West Coast salmon stocks, East Coast lobsters, snow crab, tuna, scallops and groundfish?

When asked whether the government had sought legal advice regarding this fish allocation, other than from the Justice Department, Minister Nault admitted that the government had not hired someone specifically outside of the Department of Justice. In fact, the only name provided was Senator Beaudoin, my esteemed colleague to my right. Senator Beaudoin informs me that he was not asked for, nor did he provide, legal or constitutional advice on this particular subject.

Parliament is here to keep a check over government decisions. We should not squander our parliamentary oversight responsibility. We should not place blind trust in cabinet. The Prime Minister, as the situation is now, has too much power, along with his PMO staff. It is not in our interest to hand over our parliamentary responsibility to the Prime Minister. The cause may be right but the means to an end may not be worth the price.

I invite all honourable senators to reflect carefully on the ramifications of this precedent, and I call on colleagues from resource-based regions especially to consider very carefully whether they wish to set this precedent, thereby providing to this minister and to future Indian affairs ministers the means to constitutionalize fisheries allocations in perpetuity.

On motion of Senator Carstairs, for Senator Christensen, debate adjourned.

CANADIAN INSTITUTES OF HEALTH RESEARCH BILL

THIRD READING

Hon. Sharon Carstairs (Acting Deputy Leader of the Government) moved the third reading of Bill C-13, to establish the Canadian Institutes of Health Research, to repeal the Medical Research Council Act and to make consequential amendments to other Acts.

Motion agreed to and bill read third time and passed.

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. Gérald-A. Beaudoin: Honourable senators, our Constitution of 1867 is silent on the secession of a province. We have had, of course, full powers of amendment since 1982, and a secession may take place by a constitutional amendment. Any provision or clause of the Constitution may be amended. Our Constitution is also silent on the referendum. Parliament and the provinces may adopt legislation on referenda. A referendum is facultative in our system.

A reference was made to the Supreme Court in 1996 to know whether a province may declare its independence unilaterally according to the Constitution or according to international law. The court said no in both cases. The court added that, with a clear question in a referendum and a clear result, there was a constitutional obligation for the federal authority and the other provinces to negotiate secession in the respect of great principles of our parliamentary democracy, like constitutionalism and the rule of law, federalism, democracy and respect for minority rights.

It is up to the "political actors," said the court in the reference, to negotiate. Negotiations may be made by an executive declaration, as has been the case for a century, or by legislation. I was a bit surprised when I realized that the government was using the legislative way, the legislative path. It is probably more impressive but it is certainly much less flexible.

• (1700)

The Supreme Court in its advisory opinion declared expressly that the negotiations after a referendum on secession were to take place in the political arena, and that the court would have no supervisory role over those negotiations.

[*Translation*]

The clarity bill stipulates that it is up to the House of Commons, and only the House of Commons, to determine the clarity of the question and of the outcome of the referendum and to order the government to negotiate or not. The Senate has nothing more than an advisory role in this respect.

According to Bill C-20, the House of Commons shall, within thirty days after the tabling of the question in the legislative assembly of the province in question, determine the clarity of the question. This decision is made via resolution. The question must deal only with secession, not a mandate to negotiate or offer other possibilities — partnership, economic or political association — which would lend ambiguity to the expression of the will of the population of the province concerned.

Similarly, the House of Commons determines whether a clear majority of the population concerned has clearly voted in favour of secession. In this connection, the House of Commons must take the following factors into account: the size of the majority of valid votes cast in favour of the secessionist option, the percentage of eligible voters voting in the referendum, and any other factor it considers relevant.

In both cases — clarity of question and majority — the House of Commons must take into account the views of all political parties represented in the legislative assembly of the province concerned, those of other provincial or territorial governments, those of the aboriginal peoples, and those of the Senate. If the House of Commons decides the question is not clear, or the majority is not clear, the Government of Canada will not be allowed to enter into negotiations with the province concerned.

[*English*]

We must say here that, as a parliamentary democracy, Canada is obliged to follow certain rules. The legislative power is provided for, described and defined in the Constitution. Furthermore, many constitutional conventions, like responsible government and the vote of confidence, are in great part unwritten, but they are part of the Constitution. The Constitution is composed of three elements: the fundamental texts, the court cases and the conventions of the Constitution.

In our federation, the powers are divided between two orders of government mainly by sections 91 to 95 of the Constitution. Some powers are exclusive; a few are concurrent.

As a democracy, Canada includes an executive power, a legislative power and a judicial power that has the control of the constitutionality of laws. What is supreme in our country is the Constitution. It is stated clearly in the Constitution Act of 1982 that the supreme law of the land is the Constitution.

Bill C-20 also provides that, at the end of the negotiations to operate a secession, it is necessary to adopt a constitutional amendment. We have had five formulae of amendment since 1982. The court was not invited to say which formula is applicable in case of secession. Is it the unanimous formula, or the 7-50 formula — that is, Ottawa and seven provinces regrouping 50 per cent of the population? Bill C-20 does not deal with that subject either and jurists are divided.

[*Translation*]

Negotiations with respect to the terms of secession would address the following elements, among others: the debt, the boundaries of the seceding province, the rights, interests and territorial claims of aboriginal peoples, and the protection of minority rights.

Bill C-20 has come about as a result of the advisory opinion of the Supreme Court of Canada in the reference concerning the secession of Quebec. In fact, the bill's provisions refer to the relevant passages of the reference. Bill C-20 does not dictate the referendum question — indeed the question is the business of the provincial legislature alone. Nonetheless, Bill C-20 stipulates that, in such a case, the question must address one thing only — secession.

Nor does Bill C-20 set any threshold below which there would not be a clear majority. It will be up to the House of Commons to determine whether the majority is clear after the results of the referendum are known.

