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(HANSARD)

Thursday, May 11, 2000

THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

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THE SENATE

Thursday, May 11, 2000

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

[*Translation*]

SENATORS' STATEMENTS

FRANCO-ONTARIANS

PROVINCIAL FRENCH LANGUAGE COMPETITION

Hon. Jean-Robert Gauthier: Honourable senators, last Friday, May 5, the 62nd award ceremony of the Concours provincial de français de l'Ontario took place here in the Senate chamber. There are 100,000 francophone students in Ontario, 26,000 at the secondary level. This important annual event, the French competition, was held in all of the province's secondary schools.

The ceremony was chaired by Senator Marie-Paule Poulin, and the whole event was organized by Yolande Grisé of the French Department at the University of Ottawa, in collaboration with Laurentian University in Sudbury.

The competition was held in this chamber and was attended by a number of students, teachers, and parents. We were also honoured with the presence of the Ambassador of France, Denis Bauchard, as well as a number of other VIPs.

The award ceremonies involved the finalists from among the Grade 12 and Grade 13 students of Ontario's French-language secondary schools. In all, 81 students representing 41 Ontario schools took part and there were 22 winners of the various awards and bursaries.

I should like to congratulate the overall first-place winner for writing, text comprehension, dictation, and précis: Ariane Sénécal of the École secondaire catholique de langue française Cardinal-Carter, in Aurora, Ontario. She ranked second in text study and third in dictation, making her first overall.

I should also like to draw attention to the remarkable performance by the students in the secondary schools in the Eastern Ontario and Ottawa-Carleton regions, who distinguished themselves in these four categories of the competition, including Janie Bertrand of the École secondaire de Hawkesbury, who came second in the dictation, first in text study and fourth overall.

Honourable senators, permit me to express my pride today in these young Franco-Ontarian students. What a promising upcoming generation. As *Le Droit* would put it: "It is a fine batch." Clearly this competition encourages and motivates our young people to strive for excellence. With such motivation, we will always be proud to see them take their place in our society.

As the proverb says, to participate is to be a winner. I therefore congratulate all the participants, the organizers and the generous sponsors, who contributed to the success of this great annual provincial competition.

[*English*]

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS

PROPOSAL TO ESTABLISH FEDERAL AGENCY TO INVESTIGATE AND ENFORCE WORKPLACE HEALTH AND SAFETY REQUIREMENTS

Hon. Erminie J. Cohen: Honourable senators, recently, the International Association of Firefighters, the IAFF, gathered here on the Hill and met with many of us in our offices. In their annual report, they recommended minimizing the risk of occupational health and safety exposures to firefighters and the general public by establishing a federal agency that would have the ability to investigate and enforce workplace health and safety requirements.

• (1340)

The association highlighted their concerns by relating the experience of the 1997 Plastimet recycling plant blaze in Hamilton, Ontario. The fire, which burned for four days and involved 255 firefighters, released dioxins into the air that were more than 60 times higher than acceptable levels. The site remains one of the most toxic in Canada.

The IAFF, who were concerned about the future possibility of more recycling plant blazes, made repeated calls for a public inquiry into the cause of the fire. Despite the fact that crucial information remained unknown, the Ontario government decided there was no need for an investigation.

In the United States, two separate federal agencies combine to provide important protection for workers who are exposed to toxic materials and other workplace hazards. Canada has no comparable authority. The Canadian Centre for Occupational Health and Safety is a well-respected source for information on national health and safety issues, but it lacks the investigative and enforcement powers necessary to protect Canadian workers in general and firefighters in particular.

During their meeting in my office, the suggestion was made that perhaps the solution is to create an independent agency similar to that of the Transportation Safety Board, which reports to Parliament through the president of the Queen's Privy Council. Their mandate is to conduct independent investigations and, in some cases, public inquiries into transportation accidents in order to find the causes and contributing factors.

The board reports publicly on its investigations and findings, and it makes recommendations designed to eliminate or reduce any safety deficiencies. It has the freedom to choose which accidents to investigate and concentrates principally on those accidents which have a reasonable potential to result in safety action or which generate a high degree of public concern. The board's philosophy revolves around "openness, fairness, competence and integrity," and the independence of the board allows it to be fully objective. It is this type of agency that appears to be an appropriate solution to the firefighters' concerns and should be explored more in depth.

Honourable senators, each day firefighters risk their lives to protect our lives and our property, and we, as parliamentarians, have a role to play in ensuring the health and safety of these courageous people.

DISCRIMINATION AGAINST ABORIGINAL WOMEN

Hon. Thelma J. Chalifoux: Honourable senators, discrimination against women, especially aboriginal women, has once again raised its ugly face. *The Edmonton Journal* of May 4 referred to a statement made by 76-year old Robert from Camrose, Alberta, who said:

> Forty years ago, screwing Indians was the thing to do; and further, that the courts should consider the times — squaws were there to be picked up.

It is this disrespectful and hurtful attitude that caused these victims to be a target in the first place. The victims have suffered many years in silence. In a letter to the editor, one of the victims stated:

> This whole rape thing has really screwed up my life. It really affected me, my children and relationships. I have lived on the streets, been beaten, robbed and been totally stripped of any self-esteem.

Jack Ramsey would not be able to tolerate all this pain. Will jail for Mr. Ramsey help the victims to regain their self-respect and pride? Maybe.

Honourable senators, aboriginal justice is another option. The victim and the perpetrator face each other in a circle of elders to confront the results of the terrible events that happened in the victims' lives. As Canadians, we must all ask ourselves: What are we doing to address the tragic issues of discrimination and the violence that occurs because of this act?

Almost every aboriginal woman and girl in this country has experienced this disgraceful attitude. This includes myself and my daughters. Aboriginal women have been crying out for help for far too long. Will Canadians ever listen? This is just another tragic event of bigotry and torture in the lives of my people — the Métis, the Inuit and the First Nations.

Hon. Senators: Hear, hear!

[*Translation*]

NATIONAL NURSING WEEK

Hon. Lucie Pépin: Honourable senators, we are currently celebrating National Nursing Week, and May 12 is International Nurses Day. The time is therefore appropriate to consider the incredible contribution this profession makes in this country. Nurses are undeniably the support behind the health care system in Canada. Without their knowledge, their support and their professionalism, we would never hope to have the quality and accessibility of health care that we enjoy in Canada.

Last year, at this time, I described how things had gone downhill in the nursing profession in the past ten years. Nurses are poorly paid. Permanent jobs and benefits do not exist. There is no opportunity for professional development. Workloads have increased and working conditions are often dangerous.

This year, our governments have recognized this imminent crisis: We are now facing a shortage of nurses that will get worse if governments do not quickly take action.

Faced with this crisis, governments across the country are organizing recruitment campaigns to attract young people to the nursing profession. We are even recruiting outside the country and offering accelerated courses to doctors who were trained abroad, so that they can work as registered nurses in Canada. These measures will undoubtedly help alleviate the current crisis somewhat.

However, we must tackle the real problem if we want to solve it. We may succeed in attracting recruits through short-term incentives, but how will we keep them, given what we know about the professional life that awaits them?

Let us be clear. It is not a monetary issue, even though adequate salaries, job security and social benefits are also important issues. It is primarily a matter of being able to exercise one's profession in a safe, responsible and compassionate way. Nothing is more demoralizing than to go to work every day knowing that the workload, combined with the limited resources and support, jeopardizes people's well-being.

The nursing profession is doing its best to cope with the crisis. Nurses are in a good position to play a leadership role in the reform of our health care program, and they are prepared to do so. It seems that the governments are turning a deaf ear.

However, it is not up to the nurses to act. This is why I urge the federal and provincial governments to display a political will to work together to reform health care and deal with the imminent crisis in the nursing profession.

Let us never forget that nurses are the backbone of our system. Consequently, we should work to alleviate their burden and save our health care system, since these two elements are integral parts of the same solution.

[*English*]

CANADA BOOK DAY

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, last week, to mark Canada Book Day, Senator Fairbairn kindly offered me a book of lovely photographs of her province of Alberta. Her commitment to the literacy movement in Canada is both exemplary and total. I wish to both thank her for her gesture and congratulate for her efforts.

At the time, I did not hide both my appreciation and my embarrassment. Today, in turn, I want to offer Senator Fairbairn a particular literary work that will form the basis of intense discussions this weekend in Quebec City, where Progressive Conservatives from across the country will gather to put together a series of proposals in anticipation of the next federal election. The publication, which, unfortunately for her, is within blue covers, is entitled "Engaging Canadians: Report of the National Policy Advisory Committee of the Progressive Conservative Party of Canada." It is the result of consultations with 20,000 Canadians in over 250 ridings. I have no doubt that she will be inspired by it and that someday we will see some of these proposals within red covers.

• (1350)

ROUTINE PROCEEDINGS

SPECIAL SENATE COMMITTEE ON BILL C-20

NOTICE OF MOTION FOR ALLOTMENT OF TIME FOR DEBATE

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I give notice that, at the next sitting of the Senate, I shall move:

> That, pursuant to Rule 39, not more than a further six hours of debate be allocated to dispose of the following motion:
>
> That a special committee of the Senate be appointed to consider, after second reading, the Bill C-20, An Act 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;
>
> That, notwithstanding Rule 85 (1)(*b*), the committee be comprised of fifteen members, including:
>
> Senator Joan Fraser
> Senator Céline Hervieux-Payette, P.C.
> Senator Colin Kenny
> Senator Marie P. Poulin (Charette)
> Senator George Furey
> Senator Richard Kroft
> Senator Thelma Chalifoux
> Senator Lorna Milne
> Senator Aurélien Gill;
>
> That four members constitute a quorum;
>
> That the committee have power to send for persons, papers and records, to examine witnesses, and to print such papers and evidence from day to day as may be ordered by the committee;
>
> That the committee be authorized to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings; and
>
> That the committee have power to retain the services of professional, clerical, stenographic and such other staff as deemed advisable by the committee;
>
> That when the debate comes to an end or when the time provided for the debate has expired, the Speaker shall interrupt, if required, any proceedings then before the Senate and put forthwith and successively every question necessary to dispose of the motion; and
>
> That any recorded vote or votes on the said question be taken in accordance with the provisions of Rule 39(4).

BUSINESS OF THE SENATE

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I request an opportunity to discuss house business. I refer to my comments of a week ago Wednesday, May 3, wherein I indicated on behalf of the government side that our objective was to have Bill C-2 pass third reading and Bill C-20 pass second reading by the end of this week. I note in reviewing Hansard that Senator Kinsella was prescient. He indicated that sometimes hindsight is better than foresight in these matters and we have not, as honourable senators are aware, reached that stage in our proceedings. I want to see things move along, thus the notice of motion I just gave.

Briefly, honourable senators, I repeat now, hopefully with more resolve, our objective to get these bills through by next week to the stages I indicated.

FEDERAL LAW-CIVIL LAW HARMONIZATION BILL

FIRST READING

Hon. Dan Hays (Deputy Leader of the Government) presented Bill C-22, to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and civil law.

Bill read first time.

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

On motion of Senator Hays, bill placed on the Orders of the Day for second reading on Monday next, May 15, 2000.

LEGAL AND CONSTITUTIONAL AFFAIRS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY SENTENCING

Hon. Lorna Milne: Honourable senators, I give notice that on Tuesday, May 16, 2000, I shall move:

> That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine issues relating to sentencing in Canada; and
>
> That the Committee report to the Senate no later than June 21, 2001.

CENSUS RECORDS

PETITIONS

Hon. Lorna Milne: Honourable senators, I have the honour to present six petitions signed by 159 Canadians requesting that the government allow the release to the public, after a reasonable period of time, all census reports starting with the 1906 census.

[*Translation*]

CANADIAN BROADCASTING CORPORATION

NOTICE OF INQUIRY

Leave having been granted to revert to Notices of Inquiry:

Hon. Marie-P. Poulin: Honourable senators, I give notice that on Tuesday next, May 16, 2000, I will call the attention of the Senate to the Canadian Broadcasting Corporation.

[*English*]

QUESTION PERIOD

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I have delayed answers to questions raised in the Senate by Senator Boduc on May 2, 2000, regarding United States ballistic missiles; and on May 9 and 10, 2000, by Senators Roche, Bolduc and Prud'homme regarding the agreement on anti-ballistic missile defence system with the United States.

NATIONAL DEFENCE

PROPOSAL TO DEVELOP BALLISTIC MISSILE DEFENCE SYSTEM WITH UNITED STATES-GOVERNMENT POSITION

(Response to question raised by Hon. Roch Bolduc on May 2, 2000)

The Government of Canada has not yet taken a position on the US National Missile Defence (NMD) System. The US itself has not taken the decision to deploy a National Missile Defence System, and the Canadian Government has not been asked to participate. Many questions and issues remain to be resolved before the Government will have sufficient information to determine Canada's view of the proposed system and whether Canada would participate if invited.

The Ministers of National Defence and Foreign Affairs are consulting with the US, other allies and concerned states to ensure that we have an assessment that takes into account Canada's security interests for North America; implications for Canada's position on international arms control regimes; and Canada's involvement in collective security as a member of NATO.

The Government will make its position known at the appropriate time.

AGREEMENT ON ANTI-BALLISTIC MISSILE DEFENCE SYSTEM WITH UNITED STATES—DECISION-MAKING PROCESS—POSSIBILITY OF SPECIAL CABINET COMMITTEE

(Response to questions raised by Hon. Douglas Roche, Hon. Roch Bolduc and Hon. Marcel Prud'homme on May 9 and 10, 2000)

No special Cabinet Committee has been struck to examine the issue of potential Canadian participation in the US National Missile Defence System.

From time to time, it is not unusual for Ministers to get together informally to discuss specific issues. These ad hoc meetings do not constitute cabinet committees.

Regarding the issue of when Canada will take a decision on National Missile System, the Government has not yet taken a position. As the US itself has not taken the decision to proceed, it would be premature for Canada to take a decision on our participation.

National Defence and Foreign Affairs are consulting with the US and our allies to ensure that we have an assessment that takes into account:

a. Canada's security interests for North America;

b. Implications for Canada's position on international arms control regimes; and,

c. Canada's involvement in collective security as a member of NATO.

The Government will make its position known at the appropriate time.

ORDERS OF THE DAY

POINT OF ORDER—SPEAKER'S RULING

The Hon. the Speaker: Honourable senators, I am prepared to proceed on the point of order that was left in my hands regarding the extension of debate by leave.

On Friday, April 7, just when the Orders of the Day had been called, the Deputy Leader of the Senate rose on a point of order. Senator Hays asked for a ruling as to whether it is permissible to set limits to any request for leave to extend the time allowed a senator for debate. This issue was being raised by the senator as a follow-up to a series of exchanges that had taken place the previous day after Senator Sibbeston had asked for leave to continue his speech on third reading of Bill C-9. According to Senator Hays, it is in the interests of order that a time limit be agreed to when seeking leave to extend the time for debate. In his view, granting leave should not be regarded as open-ended, as an opportunity to continue debate for an unlimited amount of time.

