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OFFICIAL REPORT
(HANSARD)

Wednesday, June 28, 2000

THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

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THE SENATE

Wednesday, June 28, 2000

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

Prayers.

THE SENATE

DEPUTY CLERK AND PRINCIPAL CLERK—
COMMISSION ISSUED TO GARY W. O'BRIEN

The Hon. the Speaker: Honourable senators, I have the honour to inform the Senate that a commission under the Great Seal of Canada has been issued to Gary W. O'Brien, Deputy Clerk and Principal Clerk of the Senate, appointing him a Commissioner to administer the oath of allegiance to members of the Senate, and also to take and receive their declarations of qualification.

Hon. Senators: Hear, hear!

LAW CLERK AND PARLIAMENTARY COUNSEL—
COMMISSION ISSUED TO MARK AUDCENT

The Hon. the Speaker: Honourable senators, I have the honour to inform the Senate that a commission under the Great Seal of Canada has been issued to Mark Audcent, Law Clerk and Parliamentary Counsel, appointing him a Commissioner to administer the oath of allegiance to members of the Senate, and also to take and receive their declarations of qualification.

Hon. Senators: Hear, hear!

TRIBUTE TO PAGES ON DEPARTURE

The Hon. the Speaker: Honourable senators, as we are approaching the end of our session, I shall take this opportunity to thank all the pages who have served us so well in these past years and to recognize those who will be leaving the Senate after their two years of service with us.

Jaideep Mukerji has been the Deputy Chief Page. He has been with us for two years and has greatly appreciated his time in the Senate. In fact, he says he regrets that so few Canadians have an opportunity to experience what he has experienced.

[*Translation*]

Next year, Jaideep will be taking part in a program that will allow him to travel the world and continue his studies in political science.

After that, he plans to spend a year in India doing humanitarian work in a clinic specializing in cataract surgery for the poor.

[*English*]

He wishes to express his thanks to all honourable senators.

Alexander Jeglic has also been with us the last two years and has greatly enjoyed his time here. He graduated recently from the business law program at Carleton University and will be pursuing his law degree in Chicago.

• (1340)

In addition to thanking senators, he also wishes to thank all the staff who have been working with him. I do not know what particular connections he has with the staff, so we shall have to get him to explain that. He hopes to use his skills to improve the socio-economic situation in his homeland, the former Yugoslavia.

The next page is Gregory Kolz. Gregory has been on the two-year program with us. In September, he will be entering his fourth and final year in the honours program in political science at the University of Ottawa. He hopes at some stage to be back in his hometown of North Bay, Ontario, to encourage other young Canadians to join the page program. He plans to pursue a career in law or education, eventually being the first Senate page alumnus to be appointed senator.

In addition to thanking all honourable senators with whom he has worked, Gregory wants to send a special thank you to the members of the Standing Senate Committee on Banking, Trade and Commerce with whom he spent the last few weeks, which he found very exciting.

[*Translation*]

The next to leave us is Jean-François Lauzon. Unfortunately, he was only with us for one year. He graduated from the University of Ottawa this spring with a bachelor's degree in political science.

Nevertheless, he had an extraordinary year with us, which enabled him to learn much more about the Canadian parliamentary system.

[*English*]

Jean-François is presently working for a federal cabinet minister. In case senators are wondering who that might be, let me say that this particular minister has a very anxious day or two waiting for the vote that will occur here tomorrow afternoon. He is in a special category, shall we say, insofar as the Senate is concerned.

[*Translation*]

He plans to undertake his master's program at the Université de Montréal in September 2001.

[*English*]

The next page is Jane Thomson. Jane will be finishing her honours degree in political science next year as a participant in the Carleton-Leeds Parliamentary Internship Exchange Program. Some honourable senators will be familiar with that exchange program, as they have dealt with some of their interns. Jane will work as an intern in the first part of the year here on Parliament Hill and the latter half in London, England, at Westminster. Jane tells us that she has had a wonderful two years here with us and thanks everyone for their help.

Honourable senators might know that the first time Jane applied for the page program, she was judged to be not sufficiently bilingual. She then proceeded to extend her bilingual skills by taking special courses and has passed the course. We have used her on a number of occasions to speak to the Forum for Young Canadians and others about our page program.

[*Translation*]

Last, but certainly not least, on the list is Robbie, who is always very active.

[*English*]

Robbie Tremblay joined the page program in February of 1998, and he has been here with us three years. I am not quite sure how he managed to have a three-year appointment for a two-year program, but that, I suppose, is Robbie. He hopes to continue his volunteer work with gay and lesbian youth and to finish his bachelor's degree in political science and sociology. After graduation, he plans to study social work and hopes to pursue a career in community planning, program development and social intervention.

On behalf of all honourable senators, I wish to express our thanks to this group of fine young Canadians who served us so well in the past one, two or three years, and to wish them every success in the future and, indeed, perhaps they will be back here someday as senators.

SENATORS' STATEMENTS

HEALTH

A GUIDE TO END OF LIFE CARE FOR SENIORS

Hon. Sharon Carstairs: Honourable senators, on June 7, I had the honour to participate in the official launch of "A Guide to End of Life Care for Seniors." This guide, funded by Health Canada, was a collaborative project by lead experts in the fields of palliative care, gerontology and medicine.

The objectives of the guide are to improve end-of-life care for seniors by consolidating best practices, providing a national guide for everyday practice, developing a common language for the practice of care, and facilitating increased autonomy and independence in decisions by seniors.

The main audience for the guide are health care and social service providers in long-term and acute-care settings and in community agencies. The guide will also be useful and informative for seniors and their family caregivers, health care planners, students and, to some degree, the general public. Indeed, it is my hope that a client-centred guide will flow from this, one that will be a bit more consumer-friendly. This is also the wish of the writers of the project. An online version of the guide will be available shortly and a link will be established with my Web page.

I should like to congratulate the co-chairs of the national advisory committee that created the guide, Dr. Rory Fisher from the University of Toronto and Dr. Margaret Ross from the University of Ottawa. Both are well respected in the field of end-of-life care. They, along with the other project members, have created a first-class document that, in my view, will be very useful in expanding our knowledge base on quality end-of-life care.

HUMAN RIGHTS

WINDS OF CHANGE

Hon. Calvin Woodrow Ruck: Honourable senators, once again it is a pleasure and an honour for me to rise and say a few words. Again, I express my thanks to all who helped me along the way. It has been an interesting two years. The time went by fast but the Lord is good.

My remarks primarily will be on human rights and the winds of change.

It was the government of Pierre Elliott Trudeau that in 1977 brought in the Canadian Human Rights Act. The coming of human rights legislation to Canada has had a major impact on me and many other members of minority groups. As a matter of fact, I was hired as a human rights officer. That really gave me an opportunity to help to right the wrongs. We have come a long way since those days, and I express my thanks to our Lord and Saviour for human rights legislation. It gave us the opportunity to work with young people and assist them in finding employment in stores that traditionally did not hire visible minority persons. We now have black men and women working on the police forces in many of our cities and towns. We have black men and women also working as RCMP officers, in Canada's elite police force, and all that came about through human rights legislation.

We have come a long way, honourable senators, but there is still a long way to go. We can see the winds of change blowing all the time.

I look back on what took place in 1917 when an explosion almost demolished half the city of Halifax. In due course, that section of the city was redeveloped, but not a single black person was given the opportunity to live in any of the redeveloped housing. With the human rights legislation in place, that situation has changed. I have felt personally the sting of not being able to live in the area. I applied to the Halifax land commission for a piece of land. They gave me the runaround and told me to write them a letter, which was rather unusual. At any rate, I wrote the letter. This all happened during the days I worked for Canadian National Railways.

• (1350)

I dropped the letter off in Newcastle, New Brunswick. I did not hear from the manager of the land commission and consequently had to visit his office. He told me that all of the land had been taken and that he was not in a position to allow me to have a lot in that area. This is but one example of the stumbling blocks we had to overcome.

However, it did not end there. I went to the Human Rights Commission with my complaint, and in due course the land was made available. I refused to accept it because in the meantime I had purchased another piece of land.

Honourable senators, the winds of change have made a difference with respect to minority persons. As I say, we have come a long way and still have a long way to go.

Again, I express my thanks to all honourable colleagues who assisted me along the way. I wish them the best as they continue to work on behalf of the Liberal Party of Canada.

[*Translation*]

OFFICIAL LANGUAGES

Hon. Jean-Robert Gauthier: Honourable senators, I wish to raise a concern requiring corrective action. I am referring to the practice whereby we may express ourselves in the official language of our choice in this chamber. However, some honourable senators, aboriginals in particular, do not have the right to express themselves in their national language and be understood. In the legislative assemblies of the Northwest Territories, the Yukon and Nunavut, however, aboriginal MLAs are permitted to address their colleagues in the national language of their choice.

In the Northwest Territories, there are 11 official languages and provision is made for interpretation of these languages during speeches or comments. It is fair and equitable for the Senate to consider allowing our senators from the Northwest Territories to express themselves here in the Senate in the national language of their choice. I shall explain. The Senate has a reputation as the defender of regions and minorities. This is one good reason we should be able to turn to interpreters so that we may understand what our friends and colleagues, the senators from the Northwest Territories, are telling us in their national language.

I shall give you an example. My grandfather, Louis-Philippe Gauthier, was elected as the member for the riding of Gaspé in 1911. He did not speak English. He came to the Parliament of Canada and he spoke in French. If we consult the Hansard of the day, all we find is this: "Louis-Philippe Gauthier, deputé, *spoke about a Wharf in Sainte-Anne-des-Monts.*" In 1958, Mr. Diefenbaker introduced interpretation of speeches in the House, and this was a very important step forward for the Canadian parliamentary system.

Honourable senators, it is time to take another step, to recognize, as the territorial legislative assemblies do, that our aboriginal friends are entitled to speak in their own language in the Senate of Canada, which is supposed to be the defender of minorities, the defender of the Northwest Territories, and the defender of the regions.

[*English*]

CANADA-UNITED STATES PARTNERSHIP

Hon. Edward M. Lawson: Honourable senators, I had the privilege last week to attend the second annual meeting of CUSP, the Canada-United States Partnership, arranged by President Clinton and Prime Minister Chrétien to deal with the border problems that affect both countries. I was pleasantly surprised that about 100 senior officials and politicians from both governments were in attendance, including consuls-general for both the State of Washington and the Province of British Columbia, along with senior American officials and people involved in law enforcement, immigration and border-crossing trade.

It was a remarkable experience to find that CUSP members were spending all this time trying to find out how to be better neighbours. They are working on PACE programs, ease of access back and forth across the border, and immigration. Americans are making it easier for us to go to the United States and Canadians are making it easier for Americans to come here.

CUSP is a productive and progressive organization because of the commitment of everyone involved. They spent much time discussing other issues, such as terrorism, illegal immigration, the movement of drugs, and so on. The entire two days were spent trying to be better neighbours and solving problems affecting both countries.

I congratulate those responsible for putting the meeting together. It was rewarding to see the genuine concern at the highest level on the U.S. side and on our side and on the part of the various federal agencies. In spite of all the serious problems, they are continually looking for ways for Canada and the U.S. to be better neighbours and trading partners.

ROUTINE PROCEEDINGS

BUSINESS DEVELOPMENT BANK

ANNUAL REPORT TABLED

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I have the honour to table the Business Development Bank annual report for the fiscal year ended March 31, 2001, entitled "BDC Financing at the Speed of Innovation: Empowering Local Solutions for Global Competition."