The purpose of Bill C-20 is to set out the conditions under which the Government of Canada would be permitted to enter into negotiations with respect to the terms of secession of a province.

There are three aspects of the bill that I think are open to criticism. First, the role of the House of Commons in examining the clarity of the referendum question and determining whether the question is clear bears a strange resemblance to that of a court determining the rights of the parties.

[*English*]

Is this respectful of the spirit of federalism? In a federal state, the two orders of government are equal and sovereign in their respective spheres and, as I have already said, it is the Constitution that is supreme.

[*Translation*]

In my view, Bill C-20 would benefit from an amendment to change the notion of determining to that of declaring. This would be fairer and more respectful of the federalism which the Supreme Court has said is the overriding characteristic of our country.

Second, as for the Senate, and this is a basic point, Bill C-20 assigns it the marginal role of being consulted after the House of Commons has taken its decision. This runs counter to the legislative equality of the two houses.

[*English*]

The Senate is a legislative chamber like the House of Commons. Parliament is composed of two houses at the federal level. For legislation, the two houses are equal. They have the same powers, except in three areas: one, there is no vote of confidence in the Senate; two, a money bill shall originate in the House of Commons; and three, the Senate has only a suspensive veto in the case of a constitutional amendment.

However, we are not concerned here with a vote of confidence, with a money bill or with a constitutional amendment. We are concerned with a statute.

[*Translation*]

• (1710)

As the house of sober second thought, the Senate cannot be relegated to the role of a puppet or that of a lobby, as some have said, regarding the secession of a province from Canada. The Senate, which has done an excellent job of improving legislation over the years, must be able to play its role and express its opinion, through a resolution, on the clarity of the referendum question and results, just like the House of Commons. This is based on the fundamental principles of our parliamentary democracy.

Some have claimed that Bill C-20 does not confer legislative power to the House of Commons. In their opinion, the role given to the House under Bill C-20 is close to that of a vote of confidence. I do not agree with that view. Bill C-20 leaves intact the notion of vote of confidence. It does not even touch on it, and this is fine. Of course, the vote of confidence only exists in the House of Commons. It has been part of our constitutional conventions since 1847, if not 1846. However, by giving legislative power to only one house, our Parliament is going against the legislative equality of the two federal houses.

When the House of Commons adopts a resolution, it is a legislative measure because the power to adopt that resolution comes from a legislative act. It comes directly from Bill C-20. It is the very exercise of that legislative power. In the 1992 *Sinclair* case, the Supreme Court of Canada ruled that an order in council — which, as we know, is from the executive branch — is part of the legislative process. In that case, it was section 133 of the Constitution. So, if an Order in Council is part of the legislative process, this is all the more true of a resolution. If we apply that principle to Bill C-20, we cannot break down the legislative process and exclude the Senate on the pretence that the resolution is not a legislative act. On the contrary, the adoption of a resolution is part of the legislative process. There is no valid reason to prevent our Senate from fully playing its role of equal legislative house. In my opinion, Bill C-20 should be amended accordingly.

I repeat, some will say that, when it comes to constitutional issues, the two Houses are not equal. It is true that the Senate only has a suspensive veto. This is an important point, but it was done through a constitutional amendment. It was not done through a simple act. By not putting the Senate on the same footing as the House of Commons, we are directly interfering with the legislative process of the parliamentary system that is part of the Canadian constitution.

[*English*]

If our Senate accepts its exclusion and if Bill C-20 is adopted as it is, it means that further federal statutes may follow the same pattern and, after a while, the powers of the Senate will be considerably reduced.

Honourable senators, why should we accept such an erosion? The pith and substance of Bill C-20 is to define the conditions under which the Government of Canada would negotiate the terms of the secession of a province from Canada.

I am in favour of clarity. This has always been my goal. If ever we have a third referendum in Quebec, I certainly would like to have a clear question.

[*Translation*]

Unfortunately, the question will probably never be clear, and this is my third point. According to Bill C-20 there will never be negotiations, because any discretion in such a case has been ruled out, and so a province could become independent illegally. In its opinion, the Supreme Court saw this clearly at paragraph 155 of the reference. Independence may come about illegally, indirectly, if I can put it that way, and based on international recognition.

It is at this point that I think we realize how much better it is to negotiate by making statements and taking positions than it is by making laws. Laws may impress, but they are not flexible.

I must say in closing that I have always preferred Plan A to Plan B for one very simple reason. Plan A offers hope. I hope that we will come back to it. Can we imagine, we who were born and have lived in the 20th century, a century that witnessed many divisions, what it would mean for our country to be divided up? Plan A is based on a common thread. Since the Quebec Act of 1774, our ancestors have fought for our language, our culture and our laws, with a strong majority of us retaining our attachment to Canada.

We are at second reading. I imagine that this bill must be sent to committee for a thorough examination with experts. Never in its history has the Senate had such a fine opportunity to justify and illustrate its existence and its vital role in the Canadian parliamentary system.

[*English*]

In a few words, I refuse to accept an erosion of our powers. We are criticized from time to time, but we shall keep our powers intact. This may be our finest hour.

[*Translation*]

Hon. Roch Bolduc: Honourable senators, my first reaction when the bill was introduced was to think that if one quarter of an entity decides that it wishes to separate, it is not unreasonable for the other three quarters to indicate their interest in the question. In this sense, it seems to me reasonable that the federal government should express interest in this political question, which has been a recurring issue for 30 years in Canada.

However, is this the right way to go about it? I listened to the speakers during debate at second reading, particularly those from the opposition. Without underestimating what the honourable senators opposite said, I would congratulate Senator Lynch-Staunton on his speech, which covers almost all the reasons for opposing this bill.