[*Translation*]

• (1400)

By way of response, Senator Kinsella, the Deputy Leader of the Opposition, agreed with the underlying position that he believed was at the root of the complaint made by Senator Hays. There was, he said, a need to review the rules of debate with respect to the time permitted to individual senators and this task should be undertaken by the Rules Committee. Indeed, several other senators who subsequently participated in the discussion on the point of order also mentioned the possibility of reviewing our rules of debate. Nonetheless, on the point of order raised by Senator Hays, Senator Kinsella argued in effect that the request for leave to suspend the time limits stipulated in the rules cannot logically be qualified by the imposition of another time limit.

As I have already noted, several other senators then intervened to speak to the point of order to express their views. At the end, the Speaker *pro tempore* informed the Senate that we had already discussed aspects of this question following the comments of the previous day and that we would look at it again in light of the remarks made on the point of order raised by Senator Hays. Since then, I have read the relevant texts of Hansard, I have also examined our rules in consultation with the Speaker *pro tempore* and the Table Officers and I am now prepared to give my ruling.

[*English*]

During the course of his intervention, Senator Corbin noted that rule 37(4) is categorical in its language. It states that:

> ...no Senator shall speak for more than fifteen minutes, inclusive of any question or comments...which the Senator may permit in the course of his or her remarks.

This limitation on debate was incorporated into the *Rules of the Senate* in 1991, together with numerous other rules that were drawn up to more clearly structure the Senate's sitting day and to better assure the ability of the government to transact its business. Senator Murray suggested that now, almost 10 years later, there might not be the same need to restrict the time allocated to speeches. Whether or not this is true cannot be decided by me. This is a subject that is best studied by the Rules Committee.

There is no doubt that the current rule is restrictive. With growing frequency, requests are being made to extend the time for debate and the question and comment period that can follow a speech. Only rarely are these requests denied. This practice, in turn, may now be giving rise to a sense of frustration. This appears to be evident based on the objections that have occasionally been raised by some senators who find the process too open-ended. Senator Hays has raised his point of order to suggest a solution to this problem. Until there is a revision of the rules on debate, this solution might be the only effective means to address this situation. The question to be answered first, however, is whether it is procedurally viable.

[*Translation*]

Senator Kinsella noted that accepting the request for leave means, according to rule 4(6), approval to do something or to proceed in some particular fashion "without a dissenting voice." Normally, what is requested involves the suspension of a rule in whole or in part. This is done routinely every Tuesday, for example, when the Deputy Leader of the Government seeks leave to move, without the required notice, a motion respecting the hour the Senate will sit on Wednesday. Instead of meeting at 2:00 p.m. Wednesday, the Senate usually agrees to meet at 1:30 p.m. and to adjourn by 3:30 p.m. in order to allow committees to sit. Leave is also used sometimes to suspend the rule on a deferred vote in order to hold the recorded division at a time more convenient than 5:30 p.m. as specified in rule 67(2). In both cases, leave is used not just to suspend the notice requirement, but to offer something else in place of the relevant rules for the purpose of allowing the Senate to conduct its business more conveniently and effectively.

[*English*]

Based on these examples, I do not find it procedurally objectionable to have a request for leave to suspend the rules limiting the time for debate combined with a proposal to fix the time of the extension. Indeed, following the model of the House of Lords that Senator Kinsella mentioned, it might be useful and advantageous to the senator who is requesting more time to indicate how much time is needed in order to improve the likelihood of a favourable response. Moreover, such an approach would, I think, be in keeping with the intent of rule 3 regarding the suspension of any particular rule. According to this rule, the purpose of my proposed suspension should be "distinctly stated." As much as possible, I have usually permitted an explanation so long as it did not involve any prolonged discussion. This, I think, is a sensible approach that could serve the Senate well until the rules of debate are revised.

Accordingly, it is my ruling that a request to extend time for debate can be qualified with a statement indicating the time of the extension. This statement can be proposed either by the senator making the request or by any other senator so long as any discussion relating to the request for leave is kept very brief.

It is my hope that such a procedure, in addition to the current practice with requests for leave to extend debate, will provide satisfactory alternatives to the Senate until such time as the Rules Committee comes up with a more comprehensive review of our rules of debate.

Honourable senators, I might make one additional comment, which is not part of the ruling. It seems to me that recently some of our very best debates and discussions have come following a speech that has been made. I recall, for example, the very good debate we had on the Nisga'a bill as a result of questions and a different kind of exchange in the Senate. I would hope that we would not restrict ourselves unduly because the purpose, after all, is to encourage debate.

BUSINESS OF THE SENATE

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I should like to call Order No. 3 under Government Business, which is the resumption of debate on Bill C-20.

Honourable senators, we are at a suspension of debate that was interrupted when we adjourned by house order yesterday. We were listening to an exchange between Senator Joyal and Senator Murray.

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 SUSPENDED

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. Lowell Murray: Honourable senators, I had and have several questions, all of which bear upon the same issue. I consulted with Senator Joyal, and I think we are agreed that it would be more coherent, efficient and save time if I put my several questions to him at once and he replied to all of them at once so that other senators may have an opportunity to take part and so that the debate may continue.

In doing that, I must draw to the attention of honourable senators an error in the *Debates of the Senate* of yesterday, at page 1320 in both the English and French versions, where I am reported as having said:

> ...that the Attorney General does not claim secession cannot be achieved unilaterally.

That is the opposite of what the Attorney General says and what her lawyers say, and it is the opposite of what I quoted her and them as having said. For the record, I will read the full declaration of the lawyer for the Attorney General of Canada, Mr. Pierre Bienvenu.

[*Translation*]

Honourable senators, I quote Mr. Bienvenu, from page 55 of the transcript of the Supreme Court of Canada for February 16, 1998:

> I repeat that the Attorney General of Canada does not claim that secession cannot be achieved under the Constitution of Canada. She claims only that it cannot be achieved unilaterally.

[*English*]

With that out of the way, I should like to put my questions to Senator Joyal. My original question to him was whether his thesis as to the indivisibility of Canada had been changed in any material way by the adoption of amending formulas in 1982. The Attorney General of Canada, in her memoir to the Supreme Court and in the oral arguments put forward by her lawyers, stated that the amendment process was flexible enough to permit even the secession of a province.

• (1410)

In any case, is Senator Joyal's thesis not contradicted by the position taken by the Attorney General of Canada before the court, and by the court's advisory opinion? Has the Attorney General made concessions, which will be with us for all time, that bind her successors? Have we lost what Senator Joyal calls "our indivisibility" by reason of the court's advisory opinion?

Senator Joyal states that it is wrong to sustain that the negotiations leading to secession are similar to the negotiations leading to an ordinary constitutional amendment. It may be wrong, but it seems to be the position of the government and confirmed in the advisory opinion. The government maintained, before the Supreme Court, that there is no right to secession. However, secession could be achieved by constitutional means. Does this distinction have any relevance to Senator Joyal's thesis?

What does Senator Joyal make of the standard response of Mr. Dion, the Minister of Intergovernmental Affairs, to the indivisibility argument, namely, that Canada is held together by an act of will, not by legal coercion?

Finally, one must conclude from Senator Joyal's speech that in his opinion Bill C-20 is unconstitutional on at least several counts. That being the case, how can one or more amendments possibly resolve that problem?

Hon. Serge Joyal: Honourable senators, I will try to answer the various issues raised by the Honourable Senator Murray in as brief a manner as possible.

On his first question, concerning the position of the Attorney General of Canada in relation to the pleading of the court in the reference debates in the Supreme Court of Canada, I think one must remember the questions that were asked of the court. The questions were clearly stated, of course, in the reference Order in Council. The first question, which is the one on which I shall concentrate my first answer, states:

> Under the Constitution of Canada, can the National Assembly, legislature or government of Quebec effect the secession of Quebec from Canada unilaterally?

We all know that the court said no to that question. The court went on to comment, but did not go as far as negating the very principle on which I based the conclusion that this country is indivisible. I refer to paragraph 53 of the ruling, which I should like to quote because I believe it deals with this point. Paragraph 53 states:

> However, we also observed in the *Provincial Judges* Reference that the effect of the preamble to the Constitution Act, 1867 was to incorporate certain constitutional principles by reference, a point made earlier in *Fraser v. Public Service Staff Relations Board.*

In other words, the court recognized in the ruling that the preamble of the Constitution keeps all the strength and meaning in terms of interpreting the Canadian Constitution. In that, the court was not innovating because in 1992, in the case *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, Judge McLachlin, at page 378, expanded at length on the importance of the preamble and its meaning. In no way did the ruling diminish the importance of the ruling. That is clear from the interpretation of what the court has had to say in terms of the first question, which is, what is the indivisibility of Canada, or to what extent is the indivisibility of Canada protected in the Canadian Constitution?

On the second point, with regard to what has happened since 1982, I know some other honourable senators share a preoccupation. Senator Beaudoin expressed his concern to me on this matter after my speech. I want to draw the attention of the honourable senator to paragraph 41 of the Canadian Constitution, which states:

> An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province.

That is the unanimity clause, in other words. What is the first subject covered by unanimity? It is the office of the Queen, the Governor General, and the Lieutenant-Governor of a province. In other words, in the Constitution of 1982, there were some classes of subjects that could be amended through what I call the "federal principle," 7/50, representing the various regions of the country, and the unanimity one. In other words, there are some elements of the Constitution that seem to be so fundamental to the nature of the country that unanimity is commended. We know what unanimity means. It means the consent of everyone on the same footing, whatever the size of the province and its population. The amending formula is based on the principle of equality of the provinces when unanimity is concerned.

If we are to discuss the office of the Queen, and what is meant by "one Dominion under the Crown," and if we want to effect that very aspect of our Constitution, we must follow the unanimity principle, in other words, involve all the provinces and the Parliament of Canada.

Moreover, honourable senators will remember that four years ago this Parliament adopted legislation to deal with what I call the "federal principle" insofar as the federal government is concerned. The bill, entitled "An Act Respecting Constitutional Amendment," was adopted on February 2, 1996, and it provides that the federal government would not initiate a resolution in the House of Commons unless it has the support of the five regions of Canada. Honourable senators will remember the debate that ensued.

The Government of Canada bound itself a degree further in the amending formula. We all know its impact. I think honourable senators who were present at that time will remember that debate. Furthermore, one must keep in mind that many provinces have given themselves additional needs before expressing their consent to the amending formula. I refer here to British Columbia, Alberta, and Manitoba. I remind the honourable senator that those three provinces have adopted specific legislation binding themselves to a referendum before their governments can give assent to any amendment to the Constitution. I should like to quote the Alberta Constitutional Referendum Act of 1992, which states quite clearly that the Government of Alberta:

> ...shall order the holding of a referendum before a resolution authorising an amendment to the Constitution of Canada is voted upon by the Legislative Assembly.

The British Columbia government, in 1991, in the act entitled Constitutional Amendment Approval Act, has the same provision, and it states:

> The government must not introduce a motion for a resolution of the Legislative Assembly authorising an amendment to the Constitution of Canada unless a referendum has first been conducted under the *Referendum Act* with respect to the subject matter...

The Province of Manitoba has bound its legislature to hold hearings throughout the province before the legislature is so authorized.

In other words, three provinces, under the amending formula of 1982, have gone a step further to recognize the locus of sovereignty, which is the will of the people of the province. We know that in 1992, when the Charlottetown accord was achieved, the Government of Canada and the government of those provinces could have achieved assent without going to a referendum. Certainly, the honourable senator will remember that the government of the day thought it advisable, considering the importance of the question raised, that they would need to go to a referendum.

• (1420)

My point is that on the very interpretation of the preamble of the Constitution of Canada, the ruling recognized the importance and the strength of the preamble. That has not changed. It is not because we had the Constitution patriated that the role of the Crown under the Constitution was diminished.

In the constitutional discussions of 1992, it was mentioned that if we changed anything in relation to that — for instance, if Canada had considered becoming a republic instead of a constitutional monarchy — section 41 provides that this is unanimity. In strict terms, this is what it is, but we know that provinces and federal governments in the past have stated that they do not feel that they are authorized totally, in terms of a democratic mandate, to go over that without consulting and having the mandate of the population.

It is the convention of the government. I have quoted the Prime Minister himself saying that he would want to consult the people of Canada if there were to be a substantial amendment. He would feel obliged to consult the people of Canada because, as he said in 1992, we have given the Constitution to the people of Canada.

Honourable senators, I do not think I said anything yesterday to the effect that the ruling, the practice, the provincial legislation, or the way we interpret our Constitution has been diminished by what the court has decided and the way we have conducted discussions on constitutional amendments in this country.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I should like to pose a question of the Honourable Senator Joyal. I wish to join with the many others in congratulating and thanking the senator for a first-class intervention.

The honourable senator drew to our attention a provision in the constitution of France that speaks to the indivisibility of the French republic. We share this continent with two other federations, the United States of America and Mexico.

In the advisory opinion of the Supreme Court in the Quebec reference case, the court tells us that they are evaluating the principle of constitutionalism, the principle of federalism, the principle of the rule of law and the principle of democracy. The other two federations also operate on the basis of those same principles.

The decision of the Supreme Court of the United States in the *White* case states that the United States of America is indivisible. I have learned through consultations with parliamentarians in Mexico that it is their understanding that the federation of Mexico is also indivisible, including Chiapas.

Would the honourable senator care to comment on that experience? Did that experience help to confirm the honourable senator's view, which I share, that Canada is indivisible?

Senator Joyal: Honourable senators, I thank the Honourable Senator Kinsella for his question.

As honourable senators know, a comparative study of various constitutions in the world teaches us that there are some constitutions, the French and the Portuguese being examples, in which it is affirmed not only that their territory is indivisible but that they cannot entertain an amendment on the very section wherein their indivisibility is recognized and affirmed. That is contained in section 89 of the French constitution and is also contained in the Portuguese constitution. Those are the most telling references that one can have on this matter.

In some other countries, the principle is not affirmed specifically in the text of their constitutions, but through history, in precedents and conventions, which are part of the legislative boundaries in which those questions are raised, it is interpreted as existing, compelling and inextinguishable unless the whole of the population expresses that wish.

In fact, as the honourable senator knows, nothing in the American constitution states that the United States of America is one and indivisible. However, we all know that throughout history the U.S. presidents have interpreted their mandate as to hold to the constitution as long as the people of America have not given their authorization to part with the unity of the country and the territory.