[*Translation*]

TRANSPORTATION SAFETY AND SECURITY

REPORT OF TRANSPORT AND COMMUNICATIONS COMMITTEE ON AIR SAFETY AND SECURITY TABLED

Hon. Lise Bacon: Honourable senators, I have the honour to table the sixth report of the Standing Senate Committee on Transport and Communications, entitled "Report on Air Safety and Security."

[*English*]

HER MAJESTY QUEEN ELIZABETH THE QUEEN MOTHER

MESSAGE FROM SENATE ON THE OCCASION OF ONE-HUNDREDTH BIRTHDAY

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, pursuant to rule 59(18), I move:

> That the Speaker of the Senate send an Address to Her Majesty Queen Elizabeth the Queen Mother expressing the heartiest good wishes and congratulations of all Senators on the occasion of her one-hundredth birthday.

Motion agreed to.

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I shall have a comment on house business before we proceed to deal with what is Item No. 1, resuming debate at third reading of Bill C-20. I wish to call as the first item of government business Bill C-19, third reading of the legislation dealing with the Rome Statute and the International Criminal Court.

• (1400)

CRIMES AGAINST HUMANITY AND WAR CRIMES BILL

THIRD READING

Hon. Peter A. Stollery moved the third reading of Bill C-19, respecting genocide, crimes against humanity and war crimes and to implement the Rome Statute of the International Criminal Court, and to make consequential amendments to other Acts.

He said: Honourable senators, I feel that one of the few positive elements that came from the Yugoslav crisis was the setting up of the War Crimes Tribunal in the former Yugoslavia. One advance is that people who commit atrocious acts will now know that, at some time in the future, even if it is difficult or impossible to stop the atrocious act as it is taking place, they face arrest for their actions. They will be brought to trial and evidence will be presented to determine whether or not they are guilty. That is a positive step in the future of our world. It is one of the very few positive steps, and I speak as one who has spent part of my life in civil wars and various situations of mayhem around the planet. It is an actual step forward.

Things go wrong, and sometimes it can take years before these people are brought to justice, and it is in that sense that I speak to the third reading of Bill C-19. The bill, essentially, fulfils Canada's commitment to establish the International Criminal Court, and makes the necessary changes to various Canadian statutes to bring us into conformation with the procedures that will be required to operate this court. The court will be, in effect, the next step from the one in The Hague that is presently dealing with the atrocities committed in former Yugoslavia.

The International Criminal Court, ICC, will be an institution with the exclusive mandate of ensuring that justice is served equally throughout the world. Hopefully, there will be no country, or any individual, who will receive preferential treatment before this court. The ICC will serve the interests and protect the well-being of all citizens of the global community, be they men, women or children. The principle of equality is central to the integrity of the ICC.

I should like to commend all those countries that are presently resisting the pressure by the United States, which is lobbying for special immunities before the court. If such a proposal were agreed to, the court would lose all moral authority. I urge those nations that are standing firm against the United States' pressure to continue to demonstrate the utmost resolve against those who would compromise the credibility of the court. The ICC has staked equality as a central pillar of its foundation and this must not be derogated from in any respect.

The crimes against humanity and war crimes bill, and the International Criminal Court, exemplify the progression that the world community, collectively, is attempting to make in the furtherance of the principle of equality. These efforts are reflective in the Rome Statute, which is revolutionary in the provisions that it contains — especially those that focus on the particular hardships that women and children must endure in times of armed conflict.

Honourable senators, the statute requires that a fair representation of female and male judges be taken into account in the selection process, as well as a fair representation of females and males in the selection of staff in the office of the prosecutor and all other organs of the court. Provisions have also been adopted that require the selection of judges, prosecutors and other staff who have particular expertise in violence against women. This inclusion of staff with expertise in gender and sexual violence in war ensures that war crimes that are exclusively committed against women will remain a matter of central importance.

Honourable senators, the ICC will be established once 60 countries have ratified the treaty. When that happens, the ICC will become a permanent deterrent that will help to ensure that individuals will no longer carry out atrocious acts against humankind. In particular, the ICC will help to ensure that those who attempt to commit genocide through the use of sexual violence and who use sexual violence as a weapon of war will be prosecuted for their offences.

Honourable senators, I wish to take a brief moment to emphasize a particular point in the tenth report of the Foreign Affairs Committee. We mentioned that your committee regrets that it did not have sufficient time to give the bill the full attention that the committee would have liked. We thought that it was important for the government to endorse the Rome Statute and, in that sense, both parties expedited Bill C-19.

However, the committee also recommended that an ongoing study be undertaken by a Senate committee of issues and concerns arising from the bill, as well as evolving issues pertaining to the coming into force of the Statute of Rome and the establishment of the International Criminal Court. Your committee recommends that this study be completed within three years.

Honourable senators, I believe that the members of the committee felt — although I do not speak for my colleagues because they can speak for themselves — that there were problems with Bill C-19. There are areas that could be changed and possibly amended. I know that some would say, "Well then, why did you pass it?" We passed it because we thought it was better to pass it than to leave it. We intend to pursue this matter at the committee level because we think that the project requires changes and improvements. There are questions with which I shall not take up the time of honourable senators this afternoon. However, I want to emphasize that point, because it was the very strong feeling of the committee that we tried to do the best that we could under the circumstances. The bill, or rather the project, has great room for improvement.

Having said that, honourable senators, I am pleased to support Bill C-19 at third reading.

[*Translation*]

Hon. Pierre Claude Nolin: Honourable senators, would my colleague accept a few questions?

Senator Stollery: Yes.

Senator Nolin: In the second part of his speech, the honourable senator referred to certain concerns the committee had when it examined Bill C-19. I believe you heard the Minister of Foreign Affairs. Did you share those concerns with him?

• (1410)

Senator Stollery: Yes, the minister is aware of our concerns. He agreed with the three-year time frame to examine these matters and make a report. The study would not be done specially by our committee. The answer to the question is yes. We also heard from a very interesting witness for some 10 or 15 minutes. He remained for a good quarter of an hour instead of only five minutes and raised some points that were of considerable interest to the committee members.

Senator Nolin: Am I to understand that the minister is going to monitor very closely the study proposed in the report, and possibly to introduce in one of the two chambers of this Parliament the necessary changes arising out of your planned examination of Bill C-19 and of the application of the Rome Statute?

Senator Stollery: Honourable senators, no doubt the committee members hope that the minister will take us seriously. If we find any problems with this bill — and I believe we shall — I am sure he will make the necessary corrections.

[*English*]

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): I should like to put two questions to the honourable senator. He alluded in his address to concerns regarding a number of evolving issues in the report. Would he identify his top three concerns?

Senator Stollery: Honourable senators, we tried to expedite the project. There are a number of issues in the bill about which many honourable senators have questions. I would be mistaken if I stood here and tried to come up with the top three because there is a series of questions. I do not think it would be proper to try to prioritize them.

Senator Kinsella: Honourable senators, here we have the tenth report. We are told by the committee:

> ...your committee regrets that it did not have sufficient time to give the bill the full attention that the committee would have liked.

That is on the record now.

Here we have a committee reporting a bill without amendment and telling us in the report, "We wish we had more time to do a good job." We know there is a certain aristocracy of mediocrity abroad in the land, but I find this unacceptable.

In response to my question a moment ago, the chair of the committee stated that the committee has a number of serious questions flowing from this bill. I fail to understand why a committee of this place would say, first, "We did not have enough time to study this matter and we should have liked more time," and, second, "There are many serious questions, but here is the bill; pass it anyway."

Perhaps the honourable senator can elucidate the situation. Perhaps I have not understood what is happening.

Senator Stollery: I can advise the honourable senator that there were discussions before we met yesterday. The question was simply whether the bill would be postponed until the fall or dealt with before we rise, hopefully, tomorrow.

The reply I received as chairman was that the Senate thought it was better, on balance, to pass the bill because the bill has positive features, one of them being that we have now implemented the Rome Statute, which we committed ourselves to do. I suggest that is the reason both the opposition and government sides decided to pass the bill yesterday.

Senator Kinsella: Finally, honourable senators, in the copy of the tenth report that I received from the Table and the copy of the report as it appears in the *Journals of the Senate*, the second paragraph of the report as reproduced in the *Journals* states:

> However, your committee regrets that it did not have sufficient time to give the bill the full attention that the committee would have liked.

In the copy I received from the Table, there is a further sentence with a line through it that reads:

> This regret is felt all the more acutely since this bill may well serve as a model to other states who will be developing implementing legislation in relation to the International Criminal Court.

I take it that the honourable senator's committee decided not to include that last sentence. If that is the case, perhaps an explanation is in order. Even if it is not the case, the proposition or the expressed sentiment that Bill C-19 is perceived by some members of the committee as serving as a model for other states makes this issue that much more serious.

Senator Stollery: Of course, the honourable senator has in his hand a copy of the motion. Though the committee decided not to include that paragraph, the honourable senator has now very successfully included it because it is now in the *Debates of the Senate*. We took the decision not to include those words.

Obviously, on reflection, as we read the paragraph that has now been included in Hansard, we decided that we did not agree with it.

Hon. Marcel Prud'homme: Honourable senators, I wish to speak to the bill. I shall take the time necessary to read the tenth report.

Yesterday, the Standing Senate Committee on Foreign Affairs had the honour to present its tenth report. I should like honourable senators to listen attentively to the tenth report.

> Your committee, to which was referred Bill C-19, An Act respecting genocide, crimes against humanity and war crimes and to implement the Rome Statute of the International Criminal Court, and to make consequential amendments to other Acts, has examined the said Bill in obedience to its Order of Reference dated June 22, 2000, and now reports the same without amendment.
>
> However, your committee regrets that it did not have sufficient time to give the bill the full attention that the committee would have liked.

Honourable senators will see that the last line of the tabled report has been scratched out. With today's computers, that line would have been deleted from the report.

As Senator Kinsella has noted, the sentence that was scratched out reads:

> This regret is felt all the more acutely since this bill may well serve as a model to other states who will be developing implementing legislation in relation to the International Criminal Court.

The committee report as reproduced in the *Journals* continues:

> Consequently, your committee recommends that an ongoing study be undertaken by a committee of the Senate —

— which one we do not know —

> — of issues and concerns arising from the Bill, as well as evolving issues pertaining to the coming into force of the Statute of Rome and the establishment of the International Criminal Court. Your committee recommends that this study be completed within three years.
>
> Respectfully submitted,

• (1420)

Let me give honourable senators the legislative history of Bill C-19. I have done this research since yesterday. First, there is the bill stage, House of Commons; first reading, December 10, 1999; second reading, May 8; committee report, June 7; report stage, June 9; and third reading, June 13. There is then the first reading in the Senate, on June 14; second reading, June 22, last Thursday. Who spoke at that time? First, Senator Stollery spoke, and then Senator Finestone spoke on June 20. Last Thursday, prior to adjournment, Senator Andreychuk and Senator Hays asked for second reading.

The bill then went to the committee Thursday night. It is a very important piece of legislation. If you read Senator Finestone's speech and that of Senator Andreychuk, will you see that? I went to the committee meeting Thursday night to check. There was no action, of course, either on Thursday night or on Friday. Saturday was a holiday, as was Monday. Yesterday morning, however, the minister appeared before the committee. The committee closed shop and reported yesterday afternoon. I must admit that I have never seen that in my life. You now have exactly what I had in mind when I said that I did not want to look like the House of Commons. I was there for 30 years. At the last minute, they would always throw a series of bills at you, as they have done at the National Assembly in Quebec City. It seems now that the Senate has espoused the same bad habits of the House of Commons of Canada.