I agree with Senator Beaudoin when he says that the legislative approach is probably not the best. If we wished to express the view of the federal government on the question, we would do better to do so by resolution. I will not debate the role of the Senate — that is a constitutional issue. This is something I studied 30 years ago in university, under the guidance of the distinguished Mr. Justice Pigeon.

I would like to give a more practical view. Was the best way for the federal government to clarify this issue to ask the Supreme Court to establish the conditions essential to the validity of the process?

• (1720)

I do not agree with having the federal government make such a request of the Supreme Court, because this results in judges being turned into politicians and mediators, to all intents and purposes. The Supreme Court told the federal government what it should do, that if the question was clear, it would have to negotiate.

The federal government should not involve the Supreme Court in this political problem, which can only be resolved through people talking to one another. The Supreme Court therefore finds itself in the role of mediator and, in this regard, I quote Patrick Monahan:

[*English*]

> True, the Court in the *Secession Reference* may have been acting as politicians rather than as judges in formulating a duty to negotiate secession that applies following a "clear majority on a clear question."

[*Translation*]

The courts have become somewhat activist — depending on the period — and we have only to take the example of the U.S. Supreme Court, which has had some pretty activist periods in its history. Earl Warren, the former Republican governor of California and an Eisenhower appointee to the Supreme Court, became more of an activist than all of the American Left.

I do not wish to pass judgment on our court. I wish to be as diplomatic as possible, but there is a danger of activism hovering over us here. There is a question that arises, and again I quote Patrick Monahan:

[*English*]

> ...why any democratic society with properly functioning political institutions would turn over these most fundamental questions to the judiciary for resolution. Courts exist to resolve the legal aspects of disputes, not to opine on purely political matters such as the wording of referendum questions or the majority that should be required before initiating sovereignty negotiations. We expect democratically elected and accountable politicians to resolve such political matters, not unelected judges.

[*Translation*]

I must admit to my prejudices; I share that view 100 per cent. I believe — and this is a bit off the topic of the debate, but I am nonetheless going to say what I think — the Charter of Human Rights has become like scripture. Any time there is a problem where the underlying values of society are really being debated, whether this involves abortion, marriage, homosexuality or some other issue, it is no longer the politicians who decide the matter; it is the judges.

There must be something missing in our society for things to be like this. If we cannot reach agreement, let us not talk about it, or let us continue to talk about it until we are fed up, but let us not leave it up to the Supreme Court to decide the most basic of questions.

That is what has happened in the United States. This is shown in Robert H. Bork's *The Tempting of America: The Political Seduction of the Law.* This is a great book, which will show you the real role of the courts. It is a matter for concern in a democracy if the court decides the most fundamental of matters, that is to say those which are the most political, by definition.

Honourable senators, my feelings on this bill are ambivalent, but having listened to Senator Rivest's speech, my conclusion is that I will not be able to vote in favour of this bill, for it will accomplish nothing. The National Assembly will ask what it wants to ask, there will be a result, and the federal government will decide what it wants to do. I trust that the bill we have here will not be any obstacle to that.

On motion of Senator Carstairs, for Senator Pitfield, debate adjourned.

[*English*]

PAYMENTS IN LIEU OF TAXES BILL

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Moore, seconded by the Honourable Senator Kenny, for the second reading of Bill C-10, to amend the Municipal Grants Act.

Hon. Normand Grimard: Honourable senators, Bill C-10 makes several changes to the Municipal Grants Act, the legislation that allows the federal government to pay grants rather than property taxes to towns and cities where it owns property. While there are a few problem areas, on the whole this is a good bill.

The changes cover two general areas. First, there is a series of mainly technical changes in the bill's scope and language.

[*Translation*]

Honourable senators, as someone who has practised law in Quebec for many years, I welcomed the decision to include the expression "real property" where the word "immovables" is used.

Following that change, "federal property" for which payments are made in lieu of taxes will now include an outdoor swimming pool, a golf course improvement, an outdoor theatre, a driveway for a single-family dwelling and improvements made to parking areas for employees.

While these are minor additions, they provide a more accurate reflection of reality. If I must pay property taxes that vary according to the quality of my driveway, why should it not be the case for the government?

Bill C-10 allows the government to make payments to First Nations administrations when a reserve is a taxing authority.

Moreover, the minister may, at his discretion, make additional payments when payments are delayed, and this is something that will please many people. The minister may also authorize payments when the tenants of federal properties are in default regarding the payment of their property taxes.

Honourable senators, under the Canadian Constitution, the federal government does not have to pay property taxes to municipalities. However, it makes payments that help pay for services provided by the municipalities on federal properties.

Bill C-10 even amends the title of the Municipal Grants Act, which will become the Payments in Lieu of Taxes Act.

[*English*]

One of the technical amendments is a goodwill clause expressing the government's intention to make fair and equitable payments in lieu of taxes. Please note that I say "intention". The government has no obligation to pay property taxes. Perhaps in committee the minister can tell us whether the government has ever considered starting to treat these payments, not as a matter of goodwill — something that it does to be a good property owner, but as an obligation to pay taxes, in much the same way as you, I, or any other property owner in any other city must pay taxes.

[*Translation*]

Honourable senators, the second part of this bill provides for the establishment of an advisory panel to advise the minister in the event of a dispute over the amount of payment due municipalities.

This is the measure needed to give official stature to the practice of consulting experts. It should be noted, however, that the government is in no way obliged to accept the advice of the panel.

Although it does not happen often, sometimes disagreement can arise on the evaluation of a property. At the moment, there are outstanding disputes in Alberta, Nova Scotia and New Brunswick.

The members of the advisory panel will be paid only when they are performing panel duties. The panel may draw on a fairly large number of members, including at least two from each province and territory.

The chairperson may establish divisions within the panel to perform all or some of the functions of the panel, but Bill C-10 provides no information on the size of these divisions.