There are different systems to achieve the same result. Common-law countries operate with a certain number of unwritten principles and conventions that are as binding as the clear, written provisions of France and the European countries that inherited the Roman law. They are well codified and written. However, the end result is the same — that is, the locus of sovereignty always lies in the same place, that being in the will of their citizens to maintain the integrity and unity of their country through the fact that they have not authorized their governments to initiate the dismantling of their country.

I shall quote again from paragraph 53 of the Supreme Court of Canada decision:

> Given the existence of these underlying constitutional principles, what use may the Court make of them? In the *Provincial Judges Reference*...we cautioned that the recognition of these constitutional principles (the majority opinion referred to them as "organizing principles" and described one of them, judicial independence, as an "unwritten norm") could not be taken as an invitation to dispense with the written text of the Constitution. On the contrary, we confirmed that there are compelling reasons to insist upon the primacy of our written constitution. A written constitution promotes legal certainty and predictability, and it provides a foundation and a touchstone for the exercise of constitutional judicial review. However, we also observed in the *Provincial Judges Reference* that the effect of the preamble to the *Constitution Act, 1867* was to incorporate certain constitutional principles by reference, a point made earlier in *Fraser v. Public Service Staff Relations Board*...we determined that the preamble "invites the courts to turn those principles into the premises of a constitutional argument that culminates in the filling of gaps in the express terms of the constitutional text".

In other words, when the text does not mention it, one goes to the preamble to fill the gap. Since the concept of indivisibility is not clearly written in the Constitution, we must go to the preamble to see where in the preamble, and in the four underlying constitutional principles that the court has identified, and which the honourable senator has expressed, indivisibility is enshrined. That is the contention I have been making and that the court has confirmed in its ruling of August 28, 1998.

Hon. Anne C. Cools: Might I ask the Honourable Senator Joyal for a clarification on that same point?

Senator Kinsella: Please go ahead.

Senator Cools: I should like to thank Senator Joyal for his excellent speech yesterday.

Senator Joyal just read from the secession reference at paragraph 53, which states:

> In the *Provincial Judges Reference*...we determined that the preamble "invites the courts to turn those principles into the premises of a constitutional argument that culminates in the filling of gaps in the express terms of the constitutional text."

I question that, honourable senators, because I do not believe that the courts have any authority to fill in gaps in express enactments.

• (1430)

It is my understanding that it is that same statement or paragraph which Senator Joyal just read that the court relied upon to determine that the federal government has a legal obligation to negotiate secession. In other words, it is upon that particular preamble that the court insists it has a right to create a binding legal obligation upon the federal government. It is a mystery to me that no government of Canada, no prime minister until now, and certainly none of us here, ever knew that the Government of Canada not only had a binding obligation to negotiate secession but had a prerogative to do so.

Could Senator Joyal clarify that? The court uses it for the exact opposite of the position he is adopting. He is saying that the indivisibility of Canada is inherent in that preamble. I agree with him. I also believe that the indivisibility of Canada is inherent in every single provision. The point is that the court used that preamble to come to the opposite conclusion of the honourable senator's conclusion, so he is not consonant with and agreeing with the court as much as it appears. To confirm what I am saying, I go to paragraph 148 of the judgment, where the court states:

> A superficial reading of selected provisions of the written constitutional enactment...may be misleading.

Could the honourable senator clarify this contradiction for us? I think a lot of people here are depending on those of us who have seriously studied the matter. There is absolutely no provision or any written or unwritten principle anywhere that imposes any obligation or any prerogative whatsoever on the Government of Canada to negotiate any secession.

Senator Joyal: Honourable senators, Honourable Senator Cools raises an important question: How can we reconcile the principles that the court has been identifying and that the honourable senator has quoted — federalism, democracy, rule of law, constitutionalism, and protection of minority rights — as being underlying principles of the Constitution, plus the preamble, which they recognize as having some impact on the interpretation of the Constitution, and the fact that, later on, at the very end of their reasoning, they say that if there is a clear referendum and a clear majority, then the federal government would have a duty to sit and listen to the requests of that province and to come to an agreement in good faith? They put essentially the whole of the exercise on good faith. In other words, they did not commend the result. They said the government would have the duty to sit and negotiate in good faith and try to achieve some kind of agreement based on the recognition of the federal principle and the protection of minority rights, and they list a number of items that should be put on the table in those discussions.

What have they recognized, in fact? They have recognized a principle of democratic expression. They have recognized that, when there is a clear question and a clear majority, without qualifying either of them, a government would have a responsibility to sit and try to find some way of agreeing. It did not order the dismantling of Canada. It did not give to the Government of Canada automatically the mandate to sit and negotiate. The Government of Canada always has the responsibility to uphold the Constitution, which is why I am suggesting to honourable senators that, before the Government of Canada sits and listens to the representatives of the seceding province, they consult the Canadian population in the same way that the province that wants to secede has consulted its own citizens. That is where the sovereignty of the country lies. If the Government of Canada is to negotiate the dismantling of the country, then, in the same way that the premier will seek the mandate from his own citizens, it will have to seek that mandate. That is why I say the previous prime ministers were right in saying, "We have no mandate to do that. Do not knock at my door on Monday morning. I am not there for this. It is not on the agenda of the day."

Any Canadian government, I submit, that wants to involve itself in that kind of initiative will have to consult its population. That is where the principle of indivisibility of our country lies. I submit that if, in the five regions, there is a majority of Canadians saying, "Yes, you can bargain in good faith," then we have taken a step further, which is the expression of the democratic will of Canadians. There is, of course, still a long way to go before we arrive at that ultimate moment when there will be two parties authorized on the same democratic basis to negotiate the dismantling of the country. That is why I feel it is important to reaffirm the indivisibility of the country, and that is why it is important to reaffirm that governments in Canada hold their sovereign power from the will of the Canadian citizens as a whole in the various regions at par, and if they were ever to initiate the dismantling of the country, it could only be because they would be authorized to do that.

I do not think there is anything in the ruling that prevents the Government of Canada from consulting its people, any more than the Government of Canada was told in the ruling that it had to adopt legislation to define clarity. The government felt that it was the proper thing to do, and I think it is the proper thing to do, but only in the context of what the honourable senator has alleged is one of the fundamental principles of democracy. Is there a more direct exercise of democracy than a referendum in which the whole of Canada will say to the government, on a clear question, in clear regional majority, "Okay, go ahead"? As I said, there is a long way to go before we arrive there. However, it is important to have those discussions in relation to Bill C-20, because they are part of the reality of Bill C-20.

All of us are trying to understand the implications of Bill C-20. I am sure we are all very preoccupied with this. Many of us have participated in many referendum debates in the last 20 years. I see my colleague Senator Nolin, who referred to it in his speech two weeks ago. We want to be sure that we do the things that are commended by those principles that hold us together.

Senator Murray asks if the will of Canadians is more important than the letter of the law. I say the letter of the law is essential to have an expression of the will of Canadians. If we do not have rules that are clear, then it is the worst path to very difficult civil situations. We know it. This is a very sensitive issue. If we are to allow people in regions of Canada to part from the country, it can only be because the procedure is clear from the beginning and there is no ambiguity. If Quebecers want to secede one day, they will know it takes two sides to bargain. Anyone who bargains knows that he needs a mandate to go bargaining and, to get that mandate, he needs to consult his members, or the president needs to consult the board of directors, and say, "Give me a mandate." If you do not have a mandate, you are not authorized to do so. That is why I say, if there is any mandate, it is within the hands of Canadians. It is the will of Canadians that ensures that those rules help the whole of the country to sustain the challenge of its unity.

Senator Murray: Honourable senators, I do not disagree with the position taken by the Honourable Senator Joyal. I simply say that the advisory opinion of the Supreme Court treats a secession amendment like any other amendment to the Constitution. As a matter of fact, in paragraph 88, the court states:

> In Canada, the initiative for constitutional amendment is the responsibility of democratically elected representatives of the participants in Confederation. Those representatives may, of course, take their cue from a referendum, but in legal terms, constitution-making in Canada, as in many countries, is undertaken by the democratically elected representatives of the people.

At another point in the ruling, the court states:

> The other provinces and the federal government would have no basis to deny the right of the government of Quebec to pursue secession should a clear majority of the people of Quebec choose that goal, so long as in doing so, Quebec respects the rights of others.

It all suggests to me that the court in no way implies that the procedure would be anything other than the procedure for any constitutional amendment. The federal Crown is obliged to go to the table, as are all the partners, to negotiate the clearly expressed will of the people of Quebec on a clear question.

• (1440)

Senator Joyal: The law that frames the exercise of the responsibility of the federal government does not change. The federal government has the inescapable responsibility to hold the constitutional order as long as the government has not received a mandate from the people of Canada to dismantle it. That is the fundamental element of our democracy.

Senator Murray: I agree, but the court does not.

Senator Joyal: The Government of Canada has never requested the court to pronounce on the secession procedure. Honourable senators will remember that, although the point was raised at that time by many people who appeared before the court, the Government of Canada refused to request any indication from the court as to how the procedure of secession should be framed. The court made a comment to that effect. To me, there is no shortcut to dismantling the country and avoiding — as Justice Estey said — the kind of chaos that surely would happen.

If that were the case, it would be easy, in fact, to go through the process of dismantling of this country. No government of a federal party — I put the Bloc Québécois aside, for obvious reasons — would ever receive the mandate in a general election to dismantle the country. Where do you get the mandate? You get the mandate from the people of Canada. How can we read the judgment in a way that the government would be relieved of the democratic responsibility of obtaining the mandate from the people of Canada? I do not read that in the judgment.

The various provinces and the federal government, as they judge appropriate, can bind themselves a little further before agreeing to some constitutional changes. I have quoted the provincial legislation and the legislation that our Parliament has adopted, Bill C-110, which many senators here have discussed and debated on its implications. As you will remember, the comment was that the Constitution would be stiffer because we would go another step than the amending formula of 7/50.

In other words, if you consider all the aspects, all the steps that have to be taken before the federal government is authorized to sit at the negotiating table, I think we have the capacity to maintain the constitutional order, as long as the people of Canada have not authorized the Government of Canada to alter the process.

Senator Kinsella: Honourable senators, I find the arguments developed by Senator Joyal very persuasive. They help me immensely in understanding, as thoroughly as I can, this historically important piece of legislation.

If I understood the honourable senator correctly, at the beginning of his speech yesterday he said that he supports the objectives of the government. An honourable senator asked him about that point and, if I understood what was said, I share with the Honourable Senator Joyal the objectives that he thinks the government has for the bill. I have no difficulty in subscribing to the same objectives.

It is a pity that the government did not consult with the Senate first and have the Senate bring to bear this kind of focused attention. This debate has been one of the better ones in which I have participated. I have learned a great deal as a result of listening to the contributions of all honourable senators. The debate has been at a level that speaks proud of this institution.

These principles are critical. They are about the life and death of Canada. Given that this immensely important information is before us and that the principles are being clarified as each honourable senator brings his or her reflections to the issue, we then have to deal with what is being suggested within the context of the legislative process.

As I said, unfortunately, the subject matter was not brought to us first. We could have drafted a fine piece of legislation that would speak to all of these principles by building upon principles that speak to the integrity of a country that has been in place for 133 years. We could leave this place knowing the country will be around for another 133 years.

However, we have what we have, honourable senators. My question is based upon the honourable senator's principle of accepting the objective of the government. Might the honourable senator find it meritorious to have this subject matter referred to our Standing Senate Committee on Legal and Constitutional Affairs? That committee could review the subject matter and build a bill upon these principles that we have adduced in our debate. I think it is impossible — there are too many contradictory opposites — to build an improvement on the infrastructure presented to us in Bill C-20.

Would the honourable senator give some reflection to that idea and perhaps comment, either now or later, so we can begin the process of obtaining agreement within the chamber to refer the subject matter of the bill to a committee, in order to present for adoption a piece of legislation that meets these critical cornerstones that are clearly there?

Senator Joyal: I thank the honourable senator for his suggestion. I am sure the Leader of the Government in the Senate as well as the Deputy Leader of the Government in the Senate will have heard his comments. There is no doubt that this issue is very important and dear to each one of us.

We have had a lengthy debate here. As one can interpret, every one of has ample time to speak his or her mind on this matter. This chamber has listened carefully to each one of the speeches that has been made. The government and the Leader of the Government in the Senate can take the suggestion of the Honourable Senator Kinsella under advisement and we can discuss it further.

We have an immense opportunity in that we in this chamber have the privilege of speaking our minds in detail and thereby profiting from the exchanges during debate. There are advantages to following the course we have followed thus far. It is a free, open and totally credible process so far. I am most indebted to my colleagues for giving me the time to speak my mind. I know the government has had an agenda and it is very legitimate, but on the other hand, the government must recognize the primary and fundamental importance of this issue. I am sure the Leader of the Government in the Senate will want to reflect on that suggestion.

On the other hand, the bill is here before us. It has been debated and amended in the other place. There are other senators who have concerns. The aboriginal senators have spoken to their concerns. My colleague from Ontario, Senator Gauthier, has expressed his own preoccupations. The debate is taking place with all of us participating.

It is not that I do not like the Standing Senate Committee on Legal and Constitutional Affairs. I see my colleagues, Senator Beaudoin, Senator Milne, who is the very able Chair, Senator Cools and all my other colleagues, always in attendance, and I think there is merit in sharing what we are doing here today, as we have been doing in the last few months. I feel each one of us has to listen to the various arguments.

The piece of legislation has been amended. It has some important elements. Each one of us might have a different opinion on it. On the whole, it is an exercise that tries to frame those fundamental objectives we want expressed in a piece of legislation that deals with the very future of our country.

[*Translation*]

• (1450)

Hon. Gérald-A. Beaudoin: I thank Honourable Senator Joyal for his remarkable contribution to this debate. We must keep in mind that there were three questions submitted to the Supreme Court, and that there was a deliberate choice not to ask what amending formula would be applicable if negotiation were to take place.

This controversial question will have to be revisited. Honourable senators, some feel there must be unanimity, while others uphold the 7/50 formula, but the Supreme Court did not give an opinion on this, which is a pity.

I have always said that the referendum is not part of the amending formula. There is absolutely nothing to prevent the federal government from consulting the Canadian public. I imagine that if anything is important enough to warrant a national referendum, this is. I agree with the honourable senator on this point.

Provincial statutes say that a constitutional amendment is not to be ratified without a prior referendum. We must bear in mind that this is not part of the amending formula. If this were ever disregarded, I am not sure that it would cancel the amendment.

Is it the honourable senator's conclusion that the principle of indivisibility includes a prior referendum, of necessity? It seems to me that this is what he is saying. I can scarcely imagine how there could be negotiation without a referendum, mind you. Does the honourable senator agree with this assertion?