Honourable senators, I believe that if you say that this will be so, and it is written in the report that you feel acutely about this bill since it may well serve as a model to other states developing the same type of legislation, surely you would want a good bill. Surely, you do not want to wait for eventual amendments to be brought forward by an eventual committee that has not yet been put together. You say "within three years."

Honourable senators, if I am correct, over the next three years, there will be 20 plus new senators. Regretfully, at least 20 will leave us — and that is not counting those who God may call on his own time. Either this piece of legislation is important and deserves proper attention or it does not. I support this important piece of legislation. However, I should have liked people to have been given a chance to present their views on it. I am sure the Foreign Affairs Committee chairman, who is a serious person, probably chose the phrase "the said bill in obedience to its order of reference" to show his displeasure. What does the word "obedience" mean in this context? The committee had an option available to it. They could have said, "No, we shall not let you push us like that."

I was chairman of the National Defence and Foreign Affairs Committees for 14 years in the other place. If you think the government pushed me, then you are wrong. I took a stance and said, "No. We shall either have a good study or I shall not be the chairman." We had good studies, with the cooperation of people like Senator Forrestall and Senator Roche, who were members of the committee. They will remember the time when both Foreign Affairs and National Defence formed one committee.

I do not want the Senate to become a replica of the House of Commons in how they carry out their business. I do not blame the house leader; he is just doing his job. The government has decided that these bills are to have priority. However, if you want to have respect for yourselves as senators, the time will come, as I said yesterday on another bill — and I shall keep saying it until either I give up or someone makes some necessary changes — when we shall have to decide whether or not we shall continually proceed under these conditions.

Some people may think that we are nobodies 50 yards away from Parliament. That is a famous saying. I always thought we in this chamber were 50 yards away from Parliament. I took that statement in the reverse. I feel we, as senators, should not accept being pushed around in any way, shape or form. We should do our duty as we see fit, as we were asked to do when we were appointed to the Senate, a house of reflection where you do not get nervous. I repeat, I have a great affinity for new senators because I was once a new senator. I was fortunate in that I came from the other place, so I already knew how the Senate functioned. I always tell new senators, "Today is your day of glory, because starting tomorrow you are on your own." I often regret that, but I tell you to find out for yourself what is going on and how it is going on. Some people can exchange chairs, but others have a point. If they tell me privately, "I have a point," then I shall not mention their name but I shall not hesitate to be their spokesperson in public. I do not think the Senate should be treated in this way — more so when I see it written in the report that they "regret," and words like "obedience." I am not here to be obedient to anyone. Sometimes I regret not being part of a major party again so that I could be more useful here.

Honourable senators, that is my intervention. I have spoken directly to the bill. In September, perhaps a few witnesses and people who have spoken out and have shown displeasure with this bill will at least pay attention to the tenth report that was presented yesterday, which I just read in its entirety. During the summer, some honourable senators may say "If he has no point, that is it." Stan Darling, a beloved member from the House of Commons, did not mix words. When you had a point to make, he would tell you when you were right or when you were wrong. He did not hesitate to tell you so. He would say, "You are wrong," and that was the end of it.

Honourable senators, if you think there is a point here, maybe you should reflect today before you give your consent or say, "It is a bad bill. We wrote it ourselves. *Mea culpa*. It's not the best." This bad bill will now be copied around the world because Canada is always regarded as a light of hope and a light of change. That is my definition of Canada: a light of hope. The world looks at us and says, "They do things better over there." We often arrive at these decisions because of the Senate, but that will not be so today.

Hon. Landon Pearson: Honourable senators, I should like to speak up in defence of the children whose lives will be impacted by the implementation of the Rome Statute and by the passage of this bill and to explain why I think it is important that we pass it today.

In September, there will be a major international conference on the topic of war-affected children. According to Human Rights Watch, there are presently 300,000 children serving as soldiers in armed conflict. These children are not only subjected to the stresses and horrors of war but are often used by cowardly adults as canon fodder or as human mine detectors. The children are physically and mentally vulnerable to the threats placed on them by the unscrupulous adults who use children for their own misguided purposes. As a result, these children are denied their innocence and childhood. Instead of being able to develop in an atmosphere of peace and stability, these children are introduced to the horrors of warfare: killing, torture and suffering of the highest degree. If these children are lucky enough to survive unscathed, they are often emotionally scarred for life, and their chances of becoming productive citizens are greatly hampered.

• (1430)

Children are often abducted and forced to join armed groups. Others turn to the army because of the breakdown of their society. Many do so because their families have been killed and they are desperate for the support network that warlords fraudently offer. At present, child soldiers are being used in more than 30 ongoing conflicts throughout the world. Children as young as eight has been forced to engage in conflict. Among these children are young girls who face additional hardships, such as being taken as "wives" by rebel leaders in certain conflicts. Many of these young women are also subjected to forms of sexual abuse, including rape.

The Rome Statute of the International Criminal Court represents a significant step forward in holding individuals criminally responsible for committing genocide, crimes against humanity, and war crimes against children. The inclusion in the statute of crimes such as conscripting or enlisting children, attacking schools and committing rape all have special meaning for war-affected children. Widespread ratification of the statute will replace a culture of impunity with respect to crimes committed against children with a culture of accountability.

The ICC statute and the rules of procedure and evidence currently being drafted at the ICC preparatory commission provide for staff and judges with expertise in violence against children and allow the court to adopt child-sensitive methods for gathering evidence and hearing testimony from children. The ICC statute therefore recognizes that war-affected children have particular needs and that these needs must be effectively addressed if children are to be involved in the work of the court.

As has often been noted, children and women comprise the majority of civilians in armed-conflict situations. With ever-growing numbers of attacks on civilians, it is not surprising that children tend to suffer disproportionately in times of war. Children are targeted for certain kinds of crimes. Children, especially boys, are forcibly recruited or killed or maimed to prevent them from becoming soldiers for the other side. Girls are forced to become sex slaves or domestics or otherwise subjected to horrendous forms of sexual violence. Schools are bombed in efforts to force families to flee, and civilians, including children, are deliberately starved.

The ICC statute specifically prohibits the conscription or enlistment of children under the age of 15 into national armed services. Canada's age minimum for military service is now 18, as you know, for deployment into areas of conflict.

Certain war crimes also especially affect children, such as intentionally directing the attacks against buildings dedicated to education. Enslavement and trafficking of children are also listed as crimes against humanity.

The statute recognizes that children will not be meaningfully or safely involved in the work of the court unless child-sensitive judges and staff are elected and hired. One of the considerations states must keep in mind when electing judges is whether they have legal expertise in violence against children. When hiring staff, court officials must keep in mind the need for experts in violence against children.

The statute empowers various organs of the court to take into account the fact that the witness is a child. During the investigation stage, the prosecutor must take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of witnesses and, in so doing, shall take into account the age of the victim or witness and whether the crime involves violence against children. This protection continues into the trial stage, and at both stages the Victims and Witnesses Unit may advise the prosecutor and court on the measures they see as appropriate in the circumstances. Children below the age of 18 will not appear before the court as defendants.

Honourable senators, since I think that the International Criminal Court is of the greatest importance and that it is necessary to replace the culture of impunity with the culture of accountability, I urge you to support this bill.

Senator Nolin: Would the honourable senator entertain a few questions?

Senator Pearson: Yes.

Senator Nolin: The honourable senator referred to a conference in September. Is that dependent on the ratification of the statute, or is it independent?

Senator Pearson: It is quite independent.

Hon. Anne C. Cools: Honourable senators, I have a question. Senator Pearson has described in very poignant terms, and in terms that grip all of our hearts, the suffering of not only children but millions of human beings across the world. I should like to ask Senator Pearson to tell me, if she could, how the passing of this statute corrects the suffering of children all across the world.

Senator Pearson: My own strong belief is that one reason people who exploit children go on doing it is that they think they can do so without impunity, that it will not matter, and that as long as they control their countries, no one will hold them accountable. This bill enables Canada to ratify the statute. This statute will tell people in the world that this is no longer acceptable, and that they will no longer be free from being charged once they misuse children in the ways I have described.

Senator Cools: As a second part of my question, the courts in Canada do not stop children in Canada from suffering. How can an international criminal court stop children from suffering? It seems to me that courts bring people to justice after a crime has been committed, not before.

Senator Pearson: My answer to that is, while we do not have the complete statistics in Canada, we now know that in the United States cases of child abuse have been diminishing for six years in succession as a result of many of the efforts taken by the courts in the United States.

Senator Cools: I should like to speak to this. My information is that all of these statistics in respect of child abuse in North America, particularly in the U.S., are on the increase. Statisticians have justified that, not because child abuse is increasing but because the measurement of cases and the reporting of cases have been increasing.

Honourable senators, I prefer to defer to Senator Andreychuk, but I should like to say a few words on the bill itself. Am I correct in my understanding that the intention is to pass this bill today? What is the urgency? I had understood that this was not an urgent bill. However, it appears to have suddenly taken on that status, and some of us want to know why that is so. There is no reason in the world to rush a bill and not to hear witnesses, honourable senators. Since I had been told that there was no need to rush our deliberations in regard to this bill, I had been hoping that when the bill would be referred to committee, we would hear from witnesses such as Ramsey Clark, the former attorney general of the United States of America, who is an authority on international law and international courts.

Could we have some serious explanation about why this bill, which suddenly came upon us in the last two or three days, is now being rushed through the Senate? If it is such an urgent matter, the bill could have been brought forward last week or the week before.

The Hon. the Speaker: Honourable senators, we may be running into a problem in that we are currently in the process of debating this bill. Does Senator Cools have a a question for Senator Pearson?

Senator Cools: I was trying to find out if we are expected to pass this bill today. If that is not the intention, then I should like to speak to this bill. It is a serious matter. This bill would create a novel court. It is an extremely unique and important matter and it should be properly studied. It is a shame and a pox on this chamber that we are not giving this bill the study it deserves.

• (1440)

The Hon. the Speaker: Honourable Senator Cools, the debate is proceeding. It is before us now. Senator Andreychuk is prepared to speak. I shall put the Honourable Senator Cools on the list of speakers.

Hon. A. Raynell Andreychuk: Honourable senators, I have already spoken as to why I believe Bill C-19 is a serious bill that deserves our attention. The International Criminal Court is not a new issue. The treaty was signed on July 17, 1998. Canada should have been working toward ratification of the bill from that date.

I draw the attention of senators to the debate that took place when the minister testified before our committee yesterday. The minister was asked why the government again put the Senate in the situation of having to weigh the need to move and to be a leader on this issue against the fact that the Senate must do its job. I have heard today that this is a most important bill that has not been given the full attention of the Senate.

Honourable senators, I have been here sufficiently long, although not as long as some, to say that we have been put in this position many times. We have moved on bills that we should have liked to study more appropriately. However, we have to ask ourselves if we should prejudice people who may benefit from a bill as opposed to taking more time to ensure that we have totally and adequately studied it.

I remember a bill that had to do with aboriginal peoples. When I was chairing the Aboriginal Peoples Committee, I was told by the minister who was sitting up in our gallery that we had to go through first, second and third reading all in the same day — and we did just that. In my opinion, it was totally inappropriate. However, if we had not done that, we would have jeopardized the provisions of the bill for the benefit of aboriginal peoples. I thought it was dastardly then to have been put in that position, and I feel the same way about Bill C-19.