[*English*]

Nothing in the bill compels the minister to accept the panel's advice. Could you imagine any other kind of tribunal where the respondent did not have to accept the tribunal's decision? Under the legislation, as first introduced, the panel members were to be appointed by the minister to serve at pleasure. "At pleasure" means that if you do not please the minister, the minister can get rid of you at any time. Normally, if you want your panel members to be independent, you appoint them to serve during good behaviour.

[*Translation*]

Consultants whose opinion is sought to clarify technical matters in property assessments should not have to worry about their professional futures each time they provide an opinion that risks displeasing the minister.

The operations of the advisory panel should bear the imprint of fairness, from the standpoints of both the federal government and the municipalities.

My colleague in caucus who sits in the other House, Gilles Bernier, was concerned that the members were appointed during pleasure. I am happy to learn that the government agreed to Mr. Bernier's amendment that the appointments to the committee be in fact during good behaviour.

In the bill as it was tabled, the appointment of the members and the Chairperson were the responsibility of the minister. Can you imagine a legal system in which the accused freely chose the judge and jury? There would be few convictions!

The government accordingly approved another amendment proposed by Mr. Bernier to the effect that appointments will be made by the Governor in Council rather than the minister.

Nothing compels the government to accept the panel's recommendations, but this advice will at least have the advantage of being provided with complete impartiality.

In addition, the bill does not stipulate any conflict of interest guidelines for panel members. Since it is reasonable to think that many real estate appraisers work for municipalities, some of them might be called upon to settle a dispute involving their municipal employer. It seems logical to me that they be required to state the name of their employer.

Bill C-10 stipulates that members must have "relevant" experience but fails to define what this entails. This is of no small importance, given that panel members will be earning $125 an hour, and expenses on top of that, in the performance of their duties. By the way, this is the going rate for professional assessors.

Curiously, membership in the Ordre des évaluateurs agréés du Québec or the Appraisal Institute of Canada is not a prerequisite for appointment to the advisory panel.

I think it unfortunate that this bill includes no provision requiring the government to examine the operation of the panel after a set number of years.

[*English*]

Honourable senators, these are all matters that we may want to study in committee. However, on balance, this is a good bill and I am pleased to support it at second reading.

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

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Moore, bill referred to the Standing Senate Committee on National Finance.

[*Translation*]

SCRUTINY OF REGULATIONS

BUDGET REPORT OF JOINT COMMITTEE ADOPTED

The Senate proceeded to consideration of the second report (A) of the Standing Joint Committee for the Scrutiny of Regulations (2000-2001 budget), presented in the Senate on April 7, 2000.—(*Honourable Senator Finestone, P.C.*).

Hon. Céline Hervieux-Payette moved the adoption of the report.

Motion agreed to and report adopted.

[*English*]

• (1740)

DISTINGUISHED CANADIANS AND THEIR INVOLVEMENT WITH THE UNITED KINGDOM

INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Cools calling the attention of the Senate:

(*a*) to persons of Canadian birth who sat as members of the House of Commons of the United Kingdom, including Ontario-born Edward Blake, Liberal Minister of Justice of Canada 1875-1877 also Leader of the Liberal Party of Canada 1880-1887, and New-Brunswick born the Right Honourable Bonar Law, Prime Minister of the United Kingdom 1922-1923, and Ontario-born Sir Bryant Irvine, Deputy Speaker of the House of Commons of the United Kingdom 1976-1982;

(*b*) to persons of Canadian birth who sat as members of the House of Lords of the United Kingdom, including the Right Honourable Richard B. Bennett, Prime Minster of Canada 1930-1935, and Lord Beaverbrook, Cabinet Minister in the United Kingdom in 1918 and 1940-1942;

(*c*) to persons of British birth born in the United Kingdom or the Dominions and Colonies who have served in the Senate and the House of Commons of Canada including the Right Honourable John Turner, Prime Minister of Canada 1984 also Liberal Leader of the Opposition l984-1990 and myself, a sitting black female Senator born in the British West Indies;

(*d*) to persons of Canadian citizenship who were members of the Privy Council of the United Kingdom including the Prime Ministers of Canada, the Supreme Court of Canada Chief Justices, and some Cabinet Ministers of Canada including the Leader of the Government in the Senate 1921-1930 and 1935-1942 the Right Honourable Senator Raoul Dandurand appointed to the United Kingdom Privy Council in 1941;

(*e*) to the 1919 Nickle Resolution, a motion of only the House of Commons of Canada for an address to His Majesty King George V and to Prime Minister R.B. Bennett's 1934 words in the House of Commons characterizing this Resolution, that:

> "That was as ineffective in law as it is possible for any group of words to be. It was not only ineffective, but I am sorry to say, it was an affront to the sovereign himself. Every constitutional lawyer, or anyone who has taken the trouble to study this matter realizes that that is what was done.";

(*f*) to the words of Prime Minister R.B. Bennett in a 1934 letter to J.R. MacNicol, MP that:

> "So long as I remain a citizen of the British Empire and a loyal subject of the King, I do not propose to do otherwise than assume the prerogative rights of the Sovereign to recognize the services of his subjects." ;

(*g*) to the many distinguished Canadians who have received honours since 1919 from the King or Queen of Canada including the knighting in 1934 of Sir Lyman Duff, Supreme Court of Canada Chief Justice, and in 1935 of Sir Ernest MacMillan, musician, and in 1986 of Sir Bryant Irvine, parliamentarian, and in 1994 of Sir Neil Shaw, industrialist, and in 1994 of Sir Conrad Swan, advisor to Prime Minister Lester Pearson on the National Flag of Canada;

(*h*) to the many distinguished Canadians who have received 646 orders and distinctions from foreign non-British, non-Canadian sovereigns between 1919 and February 1929;