Senator Joyal: Honourable senators, I maintain that the principle of indivisibility is entrenched in the Constitution and that it is "underlined," to use the terminology of the Supreme Court in its opinion. We need to state this clearly, because it is the very foundation of the role of the constitutional monarchy. It has a vital link to the political and constitutional structure of our state. If we want to take action that would have the effect of negating that principle, we must return to the constitutive source of sovereignty, which is the Canadian population.

Consequently, we cannot come to any other conclusion than that one, because if we challenge the very existence of the nation, then the nation must have a say. This is why, in my speech, yesterday, I discussed the notion of citizenship, since this is where individual rights and freedoms ultimately lie. If we were to fundamentally challenge the rights and freedoms of individuals, it would be because the whole population had agreed that some of these liberties could be extinguished over part of Canada. The two go hand in hand in a democratic system, based on the principles that the Supreme Court itself recognized as being present in our constitutional structure.

Senator Beaudoin: In other words, this would be implicit in Canada, while it is explicit in France, it is in the text. In the United States, the Supreme Court stated that the federative union was indissoluble. Therefore, the honourable senator is of the opinion this could not be achieved here, because there is an implicit constitutional obligation?

Senator Joyal: Precisely.

Hon. Roch Bolduc: In saying this, is the honourable senator aware that he is talking about the post-1982 Constitution, after the two amending formulas: one requiring unanimity for specific situations, and the other one, the so-called 7/50 formula to, for example, create a province? Would these, in his opinion, be convincing arguments to give the legislatures the power to negotiate?

Senator Joyal: I cannot be totally affirmative, because even if the legislatures have full authority under the amending formula, the court specifically recognized that where the Constitution is silent, one's interpretation had to be based on the underlying principles of the Canadian constitutional structure.

The court admitted that democracy, for example, is not recognized in the Canadian constitutional context but is binding on the governments; likewise, the principle of indivisibility, which is enshrined in the existence of a constitutional monarchy, must serve as the basis and reference of the decision as to whether we can dismantle the country without asking the constitutive authority itself for leave to do so.

Senator Bolduc: In the Constitution, following the amendments to the Constitution Act, 1982, the monarchy can be changed through a constitutional amendment, provided there is unanimous consent to do so. What is stronger than that, if we can become a republic through a constitutional amendment voted by the legislatures?

Senator Joyal: Section 41.1, which I quoted, clearly states that the office of the Governor General and the Lieutenant-Governor can be the object of unanimously approved amendments.

Senator Prud'homme: René Lévesque let it go through.

Senator Joyal: As I mentioned before, there is not only the text itself, there is also the constitutional practice the court recognized as a binding part of the assumption and application of the principles underlying the Constitution. I said earlier that the Canadian and provincial governments have recognized that a constitutional amendment calls into direct question the sovereignty of the people where it lies, that is, with the people themselves. Some provinces wanted to be formally bound. As the honourable senator said, a law can always be changed, just as there is nothing at this point obliging the Government of Canada to consult the people before making a constitutional amendment. However, the governments have, in the past ten years or at least since 1991, limited their prerogative as recognized in the amending formula. The reason for this is that the decision on a substantial constitutional amendment is basically the exercise of direct democracy by the people. There is therefore in this a basic element we can recognize in the bill assuring us that the principle of indivisibility is fully recognized.

Senator Bolduc: In constitutional terms, referendums are not binding on governments.

Hon. Jean-Claude Rivest: I find the honourable senator's theory interesting. I think this approach remains theoretical, because the amending formula will never meet the requirements of democracy, which is guaranteed in the Constitution implicitly with what he quoted from the Supreme Court of Canada.

• (1500)

The divisibility of Canada is important and fundamental, of course, in so far as a part of the country could leave. Would Senator Joyal use the same reasoning if it were a question of abolishing fundamental freedoms under the Canadian Charter of Rights and Freedoms, which are as essential as the integrity of Canadian territory? In this regard, if governments decided to abolish fundamental freedoms for all sorts of reasons, what route would the honourable senator take? That of the democracy he requires for the divisibility of Canada or that of the amending formula already provided for since 1982 in the Canadian Constitution? I will listen to the honourable senator's comments, but my answer is the amending formula. Despite all my interest in the debate, I believe that the amending formula disposes of the issues of the divisibility of Canada and the abolition of fundamental freedoms.

I give the example of the abolition of fundamental freedoms, because it is an underlying principle essential to the Constitution. This freedom comes to us through the *Magna Carta* incorporated in the preamble to the Constitution. This is the argument being developed with much interest and skill by the honourable senator before this house with respect to the divisibility of Canada, which would, in fact, be implicit and according to which we should proceed by referendum.

Senator Joyal: Honourable senators, a few months ago, I read an article written by a colleague whom the honourable senator certainly knows, Professor Frémont, a professor of law at the Université de Montréal. This article appeared a few years ago in a Canadian review specializing in public law. Professor Frémont does a comparative analysis of the way in which countries with a common law tradition have interpreted fundamental freedoms and the ability of governments to amend these fundamental freedoms. His comparative analysis points up the fact that certain issues are viewed by the courts as "supraconstitutional." They are so basic that the courts have held that governments could not amend or abolish them through the usual procedures. I remember one such case. It involved an election, the result of which was to keep a government in power for more than four or five years. This was a ruling by the Indian courts, which have inherited a British common law system in terms of public administration. In an article, Professor Frémont surveyed these issues. In his view, they go beyond the powers of the government to amend constitutions. I could give the reference to the honourable senator and we could certainly pursue this discussion.

In my opinion, since our Constitution does not cover all the aspects of the essential elements of the political structure and basic freedoms of our country, the court sees in these principles the references allowing it to fill these gaps. I believe that in this respect honourable senators might agree with me.

Senator Rivest: I would like to make another comment totally outside the legal context in which the honourable senator set his speech right from the start, and quite appropriately so.

With regard to the principle of indivisibility that was mentioned, if it were to be implicitly recognized politically, what would happen to the sovereignist movement in Quebec? It might still make its wishes known, but this would be illegal or not allowed. Does the honourable senator realize that by limiting the debate — and I do not believe it was his intention — to an essentially legal and constitutional vision, which is necessary as part of the debate, he does not dispose of the issue of the secession of a province? In this case we are dealing with Quebec, which for some time has been a political issue.

Senator Joyal: Honourable senators, very briefly, I will remind the honourable senator of what I said yesterday on this. I purposely focussed my remarks solely on the basic constitutional elements so that people know exactly what is involved in such an issue. This does not dispose of the secession issue. My reflections do not lead me to conclude that separation is not possible. All I am saying is that if one revisits, as I suggested to my colleagues, the underlying principles of our nation, these are our reference points. However, the court did say in its opinion that, in our democratic system, a secessionist movement such as the one in Quebec can exist, speak up and initiate a public debate, which must then be held.

[*English*]

Hon. Sheila Finestone: Honourable senators, I would love to be making a speech at this moment, but I must share with you my great pleasure at the privilege of assisting at an intellectual exchange of this quality. The exchange has been quite stunning and certainly very informative. The intent of every participant has been to ensure that the best interests of Canadians are well served.

Notwithstanding my desire to ensure that outcome, I find myself becoming increasingly perplexed as to the process. I am a Quebec woman, very concerned about the future of my province and more particularly concerned about the well-being of the anglophone community throughout Quebec. It is a minority and a provincial consideration. I also have enormous respect for the need to maintain and promote the French language and culture within the context of Canada.

I am listening to this debate. I thought I had an answer, but I became perplexed again. I think and I hope that Canada is indivisible, but in reality, as we look around the world, change does takes place. It could take place here. If so, we want it to take place in an atmosphere that is non-confrontational, whatever the outcome may be.

I know that my colleague Senator Joyal has put hours and hours of study into this matter, as have many other senators in this room.

Yes, I like the clarity. I hated the referenda. I loathed the procedure we used in Quebec. I thought there were unfair and uncertain mechanisms used, particularly in the English-speaking community. I do not want that ever to happen again. I want fairness and equity and clarity. I come to my bottom-line question.

This bill is called "clarity." That is good. We should have a clear question; that is right. We should know what the majority should be; that is only normal. The rest of Canada should be involved, if — God forbid — we ever need to consider a different structure in this Canadian geography.

This is my question toward a clear question and an eventual determination of a fair question so that we can see where we must go, if — God forbid again — there is a negotiation. I come to my bottom-line question: Is the argument now both legal and yet very political? If this chamber were to accept an amendment to include the Senate, would that satisfy us for this moment? Or is that not enough?

That is my dilemma. How do I vote? Am I satisfied if we amend this bill to include the Senate?

The honourable senator has said that he has many questions about the content and the procedure and, perhaps, the clarity. What if the Senate were to propose an amendment to include the Senate in the process? I think it should have been there in the first place and I will accept the explanation that it was a technical error.

Senator Cools: They forgot!

Senator Finestone: Would the honourable senator, in that instance, be prepared to vote for this bill?

Senator Joyal: I thank the honourable senator for her remarks. She will remember that the fifth point of my presentation yesterday dealt with the status of the Senate in our constitutional order. I feel that the Senate should be included for fundamental reasons. I stated them yesterday. I believe that the honourable senator has had an opportunity to reflect on them. Essentially, they are linked to the federal nature of our country, which is one of the underlying principles that the Supreme Court has identified as bringing order in the Canadian system of government.

• (1510)

I also stated that there are elements in the maintenance of the unity and integrity of the country that must be clearly stated. In the past, we have omitted discussion on some of those principles, not from any wrong perspective but simply because it did not seem proper to raise them.

The committee that will discuss and debate this legislation will have ample opportunity to reflect, not only on the points that I have proposed, but also on the other points that other senators have raised. Much as I have proposed an interpretation, I am certainly ready to listen to any senators or witnesses or experts that we will have the privilege of hearing during the meetings of the committee. We will have a third reading debate in this house. At the end of that, we will be asked to pronounce on the end result.

At this point in time, however, when asked if I will accept less, when I am asking for more, quite frankly, I do not want to find myself in that funnel. I want to take the opportunity we have to listen to all of those who will participate. I have the greatest respect for my honourable colleagues who will participate at the legislative committee or at the special committee, or at any committee to which this house decides to refer the bill. I will listen to the experts. After the last stage of the debate, I will determine for myself how I will vote. Honourable senators will understand that at this point in time, while we are at the very important beginning of enlightening ourselves and one another, it is premature to conclude finally the implications of this bill.

The Hon. the Speaker: We are still at the stage of the speech by the Honourable Senator Joyal and questions and comments following. Are there any further comments or questions?

[*Translation*]

Hon. Marcel Prud'homme: Honourable senators, I have listened to, studied, and reread the speech by Senator Joyal. It often occurs in the House of Commons that decisions are reached prematurely. How could the honourable senator interpret the government's decision to announce to us that as soon as this bill passes second reading, a committee will be struck comprising 15 senators, eight of whom are already known and appointed, when we do not yet know how the Senate will dispose of this bill?

[*English*]

Is it not prejudging, to say ahead of time, that, after second reading, there will be a committee, therefore making fruitless any debate at this time? Advice has been given that a committee will be struck. This matter was hotly debated in the House of Commons at times, when decisions were taken prejudging the outcome of a vote. I would have imagined that you take these decisions once a vote has been taken, and then you say, "it shall therefore be," et cetera. It is not that I disagree with the special committee, but I find it to be rather unusual. I do not even know how I will vote, so I do not know how someone else can prejudge how I will vote or how others will vote. Is this not something that should trouble senators who want, in all fairness, to say, "I will try to influence my colleagues so that there will not be the necessity of a special committee"?

[*Translation*]

I should like to have a comment on that, if I may.

[*English*]

Senator Joyal: Honourable senators, when the decision should be taken by this house on the formation of a committee or on what kind of committee it should be is a matter of procedure. As such, it is in the hands of the Speaker to interpret our rules. I shall certainly defer to the learned opinion of the Chair on this.

Do I interpret that decision in one way or the other? I will say to the honourable senator, with whom I had the opportunity to share some years in the other place, that what is important to me as a member of this place is that I speak my mind on what I think are fundamental concerns. I have no doubt that my colleagues who will sit on the committee that will have the responsibility to debate and study this bill in depth, be it a permanent or a special committee, will be totally receptive to allowing any of us to go there and ask our questions and profit from the expertise and knowledge of the various senators and experts who will be invited. The issue of deciding when, whether before or after, is at this point in time in the hands of those in this room whom we trust to be responsible for those decisions.

To answer my honourable colleague Senator Finestone, at the end of third reading, this house will dispose of the bill in the manner in which it wants to dispose of it. Whatever might happen in between is done according to our rules, our traditions, our practices, and our respective caucuses. Most of us, as the honourable senator will know, participate in caucus where we can voice our private concerns —

Senator Prud'homme: Most.

Senator Joyal: — in relation to the organization of our own work as a team. Most of us "pour faire droit au statut de l'honorable sénateur."

At this point, I would suggest that we have had the privilege of having a free and open debate on this matter. I am indebted to the leaders on both sides and to all honourable senators who participate in this discussion.

Senator Cools: Honourable senators, I wish to ask Senator Joyal one question.

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, may I interrupt the debate? My counterpart, the Deputy Leader of the Opposition, must leave, and there are some matters that I should like the Senate to deal with while he is present. Do I have permission?

Senator Cools: I will be absolutely happy to defer, Senator Hays.

Senator Hays: Thank you, honourable senators.

The Hon. the Speaker: Is leave granted for the Honourable Senator Hays to speak now on these other matters?

Senator Cools: Absolutely.

Senator Prud'homme: If it is not controversial.

Senator Hays: You will have to wait and see. It is non-controversial to me.

Debate suspended.

BUSINESS OF THE SENATE

Hon. Dan Hays (Deputy Leader of the Government): First, honourable senators, I have had the opportunity to negotiate or discuss further the matter of voting time on the motion that has been put to strike a committee to receive Bill C-20, which was recited in my motion on time allocations. We have agreement, which Senator Kinsella will confirm, I believe, to vote on all matters with respect to that motion at 5:30 p.m. on Tuesday next, which means that I do not need Monday for procedural reasons. Accordingly, when I revert to the motion to adjourn, I shall adjourn to Tuesday, not to Monday as I might have otherwise done.

Hon. Noël Kinsella (Deputy Leader of the Opposition): Honourable senators, I am able to concur with that agreement.

Hon. Marcel Prud'homme: Honourable senators, just a minute. This is a beautiful show of friendship between people, and you talk about "consultation." I asked Honourable Senator Hays if there were any surprises. His Honour has said that all senators are equal. Senator Joyal just hinted at how strongly he debated this issue. He said, "We debated these issues in our caucuses." There are five of us who are not yet organized in a caucus. I do not speak for my colleagues; I speak for myself. We have no caucus. We debate with whoever wants to listen to us. However, we have not been consulted about the possibility of having a vote at 5:30 p.m. on Tuesday.