The International Criminal Court demands our priority and attention. Some 60 ratifications are necessary. We could very easily say, “Let other countries ratify, after which we shall ratify in due course.” I do not think that position would be in the best interests of Canada. As a consequence, I agreed to expedite this matter.

Honourable senators will see in our committee report that we spent a great deal of time discussing why the minister had not convinced his government that Bill C-19 is a priority bill. His answer was that he had difficulty getting certain items on the agenda. I believe we made it clear to him that we did not feel his answers were appropriate. In fact, the reason for the comment in the report is that some of us have come to the point at which we have heard too often the comment "It will not happen again." Thus, we are sounding a warning. Rather than being criticized for that, I hope that senators will laud us for having the courage to put in the report the comment that we are not getting the benefit of the House of Commons and the government in this institution.

What we are arguing about in regard to Bill C-20 is that the Senate is not included. Time and time again, the Senate is not taken into account. In my opinion, this is symptomatic of a systemic disrespect for the Senate. I do not see Bill C-19 as unusual; I see it as symptomatic of a greater problem vis-à-vis the Senate.

Honourable senators, I believe that some of us have given sufficient scrutiny to the portions of Bill C-19 that have to do with the International Criminal Court. The International Criminal Court will be an experiment in itself. There is no other model to follow. The tribunals in both Rwanda and Bosnia are specific to those areas and, at best, are ad hoc. They are flawed by nature of how they were set up.

The International Criminal Court has had the benefit of the best minds that the international community of diplomats, government officials, NGOs, jurists and lawyers could put together. There is no question that there are some uncertainties in the bill. It is about these uncertainties that some members of our committee have said ongoing study is warranted. We must continue to look at Bill C-19 to see whether it is appropriate or whether it needs adjustment.

The dilemma is that nowhere in the House of Commons or the Senate is there a place for the ongoing scrutiny of international treaties. We are creating a mechanism that will do just that, which is why we are asking for a study. As to which committee this matter should be referred, perhaps it should be the Standing Senate Committee on Legal and Constitutional Affairs or the Standing Senate Committee on Foreign Affairs. Perhaps it might be referred to a new committee on human rights. Nonetheless, we are signalling that there must be ongoing scrutiny to ensure that Canadian laws comply with the ongoing development of the International Criminal Court. On that basis, I was prepared not only to approve Bill C-19 but to approve the comment about scrutiny.

I said in my speech at second reading, and I shall say it again, that it was bad public policy for the government to have put together the implementation portions of Bill C-19, which are needed for the ICC, along with the amendments to the Criminal Code, which by and large are amendments needed because of the decision in *Finta*. While the officials yesterday tried to explain why they put the implementation portions of the bill and the amendments together, I do not accept their comments. It would have been better had they been separated. It is about this area of amendments to the Criminal Code, which ensure that war crimes prosecutions can continue, that there are some differences of opinion.

Those of us who read the debates in the House of Commons know that a number of people felt that the provisions are not strong enough, while others felt that they are not consistent with the ICC. I believe those points warrant more scrutiny.

The dilemma for us was this: Do we hold up the International Criminal Court and signal that we are not ready to go ahead because we see internal Criminal Code amendments having to be made? In the interest of international justice and in the interest of Canada's position, which I believe has been an all-party position of support for the International Criminal Court, we should not delay the passage of this bill. In fact, we were weighing it in the same way as we weighed Bill C-23. About Bill C-23, we asked if there should not be an amendment to remove clause 1.1. I recall senators in the committee saying that they would like to amend it, but to do so would mean to return it to the House of Commons, which is not now sitting. There was also a question of whether there will be an election in the near future. If there was even the slightest chance of having the bill fail, it is better to go with the bill rather than risk losing it. That is my feeling with regard to Bill C-19. If we delay its passage, we risk losing the bill on the International Criminal Court.

Honourable senators, it has been proposed that we study this bill. A few groups, Amnesty International being one of them, said that they would continue to look for more improvements in Bill C-19, but weighing the pluses and the minuses they would prefer the bill to go forward. I believe I also heard that from the witness who appeared before us. The minister indicated that he agreed with our study. I took that to mean that he would cooperate with our study and reply to it.

• (1450)

I also put on the record that I shall be putting forward amendments by way of a private bill, or otherwise, if in fact it is determined that they are warranted after our study and if the government is not moving to make changes. I shall take this action in the interests of what I believe to be a long-overdue International Criminal Court.

This court will, by its nature, will be regarded by the entire world as a comprehensive court that will define certain major crimes. If one transgresses, there will be consequences.

This court is long overdue. We waited after the First World War, and we waited after the Nuremberg Trials, and nothing happened. We have waited decades and perhaps centuries. I do not believe that it is warranted to wait any longer.

My difficulty with the minister's position was that he indicated that this would be a model for other countries. In my opinion, as I pointed out to the minister, the way that we handled it, and the lack of good governance within our country to put it through and to give it due diligence in both Houses, is hardly an example for the rest of the world.

What we must do to implement the bill is peculiar to our system and has very little instructive value to other countries. They have different political systems. They need technical assistance and support from Canada through the intergovernmental and parliamentary groupings that we have and through the executive using its good offices to encourage countries to move toward ratification or signing, whichever the case may be.

In this regard, I want to correct the record on my speech at the second reading where I indicated that 100 countries had signed. I have been keeping a weekly watch on the signatures and ratifications. I had been led to believe that there would be 100 by the time I spoke. In fact, there are 98 as of today, with some indication that we shall be over 100 very shortly.

In addition, I was led to believe that 13 countries had ratified. In fact, 12 countries have ratified, and two countries have indicated that they are in the process of depositing the instruments that will complete ratification. Thus, there will be 14 countries that have ratified soon.

I believe that Canada should put forward its legislation as a model. It should put forward its legislation noting that it is one example of how legislation for implementation can take place. I do not believe that we should represent ourselves as having the answers as to how other countries should go forward. I personally have been involved in assisting other countries in their ratification process. It is a complex, delicate issue with legal impediments and political initiatives. We should encourage other countries. However, we should not represent our legislation as the be all and end all, because it is not. It is simply the best effort, I think, at this point.

As the committee has pointed out, the bill needs more work. We shall be part of that process if we set up a committee to do so.

Honourable senators, it is extremely important that we understand that the International Criminal Court will not, of itself, save one life. It will not in any way change the dynamics of poverty and autocratic and oppressive rulers around the world. However, it will start to build a community of caring.

The Hon. the Speaker: Honourable Senator Andreychuk, I regret to say that your speaking time has expired.

Hon. Dan Hays (Deputy Leader of the Government): I propose that we give leave for a further five minutes.

The Hon. the Speaker: Is it the pleasure of honourable senators to grant leave?

Hon. Senators: Agreed.

Senator Andreychuk: Honourable senators, the international community can ill afford to wait any longer to join a consensus of action that is not ad hoc but is systematic. It is inappropriate to continue to refer to a Pinochet and not put the other dictators and repressive leaders into the same camp. I shall not start listing them, but there are many who exist today. We should not be in a position of that kind of selectivity. I believe that a court goes a long way to making us all accountable.

Therefore, I am at this point, reluctantly due to the process, but enthusiastically due to content, in favour of proceeding with third reading.

Senator Prud'homme: Honourable senators, I shall go a bit against the wind. The honourable senator has convinced me that not only the process, but the bill, is bad. The more she spoke, the more I became convinced that what we are doing today is wrong.

Am I correct in that the treaty was signed on July 19, 1998?

Senator Andreychuk: July 17, 1998.

Senator Prud'homme: Thus, I am correct in concluding that the minister had at least since July 18, 1998 to move, and to come and see us to try to convince us of what the honourable senator has just said.

The honourable senator mentioned 100 countries that have signed. Countries may sign, however, that does not mean that they have ratified. Adoption of this kind of treaty requires that 60 countries ratify it. She has told that 14 countries have ratified thus far. I thought that it was 19 countries. We could say that between 14 and 19 countries have ratified.

Given the low number of countries that have ratified, I should see nothing wrong with delaying this bill to gain more information and hear more witnesses. I should have hoped that the house leader had called Bill C-20, because he expected this bill to move through quickly. It may take all afternoon and take that time away from Bill C-20. I am in your hands.

Senator Andreychuk: Honourable senators, I do not know if that was a question, but I should like to respond.

It is July 17, 1998, that the signings occurred. This bill on the International Criminal Court is unique. The treaty notes that by signing, a country is obliged to work toward the international court and cooperate with the establishment of it. Therefore, it is somewhat different than the other treaties that have been signed but not ratified. It places an obligation to proceed towards ratification.

Senator Nolin: Normally, ratification is an act of the executive. It is a Royal Prerogative. The executive does not need to come to Parliament to seek authorization.

Why is it being asked for this time? Is it because they are amending laws? If they are, they do not need us to ratify. They could do that tomorrow, or could have done that last week. They could seek amendments to other laws. They do not need us to ratify the treaty.

Senator Andreychuk: The honourable senator is absolutely right in that the executive ratifies the treaty. They could have ratified it, but it would have meant that our laws would be inconsistent with those to which we are agreeing in the International Criminal Court.

Therefore, I think it is a better procedure. I would encourage other governments to use this procedure if it dramatically affects internal law. Other countries should have the implementing legislation going in tandem with the ratification.

The honourable senator will have to address his question regarding the motives of the government to another source.

• (1500)

Hon. Lois M. Wilson: Honourable senators, I should like to speak to this bill as well. I have been involved with it since almost before its inception, when I was chair of the International Centre for Human Rights and Democratic Development in Montreal. We worked on it for about five years previous to this date.

This is not a new idea. It was fully supported by the NGO community in Canada through the churches and other organizations. I must congratulate Canada on making sure that gender was factored into the final bill. There was no other country working that hard on this issue.

Honourable senators, the bill is not perfect, but it is a firm start against international criminals having endless impunity.

Second, this bill represents a quantum leap in international consciousness for the rule of law. Therefore, it is terribly important that Canada say that clearly and firmly.

Third, Bill C-19 is a work in progress. I want to emphasize that. I am glad the committee has recognized that and has added, which I fully support, that they will study the issues and concerns arising from the bill, as well as evolving issues pertaining to the coming into force of the Rome Statute. The point is that there will be evolving issues and concerns. This is an international issue, not just a Canadian matter. Some countries do not want the bill to pass, who will not even look at ratifying it, who do not want their international criminals prosecuted, and are lobbying very hard to have it defeated.

I am delighted that the Foreign Affairs Committee has said it will study this matter because there will be emerging and evolving issues as the years go on. We need speak to those issues.

As well, one of the jobs that we have to do in Canada is to bring our laws into conformity with the International Criminal Court. That will be quite a job.

Fourth, I am very glad that the sentence in the report referring to the bill serving as a model has been scratched out. I do not believe in models. Canada has played a significant role in facilitating the coming together of countries around this bill. We shall continue to provide technical assistance to developing countries to see them through the difficult parts of this issue. The word "model" was not well chosen.

Finally, I do not feel pushed around. We should pass the bill today, knowing that it is a work in progress. It is long overdue and we cannot risk losing it.

Hon. Jerahmiel S. Grafstein: Honourable senators, I am a member of this committee and I should like to speak to some of the issues raised here today.

First, I am in support of this bill. I urged the committee to proceed with it, and with the assistance of the chairman, Senator Andreychuk and others on the committee, we developed a very good model for the Senate to deal with a bill that is in progress and that will bring about very complex changes.