(*i*) to the legal and constitutional position of persons of Canadian birth and citizenship, in respect of their ability and disability for their membership in the United Kingdom House of Lords and House of Commons, particularly Canadians domiciled in the United Kingdom holding dual citizenship of Canada and of the United Kingdom;

(*j*) to the legal and constitutional position of Canadians at home and abroad in respect of entitlement to receive honours and distinctions from their own Sovereign, Queen Elizabeth II of Canada, and to the position in respect of their entitlement to receive honours and distinctions from sovereigns other than their own, including from the sovereign of France the honour, the Ordre Royale de la Légion d'Honneur;

(*k*) to those honours, distinctions, and awards that are not hereditary in character such as life peerages, knighthoods, military and chivalrous orders; and

(*l*) to the recommendation by the United Kingdom Prime Minister Tony Blair to Her Majesty Queen Elizabeth II for the appointment to the House of Lords as a non-hereditary peer and lord of Mr. Conrad Black a distinguished Canadian, publisher, entrepreneur and also the Honorary Colonel of the Governor General's Foot Guards of Canada. —(*Honourable Senator LeBreton*).

Hon. Marjory LeBreton: Honourable senators, I wish to participate in the inquiry set down by my colleague on the other side, Senator Cools, calling to the attention of the Senate the issue of the blockage of the appointment of Conrad Black to the British House of Lords.

We all know the details. The Prime Minister has used several excuses, or more aptly, cast blame in many directions in an effort to explain his actions. Senator Cools and others have laid out all the facts, which undeniably illustrate that there is no basis or precedent to justify the Prime Minister's actions. You know and I know that none of the various explanations and excuses stand up to scrutiny. There is no precedent. There are no laws. There are no regulations. There is nothing to excuse this shameful and embarrassing spectacle. However, this is not about the protocol or lack thereof. What this is about, honourable senators, is the character and the darker side of the Prime Minister and his natural instinct to go for the jugular of anyone whom he perceives to be crossing him.

First, may I say that I do not know Conrad Black, although I have met him on occasion.

Second, I happen to like the *National Post*. This is an opinion not shared by all of my colleagues, I might add. I think it is a good newspaper with a wide range of political opinion expressed by its journalists and columnists.

There is one glaring exception, and that is its editorial page. I do not think it contributes to an enlightened and informed debate when one of its editorial writers, Ezra Levant, a former Reformer and Manning staffer, carries on as the unabashed chief cheerleader for the Canadian Alliance, better known as the party formerly known as Reform. He pops up here, there and everywhere, shilling for his political masters. He and his media hosts refer to him as a columnist for the *National Post*.

If he were a columnist, fair game. We would know where he was coming from and agree with or dismiss his opinions as we wished. Often his editorials are easy to spot by those of us who keep our eye on the political scene, because we hear these views expressed regularly on his various appearances on CBC and CTV Newsnet. Unfortunately, to most Canadians he is not so easily recognized, and a newspaper with the influence of the *Post* should not tolerate the unprofessionalism of his blatant partisan bias. At the very least, they should insist that he sign his editorials. Having Ezra Levant write editorials in the *Post* would be like having me write unsigned editorials for *The Globe and Mail*.

Other than the obvious failings of its editorial page, I think the *National Post* significantly contributes to the discourse in our diverse country.

Third, I do not for one moment believe that Conrad Black, a man of many talents, successes and achievements, not to mention what must be an extremely heavy business schedule, is involved in the direction and management of the *National Post* or his other newspapers. Obviously, however, there is one person who does think so: the Prime Minister.

Honourable senators, this debate is not about some law, rule or regulation. This is about the Prime Minister and his well-known, street-fighter, take-no-prisoners style — his well-known mean streak. This is not hard to see, and most in the public have seen right through it.

I wish to put on the record a letter to the editor from a member of the public:

> A newspaper baron who strove to be a knight
> found it not easy just to be black and white
> though accepted in Britain as Sir Conrad Black
> with Jean Chrétien's denial, he was taken aback.
> With that peerage denied, we know how you feel
> and advise you to consort with Lady Barbara Amiel
> and if to call you Sir Conrad is what you want most
> then beware what you print in the *National Post*.

That was written by Michael Cronin in *The Ottawa Citizen* on June 23, 1999.

So the Prime Minister is angry with the *National Post*. True, they have written some informative, tough pieces, but that is no different from the treatment accorded to all of us. Is that not what newspapers do? Whether it is you or me or Conrad Black is irrelevant. Canadians should be up in arms over a Prime Minister who interferes with an individual's rights just because he does not like what he says.

Let us cut away the bafflegab. This is about one thing and one thing only: Jean Chrétien's desire to get even with Conrad Black. All the evidence is there to prove he went against the advice of his own Privy Council, the Canadian High Commissioner to Great Britain, and the Governor General. According to recently acquired documents, there was an incredible effort by the Privy Council Office to justify the Prime Minister's decision after the fact:

> Records previously suppressed from Access to Information reveal considerable debate and confusion within the Privy Council and the Prime Minister's Office as high-ranking bureaucrats scrambled to justify the prime minister's intervention.
>
> The documents were created in late June and in July — a fact that suggests officials scrutinized their internal protocol after, rather than before, the government objected to Mr. Black's appointment on June 10 citing "longstanding government policy."

This, honourable senators, should come as no surprise. There is plenty of proof of the Prime Minister's character traits. I am on the record in this place, and in the public, listing the Prime Minister's many contradictory character flaws, double standards and political hypocrisy. I invite people to read a speech I gave in December, 1996, which sent the Prime Minister's spin doctors and his media apologists into overdrive. If I must say so myself, I was well ahead of everyone else on warning of the Prime Minister's shortcomings. Today, I will turn to others to substantiate the growing evidence of who John Chrétien really is and what is behind his decision on Conrad Black.