• (1520)

Senator Hays is a fine gentleman, and I will continue to say that until he feels that I am strangling him. We always say yes to him, but I should like to remind honourable senators that we have not been consulted on this matter. Therefore, we do not see the necessity of sitting on Monday, and we will come back here on Tuesday and vote at 5:30 p.m.

There will be other speakers on this order. I will not object, so honourable senators can relax. However, the same thing always happens. At times, independent senators are consulted, while at other times they are not. I am not asking to be consulted every day on the ordinary business of the house concerning adjournments, and so on. On a question as important as this, I would have appreciated knowing in advance. It is possible that I was told and I do not remember. However, that would be tough for me to admit publicly; or perhaps I was absent when these negotiations took place. If that were the case, then I would be at fault. I repeat again, in these important matters it takes only a minute in that we are only a few feet from each other. I would have appreciated knowing about this.

Senator Kinsella: Honourable senators, I confirm the agreement on this side of the chamber. Rule 38 is very clear. It states:

> At any time while the Senate is sitting, the Leader of the Government in the Senate or the Deputy Leader of the Government in the Senate may state from his or her place in the Senate, that there is an agreement among the representatives of the parties in the Senate....

I am confirming that agreement, honourable senators.

The Hon. the Speaker: Honourable senators, I thank the Honourable Senator Kinsella for having raised this point. However, it does not cover the agreement, which I understand has now been reached, to have a vote on a motion.

I want to make it clear so that on Tuesday there is no disagreement concerning what we are talking about. Are we not talking about the motion that a special committee be appointed?

Hon. Anne C. Cools: No.

Some Hon. Senators: Yes.

The Hon. the Speaker: The motion being discussed states, in part:

> That a special committee of the Senate be appointed to consider, after second reading, Bill C-20, An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of a Canada....

Honourable senators, is that the motion about which we are talking?

Senator Cools: That is the motion.

The Hon. the Speaker: Is there agreement, then, that there will be a vote on this motion at 5:30 p.m.?

Some Hon. Senators: Agreed.

Senator Prud'homme: When will the motion be debated, honourable senators?

Senator Hays: Honourable senators, perhaps I could answer by saying that this order will be called today for debate. It will be called every sitting day until Tuesday. I have indicated that I will be proposing a motion, for which leave will be required, that we adjourn until Tuesday at 2 p.m. There will be two more days of debate.

The Hon. the Speaker: In order that there will be no misunderstanding, honourable senators, on Tuesday next, at 5:30 p.m., regardless of where we are in the proceedings, I shall rise and call for a vote on this motion.

Senator Hays: Agreed.

The Hon. the Speaker: Whether or not it has been debated, I shall call for a vote. To be clear, we will have a voice vote. If there is a request for a standing vote, a standing vote will follow, according to our rules. Is it agreed, honourable senators?

Hon. Senators: Agreed.

Senator Prud'homme: Honourable senators, I see that we have a very fair and prudent Speaker. His Honour sets out exactly what he will do. Therefore, the question will be dealt with on Tuesday. That is not the question to adopt Bill C-20 at second reading but on the motion to strike a committee once Bill C-20 has been disposed of at second reading. Is my understanding correct?

The Hon. the Speaker: No. At this point, I have no idea where Bill C-20 will be at that point in time. The agreement being sought now has only to do with the question of establishing the committee. Where Bill C-20 stands, I do not know. I have no means of knowing. All I want to know is what we will do on Tuesday at 5:30 p.m.

Senator Lynch-Staunton: We vote against the motion!

The Hon. the Speaker: At 5:30 p.m., regardless of where we are on the Order Paper, I shall rise and call for a vote on this motion.

Senator Hays: Perhaps as a further clarification, we could set the time of the bell. We shall have the voice vote at 5:30 p.m., as His Honour has indicated, and then a half hour bell and the vote at 6 p.m.

Hon. Eymard G. Corbin: Honourable senators, I rise on another point of order on this matter. Are we to presume that before the question is put we will know the names of the other members of the committee, apart from those listed in today's Order Paper?

Senator Hays: Honourable senators, the best answer I can give to that question is no. I envisage the way in which the membership of the committee will be determined — because it is not determined in the motion — is in the way provided for in our rules, which is that the Committee of Selection will meet, make a decision and report back to the Senate. I am not sure when that report will be made to the Senate. I am hoping that it will be as soon as possible. That report would then come to the Senate for approval and a voted.

Senator Prud'homme: It will be put to the Senate and voted on, but like anything else, it will be debatable.

Senator Hays: That is correct.

The Hon. the Speaker: Honourable senators, the situation is that if the motion is reached by then, yes, it will be debatable. However, if the motion is not reached by 5:30 p.m., I will not be able to entertain any further discussion. That will be the end of it.

Hon. Jean-Robert Gauthier: Honourable senators, I seek clarification. I have been here all afternoon listening to the debate. I heard the Deputy Leader of the Government mention that there will be something else in that motion. As I understood it, he said there will be six days allowed for further debate on Bill C-20. Am I right or am I wrong?

Senator Hays: As far as I know, I made no mention of Bill C-20. Any remark I made in the context of the agreement reached between Senator Kinsella and myself was made pursuant to rule 38.

Hon. Nicholas W. Taylor: Honourable senators, I should also like to have something clarified. I am not sure if we will be asked to vote on a motion that shows only one side of the appointees to that committee. Are we being asked to appoint a committee for which we know only a portion of the members who will serve on it? Do those names have anything to do with the motion?

Senator Hays: The Honourable Senator Taylor has asked two questions. The answer to his first question is yes. Technically, the answer to his second is no. Perhaps I should elaborate.

The motion is to strike a 15-person committee. In accordance with the division of 15-person committees, we have named nine government senators.

• (1530)

We have no names for opposition senators, but I believe they will be put forward at a Committee of Selection meeting. This motion may be defeated, in which case we will not need more names. Nevertheless, if this passes, the Committee of Selection meeting will then determine the balance of membership.

Senator Taylor: Honourable senators, I have two points of clarification. I gather that, when we vote on a motion, we know for sure what this side of the house is proposing, but we may not know what the other side of the house is proposing.

That leads to the second point of clarification. I have been studying the rule book, which states that a quorum shall consist of four people. Does that mean that the nine whom we have nominated, if the opposition does not put up anyone and we approve the committee, can have a quorum of four and control the vote? What are we agreeing to here?

Senator Hays: Honourable senators, that is a hypothetical question — and many such questions might be put. I do not know how much detail to go into. This has occurred in the Senate before and we have rulings on the issue. Perhaps we could have occasion to go over that. I do not think it is a problem.

Honourable senators, we are now at 3:30 p.m. on what we had hoped would be a short day. All honourable senators can rely on the fact that the Deputy Leader of the Opposition and I have an agreement, and that we have considered most of those items. I am hoping that we can get on to the next matter before he must leave. I would be happy to sit down with the honourable senator after we adjourn in order to explain the situation further.

Senator Taylor: Thank you very much. Past experience has always told me that I only got into trouble when someone said, "Don't worry; everything is looked after."

Senator Nolin: You were told that before the referendum last time.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, perhaps I can help Senator Taylor and his colleagues. We have not submitted names from this side because we are not in favour of the formation of a special committee. We feel the bill should go before the Standing Senate Committee on Legal and Constitutional Affairs, and I shall make that argument in due course. As a matter of fact, we are soliciting interest from existing members of the Standing Senate Committee on Legal and Constitutional Affairs, on both sides, to see if any members wish to sit on the special committee. Therefore, applications on the other side are more than welcome.

Senator Cools: Am I able to apply as well?

Senator Kinsella: Absolutely. Send your name in with three references.

Senator Cools: I was thinking perhaps there was an opportunity to be on the committee, because there seem to be a few vacancies.

Senator Lynch-Staunton: We need a reference from your chairman.

Senator Prud'homme: I would be more than happy to discuss this issue with the honourable senator after the sitting today. We may propose the name of Senator Cools to replace someone who has already been announced. To be frank, I do not like to know ahead of time, even before deciding on committees, who will be appointed. I would be more than happy to make a motion eventually, with the honourable senator's name, instead of another senator.

The Hon. the Speaker: Honourable senators, we are now getting into the substance of the question and away from the procedural matter that is before us. Let us come back to the procedural matter.

I take it, then, that Honourable Senator Hays will agree to our removing his Notice of Motion of earlier today?

Senator Hays: We could do that, or I simply will not move the motion. I had envisaged the latter approach, but if His Honour feels more comfortable with it off the Order Paper that is fine.

Senator Kinsella: If I were you I would leave it there.

Senator Hays: My preference would be to leave it there.

The Hon. the Speaker: Honourable senators, then the understanding is clear that, in regard to this motion to establish the committee, at 5:30 p.m. on Tuesday I will interrupt whatever else is going on and call for a vote on that motion.

Senator Lynch-Staunton: A voice vote.

The Hon. the Speaker: If a standing vote is requested, is there agreement that it will be a half-hour bell?

Some Hon. Senators: Agreed.

The Hon. the Speaker: That is the agreement. The house is agreed. We will proceed on that basis.

Senator Cools: I thought I understood Senator Hays to ask that it be called at 5:15 p.m. and that the bell would ring for 15 minutes.

The Hon. the Speaker: I believe Senator Hays corrected that and said that we will call the vote at 5:30 p.m. If a standing vote is required, there will be a half-hour bell. The house has agreed. That is the understanding.

Senator Hays: Honourable senators, I gather that that understanding has the status of a house order.

I should now like to move to another matter of importance. It relates to item No. 4 under Government Business.

PROCEEDS OF CRIME (MONEY LAUNDERING) BILL

SECOND READING—MOTION TO DECLARE BILL NULL AND VOID ADOPTED AND ORDER WITHDRAWN

On the Order:

> Second reading of Bill C-22, to facilitate combatting the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend and repeal certain Acts in consequence.

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

> That, notwithstanding rule 63(1), the proceedings on Bill C-22, which took place on Tuesday, May 9, 2000, be declared null and void.

We have before us an unprecedented situation, on my inquiry, which is that the text of Bill C-22 that was sent to this place by the other place does not in fact reflect a series of amendments that were made to Bill C-22 in the other place. My information is that they are the amendments that were set out in the second report of the Standing Committee of Finance of the other place. There are several of them. Accordingly, what we have referred to in Item No. 4 is not correct. The error appears to be of a clerical nature, but it is a substantial error. It must be remedied because we are not talking about the same piece of paper in the two Houses in terms of what is described therein, namely, the parchment.

The House of Commons has responded to this by sending to us what I believe is the correct parchment. However, we must dispose of this matter here, in the absence of any other way of dealing with this unprecedented problem.

Honourable senators, this is a matter that I have had an opportunity to discuss with the Deputy Leader of the Opposition. I would propose that we deal with this through unanimous consent. Senator Prud'homme is not listening; nevertheless, we will deal with it by passing the motion that I have put.

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

Hon. Marcel Prud'homme: Honourable senators, as a word of explanation, what does this imply? I will cooperate on this issue.

Senator Hays: I appreciate your agreement to cooperate, Senator Prud'homme.

Senator Prud'homme: The difficulty, senator, is that you must realize that senators talk to each other. Some say that I am shy. I do not know exactly what is going on, so I do not like to get up. Sometimes I do know; however, I am concerned about the new senators. When I became a senator seven years ago, I did not dare get up for fear of embarrassing myself.

Will the Deputy Leader of the Government please tell us what this implies so that we are all on an equal footing in understanding the mistake that took place?

Senator Hays: Thank you, Senator Prud'homme. Before I say anything, though, I wish to point out to honourable senators that I did try to be as precise and as clear as I could in explaining. Nevertheless, let me explain again.

• (1540)

On Monday of this week, we received Bill C-22, which is Order No. 4 on the Orders of the Day. It was given first reading on Monday.

The parchment did not contain amendments that were made in the Standing Committee on Finance of the other place. They are referred to in the second report of that committee. There are several of them, and they are substantive. The error — and it is a clerical error but it is a substantive clerical error — was discovered. We have now received from the other place another parchment, which is the same bill, Bill C-22, with the corrections made in it.

Honourable senators, we cannot have two Bill C-22s, so after discussion with the Deputy Leader of the Opposition and the Table, we have proposed a solution to this unprecedented situation. The solution is that we give unanimous consent to the motion that I read and that His Honour put. Perhaps His Honour could put it again to ensure that everyone has heard it and understands exactly what we propose.

The Hon. the Speaker: Honourable senators, since that order has not yet been called, I do not think as Speaker that I should deal with it. We are still on the previous order, which is the second reading of Bill C-20. I will deal with Bill C-22 when that item is called.

Motion agree to and order withdrawn.

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.

The Hon. the Speaker: Honourable senators, is there any further debate on Bill C-20?

Hon. Anne C. Cools: Honourable senators, I thank Senator Hays for that explanation and for that hasty correction.

I had one last question for Senator Joyal, but apparently he is not here. Perhaps someone could move the adjournment.

The Hon. the Speaker: Honourable senators, unless another senator wishes to participate in the debate, this will conclude, then, that portion of the questions to Senator Joyal. We now move to further debate.

Hon. Jerahmiel S. Grafstein: Honourable senators, let me add my congratulations to Senator Joyal on his masterful and comprehensive analysis of this bill, in which I share and I concur. Therefore, I will not attempt to replicate or retrace too extensively his arguments.

[Senator Hays]

The clarity bill, as presently crafted, presents all senators with a most perplexing and painful conundrum. The purpose of the bill, as articulated by its advocates here and in the other place, is to design a constitutionally appropriate legislative mechanism following the constitutional road map as surveyed and opened by the Supreme Court of Canada's advisory opinion. I stress that it is an advisory opinion, not a judgment.

Ostensibly, this bill's rationale is to ensure that any future provincial referendum proposing the breakup of Canada presents a question that is both clear and supported by a significant majority of voters in that province on that question.

How can one not support the objectives of such a measure? Yet, a devil lurks in the details. The drafters of this bill neglected the Senate. The question, therefore, senators must ask is whether a bill, the purpose of which is greater constitutional clarity, is constitutionally effective if, on its face, it fails to meet the express and implied principles of the Constitution. What great danger is let loose in the land if a bill drafted for the sole purpose to comply with constitutional principles itself fails to meet constitutional principles? To paraphrase, the last sin is maybe the greatest treason, to attempt to do the right thing with the wrong reasons.

The legislative role of the Senate is undisputed. Under Section IV of the 1867 Constitution entitled "Legislative Power," section 17 reiterates:

> There shall be One Parliament for Canada, consisting of the Queen...the Senate, and the House of Commons.

Section 18 goes on to emphasize the privileges, immunities and powers of the House and the Senate.

The Constitution states unequivocally that legislation, to be lawful and binding, requires three actors: the two Houses of Parliament, the other place and the Senate, and of course the Governor General on behalf of the Crown. Yet, this bill mysteriously fails to follow the express provisions of the Constitution.