This particular bill moves us to a different track with respect to egregious breaches of international law. It allows us to put ourselves on a fast track and in the forefront of nations prepared to proceed and implement — not just to ratify, but implement — domestic legislation to facilitate that process, so that our laws at home are consonant with the laws abroad. This bill is an important measure in that direction.

There are, however, some flaws. I had the fortune — or the misfortune — of reading this entire bill and following the debates very closely in the other place. I was concerned with the exemption regarding the Pinochet situation, which was amended at the last moment in the other place. Therefore, my own material reservation, which I pointed out to the deputy leader, was resolved in the other place.

There are other imperfections in this bill. Issues have been raised regarding definition, harmonization and drafting. All of these are quite complex. None of them go to the heart of the bill or are fundamental flaws. How far some of these definitions reach and the consequences of some of them are open to serious questions. The minister, when he was asked by myself, Senator Andreychuk and the chairman whether he would facilitate a study, said that he would. He recognized the same process or the same problems as Senators Wilson and Andreychuk have pointed out, that the bill is not perfect but that it contains no fundamental flaws. We are showing leadership.

An honourable senator asked, "Why now? Why not next week or the week after?" Starting this summer, there are a host of the international meetings. I shall go to Bucharest in a week or so to assist our delegation to persuade others in Eastern Europe to encourage their legislatures to move forcefully on ratification and implementation. To go empty-handed to these numerous international meetings this summer would leave Canada talking but not doing. I felt it was important that we move forward with this legislation. I was delighted that the chairman of this committee facilitated a quick hearing to deal with this matter.

There are questions about the bill, but there are a number of ways of solving them. First, the study will allow us to look at this bill carefully in an ongoing study and perfect the bill. There are no questions about that. We shall be able to perfect the bill, but the minister has it within his power to do more. There is a process under the Rome treaty, under international law, where definitions and concerns could be corrected through the Secretary-General of the United Nations through a process which allows for refinement and amendment. That process has already been used in the United Nations at least four times by the Secretary-General to correct the wording of the Rome statute.

The minister knows the concerns. These were pointed out to him, not only in writing but verbally. It is my hope that the minister, who has taken an excellent leadership role on behalf of Canada, will take the additional initiative of starting the process by correcting the wording as pointed out in the testimony in the committee.

The problem is that some of the concerns are confusing. We heard the testimony of Mr. Narvey on behalf the Coalition of Concerned Congregations. He had serious concerns with respect to issues of criminalization of the movement of populations. That is an important and definitional issue, a profound issue that has very serious consequences for our friends and those who are not our friends.

Through this complex but appropriate process of studying the bill and having a post-study at the end of the process, the minister will be ready and willing to listen to amendments if we feel there are corrections to be made.

I want to commend all honourable senators for taking the time to focus on this bill. I did read the 500 pages of this treaty and the implementing legislation. It is not happy reading. Trust me, senators, this bill is in very good shape for us to move forward.

Senator Cools: Honourable senators, I shall be very brief. I shall essentially attempt to record some objections to the way in which this entire proposal has proceeded.

Honourable senators, if this bill were so important, it could have been brought forward a couple of weeks ago to receive the proper study and attention from senators that it deserves.

I have not read the bill, but I have read extensively on the formation of this court and on the formation of the International War Crimes Tribunal of which, as you know, Louise Arbour was the chief prosecutor.

The bill is condemned by the committee's own report. I am sure other senators have put this fact on the record. The tenth report of the committee expresses great regret that the committee did not have sufficient time, and then it turns around a few lines later and states that the subject matter should be studied for three years. It seems to me that this is an extremely serious matter. The committee report has said that these matters are deserving of study and, in point of fact, matters to which the committee itself did not give sufficient attention. That is very serious and, to my mind, very damning.

I also note that the judgment is still out on the success or failure of the International War Crimes Tribunal in respect of Rwanda and former Yugoslavia. It would have been nice if the committee could have heard from some witnesses who have had involvement with that tribunal. I should have liked the committee, for example, to have heard from Ramsey Clark, former attorney general of the United States of America, a man whom I know. I am quite sure he would have been happy to share his opinions with us. There are a number of Canadian lawyers as well who have been working at the international tribunal in Arusha, Tanzania, and I am sure many of them would have been happy to come and speak to the committee as witnesses.

• (1510)

One of the issues that I have not heard anyone address here today is the importance or the very creation of the International Criminal Court itself and the questions of its jurisdiction. How does it obtain sovereignty and how does it obtain jurisdiction? These questions are bedevilling many of the so-called international lawyers across the world. I should have liked to have asked precisely why the United States of America is not supporting the ICC. I should have liked to have known much more about the relationship between Canada and the United States of America in respect of that additional point.

I also would have liked someone to explain carefully to the Senate why the International Criminal Court has gone outside of the United Nations structure to be created. Many people across the country seem to believe that the ICC is a UN creation or that it will somehow be an agency or arm of the United Nations. However, that is not the case. The ICC is outside the United Nations structure.

These are important questions. They should have been raised before the Foreign Affairs Committee. I think this is an extremely improper and unnecessary way to proceed.

Finally, I have some problems with senators who rise and say here that to study a bill in a minimal way is to delay. First, the bill could just as easily pass in September. There is absolutely no reason why this bill could not come up as the first item when we return in September. Second, somehow or other there should be a structural change in perspectives if we now consider that a minimal study in this chamber or by the Senate is, somehow, a delay. Somehow, we must begin to separate the words "delay" and "Senate study."

Honourable senators, I am happy, honoured, encouraged and optimistic that Minister Axworthy is supportive of the Senate in its study. It will be the first time in the Senate's history that Minister Axworthy has supported the Senate. I have looked forward to that with some eagerness, because Mr. Axworthy has not been shy in articulating to all what he thinks of the Senate. This would be a novel advancement. If nothing else, that may be the one good thing that could come out of this. I just hope that Mr. Axworthy will remember, with some care and some diligence, the commitment from the honourable senator right across the way who is both smiling at me and assuring me of it. Frankly, if such a study were to go ahead, it would be a splendid and wonderful thing, and something to which we could all turn our minds.

Having said that, honourable senators, if this bill is as important as Senator Andreychuk says it is, then the bill could have come forward in a timely way and it could have been given the proper study that it so adequately deserves. There is no reason in the world why it did not get the sort of attention it requires. Those, honourable senators, are questions of legislative management, not questions of substance.

Hon. Douglas Roche: Honourable senators, very briefly, the Rome Statute establishing the International Criminal Court is one of the most important international accomplishments of the post-Cold War era. It raises the world community to a higher level of civilization. The Government of Canada, and particularly the minister, should be commended for the work done to get the International Criminal Court established, not to mention the outstanding work done by Canada's Ambassador Philippe Kirsch, who led the Canadian delegation in the proceedings.

For me, it is unthinkable that this bill would not pass. Of course, I join other senators in protesting the manner in which we have been forced to accept and deal with this bill in a hurried manner — so hurried that my own office did not even receive a notice of the committee hearing that was held yesterday.

Having said that, I must weigh the reason for the hurry on the bill against the diminishment of the role of the Senate. The reason for the hurry on the bill is that Canada must be in a strengthened position to work in the international community for the ratification of the tribunal. The ratification number needed is 60. Much work internationally is to be done, and Canada is in an excellent role in advancing that work.

I must weigh that very strong reason for the hurry on the bill against the poor manner in which the Senate has been asked to deal with this. I do come down myself on the need of the bill. Thus, I support passage of the bill today, along with the ongoing study that has been recommended.

Hon. Sheila Finestone: Honourable senators, I should like to add my voice of support for this bill. It is now three years that, through the Inter-Parliamentary Union and other of our groups working internationally, we have been promoting the adoption of this bill, which, finally, will see the potential of not allowing people to go unchallenged or untried as a result of war crimes that they have committed.

I could tell you that Minister Axworthy, who has a very fine reputation internationally in the work that he is doing and who is renowned as a result of the work he did for the anti-personnel land mines, is now prepared to put effort and energy, with all of us as his helpers, in the international sphere. Along with that, he has recently appointed Irwin Cotler, from the other place, who is internationally renowned as a human rights lawyer and who knows international law. Other countries can move ahead once we have set a model or set the pace by adopting the legislation needed to ratify this procedure, the Rome Statute.

Honourable senators, I urge you to pass the Rome Statute now.

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

Some Hon. Senators: Agreed.

Senator Cools: On division.

Motion agreed to and bill read third time and passed, on division.

BUSINESS OF THE SENATE

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, the next item of government business that I shall call will be Bill C-20. Before doing that, however, I should like leave to make a short statement on house business, as we soon will break for the summer.

You will have heard, perhaps, at the early part of our Order Paper that I had asked for leave to revert to the adjournment motion later this day. I have done so to move a motion. I shall consult with my colleague Senator Kinsella on this later in the day, before I move the motion, but I wished to move a motion that when we adjourn today we adjourn to one o'clock tomorrow rather than our normal sitting time of two o'clock.

I should also like to indicate that I have had discussions with Senator Kinsella, the Deputy Leader of the Opposition, on the matter of the last speakers on Bill C-20. In that regard, I believe we have generally agreed that, at approximately 2:15 tomorrow, we would cooperate to have His Honour see the Leader of the Opposition so that he might speak to Bill C-20.

• (1520)

That would allow approximately 75 minutes prior to the time for putting the motion at 3:30 p.m., following which the bells will ring and the votes will be called at 4:00 p.m. That would allow roughly 40 minutes for the Leader of the Opposition to speak, and approximately 35 minutes for the Leader of the Government to speak.

It may be necessary to sit after Royal Assent tomorrow to look after any business that we have not been able to attend to between 1:00 and 2:15. We shall see the absence of the Leader of the Government early in the afternoon, but hopefully he will be here for Question Period although I cannot guarantee that at this time.

Honourable senators, Senator Kinsella may wish to comment, and I shall be happy to deal with any questions. I shall then call Bill C-20. It was adjourned by Senator Grafstein, but I believe he intends to yield to Senator Pitfield, who will be the first speaker on the bill.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, before passing to Bill C-20, I wonder if the government side has set aside time tomorrow to pay tribute to the Leader of the Government in the Senate in case there is an election in the fall? Tomorrow could well be his last day here. I certainly would not want to miss the occasion to wish him good luck.

Senator Hays: That concern, so typical of Senator Lynch-Staunton, for those of us on this side is much appreciated. Not to worry though, honourable senators, for if, as expected, Senator Boudreau leaves us, I am sure he will return many times as a minister of the other place to share his wisdom, so we can look forward to those occasions. Therefore, I do not believe tributes will be necessary.

Hon. Marcel Prud'homme: Honourable senators, to finish in a very harmonious way, which these last days may lack, why does the Deputy Leader of the Government not tell us exactly what he proposes for the end of the session? Last night I stayed to the very last because I never knew what would come out of the hat. In announcing the bills that the government really wants, I think he will get cooperation if we know in what order they will be called. I should prefer to concentrate totally on Bill C-20, and that is the wish, I am sure, of all honourable senators.

If there are no speakers tonight on this bill then I propose that we be told what order the deputy leader will be following, and the same for tomorrow. There are some bills that particular senators would like to address and we can advise, as a sign of cooperation, whether or not we are prepared to speak to a particular bill. What does the deputy leader have in mind until the end?

Senator Hays: Honourable senators, I shall go through the remaining matters under government business. We are looking to see Bill C-27, the parks bill, referred to committee today; Bill C-5, the tourism commission, referred to committee; Bill C-24 on the Excise Tax Act, et cetera, referred to committee. I spoke to Senator St. Germain and I believe he is ready to speak to Bill S-26. If that is done later this day then I believe that could go to committee. I believe Senator Lynch-Staunton will be speaking to Bill C-37, the pension bill, and that will go to committee. I am not sure whether Senator Rompkey will speak to Bill S-25. That is a summary of what we are hoping to achieve today, Senator Prud'homme. What follows after today is difficult to comment on.