Lysiane Gagnon, writing about the Prime Minister's desire to seek a third term, "Hear the one about the tired old warhorse", in *The Globe and Mail* on March 20 of this year, stated:

> At 15, he feigned appendicitis to get out of a college he didn't like and, when caught in his own trap, allowed surgeons to remove a perfectly healthy appendix rather than confess his lie. This tells a lot about the man.

A November 8, 1999, *Globe and Mail* editorial headed, "The fiction of success in Canada's global ranking", quoted the head of the BCNI, Tom D'Aquino, in outlining Canada's eroding position in the global economy. The editorial says, "Chrétien, dare thou speak his name!" and then quotes Mr. D'Aquino:

> Those of us who have spoken publicly have already experienced the kind of criticism and veiled attempts at intimidation that blunt talk can generate. There will be more.

To which the editorial responded:

> Indeed there will.

Writing about the Prime Minister's tactics in the "Shovelgate" affair, Mr. Lawrence Martin catalogued some telling personal characteristics of the Prime Minister in his *Ottawa Citizen* column, "Life in the trenches suits PM just fine," on February 26, 2000.

> As a student, there was the famous episode of Mr. Chrétien faking appendicitis to get extended leave from the boarding school he hated so much. The better part was that he carried the lie right through into the operating room where doctors took out his appendix — even though there was nothing wrong with it.
>
> As a hockey coach, Mr. Chrétien had a star player use a fake birth certificate so he could play on his team and make it a winning team. As a politician, he put in a nice little semi-fix for his re-elections of 1972 and 1974. He arranged for a good friend to win the nomination of an opposing party...

It happened to be our party.

> ...and then to run a non-campaign against him. Mr. Chrétien's friend recalled siting in a hotel room the whole campaign.

• (1750)

> Mr. Chrétien "had to win," and in the scandal now enveloping the Human Resources department the question is whether he or his people went overboard; whether they shoveled money through a department that was short on a paper trail to friends in right places for votes in right places.
>
> ...the PM's essential response strategy on the controversy has been to flatten the opposition. That style — mow them down — has always been his shortcut to success.

Mr. Martin's article continues:

> In interviewing him for a biography, the best part was when he talked about his career as a streetfighter.
>
> ...There was the time as a young lawyer when he cold-cocked a colleague at a fancy reception in Trois-Rivières, laying him out with such a brutal haymaker that women were screaming as the blood streamed across the hardwood floor. There was the time at college when he sucker-punched a student who had biceps twice his size and left him slumped and groaning against the gymnasium wall.
>
> Mr. Chrétien may have mellowed somewhat since then. But when, a few years ago in Hull, he grabbed a professional protester by the throat and put the famous Shawinigan choke hold on him, you knew he hadn't changed.

In *The Globe and Mail* of October 24, 1998, under the headline "What makes Chrétien rage?" William Thorsell wrote:

> Why is Jean Chrétien so angry? Why does the Prime Minister react so aggressively and cruelly to the most straightforward of human situations?
>
> It shows in almost everything the Prime Minister does — his nervous, bullish bravado in the face of almost everything complex or unpredictable that crosses his path. He governs from the personal insecurity that dares not ask for help or show magnanimity lest one iota of a densely fortified position be put at risk.
>
> Are any members of the Liberal caucus under any illusion about their prospects if they show the slightest public difference of opinion with Mr. Chrétien on a matter of policy? How many Liberal backbenchers have lost their committee assignments for voting against a controversial government bill that in no way constituted a matter of confidence? How many Liberal backbenchers have voted for a government bill, sometimes with tears in their eyes, which they opposed in their hearts and minds, knowing that the slightest divergence from Mr. Chrétien's line would quash their careers?

> How many strong Canadian federalists in Quebec were shunned and rejected during the 1995 referendum campaign, told their help was neither wanted nor needed, simply because they were members of an opposing political party in our democratic system?
>
> It becomes a make-believe world in which Mr. Chrétien imagines conversations with homeless men, and then reports them to the public as real. It becomes a vendetta world in which Mr. Chrétien evinces stark indifference to the agony of a former prime minister and his family, unjustly caught in the horror of a botched police investigation. It becomes a paranoiac world in which the cardboard signs of students standing for the rule of law and freedom of speech against the universally acknowledged transgressions of foreign leaders turns into dangerous weapons.
>
> It is difficult to any person to realize that the Peter Principle applies to himself, and that most everyone around him knows it, too.
>
> ...The bluster is a symptom, not a cause. Jean Chrétien is an angry man in the Prime Minister's chair. There is nothing we can do about his anger.

James Travers, writing in the *Toronto Star* on March 9, 2000, gives us an insider's view on the internal struggles in the Liberal Party when he states:

> ...this Prime Minister is more comfortable bullying than being bullied and such an obvious effort to make him go will only convince him to stay.

What did others say on the subject at hand, namely Mr. Black's peerage? Lawrence Martin of *The Ottawa Citizen* stated on June 22, 1999:

> Despite Chrétien's protestations to the contrary, only the very naive would conclude that his blocking of Black's path to the House of Lords has nothing to do with his desire to retaliate against the *National Post*.
>
> My sense is that the peerage case is Chrétien's way of telling the newspaper magnate: "Call off your dogs, or you'll be hearing from ours."

An article in the *Ottawa Sun* on June 26, 1999, by Paul Stanway, states:

> Chrétien and his lackeys have advanced several reasons for not approving Black's elevation to the peerage. None of which seem to hold much water.
>
> As owner of one of Britain's largest national newspapers, the *Daily Telegraph*, Black was certainly in line for a title. It goes with the territory.
>
> Personally, I'm not a big fan of titles (probably because I'm never going to get one), but what's so terrible about the Queen of Canada honouring a Canadian for his accomplishments in Britain?
>
> Nevertheless, it seems incredibly petty for the Prime Minister to block the honour for such transparently personal reasons. I'm presuming that Chrétien will eventually have to approve the peerage for Black, but his own reputation will have suffered as a result of this silliness.