Honourable senators, what are we to do? Let us retrace the path of our constitutionality and constitutional practice in the hope of convincing the promoters and advocates of the bill in this place that a renovation of the bill may be necessary for it to achieve its own desired purpose.

How disastrous the consequences if, honourable senators, this bill is challenged and found wanting, found to be unconstitutional and, hence, an illegitimate act in constitutional terms, or on its face to be of no force and effect in that it is inconsistent with the principles, express and implied, of the Constitution. All of this could occur at the very moment when the separatist forces in Quebec, seeing winning conditions, seek to renew or pursue their project. This surely is a most dangerous course for the advocates of this bill to follow. By excluding the Senate, the bill fails, as I have said, on its face to meet the express provisions of the Constitution, as both written and interpreted.

Honourable senators, let us look at the validity of this bill through different prisms. What of constitutional conventions? What of constitutional usage? What of constitutional practice? What of constitutional custom? What of the rule of law, as articulated by the Supreme Court and expressed in the preamble of the Charter itself? What of the express powers and privileges of the Senate? What of the amending power of the Senate if the action in this bill is a certain precondition to amendment?

Can the advocates of this measure give us any single example where the legislative oversight of the Senate, created precisely to represent sectional and regional interests and minority rights under our federal system, has ever been thus evaded? Is there any example the advocates of this bill can bring forward that cannot be readily distinguished?

As honourable senators can see, profound and mighty questions are raised by this most exceptional legislative act. Does it meet the federal principle and the rule of law that the Supreme Court has held were inseparable in the Constitution? What kind of unpredictable violence does it do to the bicameral principle of Parliament?

Finally, honourable senators, is the product sought by this bill a binding resolution, a mandatory resolution, an obligatory resolution, an imperative resolution, that can fetter and bind the executive's discretion, that can fetter and bind the executive's prerogative, without the assent of both Houses or of the Crown? Indeed, are the binding resolutions sought by the executive in this act "legislative acts"? Are these binding resolutions, in pith and substance, legislative acts? If they are legislative acts, can they meet the test of the rule of law and constitutional principles and practices where the Senate does not expressly participate?

This bill, Bill C-20, is not an exercise in political science. The resolutions sought may lead to the dismemberment of Canada. If the purpose of the executive is to give greater legitimacy, greater credibility, to win the public's hearts and minds by adherence and respect for the rule of law, does it not take a gamble with Canada's future if it charts on its own a different course with only one House, which it controls?

Let me conclude, honourable senators, with one of the best artistic expressions of the rule of law that it is our senatorial and constitutional duty to uphold. This is from Robert Bolt's magnificent play, *A Man for all Seasons*:

> Sir Thomas More: The law, Roper, the law. I know what's legal not what's right. And I'll stick to what is legal...
>
> William Roper: So now you'd give the Devil benefit of law!
>
> Sir Thomas More: Yes. What would you do? Cut a great road through the law to get after the Devil?
>
> William Roper: I'd cut down every law in England to do that!
>
> Sir Thomas More: Oh? And when the last law was done, and the devil turned around on you — where would you hide, Roper, the laws all being flat? This country's planted thick with laws from coast to coast — Man's law, not God's — and if you cut them down — and you're just the man to do it — d'you really think you could stand upright in the winds that would blow then?

Honourable senators, do we think we can stand upright if our concerns on the rule of law are not satisfied? The onus is on the advocates of this bill to carefully allow a full and open hearing in a committee that, hopefully, does not prejudge these most weighty issues.

• (1550)

Does the bifurcation of Parliament, without constitutional amendment, not raise more questions of doubt than the clarity it seeks to bring to this awesome issue?

All senators will recall President Vaclav Havel's speech on the rule of law in the other place a short time ago. Let me conclude with the words of Vaclav Havel, the Czech leader, president and author, who wrote in a book entitled *Disturbing the Peace*:

> The good and the bad things we do each day are a constituent part of our history. History does not take place outside history, and history is not outside of life....

Honourable senators, this bill embarks us on a historic voyage. We should navigate with caution and with care. The country may be at stake.

Hon. Lowell Murray: With the honourable senator's permission, I wish to ask him a question.

Senator Grafstein: Yes.

Senator Murray: The conclusion I draw from his speech, as I drew from the speech of our colleague Senator Joyal a while ago, is that, in his opinion, the bill is, on at least several counts, unconstitutional.

What amendments can we make that would repair that difficulty?

Senator Grafstein: Again, this is my precursory view, but I should hope that, as we have had in the past in following the practice of the Senate, we will have a full and open hearing at committee, where experts, having had the advantage of reading the Debates at second reading, will be able to opine on their particular views. As a result of that, we should come to some consensus on whether or not the views that Senator Joyal and I and others share as to constitutionality are reflected by way of evidence in the committee.

Honourable senators will recall that I disagreed with the government on the Nisga'a bill. I was not a member of the committee; yet I went to practically all the committee hearings. We had a full and fair hearing. We had all of the views reflected. I believe, as Senator Joyal has said, that every member and the chair of this committee will allow a full and fair airing of all the evidence that would reflect on the opinions that you have heard here today.

I do not believe that I will be invited to be a member of that committee, but I certainly will attend, as any senator may, including an independent one, and listen and, I hope, participate in the questions and answers fairly. At the end of that process, I would expect to come to an appropriate conclusion.

My preliminary belief is that this bill is flawed. None of us would like to have a bill premised on constitutional principles being itself unconstitutional. That would be a horrible result. All honourable senators recognize the importance of this measure, the exceptional nature of this measure, and I am confident that all senators will not prejudge the matter, but will give their full faith and credit to the evidence that is presented and only then, perhaps, disagree with the evidence.

For instance, I have some fundamental disagreements with the Supreme Court of Canada's advisory opinion.

Senator Murray: That was my next question.

Senator Grafstein: The good news, honourable senators, is that it is an opinion. It is not a judgment. The good news is that there may be some dicta. Who are we to stand up against the Supreme Court of Canada? Well, I will tell you who we are. We are senators, who are supposed to be supreme when it comes to law-making.

Senator Murray: I appreciate the thoughtful analysis that the honourable senator has given to this bill, as he did to the Nisga'a bill. While I was somewhat critical of his decision to abstain at second reading of the Nisga'a bill, upon further reflection I found myself in his company on the abstention.

That being said, until this very moment, the honourable senator had been careful not to discuss or to criticize the advisory opinion of the Supreme Court of Canada. Indeed, Senator Joyal was, I thought, at some pains not to do so either. Perhaps that reflects their professional training.

Senator Cools: Yes.

Senator Murray: No one wants to criticize the court unnecessarily, I least of all.

However, if the bill is flawed, as my honourable friend suggests, is it not possible that the advisory opinion of the court is responsible for that? The advisory opinion of the court is flawed in that after they answered the three questions put to them by the Order in Council, they ventured a political essay in the broad sense, which, in my very respectful opinion, is beyond the realm of their experience and of their mandate.

The advisory opinion, in a number of respects, has created a great deal of difficulty for "political actors."

Let me take up one point that the honourable senator made. The good news is that it is advisory only. I have the opinion here. I shall not get it out and read to you the exact sentence, but it is forever engraved on my mind: "These are binding legal obligations under the Constitution." I believe I am quoting almost word for word.

When they talk of the binding legal obligations under the Constitution, they are talking about the process that they are putting forward in the event of a referendum on secession in a province.

A short while later, when he was taking his retirement from the court, the Right Honourable Antonio Lamer, in a celebrated interview with *Le Devoir*, was at some pains to say what appeared to me to be the contrary position; namely, that no one is bound by this, that it is just an advisory opinion, et cetera. What does my friend make of all that?

Senator Grafstein: Honourable senators, there are three issues. I will try to deal with them shortly, if I can.

First, regarding the advisory opinion of the Supreme Court of Canada, I believe former chief justice Lamer was correct when he said that that opinion is an opinion. It is not a judgment; it is an opinion. An opinion is much different from a judgment. As Senator Joyal pointed out in *Re Broadcasting*, or in even a better case, the Manitoba reference with respect to the bilingual statutes, there was a clear judgment with clear principles, and *stare decisis* follows.

The nice question for lawyers — and also for senators — is whether the Supreme Court of Canada, under the rule of *stare decisis*, must follow an opinion as opposed to a judgment. I believe they are bound to follow a judgment unless they are able to find different facts or templates that they can shift. They are freer to change their viewpoint when it comes to an opinion. I do not think they are bound by *stare decisis*.

I share Senator Cools' concern about the court perhaps proceeding beyond the exercise of its constitutional duties from time to time. I was the only senator who attended at the final arguments on the advisory opinion. Speaking for myself, I was displeased with the argument that was made at that time.

Senator Murray: Why? By the government?

Senator Grafstein: By the government and by the parties to the opinion. The reason I fundamentally agree with Senator Joyal is that the argument that he made so soundly, thoroughly and correctly about the country being one and indivisible was not —

The Hon. the Speaker: I regret to inform Senator Grafstein that the 15-minute period for the speech and questions has expired.

• (1600)

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I would propose that the time for Senator Grafstein's speech, comments and questions be extended by a further 15 minutes.

The Hon. the Speaker: Is it agreed, honourable senators, that leave be granted for a further 15 minutes?

Hon. Senators: Agreed.

Senator Cools: Honourable senators, I do not understand what just happened. Was that a motion of some kind? It seems to me that the request for time should come from Senator Grafstein.

Senator Grafstein: I find that perfectly acceptable, unless other senators disagree.

Senator Hays: Senator Cools has asked whether or not this is proper. The new ruling was just given today, so perhaps the honourable senator has not had time to read it. The ruling states at page 4:

> Accordingly, it is my ruling that a request to extend time for debate can be qualified with a statement indicating the time of the extension. This statement can be proposed either by the senator making the request or by any other senator so long as any discussion related to the request for leave is kept very brief.

Senator Cools: Honourable senators, there is a bit of a problem because one cannot discuss Speaker's rulings. I would have absolutely no problem if Senator Grafstein requested another hour. I would agree. We cannot, however, discuss and debate a ruling. The particular question is: Who should intervene to allow suspensions of time?

The Hon. the Speaker: Honourable Senator Cools, I must ask you not to discuss or debate it in that case. A 15-minute extension has been granted to Senator Grafstein.

Senator Grafstein: Thank you, honourable senators.

Let me conclude on the third issue. I have covered the first two.

As Senator Joyal and Senator Finestone said, we have the bill before us; we are obliged to deal with it. I find the bill curious. The word "resolution" is used and the Oxford dictionary says that "resolution" can mean many things. It can mean "an opinion." With the House of Commons, the executive can seek a non-binding resolution. The two Houses do that all the time.

This resolution is different. It is binding, obligatory, imperative — all of the legal words — and I use those words carefully.

We are then told by the advocates of the bill that, no, this is just a means of fettering the executive decision that can be done in the other place. When you turn to the amendment provisions in the Constitution, it calls for resolution.

Is this resolution, in pith and substance, a legislative act? I believe it is. If it is not, I have no quarrel. If it is, then this house has a constitutional responsibility to deal with the matter as the product of this particular bill.

Honourable senators, this is an important point. It goes to the question of the powers of the Senate. It goes to the question of the prerogatives of the Senate. It goes to the question of the privilege of the Senate and its constitutional practice and usage.

If one wants to parse my speech, I have tried to, in a short way, indicate all the many principles that I believe may have been offended by this piece of legislation. I should hope that the committee, in the fullness of time, will examine each one of those separate propositions with their separate constitutional consequences.

Senator Murray: That will take time, senator.

Senator Grafstein: It will not take that much time. I do not believe it will be a laborious exercise. I believe that the experts in the country will be able to come forward and opine on this issue because we do have a great deal of expertise. This issue is complicated, and I hope the committee will allow itself the appropriate time to study it carefully.

Perhaps other senators who have not followed the matter carefully will require more time. I understand that. For me, it will not take much time.

Senator Cools: Will the Honourable Senator Grafstein take a question?

Senator Grafstein: Yes.

Senator Cools: I believe Senator Murray is absolutely right. The judgment at paragraph 153 in the advisory opinion states exactly that:

> The obligations we have identified are binding obligations under the Constitution of Canada.

It becomes a moot or academic point because the government has taken it as obligatory and Bill C-20 is a reflection thereof.

That is not my question. According to the bill and according to the advisory opinion, we have a situation where we will have, if one can call it that, an outgoing Canada and an incoming Canada, or an old Canada and a new Canada. Senator Joyal raised very eloquently the sovereignty of the people of Canada and the fact that government should operate with the consent of the sovereign's will of those people.

Honourable senators, I am a colonial so I know a little about movements of one status of a state to another. I have not yet heard anyone address the question of who speaks for the emerging Canada. In other words, when countries emerge, as in 1867 when a new nation emerged, it was the emerging representatives who spoke and who said, "We wish to form a union."

I understand that constitutions operate positively, not negatively. In other words, any authority in Parliament or government on behalf of the people of Canada ends with the end of Canada.

My question to Senator Grafstein is whether he has addressed this particular question. Who will be the representatives of the emerging Canada, if one could call it Canada, or the Canada equivalent? How will they purport to learn and to obtain the sovereign will of the people of the prospective state, whatever it will be called?

Senator Grafstein: I have two points, and I will not be exhaustive. There is a bit of contemporary conceit in this bill. The conceit is that the players, as presently presented in either house, will even be here to deal with this particular matter.

Senator Cools: Yes.

Senator Grafstein: I disagree with the position that the honourable senator has suggested the government has taken — and even if it has taken that position, I am not sure it is correct —

Senator Cools: It is very wrong.

Senator Grafstein: — that they are bound by an advisory opinion. I leave that for this government or future governments to address. In my view, they are not bound by the opinion. It is an advisory opinion.

The Province of Quebec has been on all sides of this particular question. They agree or disagree depending on the time of day.

Senator Cools raises another interesting question. The only piece of relevant history I can give her is the American history. There was a huge debate between the fathers of the American union. When they went out with a constitutional convention, they passed articles, and George Washington, Madison, Jefferson and all the fathers were mightily concerned that they may have been doing something illegal or unlawful. George Washington, in particular, was concerned that the foundation of the United States might have been based on illegal means. As quickly as they could, therefore, they established Congress. They insisted that Congress adopt the articles that were presented by the convention.

Who speaks for whom? Who speaks for the new or the old? I shall tell you who speaks for Canada. The Parliament of Canada speaks for Canada. Until such time as that is altered, Parliament — that is, the Senate and the other place — speaks for Canada.

• (1610)

Senator Cools: I agree absolutely with Senator Grafstein. I hope that, as the discussion proceeds, some of these issues will emerge even more clearly. I thank the senator for his addition to the subject.