I should point out that from the time frames I have outlined there may not be time for other speakers on Bill C-20 tomorrow. It is therefore important that honourable senators who wish to speak to this bill make every effort to do so today.

Hon. Nicholas W. Taylor: Honourable senators, I have a question. The notice of motion that was given on my behalf yesterday, now on the Order Paper as Item No. 80, is not part of Bill C-20 but was a way for many senators to express their views to the other place on some defects in Bill C-20. That does not mean I want to have it as part of Bill C-20, but I think it almost runs neck and neck with it. Is there a possibility, since we have been jumping all over the Order Paper anyway in the last few days, to get in one or two speeches before 7 or 8 or 9 tonight on Item No. 80 on the Order Paper?

Senator Hays: We shall get to that item, Senator Taylor, although it may be a bit later in the day. Those items that I call at certain times are all government items and our rules allow me, as the deputy leader, to do that. However, I have no ability to do what I believe you are suggesting, and that is to bring your Notice of Motion ahead so it would come after our discussion of Bill C-20. That is a matter for the whole Senate requiring leave of the whole Senate. I do not believe it would be appropriate to even ask for leave while we are on government orders because I could not give leave. If the honourable senator wishes to ask after government orders then it will be up to senators to hear his request and to give leave.

Senator Taylor: Thank you. My success in asking for leave from the opposition, particularly as acting chair from time to time on the Energy Committee, has been abysmal. I have had no success at all, but if you are a Westerner you get into the habit of living in hope, and I might just ask for leave later.

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

THIRD READING—MOTIONS IN AMENDMENT—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Hays, seconded by the Honourable Senator Graham, P.C., for the third 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,

And on the motion in amendment of the Honourable Senator Watt, seconded by the Honourable Senator Adams, that Bill C-20 be amended in paragraph six of the Preamble to read as follows:

> WHEREAS the Supreme Court of Canada has confirmed that, in Canada, the secession of a province, to be lawful, would require an amendment to the Constitution of Canada, that such an amendment would perforce require negotiations in relation to secession involving at least the governments of all of the provinces and the Government of Canada, **as well as representatives of the aboriginal peoples of Canada, especially those in the province whose government proposed the referendum on secession**, and that those negotiations would be governed by the principles of federalism, democracy, constitutionalism and the rule of law, and the protection of minorities;

and in subclause 3(1) to read as follows:

> It is recognized that there is no right under the Constitution of Canada to effect the secession of a province from Canada unilaterally and that, therefore, an amendment to the Constitution of Canada would be required for any province to secede from Canada, which in turn would require negotiations involving at least the governments of all of the provinces and the Government of Canada**, and the representatives of the aboriginal peoples of Canada, especially those in the province whose government proposed the referendum on secession**.

And on the motion in amendment of the Honourable Senator Gauthier, seconded by the Honourable Senator Corbin, that Bill C-20 be not now read a third time but that it be amended,

(*a*) in clause 1, on page 3, by replacing line 40 with the following:

> "resolutions by the Senate, any formal statements or resolutions by the representatives of the English or French linguistic minority population of each province, especially those in the province whose government is proposing the referendum on secession, any formal state-"; and

(*b*) in clause 2, on page 5, by replacing line 2 with the following:

> "ate, any formal statements or resolutions by the representatives of the English or French linguistic minority population of each province, especially those in the province whose government proposed the referendum on secession, any formal statements or resolutions by".

And on the motion in amendment of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Grafstein, that Bill C-20 be not now read a third time but that it be amended:

(*a*) on page 2, by adding the following after line 33:

> "**1.** Subject to this Act, the Government of Canada must act at all times in accordance with the principle that Canada is one and indivisible.";

(*b*) in clause 3, on page 5, by adding the following after line 24:

> "(2) Where it has been determined, pursuant to section 3, that there has been a clear expression of a will by a clear majority of the population of a province that the province cease to be part of Canada,
>
> (*a*) the Government of Canada shall consult the population of Canada, by national referendum, about the proposed secession; and
>
> (*b*) after the national referendum, the Senate and the House of Commons may, by joint resolution, authorize the Government of Canada to enter into negotiations to effect the secession of the province from Canada, subject to the terms and conditions set out in the resolution."; and

(*c*) by renumbering clauses 1 to 3 as clauses 2 to 4 and subclause 3(2) as (3), and any cross-references thereto accordingly.

Hon. P. Michael Pitfield: Honourable senators, I am rather overcome. I do not know whether the presence of a podium is a hint I should begin training for the ministry, or perhaps my comments last time were heard in higher places and someone has taken pity on me. I am grateful to him and to you all.

• (1530)

It may surprise you to hear that I believe there are a number of reasons to think that when we look back we shall conclude that our discussion on Bill C-20 was one of the most useful we have had in a very long time. First and foremost, in my view, among the positive elements was Senator Joyal's analysis of indivisibility. It brought new life to the discussions. Some people are inclined to dismiss this sort of discussion out of hand as being too theoretical. Why would you want to spend the time of busy people examining the question of indivisibility? How many angels can dance on the head of a pin? However, that is to overlook the key roles of ensuring coherence, consistency and rigour in people's thinking. The committee and its witnesses clearly demonstrated that the government has gone very far in developing a policy of acquiescence and appeasement.

First, for instance, there is Minister Dion's argument in favour of some sort of Royal Prerogative that would permit Ottawa to take Canada apart without any further authority. Second, there is the minister's apparent assumption that the public would stand for that happening, whether they were consulted or not.

Personally, I find this whole approach to be of very doubtful validity. The committee and its witnesses themselves went a long way towards destroying a number of assumptions that overlie these policies.

I found Senator Joyal's dissection of the government's stand in favour of the divisibility of Canada territorially to be a formidable and thought-provoking piece of work. It will be heavily debated, but I am willing to give odds that we have had a major change in the statement of provincial and federal cases for constitutional reform, and that divisibility will be hotly contested.

More important, perhaps, is that one supports divisibility or indivisibility at a considerable cost to one's opportunity to do other things. That is as it should be. We want debates of this kind to turn on issues that really matter to the members, but, nonetheless, it is time-consuming.

Many will try — in fact, some tried in committee — to scare Canadians away from taking a sternly realistic view of the serious difficulties that the country would risk having to face with another referendum. Clearly, there are some Canadians who still believe that more can be squeezed out of other Canadians.

I am not of that school. To me, the message is not unfriendly, but it is there. We have all sorts of reasons to be confident of our future in a fast-changing world, but there are also increasing signs that people are tired of talking about the Constitution. They think that they have gone as far as they should go and want to move ahead with the development of other subjects. It seems to me we must not overestimate our capacity to hold ourselves together artificially by myths and games and cliques, by the tenuous reconstruction of history along the lines that the government seems inclined to put in place by the direction of its expenditures, the appointment of its supporters, or whatever.

The differences between the positions of Minister Dion and Senator Joyal are clearly there to see, and that is very important. They reflect different fundamental beliefs about social and cultural policy, and inevitably about economic policy, and that is important. They are not entirely theoretical.

Even now, we have the Canadian Alliance party leadership sweating over how it will bridge the differences amongst its own membership. Speak to these players, and one is very quickly and deeply impressed by the different roads our political players, whatever that means, are taking.

One problem is that governments in office do not seem conscious of the extent to which they appear to manage by manipulation and of how objectionable Canadians increasingly find this to be. As a result, the credibility of politics and politicians keeps falling.

There is a widespread sense of general malaise. The message is one of widespread decline. From the fo'c'sle to the bridge, the message goes out as a message of general foreboding, and no answer comes back to the membership.

The vital spot is our institutions, first, because they are what gives the collectivity its capacity to think and coordinate, and second, because in our political system our institutions have never been given any special protection other than in a few cases of national defence. We trust that our institutions will prosper, but basically we leave it to luck as to whether or not that will happen, a luck that is founded on our wealth. It has been good luck up until now. We are wrong to believe that we can constantly and boundlessly draw on our institutions and constantly kick them around to the extent that we do.

The government, in Bill C-20, took a cheap shot at the Senate. There is nothing new in that. It implies a general decline in the Senate's mandate. The Senate has, by a series of announcements, been put on notice that the government is going to repeal or change the basis of some of the major institutions of our governmental system. One does not get a sense of this sort of reform until one sits down with the Senate and House of Commons Act and considers what is implied — and it is implied. It is not said openly, but in a snide and shifty manner. No one has stood up to declare a policy or to stand where they think a policy on institutions should go. I frankly believe that there are few members who are all that aware of what we mean our institutions to be.

• (1540)

The government's intentions have not been declared. They have been left to emerge, as if by chance, as a result of routine public administration. If the public is treated this way, and there is no reason to believe it is not, one must wonder how good our people are at running it.

Very few senators and very few members of Parliament are not fiercely aware of the costs that they assume in representing their constituents or in urging the interests of their people in whatever their institutional responsibilities bring them. There is a rich history inside the institutions of our country. I do not believe anyone, in particular the members of the two central Houses, fully understands the contribution they make.

It has long been rumoured that the Senate is up for abolition. So be it. That should be weighed against other uses that there might be for the institution.

The Hon. the Speaker *pro tempore***:** I regret to interrupt the Honourable Senator Pitfield, but his speaking time has expired. Is the honourable senator asking for leave to continue?

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I propose that Senator Pitfield's speaking time be extended a further 15 minutes.

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

Hon. Senators: Agreed.

Senator Pitfield: I thank honourable senators. I shall not take that long. I apologize; however, I feel strongly about this matter and I should very much like the support of honourable senators.

In a country like Canada, some institutional innovation of dealing with federal-provincial relations could be very important. That has never been tried. If we look at the way in which our government has developed over the past 130 years, we see that the size of the public service element has grown like Topsy. The size of the elected and of the secondary political organization, the Senate, have remained surprisingly constant. It is a question of a number of multiples over what it used to be, but it is not a vast growth.

Mr. Pearson, when he saw this, began his process of broadening the political interface of the government with its representatives to the people. He had a very clear view in his mind of what he thought politicians in the Senate should be and should do. He brought in the Government Organization Act in the late 1970s, which introduced the much larger cabinet and the political secretaries and staffs that later on Mr. Trudeau and his successors acted upon, to advantage, because the essence of the parliamentary system is participation. If we can get participation, then we shall get a self-orienting, largely self-financing mechanism in place to represent the non-bureaucratic political interests.

Given its location, the value of the Senate in terms of the political system must be very great. Its value is going up as the time for such negotiations approaches.

The next question is: Why raise this proposal now, just before substantive negotiations on the Constitution are about to begin? Why do it in this manner — deceitful, shifty and not at all what we would expect of a government confident in its power and proud of its program. There is something strange.

I do not imagine there is any formula in the law more frequently stated in a country like Canada than the one that starts "the Queen, on the advice of the Senate and the House of Commons, has decided" thus and so. Now all of this is to be implicitly dismissed.

I cannot believe that the courts will uphold this, either as an interpretation of the law or as acceptable for amending it. Look at it. Go to your offices, honourable senators. Take it off the shelf. Look at the British North America Act and look at the way in which it sets up these institutions. From a technical point of view, they are beautiful.