An article found in *The Globe and Mail* on June 27, 1999, under the headline "Honour Conrad, Shame on Jean," by Lysiane Gagnon, states:

> So Mr. Black was on his way to the House of Lords when Prime Minister Jean Chrétien stepped in.
>
> Although he was initially told by Canadian government officials that his peerage would be no problem as long as he obtained British citizenship, Mr. Chrétien suddenly decided that such a nomination was impossible.
>
> ...since Canada allows dual citizenship, and since citizenship carries obligations but also access to various privileges, there is no reason to deny Mr. Black's peerage — no reason except cheap partisanship and an increasing intolerance to criticism within the Prime Minister's Office. This was crudely exemplified last year when Mr. Chrétien's press secretary, Peter Donolo, filed a complaint against CBC reporter Terry Milewski, whose aggressive investigative reporting on the APEC affair cast a bad light on the Prime Minister.
>
> It seems that Mr. Chrétien doesn't like the coverage he gets in Mr. Black's *National Post*, and he certainly doesn't like Mr. Black's opinions. So what we see is yet another mean-spirited attempt at humiliating a political adversary. This is not a scandal comparable to the Airbus affair, in which the Chrétien government tried to destroy former prime minister Brian Mulroney's reputation on the grounds of totally unproved allegations. It is just plain pettiness, unworthy of a prime minister.

Honourable senators, in an article in *The Globe and Mail* on June 29, 1999, under the heading, "Jean Chrétien and the blocking of Conrad Black," Gordon Gibson writes:

> The instructive part relates to the politics of envy and the continuing discovery of the real Jean Chrétien.
>
> ...When Canadians succeed well beyond the average in ordinary fields such as business and the professions they become the object of many people's envy.... The federal Liberals understand the politics of this....
>
> ... I would have described him —

— and here Mr. Gibson is referring to Mr. Chrétien —

> — more as a cunning person of average intelligence and excellent bonhomie...modified by a closeted ruthlessness and a long memory for enemies. Mr. Black having made himself an enemy, the rest follows.
>
> ...My final adjective for the blocking of the peerage is "outrageous". Mr. Black would have made a great contribution to the House of Lords.

I also have an article found in *The Ottawa Citizen* on August 10, 1999, under the heading, "Time to overturn Nickle Resolution," by David Warren. Pointing out he was no fan of Conrad Black and debunking the use of the Nickle Resolution to deny the honour to Mr. Black, Mr. Warren had these things to say about Mr. Chrétien:

> Jean Chrétien's behaviour is part of a pattern long established. There was the day he laid his hands upon the neck of that protester in Hull, who got within the prime minister's physical reach, when he should have taken his chances with the bodyguards. What a temper it revealed!
>
> More to the point was the use of the RCMP to pursue Brian Mulroney on trumped-up corruption charges. The calculation was that Mr. Mulroney had left office too unpopular to defend himself, and the Liberals would have a field day leaking allegations to the press from an investigation that might go on forever.
>
> In both these cases, the supposed hapless victims bit back through the courts; so that in the end, Mr. Chrétien probably wished he hadn't opted for a bit of fun.
>
> ...Mr. Chrétien's —

The Hon. the Speaker: Honourable Senator LeBreton, I regret to have to inform you that your 15-minute period for speaking has expired.

Senator LeBreton: May I have leave, please?

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

Hon. Senators: Agreed.

Hon. Sharon Carstairs (Acting Deputy Leader of the Government): Honourable senators, while Senator LeBreton is still on her feet, I wish to point out that there is general agreement not to see the clock at six o'clock.

The Hon. the Speaker: Honourable senators, is it agreed not to see the clock at six o'clock?

Hon. Senators: Agreed.

The Hon the Speaker: Please continue, Senator LeBreton.

Senator LeBreton: Mr. Warren goes on to state:

> ...Mr. Chrétien's invocation of the Nickle Resolution was so obviously bogus. Not only was the elevation of a British-resident dual-national not contemplated in its wording, but even if it has been, it had no effect. The British can, Canadian resolutions notwithstanding, do anything in Britain that they please. They are only prevented by courtesy.
>
> And it was by playing, informally, with this power of courtesy that Mr. Chrétien was abusing his power....

An article appeared in the *Halifax Daily News*, March 8, 2000, under the headline, "PM deserves the boot: Black's peerage fiasco exposed Chrétien's flaws," by Harry Flemming. Mr. Flemming begins with the quote:

> "Upon what meat doth this our Caesar feed, 'That he is grown so great?'" — Cassius, in Shakespeare's Julius Caesar.
>
> The little guy from Shawinigan has grown too big for his britches.
>
> Forget for the moment, if you can, the fact three of 10 RCMP investigations into questionable "job-creating" grants are in Chrétien's constituency of Saint-Maurice. Forget all the other things, including his dubious financial dealings. Forget poor Conrad, too, but zero in on the Black affair and assess the character of the man who has been at or near the centre of our national political life for 37 years.

• (1800)

> The "little guy"...has become Napoleonic: self possessed, self-important, cocksure, dictatorial, intolerant, history-obsessed, vindictive, mean-spirited, and overripe for a fall.
>
> Using a spurious precedent, Chrétien intervened with the British government to deny Black a life peerage. As owner of London's *Daily Telegraph,* it would have been unprecedented if he hadn't been offered a peerage.... Why the intrusion into the affairs of another country? Sheer spite, that's why. Black's Canadian flagship, the *National Post*, has been doing some intrusive reporting into the financial affairs of Chrétien and some of his pals.
>
> To make bad worse, Chrétien and his lackeys not only ignored, but suppressed, advice from their senior protocol adviser that Black was indeed eligible to accept appointment to the House of Lords.