I am grateful to Senator Joyal for raising the American situation. His comments related not so much to the American Revolution, as to the context of the American Civil War.

Honourable senators, I have studied a fair amount about the American Civil War. My husband's great-grandfather marched in the American Civil War. When I was a very young girl, in the Caribbean, I was taught that constitutional parliamentary government was by far superior. We were told this was so because the parliamentary system would avoid bloodshed and revolution.

At some point in this debate, the entire question of revolution, civil war and bloodshed will be raised.

Hon. Serge Joyal: Honourable senators, I should like to commend Honourable Senator Grafstein for enlightening me on some of the legal aspects raised in this bill. However, he did not address the specific issue that the government leader has expounded on, that is, the prerogative.

In the evaluation of clause 1 of the bill in relation to the resolution, has the honourable senator had the opportunity to research the argument that this legislative initiative is an expression of the prerogative? As such, how would one bind the resolution's use in the exercise of the prerogative versus a simple act of Parliament?

Senator Grafstein: That is a most complex question, and I hope the committee will look at it.

I am not satisfied that the executive can bind or limit their own prerogative in this particular fashion. They can delegate power to a subordinate entity, but I am not sure whether they can limit their own prerogative in this particular fashion without, perhaps, a constitutional amendment in its proper form. Therefore, if there were such a question, for greater clarity and certainty, it would be important for both Houses to pass it and for the Queen to assent to it. There is then a safeguard for the limitation of the executive's prerogative. That question should be raised and carefully explored by the committee.

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

[*Translation*]

CANADA ELECTIONS BILL

THIRD READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Hays, seconded by the Honourable Senator Moore, for the third reading of Bill C-2, respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts.

Hon. Pierre Claude Nolin: Honourable senators, I shall be brief, since I have amendments to introduce.

The political parties of Canada are governed by the Canada Elections Act. Bill C-2 is intended to repeal that act and to create a new one. The main registered political parties must maintain transparent financial activities. To that end, the present legislation requires each registered party to have a chief agent. The role of this individual is comparable to the official agent a candidate is required to have for a specific riding.

Since we started examining Bill C-2, I have received correspondence from citizens, lobbyists in particular, calling upon me to closely examine the disclosure of financial information from political parties and demanding more transparency, particularly where riding associations are concerned.

National parties are required to submit detailed reports. In fact, under Bill C-2, more information will have to be provided annually by the various political parties.

The House of Commons, in 1988, the Lortie commission, in 1993, and the Chief Electoral Officer, in his 1996 report following the 1993 election, all asked for greater transparency regarding the political parties' finances and financial transactions. The Lortie commission and the Chief Electoral Officer were even more specific. They expressly asked that the act be amended to include riding associations.

I want to point out something that is not new, namely. that about 80 per cent of the Canadian population is already governed, at the national level, by such provisions. Six provinces out of ten already have such measures in their elections act, including Quebec, since 1977. Ontario also has similar measures, whereby riding associations are an integral part of political parties. As such, they must submit detailed financial activity reports, which are examined by authorized auditors.

The current act, like the proposed bill, states that a riding association can have a registered agent, but it does not specify the responsibilities or mandate of that agent.

• (1620)

I agree with what the Chief Electoral Officer and the Lortie commission asked in 1993. In fact, at least two members of the Lortie commission are now among our colleagues. What they asked is not complicated. They asked for transparency. Canadians deserve the greatest possible transparency when it comes to the finances of political parties. There is transparency at the national level. It is so good that our system serves as a model all over the world.

However, there is a grey area. The Chief Electoral Officer said so in his 1996 report. He told us in committee that if we did not amend the act, he would ask us to do so the next time. He said he would keep on asking us until we did it, so we should do it.

He is the officer of Parliament responsible for the integrity of the electoral system of which we are so proud. I had a speech. I could have told you why transparency is necessary. For example, what happens to the agent of a riding association if the member of Parliament changes political parties? Ask Mr. Nunziata in the other place what happened to his riding association fund. Chances are the money left with him and is no longer in the coffers of the Liberal association in his riding.

What happens when a riding association changes executive? Ask the New Democratic Party what happens to the riding association's money. People will tell you that in their party all the money must go through the central committee in Ottawa. What happens if someone contributes to the party and does not want an income tax receipt? What is there to compel the treasurer of the riding association to deposit the cheque in the riding association's bank account? This is a very slippery slope. We must protect ourselves.

We are supposed to have the best Elections Act in the world; it is given as a model. There is a flaw in the act and it is our duty in the Senate to introduce these amendments. In the House of Commons, they are in a conflict of interest and they do not want us to mess around with the Elections Act. During the debate on electoral boundaries, they said we were meddling in their affairs. Indeed we were.

Senator Prud'homme: And it is a good thing we did.

Senator Nolin: Honourable senators, I should like to introduce some amendments dealing with what I just talked about.

Senator Prud'homme: If I like them, I will support them.

Senator Nolin: These amendments make significant changes to clause 375 of the current bill, which deals with the registered agents of political parties at the riding association level.

MOTIONS IN AMENDMENT

Hon. Pierre Claude Nolin: Honourable senators, I move, seconded by the Honourable Senator Prud'homme:

That Bill C-2 be not now read a third time but that it be amended, in clause 375, on page 154,

(*a*) by replacing line 27 with the following:

"**375.** (1) A registered party shall, subject to";

(*b*) by replacing line 32 with the following:

"registered party shall appoint a person, to be";

(*c*) by adding the following after line 36:

"(3) The registration of an electoral district agent is valid

(*a*) until the appointment of the electoral district agent is revoked by the political party;

(*b*) until the political party that appointed the electoral district agent is deregistered; or

(*c*) until the electoral district of the electoral district agent no longer exists as result of a representation order made under section 25 of the *Electoral Boundaries Readjustment Act*.;

(4) Outside an election period, the electoral district agent of a registered party is:

(*a*) responsible for all financial operations of the electoral district association of the party; and

(*b*) required to submit to the chief agent of the registered party that appointed the person to act as the electoral district agent an annual financial transactions return, in accordance with subsection (5), on the electoral district association's financial transactions.

(5) The annual financial transactions return referred to in subsection (4) must set out

(*a*) a statement of contributions received by the following classes of contributor: individuals, businesses, commercial organizations, governments, trade unions, corporations without share capital other than trade unions, and unincorporated organizations or associations other than trade unions;

(*b*) the number of contributors in each class listed in paragraph (*a*);

(*c*) subject to paragraph (*c*.1), the name and address of each contributor in a class listed in paragraph (*a*) who made contributions of a total amount of more than $200 to the registered party for its use, either directly or through one of its electoral district associations or a trust fund established for the election of a candidate endorsed by the registered party, and that total amount;

(*c*.1) in the case of a numbered company that is a contributor referred to in paragraph (*c*), the name of the chief executive officer or president of that company;

(*d*) in the absence of information identifying a contributor referred to in paragraph (*c*) who contributed through an electoral district association, the name and address of every contributor by class referred to in paragraph (*a*) who made contributions of a total amount of more than $200 to that electoral district association in the fiscal period to which the return relates, as well as, where the contributor is a numbered company, the name of the chief executive officer or president of that company, as if the contributions had been contributions for the use of the registered party;

(*e*) a statement of contributions received by the registered party from any of its trust funds;

(*f*) a statement of the electoral district association's assets and liabilities and any surplus or deficit in accordance with generally accepted accounting principles, including a statement of

(i) disputed claims under section 421, and

(ii) unpaid claims that are, or may be, the subject of an application referred to in subsection 419(1) or section 420;

(*g*) a statement of the electoral district association's revenues and expenses in accordance with generally accepted accounting principles;

(*h*) a statement of loans or security received by the electoral district association, including any conditions on them; and

(*i*) a statement of contributions received by the electoral district association but returned in whole or in part to the contributors or otherwise dealt with in accordance with this Act.

(6) For the purpose of subsection (5), other than paragraph (5)(*i*), a contribution includes a loan.

(7) The electoral district association shall provide the chief agent of a registered party with the documents referred to in subsection (5) within six months after the end of the fiscal period."; and

(*d*) by renumbering subsection (3) as subsection (8) and any cross-references thereto accordingly.

Honourable senators, I have other corollary amendments to make in both official languages.

Honourable senators, I move, seconded by the Honourable Senator Prud'homme:

That Bill C-2 be not now read a third time but that it be amended in clause 405, on page 166, by replacing lines 36 and 38 with the following:

(3) No person, other than a chief agent, or a registered agent or an electoral district agent of a registered party, shall accept contributions to a registered party.

(4) No person, other than a chief agent of a registered party, shall provide official receipts to contributors of monetary contributions to a registered party for the purpose of subsection 127(3) of the *Income Tax Act*.

• (1630)

Honourable senators, I move, seconded by the Honourable Senator Prud'homme:

That Bill C-2 be not now read a third time but that it be amended, in clause 424, on page 174, by replacing lines 14 to 16 by the following:

"(*a*) the financial transactions returns, substantially in the prescribed form, on the financial transactions of both the registered party and of the registered party's electoral district associations;"

Honourable senators, I move, seconded by the Honourable Senator Prud'homme:

That Bill C-2 be not now read a third time but that it be amended, in clause 426,

(*a*) on page 176, by replacing lines 36 to 38 with the following:

"shall report to its chief agent on both its financial transactions return and trust fund return referred to in section 428, and on the annual financial transactions returns on the electoral district associations' financial transactions referred to in paragraph 375(4)(*b*), and shall make any"; and

(*b*) on page 177,

(i) by replacing line 11 with the following:

"electoral district agents, registered agents and officers of the regis-", and

(ii) by replacing line 20 with the following:

"electoral district agents, registered agents and officers of the party to".

Honourable senators, I move, seconded by the Honourable Senator Prud'homme:

That Bill C-2 be not now read a third time but that it be amended, in clause 473, on page 202, by replacing lines 37 and 38 with the following:

"registered party or to a registered agent of that registered party in the".

Honourable senators, I move, seconded by the Honourable Senator Prud'homme:

That Bill C-2 be not now read a third time but that it be amended, in clause 477, on page 203, by replacing lines 30 to 31 with the following:

"**477.** A candidate, his or her official agent, and the chief agent of a registered party, as the case may be, shall use the prescribed forms for".

Honourable senators, I move, seconded by the Honourable Senator Prud'homme:

That Bill C-2 be not now read a third time but that it be amended, in clause 560, on page 246,

(a) by replacing line 18 with the following:

"ceipt with the Minister, signed by the chief agent or a registered"; and

(b) by replacing line 25 with the following:

"*(a)* by the chief agent or a registered agent of a registered".

[*English*]

The Hon. the Speaker *pro tempore***:** Honourable senators, is leave granted for Senator Nolin to present seven amendments?

Hon. Senators: Agreed.

Senator Nolin: Dispense.

The Hon. the Speaker *pro tempore***:** Shall I dispense with the reading of the seven amendments?

Hon. Senators: Agreed.

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I wish to thank Senator Nolin for the work he has done in preparing a presentation and series of amendments. These amendments would require a much higher level of reporting by riding or constituency associations than is presently provided for in Bill C-2.

This is an initiative with which I am not totally unsympathetic. My own feelings are in accord with the honourable senator's on the value of transparency in all matters to do with our democracy. At the heart of that is the way in which we elect our representatives. Senator Nolin pointed out in his speech that most provinces have provisions that require a higher level of disclosure. That is, to me, a strong indication of where we are headed at the national level.

In opposing the amendments, I ask honourable senators to consider where Bill C-2 in its present form, unamended, will take us in terms of progress towards the ultimate goal of greater transparency and more disclosure. Senator Nolin referred to the important role of the Chief Electoral Officer. I totally agree that he is of extraordinary importance and has a great responsibility for ensuring that the integrity of our system is maintained. However, in addition to the Chief Electoral Officer, the political parties recognized in accordance with provisions of the legislation also have an important role and a high duty to ensure adequate levels of transparency and behaviour — shall I say economic behaviour as well as political behaviour — on the part of the riding associations which constitute the political parties.

In my mind's eye, the most important political institution in the country is the riding association. Most parties then have a means of breaking down the ridings by provinces or territories, and then nationally. I list them in my mind's eye in the order of importance, namely ridings, provincial and territorial, and the national association.

The parties which constitute the entity of the ridings, the provincial and territorial associations and the national party, are accountable, at least every five years through a general election, to the public that they represent at the various levels. Therefore, the way in which those parties are run and the way in which political and economic accountability and transparency of the riding associations is administered by those parties is to some considerable degree an answer to what is behind the amendments. A party that allows a riding association to do something that is improper will pay a political price and is accountable for that transgression.

I acknowledge, having said that, that different rules requiring transparency will bring that transgression to light sooner than they might under the law as presently constituted. However, as Senator Nolin acknowledged at the beginning of his comments, Bill C-2 does require a much higher level of accountability and transparency in terms of publishing donor's names and addresses, disclosure of trust funds that contribute to campaigns, disclosure of transfers to constituencies by the federal or provincial associations, and in numerous other ways. That includes the disposition, following the election, of surplus funds for which the candidates are accountable under our system. They have been so responsible for a long time in terms of them constituting a receipting entity in terms of disposition of those funds and saying that those funds cannot be transferred to a candidate who has been successful.

• (1640)

Without going on at length and reciting the provisions of the act that call for that greater level of transparency through the federal associations that are responsible for what are our political parties, and highlighting the importance of our system and the fact that it has worked extremely well in terms of the healthy democracy that we have in Canada, through the ridings being supervised by the associations of which they are a part at the provincial, territorial and national level, I am not in support of Senator Nolin's amendments.

Therefore, I urge honourable senators not to vote in favour of them. I would be happy to answer questions or receive comments.

Hon. Marcel Prud'homme: Honourable senators know that I was elected nine times. I never spent more than $25,000 to get elected in any election. Some of that money was raised by my own family in order that I could keep my independence.

The Honourable Senator Hays has been a president of the Liberal Party of Canada, and a very popular one indeed. The Liberal Party should be thankful that he was president. Sitting next to Senator Hays is a former president of the party whom I supported very strongly under Mr. Trudeau's regime. Our Speaker has also been president of the party, and I was a strong supporter of him as well. There are others here in the Senate who held the same position.

All that is to say that there is a great deal of experience in this place. Honourable senators know that the intention of Senator Nolin's amendments comes about as a result of his long experience. To speak in a communistic way, he himself has been an apparatchik of his own party. I was probably a smaller apparatchik of my party. I see that Senator Milne is also here. She is highly knowledgeable about the hanky-panky of politics. My good friends Senators Finnerty, Taylor and Carstairs are also here late on a Thursday afternoon, while everyone else seems to be in Quebec trying to save a good and honest leader, although one who may not be the most popular.