I cannot believe that the courts will uphold this legislation. I cannot see the courts coming to the conclusion that the Senate can be taken over, that the upper chamber can simply have its duties assumed by the lower chamber. I think that is very doubtful.

Are there to be other such downgradings? Is this to be a precedent for the way in which things are done? What is to be gained if the change is challenged in the courts and lost? Would it not be better to make it the subject of a reference now?

• (1550)

To me, the whole scheme of gradually undermining the Senate in the eyes of the public seems perverse and improper. An officer of the Crown is by law duty bound to serve the Crown and protect its patrimony. How do appointees of one region swear themselves with their oath of office when it comes to supporting this mishmash of conflicting interests?

Are we about to see a whole lot of government appointees sacrifice themselves out of respect for their duty to the Crown? Or, will we stand up and say that oaths of office, accountability, and all the measures that bring about the authenticity of our political system, which make it unique, which plant you and me in a direct relationship with the people of the country, are all a romantic notion?

I cannot believe that we shall see a situation where the federal government would suddenly conclude that an institution such as the one for which we have become responsible by our oaths of office should become an institution that it wants to publicly downgrade. This institution has done nothing but increase in effectiveness and government dependence over the last 130 years.

I wonder if sometimes the government is preparing for a unicameral chamber in our federal system, but then, there are so many reasons against that. What we should be doing is not playing these games. There are too many things to be done. We should be doing our work better. We should help in identifying new ways that we can be helpful.

All of these should be viewed in the context of parliamentary reform. Imagine, as now would be the case, that we go through the whole trial by fire, and at the end of the process, we are in an even worse situation than we were at the beginning. This could easily happen.

Above all, let us make sure that we do not fall victim to our own propaganda. The current Senate is far better than it has been given credit for. It deserves encouragement, not the back-of-the-hand dismissal that it gets from Bill C-20. We must walk tall.

Hon. Senators: Hear, hear!

Hon. Tommy Banks: Honourable senators, it is my misfortune that I follow the Honourable Senator Michael Pitfield. It has been my honour, pleasure, privilege and challenge to be here among you for a total of two months and 18 days. That is the sum total; that is the length, width and breadth of my political experience. I have failed in that time to completely master the intricacies of constitutional law, parliamentary procedure and the niceties of politics. I promise that I shall try to do better in the next two and a half months.

However, I have learned some things. Among them, in listening to the inspired and impassioned debate on all sides of the question, is that this bill is not merely unusual or extraordinary. This bill is unique, and its implications are portentous.

I wish to make clear that I am in favour of the thrust and intent of this bill, and that I had, at the outset when it was my privilege to attend the committee meetings, questions as to its constitutionality and as to its rightness in that respect. I then came to recognize that, having heard Chief Justice Estey and Professor Smith on one side, and Professors Monahan and Magnet on the other side, and having heard others of equal reputation, that I was simply incompetent to make a judgment in respect to the constitutionality of the bill. I shall leave that to people who are better qualified than I.

The other thing that I recognized is that in arriving at the findings that gave rise to this bill, the Supreme Court was answering very specific questions that had been asked of it by the government. These questions had to do with a more or less clear and more or less present threat that arises from time to time in Quebec. The court was careful to confine its answers to those specific questions about Quebec.

Bill C-20 is not about Quebec. It is about every province, and every territory, and every grouping of provinces and territories. It is not about a particularly clear or present threat only. When we pass this into law, which I trust we shall, it will apply to any province or territory at any time. This will be law for a long time from now and in situations that we cannot possibly foresee.

It is not much of a reach, honourable senators, to suggest that in a few years when Newfoundland begins to make contributions to the equalization pot, rather than receiving from it — and if all goes well, that will be the case — that a not-always-latent separatist attitude might rear its head in that province. I remind honourable senators that my province, Alberta, elected a separatist member not many years ago. Other members of that same party posted respectable returns in that same election. I do not believe that western separatism is out of the question.

I had the opportunity of asking questions of Professor Magnet in the committee. I noted that in two and a half years or five years from now, I have no doubt that the next government will be a Liberal one because people want prudent and good government to continue, but it is not —

Some Hon. Senators: Hear, hear!

Senator Banks: It is not impossible, however, to imagine that that government might be, at some time in the future, a minority government and would face across the aisle in the other place a phalanx of opposition parties, each of which has announced very clearly that it is in favour of the principle of 50 plus one being sufficient as an indication of the population of a province wishing to separate and begin the negotiations that would lead to that separation.

Professor Magnet was cited here yesterday. The questions that we were asking about constitutionality to those experts on political science, and other things, were answered by them in an academic manner. They were talking about constitutional law.

• (1600)

I asked Professor Magnet a question about a situation, in perhaps two or five years from now or some time in the future, when a minority government may be facing a majority in the aggregate of opposition members across the aisle with a different view that 50 plus one is sufficient. Professor Magnet responded:

> Thank you for that question. Constitutionally I do not see it that way, but you have raised points of very practical politics and wrapped them in a constitutional blanket.

About the action of the House on Bill C-20, he said:

> I cannot see that this binds the government in a way that is constitutionally impermissible, but I think that your point about a differently constituted chamber in the House may well come back to haunt the government. I have some views about that which are not constitutional or legal, but political, and they are really not so different from the view I understand you to be articulating, that being that the government could find itself with a very different breakdown in the other chamber. It could find itself with the Bloc holding a very strange balance and making strange coalitions. This bill may prove to be some difficulty for it.
>
> This is a completely political judgment. Of course, I think that the political conventions are that a government would expect to be able to control what happens in the other chamber. However, the points you are making do suggest all sorts of strange things that could happen that could defeat those expectations, and this bill might not prove helpful in those circumstances. On that political point, I have no disagreement with you.

Honourable senators, my reservation on this bill resides in one single place and only in one single place. That is where the determination is made as to whether there is a significant enough vote in a referendum to justify the commencement of negotiations. In that respect, the bill in its present form, trotted out on this stage before this audience in this particular show with these acrobats and these contortionists and these clowns, is a pony that will perform its trick very well, but, on another stage before another audience, if the acrobats act up or the contortionists get out of line or, God forbid, the clowns go nuts, we may find that the pony has hidden fangs and claws and it might rear up and bite us. We might not also, at that time, have quite so good a master of ceremonies as we have now.

I should like you to focus, if you would, on that single slice of time. It is the action immediately preceding the negotiations and on which those negotiations are conditional and which will propel us into those negotiations. It is a period of time, only about 15 minutes long, when the Commons has determined alone that the question is clear and a referendum has been held and the votes have been counted. Let us assume that the result was a 53 or 54 per cent majority and the province in question has asked the government to begin negotiations that will lead to the dissolution of Canada.

The argument in support of this bill is that the action to be taken by the House of Commons in that time period is just an ordinary, everyday government piece of business, just a resolution that is not fraught with portent — which I think it is.

At that moment, the House of Commons, acting alone, may take a crowbar to a basement door that has been nailed shut for 133 years and oblige a government against its will to pry open that door and propel us all down those stairs into the darkness where no one has ever gone before. There is no light down there. We have never been there and no single person in this house wants ever to go there, but we shall, by that action, if it happens, be propelled into that basement.

Such a propulsion is not impossible to conceive given the vagaries and accidents of electoral politics. I refer to last Saturday and I refer to a few years ago. If anyone had suggested last Friday night to his face that Stockwell Day would finish way out in front of the other contenders, he would have laughed that person out of the room. If anyone had suggested to Mr. Mulroney, when he was presiding over the largest parliamentary majority in Canadian history, that two elections hence his glorious party would be reduced to two seats in the Commons, everyone would have laughed. The other House is subject to the vagaries and the accidents of electoral politics.

I think, therefore, that on that one determining question, the one that will propel us down the basement stairs, there needs to be — if ever there was a place that it was needed — sober second thought.

How do we achieve that? Many commentators have dismissed an amendment to include the Senate in Bill C-20 in a determining role because such an amendment will be seen as us acting in our own selfish if not churlish interests, but I suggest that there might be an alternative. We might be able to substitute someone else's second thought.

There are precedents that apply as inspiration. One is the 1982 constitutional amending formula. The other is the 1996 Parliament Act, Bill C-110. Those pieces of legislation harness the consent of the provinces. In order to preserve the principle that second thought should be given to a decision that is as loaded down with portent as the one to which I have referred, that is to say, whether we have a sufficiently clear expression of the will of the electorate in a province so as to impel the commencement of negotiations for the break-up of our country, I ask honourable senators for support for my amendment.

MOTION IN AMENDMENT

Hon. Tommy Banks: Honourable senators, I move:

That Bill C-20 be not now read the third time but that it be amended, in clause 2, on page 5, by adding after line 5 the following:

"(5) The Government of Canada shall not enter into negotiations on the terms on which a province might cease to be a part of Canada if, within 30 days of the House of Commons making a determination that there has been a clear expression of a will by a clear majority of the population of a province that the province cease to be part of Canada pursuant to subsection (1), such negotiations are objected to by at least three of the following:

(*a*) Ontario;
(*b*) Quebec;
(*c*) British Columbia;

(*d*) two or more of the Atlantic provinces that have, according to the then latest general census, combined populations of at least fifty per cent of the population of all the Atlantic provinces; and

(*e*) two or more of the Prairie provinces that have, according to the then latest general census, combined populations of at least fifty per cent of the population of all the Prairie provinces.

(6) The following definitions apply in this section.

"Atlantic provinces" means the provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland.

"Prairie provinces" means the provinces of Manitoba, Saskatchewan and Alberta."

The Hon. the Speaker *pro tempore***:** Honourable Senator Banks, who is your seconder?

Senator Banks: I have not obtained a seconder. I wait for one to volunteer.

Hon. Eymard G. Corbin: I shall second the motion in amendment.

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

• (1610)

Hon. Lowell Murray: Honourable senators, would my friend permit a question?

Senator Banks: Yes.

Senator Murray: How does the honourable senator propose that the opinions of these provinces be expressed? His amendment seems to follow a sort of amending formula, but in the amending formula legislatures pronounce. When he refers to "provinces," does he mean provincial legislatures or is he referring only to the executive of the governments of those provinces?

Senator Banks: Honourable senators —

The Hon. the Speaker *pro tempore***:** A short answer, please, because the honourable senator's speaking time has expired.

Senator Banks: I do not know. It would likely be different in each province. It would be whoever is in power properly in that province to act. Some provinces require a referendum before the government is able to pronounce on a constitutional question and some provinces might regard this as a constitutional question, although it is not, strictly speaking. I would presume that the executive of each provincial government would be empowered, by virtue of it being the executive, to object. It is important to note that we are not seeking the approval of the province; rather, we are open to their objection to the legislation.

The Hon. the Speaker *pro tempore***:** Honourable senators, the time period for questions has expired.

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I propose that we give leave to Senator Banks to extend his time for questions by five minutes.

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

Hon. Senators: Agreed.

Hon. John G. Bryden: Honourable senators, I have a couple of brief points and questions for Senator Banks. One of them is not so much directed to him except that what he has said brings the issue to mind. He made the point that a Parliament configured differently might require the government to negotiate secession where there was only a majority of one in the Parliament. I think that is what the honourable senator said. The honourable senator is the first one to say that here, but others have discussed it as well.

As I read Bill C-20, the House of Commons does not require the government to do anything. In fact, it does not have the power to require the government of the day to do anything. If we read clause 2(4), the House of Commons can prohibit the government from entering into negotiations. That is all. The bill is very clear. It states that the Government of Canada shall not enter into negotiations on the terms on which a province might cease to be part of Canada unless there has been a clear expression of the will by a clear majority.