> His street-fighter image from his Shawinigan boyhood stood him well. His earthy ways made him a man of all the people, in contrast to the aristocratic Trudeau. The guy who "couldn't speak either official language" was us.
>
> That was then. Now, he's a thug.

Honourable senators, there are many more similar writings in many of our newspapers, but time does not allow me to read all of them into the record.

In closing, I should like to speak of the most popular game in town — the "blame game," which is played to a high level of expertise by the Prime Minister and his government. There is never, ever, an admission of wrongdoing, never an apology, not even a simple, "I'm sorry"; and there is no ministerial accountability.

The Prime Minister can go skiing via government helicopter, build an expensive private road to his private estate at the taxpayers' expense, throttle a protester and blame the RCMP. He can miss the funeral of King Hussein, blame the Jordanians, the staff, and then settle on the Chief of the Defence Staff for blame. He can perform poorly at a townhall meeting and blame the Montreal waitress for calling him to account for his GST promise. There can be cabinet leaks and the billion-dollar boondoggle, and he blames the bureaucracy. He can nearly lose the country and blame the Quebec Liberal Party.

When they have run out of people to blame, Brian Mulroney always comes in handy, although Mr. Chrétien conveniently fails to blame him for free trade, tax reform, international leadership, and all of the other policies of Mr. Mulroney's government that are now contributing to our healthy economy.

Now that the difficulties and failings of his government have come to light, Mr. Chrétien can blame it on the *National Post* and, by extension, Conrad Black.

Mr. Black is in good company on the board of the Prime Minister's "blame game." The Queen is one. Conrad Black's life peerage was deferred in order to spare the Queen the constitutional "embarrassment" of having to choose between conflicting advice from two heads of government, sources within the U.K. government say. This was reported in the *National Post* on June 22, 1999.

The British Prime Minister, Tony Blair, received the same reasons as the Queen for being spared.

You guessed it, honourable senators — we might as well trot out Brian Mulroney again, and I quote from an interview on March 19, 2000, when Don Newman of CBC asked:

> Do you think that's what this lawsuit is all about, publicity for Conrad Black's newspapers, or do you think that he really wants to be in the House of Lords?"

The Prime Minister replied:

> There was a Cabinet committee who looked into that, and they said that the regulation put forward by Mulroney were the good ones, and we did not change that. And so he could not accept it and remain a Canadian citizen. That's all."

I think this is the first time the Prime Minister has used the word "good" in the same sentence as "Mr. Mulroney." I say to the Prime Minister: Nice try, but what you said is totally false. There was no regulation passed by the Mulroney government, and you know it!

Honourable senators, it is as clear as glass. This is a contemptuous act based on nothing but false vanity. We are now left to accept that it is the Prime Minister's prerogative and nothing can be done — how sad.

Professor Lorne Sossin of Osgoode Hall and York University wrote an article in *The Globe and Mail* on March 23, 2000, after Mr. Justice Lesage's ruling. The ruling stated:

> It is well recognized in our jurisprudence that advice by a political leader in relation to foreign affairs comes within the political area of the prerogative that is not subject to review in the courts.

In layman's language, it means the Prime Minister is above the law. Professor Sossin writes:

> Where no Charter right is at issue, as in Mr. Black's case, the old common law rule of royal prerogatives being outside the scope of judicial review still applies. While courts will rule on whether the prerogative exists, they will not examine how or why such power is exercised. This means that ordinary citizens (even citizens with Mr. Black's extraordinary resources) cannot hold the Prime Minister accountable for civil wrongs that may have been committed against them in the exercise of a royal prerogative. Can it really be that, in the year 2000, an elected official in this country can act with impunity?

He continues:

> It is the role of the court to ensure the exercise of public authority is lawful. If the Prime Minister had determined that the Queen should not confer a peerage on Mr. Black, and communicated this position in good faith to the British government, then no cause of action should arise, notwithstanding Mr. Black's hurt pride. However, if the PM formed and communicated a position on this issue out of personal animus for Mr. Black, then this is no longer a legitimate political decision, but rather a personal attack and an abuse of power. The rule of law dictates that no public official enjoys absolute discretion, not the Prime Minister and not even the Queen.
>
> ...To shield such accountability in the name of the royal prerogative is offensive to Canada's democratic character.

Honourable senators, this whole episode is an embarrassment for Canada and should cause Canadians to reflect on the actions of the Prime Minister. It is sad to say, but this is yet another example of the use of one of the Prime Minister's weapons of choice — the sucker punch — for that is what he did to Conrad Black and in so doing has damaged Canada's reputation in the world. So much for honesty and integrity, because in this case he demonstrated neither.

Hon. Nicholas W. Taylor: Honourable senators, would the Honourable Senator LeBreton permit me a small question?

Senator LeBreton: Absolutely.

Senator Taylor: In view of the fact the honourable senator seems to be quite familiar with Lord Black — or almost Lord Black — can she confirm the story that is circulating that because *Frank* magazine refers to him derogatorily as "Lord Tubby," Conrad Black will buy that small magazine to still its voice?

Hon. Anne C. Cools: Honourable senators, I should like to move the adjournment of the debate.

Senator Carstairs: Honourable senators, Senator Cools has spoken already to this inquiry. It is my understanding that an honourable senator cannot speak twice to the same inquiry.

The Hon. the Speaker: It is the inquiry of Senator Cools, and she has the right to close the debate on it.

On motion of Senator Cools, debate adjourned.

The Senate adjourned until tomorrow at 2 p.m.

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Monday, April 10, 2000