I do not expect Senator Hays to support the amendments. I seconded them for the pleasure of discussing them. Does he agree that something will have to be done? It is a fact that some constituencies are sitting on loads of money that they refuse to pass along to their party, which, sometimes, is in dire need of money. I do not think that is fair or correct. I know that some local riding associations — and I do not want to be partisan — are sitting on hundreds of thousands of dollars while their party is starving.

That alone should be enough for us to say, "There is a point there and something will have to be done." Everyone is agreed that something must be done. It is like the famous song in Quebec, "Tout le monde veut aller au ciel mais personne ne veut mourir," which means that everyone wants to go to heaven but no one wants to die.

Does the honourable senator agree that, perhaps in a different atmosphere, but not delaying any further, something will have to be done to put our houses in order so that we can continue to preach that we have the best electoral laws in the world? Other countries ask us to share our expertise with them, be it the International Parliamentary Union, NATO, members of the Commonwealth or the French associations. They want to share our electoral laws.

Does the honourable senator agree that with his experience, and with the collective experience of all those I see around me, something will have to be done?

Senator Hays: Honourable senators, Senator Prud'homme is right. We have here — and Senator Prud'homme is first among them — a group of people who have vast experience and, accordingly, a lot of wisdom in this area.

The honourable senator asks if I agree that something will have to be done. Senator Nolin said that the Chief Electoral Officer wants more than Bill C-2 gives. He refers to the precedent of the provinces. His own amendment indicates the direction in which we are going. I repeat, and Senator Nolin acknowledged it, Bill C-2 takes us much further than we were before in the existing law that will be amended if this bill is given third reading and passed. If an election is held after the law comes into force, there will be a greater level of transparency and accountability.

I feel obliged, however, to repeat something. Something is being done. A political party that does not know — and I am speaking here in an abstract way — what its riding associations are doing, how much money is in the bank and what that money is being spent on is not doing its job. I suggest to honourable senators that the political parties of this country do know what is happening at the riding level. They do know what is in their bank accounts and how the monies are spent. That is the economic accountability issue to which I referred.

I think our democracy is healthy. Our level of transparency and accountability, while not perfect and which would be advanced considerably by the amendment, and in the minds of many should be, is a good system that works well. I think 130-some odd years of experience in terms of elections — and I am only familiar with the most recent ones while Senator Prud'homme is familiar with more — has proven that through election cycle after election cycle.

That is the best answer I can give, honourable senators. In giving the answer, I am trying to reinforce the position of my colleagues that the bill as presented is a good one and should be supported without amendment.

[*Translation*]

Senator Nolin: Honourable senators, I was expecting Senator Hays to show me how well-organized political parties have adequate control over their financial activities. However, I challenge him to tell me right now that his national political party knows exactly where all the funds solicited — let us talk simply at the regional level — by any candidate for the Liberal Party of Canada come from and that the use of these funds is duly documented.

If he tells me that it is possible but that he does not know, I will understand. In this sense, I may be going too far by challenging him, but I am convinced that he cannot tell me for sure that his party knows exactly where the funds are at the local management level.

• (1650)

Does the honourable senator not think that it would be much better for the transparency and credibility of our system if this were included in the bill, with all the penalties that involves? If we do not adopt the amendments I moved, we will not be able to improve this system once and for all. It is already improved in the provinces for 80 per cent of Canadians.

[*English*]

Senator Hays: Honourable senators, when I made my comments, they were not about a political party. They were comments intended to describe parties in a generic or an abstract way. I do not intend to comment on either the party that I belong to or on anyone else's party.

The thrust of your question is: Would it not be easier and better if the Chief Electoral Officer and his bureaucrats looked after this for us? We would feel better about it then. This question arises again and again in public life: Who should be exercising power? There has always been an undercurrent to the effect that, if we had bureaucrats, or if the Auditor General ran the country, everything would be just fine. The fact is that the same human beings with the same frailties exist throughout the system, whether they are political or bureaucratic. I believe that the power and these responsibilities should be moved carefully away from the politicians. They are accountable through their parties and, in the case of the our democracies, in general elections.

If these parties do not know what is happening, they should. I believe that for the most part they are knowledgeable. Do they have every bit of knowledge that they should have? Probably not. Would they have it if your amendment were passed and in force in five years? Probably not. The system is working well. It is healthy and improved. We are heading more and more towards a greater level of disclosure, transparency and accountability, and I think we will continue to do so. The rate at which that progresses will be measured in the changes that are contained in Bill C-2. At the next revision of the act, we will see another measure of that progression.

In answer to the question, Senator Prud'homme, we are heading in that direction. We will require greater disclosure and accountability. How we do it, however, is something on which we should move at a measured pace. I think we are doing that and I think we have taken a good series of steps forward in Bill C-2.

The Hon. the Speaker *pro tempore***:** Honourable senators, the alloted 15 minutes allowed on this question are over; however, Senator Milne had a question.

Hon. Lorna Milne: Honourable senators, I want to make a comment on this particular bill.

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

Senator Hays: Leave is granted to extend the time. However, the senator does not need leave to speak because she is speaking in the first instance.

Senator Milne: Honourable senators, since I have been accused in this place of hanky panky, I think I should stand up and defend myself, as well as speak to the amendment.

The Hon. the Speaker *pro tempore***:** Order!

Senator Prud'homme: On a point of order, I have great respect and friendship for Senator Milne. She said, "I have been accused of hanky panky." Her statement was made right after Senator Nolin, Senator Hays and I had spoken. I hope she was not referring to one of us. I doubt very much that a gentleman like either Senator Hays or Senator Nolin — and, hopefully, a gentleman like me — would ever whisper comments like that. Perhaps it came from her neighbour. It did not come from this side.

Senator Taylor: I am at the age where I could consider that a compliment!

Senator Milne: In the debate within the committee on this particular bill, it was pointed out clearly and quite accurately that this is an Elections Act, not a "between Elections Act." If we are asking political parties, between elections, to account for every five cents they spend or raise on a garden party or on hot dogs and have the Chief Electoral Officer of Canada scurrying around within the internal affairs of party ridings between elections, then we are going a bit far. This bill brings a great deal of openness to the entire party funding procedure at election time, and I think we should support the bill as it is and not the amendments.

On motion of Senator Taylor, debate adjourned.

BUSINESS OF THE SENATE

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, under Government Business, I should like to call Bill C-22, next.

PROCEEDS OF CRIME (MONEY LAUNDERING) BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with the reprinted Bill C-22, to facilitate combatting the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend and repeal certain Acts in consequence.

Bill read first time.

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

On motion of Senator Hays, bill placed on the Orders of the Day for second reading Monday next, May 15, 2000.

• (1700)

AGRICULTURE AND FORESTRY

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Thelma J. Chalifoux, for Senator Gustafson, pursuant to notice of May 4, 2000, moved:

> That the Standing Senate Committee on Agriculture and Forestry have power to sit at 3:30 p.m. on Tuesday next, May 16, 2000, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

Motion agreed to.

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

UPDATE "OF LIFE AND DEATH"—MOTION TO AUTHORIZE SUBCOMMITTEE TO MEET DURING SITTING OF THE SENATE WITHDRAWN

On Motion No. 66:

> That the Subcommittee to Update "Of Life and Death" have power to sit on Monday next, May 15, 2000, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

Hon. Sharon Carstairs: Honourable senators, the Deputy Leader of the Government has made it clear that we will not be sitting on Monday. That being the case, there is no need for this motion. I would ask permission of the chamber for unanimous consent to withdraw the motion.

The Hon. the Speaker *pro tempore***:** Honourable senators, is there unanimous consent that this motion be withdrawn?

Hon. Senators: Agreed.

Motion withdrawn.

[*Translation*]

TRANSPORT AND COMMUNICATIONS

COMMUNICATIONS—MOTION TO AUTHORIZE SUBCOMMITTEE TO MEET DURING SITTING OF THE SENATE WITHDRAWN

On Motion No. 67:

> That the Subcommittee on Communications have the power to sit on Monday, May 15, 2000, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

Hon. Marie-P. Poulin: Honourable senators, since the Deputy Leader of the Government has informed us that the Senate will not be sitting on Monday, May 15, 2000, I seek unanimous consent to withdraw this motion.

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

Hon. Senators: Agreed.

Motion withdrawn.

[*English*]

AGRICULTURE AND FORESTRY

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

On Motion No. 68:

> That the Standing Senate Committee on Agriculture and Forestry have power to sit on Monday next, May 15, 2000, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

Hon. Thelma J. Chalifoux: Honourable senators, on behalf of Senator Fairbairn, I ask for unanimous consent to withdraw this motion.

The Hon. the Speaker *pro tempore***:** Honourable senators, is there consent to withdraw this motion?

Hon. Senators: Agreed.

Motion withdrawn.

ADJOURNMENT

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

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

> That when the Senate adjourns today, it do stand adjourned until Tuesday next, May 16, 2000, at 2 p.m.

Motion agreed to.

The Senate adjourned until Tuesday, May 16, 2000, at 2 p.m.

THE SENATE OF CANADA

PROGRESS OF LEGISLATION

(2nd Session, 36th Parliament)

Thursday, May 11, 2000

GOVERNMENT BILLS
(SENATE)

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-3	An Act to implement an agreement, conventions and protocols between Canada and Kyrgyzstan, Lebanon, Algeria, Bulgaria, Portugal, Uzbekistan, Jordan, Japan and Luxembourg for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income	99/11/02	99/11/24	Banking, Trade and Commerce Foreign Affairs	99/12/07 99/12/09	0 0	99/12/16		
S-10	An Act to amend the National Defence Act, the DNA Identification Act and the Criminal Code	99/11/04	99/11/18	Legal and Constitutional Affairs	99/12/16	2	00/02/09		
S-17	An Act respecting marine liability, and to validate certain by-laws and regulations	00/03/02	00/04/04	Transport and Communications	00/05/09	2			
S-18	An Act to amend the National Defence Act (non-deployment of persons under the age of eighteen years to theatres of hostilities)	00/03/21	00/04/04	Foreign Affairs	00/05/04	0			
S-19	An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence	00/03/21	00/04/06	Banking, Trade and Commerce					
S-22	A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law	00/05/11							

GOVERNMENT BILLS
(HOUSE OF COMMONS)

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-2	An Act respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts	00/02/29	00/03/28	Legal and Constitutional Affairs	00/04/13	0			
C-4	An Act to implement the Agreement among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station and to make related amendments to other Acts	99/11/23	99/12/01	Foreign Affairs	99/12/09	0	99/12/14	99/12/16	35/99

C-6	An Act to support and promote electronic commerce by protecting personal information that is collected, used or disclosed in certain circumstances, by providing for the use of electronic means to communicate or record information or transactions and by amending the Canada Evidence Act, the Statutory Instruments Act and the Statute Revision Act	99/11/02	99/12/06	Subject matter 99/11/24 Social Affairs, Science and Technology	99/12/06 99/12/07	2	99/12/09	00/04/13	5/00
C-7	An Act to amend the Criminal Records Act and to amend another Act in consequence	99/11/02	99/11/17	Legal and Constitutional Affairs	99/11/30	4	99/12/08	00/03/30	1/00
C-9	An Act to give effect to the Nisga'a Final Agreement	99/12/14	00/02/10	Aboriginal Peoples	00/03/29	0	00/04/13	00/04/13	7/00
C-10	An Act to amend the Municipal Grants Act	00/03/28	00/04/10	National Finance	00/05/04	0	00/05/09		
C-13	An Act to establish the Canadian Institutes of Health Research, to repeal the Medical Research Council Act and to make consequential amendments to other Acts	00/03/30	00/04/04	Social Affairs, Science and Technology	00/04/06	0	00/04/10	00/04/13	6/00
C-20	An Act 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	00/03/21							
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000	99/12/14	99/12/15	–	–	–	99/12/16	99/12/16	36/99
C-22	An Act to facilitate combatting the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend and repeal certain Acts in consequence	00/05/09 (withdrawn 00/05/11) 00/05/11 (reintroduced)							
C-23	An Act to modernize the Statutes of Canada in relation to benefits and obligations	00/04/12	00/05/09	Legal and Constitutional Affairs					
C-29	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000	00/03/23	00/03/28	–	–	–	00/03/29	00/03/30	3/00
C-30	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001	00/03/23	00/03/28	–	–	–	00/03/29	00/03/30	4/00

COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-202	An Act to amend the Criminal Code (flight)	00/02/08	00/02/22	Legal and Constitutional Affairs	00/03/02	0	00/03/21	00/03/30	2/00
C-247	An Act to amend the Criminal Code and the Corrections and Conditional Release Act (cumulative sentences)	99/11/02							
C-445	An Act to change the name of the electoral district of Rimouski—Mitis	00/05/09							
C-473	An Act to change the names of certain electoral districts	00/04/10							

SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-2	An Act to facilitate the making of legitimate medical decisions regarding life-sustaining treatments and the controlling of pain (Sen. Carstairs)	99/10/13	00/02/23	Legal and Constitutional Affairs					
S-4	An Act to provide for judicial preauthorization of requests to be made to a foreign or international authority or organization for a search or seizure outside Canada (Sen. Nolin)	99/11/02							
S-5	An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (Sen. Grafstein)	99/11/02	00/02/22	Social Affairs, Science and Technology					
S-6	An Act to amend the Criminal Code respecting criminal harassment and other related matters (Sen. Oliver)	99/11/02	99/11/03	Legal and Constitutional Affairs					
S-7	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	99/11/02	00/02/22	Privileges, Standing Rules and Orders					
S-8	An Act to amend the Immigration Act (Sen. Ghitter) *(Dropped from Order Paper pursuant to Rule 27(3) 00/05/04)*	99/11/02							
S-9	An Act to amend the Criminal Code (abuse of process) (Sen. Cools)	99/11/03	00/05/04	Legal and Constitutional Affairs					
S-11	An Act to amend the Criminal Code to prohibit coercion in medical procedures that offend a person's religion or belief that human life is inviolable (Sen. Perrault, P.C.) *(Dropped from Order Paper pursuant to Rule 27(3) 00/02/08)* *(Restored to Order Paper 00/02/23)*	99/11/04							
S-12	An Act to amend the Divorce Act (child of marriage) (Sen. Cools)	99/11/18							
S-13	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	99/12/02	00/02/22	National Finance					
S-15	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) (Sen. Milne)	99/12/16							
S-16	An Act respecting Sir John A. Macdonald Day (Sen. Grimard)	00/02/22							
S-20	An Act to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada (Sen. Kenny)	00/04/05	00/05/09	Energy, the Environment and Natural Resources					

S-21	An Act to protect heritage lighthouses (Sen. Forrestall)	00/04/12

PRIVATE BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-14	An Act to amend the Act of incorporation of the Board of Elders of the Canadian District of the Moravian Church in America (Sen. Taylor)	99/12/02	99/12/07	–	–	–	99/12/08	00/03/30	

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