The Parliament of Canada can express its opinion that the question is totally clear and that, in its opinion, the majority is totally sufficient, but the government does not have to do anything. People will state the intention of the bill. As I understand it, and as former justice Estey made clear, the intention of a bill comes from the words in the bill. The only thing the members of the House of Commons can do is to prohibit. That is what this bill does. Does the honourable senator agree with that? If so, why would this amendment be necessary?

Senator Banks: Honourable senators, if Parliament were to make that consideration, we would not even be having this discussion. Rather, it is the House of Commons that will make that decision.

I agree that the bill does not, as it stands, legally compel the government to do anything. However, given the thrust and the import with which this bill has been infused by this government, and the reliance that the government places upon this bill, I do not see how this or any other government could possibly wiggle out of commencing negotiations in the circumstances described by my honourable colleague. If the House of Commons determines that there was a clear question and a clear vote, I do not understand how the government would be able to say — and still face itself in the morning — that it would not negotiate. I realize it could, but I think that is unlikely.

Senator Stratton: No.

Senator Bryden: Honourable senators, any number of factors enter into whether the Government of Canada commences negotiations with any province on secession, one of which is specified in the bill and acts as a total prohibition — namely, that there is not a clear question and not a clear majority. However, there can be a clear question and a clear majority. A government that is responsible to the people can say, "Given these factors, we shall not do it." I needed to make that point because I do not know that it has been clearly understood. The positive is not there; it is only a negative. It is a prohibition.

I wish to make another point regarding the comments of Senator Banks. Once again, I am not bringing this home to roost on my colleague. In this chamber, we have managed to take this short bill, which is significant in nature, and to hang a huge number of options on it, whether parliamentary reform or whatever. The comment that makes me rise is that this bill will be law and, given the present configuration, this law will be around for a long time. My comment is: Maybe. The fact is that this bill will be a statute like any other statute that is passed by the two Houses of Parliament and assented to by the Governor General. We could come back here in the fall and propose an amendment to this bill. We could come back here in the fall and propose a bill to repeal this bill. It is a statute like any other statute.

Honourable senators, we have an unfortunate ability in this house to sometimes take a bill that is quite clear regarding one principle and make it into a clothes rack on which we can hang all of the things that are good, bad or indifferent about our system of government and our institutions.

Some Hon. Senators: Speech!

Senator Bryden: No, honourable senators, this is not a speech. I am permitted to ask a question and to make a comment. My comment is the following: Let us not make this bill do more than it is intended to do or to turn it into some sort of constitutional document written in stone when in reality it is a statute that can be amended.

Senator Banks: Honourable senators, Senator Bryden is right. This is a duck, but it is the biggest duck! It is not a duck like any other duck. This is the monster duck of all time, but it is a duck.

Senator Bryden: If it walks like a duck and quacks like a duck, then it is a duck!

Senator Banks: If Senator Bryden honestly believes that any government could decide not to negotiate in the event of the Commons having determined that the question was fair, a vote having been taken and the Commons having determined that the vote was sufficient, then the honourable senator is right and I am wrong. However, I differ from the honourable senator in that respect.

• (1620)

Hon. Jerahmiel S. Grafstein: Honourable senators, here we are in Ottawa, on the eve of the 133rd birthday of Confederation, and the reach of the British North America Act, our Constitution of 1867 as amended by the addition of the Charter of Rights and Freedoms when the Constitution was bought home in 1982, is alive and kicking. The words of the Confederation debates — I repeat, the Confederation debates — echo in this chamber these last few weeks. One people, one nation, one country under law — so said Sir John A. Macdonald and so repeated endlessly by every prime minister from his time to ours.

Honourable senators, here we are met to debate a most significant bill. Bill C-20, the clarity bill reaches, as virtually all senators have said, to the very heart of our body politic — the unity of Canada.

Let me congratulate the Chairman of the Standing Senate Committee on Legal and Constitutional Affairs who sat as a government nominee on this special committee. She raised for me a serious concern that gave us all pause for reflection, a central issue that lies at the very core of this debate — the senator's oath of office, as Senator Pitfield alluded to in his speech, and hence the nature of the Senate itself in our federal bicameral system of governance. The Chairman of the Special Committee argued that her reading of the oath of office was to defend Canada, not the Senate. May I most humbly and respectfully disagree. The oath is more complex. I believe our oath requires more. Each senator, when appointed, takes the oath of allegiance to the Crown before the Speaker. The honourable senator argues, on her reading of the proclamation of her appointment, that she is to render "advice and assistance...in all weighty affairs which may concern the state and the defence of Canada."

I believe the Senate oath of office serves to remind senators of the serious fiduciary obligations, duties and responsibilities — duties as legislators, as law makers — to uphold our legal order by legal means, by the rule of law. Of necessity, "legal means" include defending the powers of the Senate from unconstitutional impairment, dilution or encroachment.

The Supreme Court has repeatedly stated that it holds as one of its paramount duties to defend the court's judicial independence. The Senate has no less duty to defends its legal and constitutional powers. Can any authority in this Parliament or in any other Parliament offend the constitutional order except by constitutional means?

There is a great confusion in this chamber over the reach of the 1998 Supreme Court reference. Why is this so? Let me briefly retrace the beginnings of Confederation.

The BNA Act was like Bill C-20, a simple bill of Parliament, in this case the English Parliament. Yet it was much more. It contained the constitutional framework of the Canadian governments that remains alive in our amended Constitution today. The Fathers of Confederation came together from the three regions of Canada — Upper Canada, Lower Canada, and the Maritimes — and they constructed a stronger, less fragile central governance than the United States, which, at that very time, faced the horrors of the American Civil War. American sovereign states were pitted against one another, each arguing sovereignty. Therefore, confronted by that bitter experience, our Fathers of Confederation carefully built a more indestructible, indissoluble union, stronger than a federal union, a confederal union.

They started with a strong bicameral federal Parliament. Provinces became creatures of Parliament by our Act of Union. The Crown deposited plenary powers in the federal government and then certain powers were horizontally divided, allocating local and specific powers exclusively to the provinces. This horizontal division of exclusive powers was clearly spelled out in section 91 and section 92 of the BNA Act. The federal power was granted strong residual powers under the rubric of "peace, order and good government." Added to these plenary powers were the overarching powers to override aberrant provincial legislation through the powers of disallowance and reservation. Sixty-eight times since Confederation those powers were used. Perhaps more.

To check the federal executive, all federal power to legislate was divided equally between the Senate and the House of Commons, with the question of confidence in money bills left ultimately to the Commons, consonant with the traditions of the mother Parliament in England. Both chambers were to draw on different sources of popular support. The Senate was granted equal representation from each of the regions, with secure appointment, while the Commons representation was based upon popular support in individual ridings. Two majorities were crafted by the Fathers of Confederation, one based on the equality of the regions and the other based on representation by population in the Commons; one to remain stable and equal, and the other to grow in size with the growth of the population.

Throughout the decades, as the former Supreme Court justice Mr. Estey pointed out before our hearings, our courts jealously guarded the division of powers between the federal and provincial players, and, as forcefully, had protected, as he pointed out, the equality of powers between the Senate and Commons to legislate as a check on the most powerful executive. That, honourable senators, is why Canada's existing constitutional structure is indivisible. Sovereignty was shared between the Crown in the right of Canada and the Crown in the right of provinces. Can this be changed? The Fathers of Confederation ingeniously constructed an explicit and intricate, flexible, power-sharing structure in the belief that the Canadian union could not, like the United States, be ripped asunder. The undivided sovereignty of the Crown clearly and ultimately rests with the people. This was the organizing idea that animated the Charter of Rights and Freedoms when it became the law of the land when incorporated into our Constitution in 1982. Governments were not above the law, but the people were sovereign.

Of course, extraordinary change can be brought about but only by the express will of "the consent of all Canadians." In the Supreme Court reference the court opined — and it was an opinion, not a judgment — that:

> The consent of the governed is a value that is basic to our understanding of a free and democratic society.

The court went on to say:

> Yet democracy in any real sense cannot exist without the Rule of Law.

Honourable senators, it could not be otherwise. What precedents can be offered? Shortly after Confederation, on a clear question and a clear majority, the Province of Nova Scotia, led by the Honourable Joseph Howe, expressed its desire to separate from Canada. A petition was made to the English Parliament, then the repository of our amending process. The English Parliament said no to the petition. Such separation could not take place without the consent of the other parties, being the federal Parliament and the other provinces. The Canadian union was not severable by one province.

The Australian precedent was more recent and equally compelling. In 1933, the Western State of Australia, on a clear question and a clear majority, voted to separate from the other states of Australia. Again, a petition was made to the Parliament of England, which held their amending process. The English Parliament declared that separation could only take place on a clear vote of the peoples of all the Australian states, not just the votes of the petitioning state. The sovereign will, they said, rested not with the federal cabinet or the federal Parliament but with all the people.

Now, honourable senators, we are faced with the Supreme Court reference of 1998. There are no explicit provisions for separation in our Constitution. The Supreme Court was not questioned directly on that issue. Instead, two rather narrow legal questions were asked. Could the Province of Quebec separate under international law or domestic law by a unilateral declaration of independence based on the international principles of self-determination? The Supreme Court's opinion answered a resounding "no" to both questions. The court could do no other. The court, faced with the express provisions in our Constitution, could not, of its own, establish a legal constitutional right to secession. It recognized that such an opinion would be reaching beyond the explicit provisions of the Constitution. To dismantle or to dismember the constitutional order would require more. All the constitutional actors, all the people, would have to agree.

• (1630)

The source of all sovereignty, the will of all the people, of necessity would have to consent. One senator argued that the Supreme Court opined that on a clear question and a clear majority, all actions solely within the confines of one province under one provincial government could of itself create a legal, constitutional binding right of that province and a constitutional binding legal obligation in Canada to negotiate secession — to negotiate the dismemberment of Canada.

How could the court create such a binding, legal, enforceable constitutional right and duty absent the express provisions of the Constitution?

Let me turn, honourable senators, to the Senate's powers found in sections 17 and 18 of the Constitution. Legislation, law making, requires both the Houses of Parliament and the Royal Assent, as Senator Pitfield mentioned. What is the product asked in this bill? It is for one house to decide the nature of the clear question and the nature of a clear majority. It is simple but complex. Is this decision, this binding order, this binding resolution, in pith and substance a legislative matter, a law that could trigger the chasm of secession, or is it merely, as some witnesses supporting the government's position suggested, a delegable, administrative matter? Can the cabinet fetter its broad plenary Royal Prerogative by choosing a binding resolution of only one house of Parliament? Mr. Estey, for one, said no. This smacks more of "law" than anything else, he said. Once the cabinet chose only one house of Parliament, must it not use both? This is our bicameral system. Did the cabinet choose one house when requiring a determination of national emergency? Did the cabinet choose one house when determining the declaration of war? No, of course not. It could not.

What, then, should be the role of the Senate in the clarity bill? All agree Bill C-20 is an extraordinary measure. All agree it could trigger the path to secession. All witnesses before the committee, save one, agreed that there was no constitutional inhibition or barrier for the Senate to equally participate, because of its inherent powers within the Constitution, in the clarity bill with the Commons. All witnesses supporting the minister said it might be "awkward," but no witness save one argued that there was any inhibition or constitutional barrier for the Senate to equally participate with the House. Only one disagreed: the minister. I shall not repeat the minister's labyrinth arguments. Honourable senators have heard them all before. One turns to the evidence to find the learned witnesses sharply divided. There was no overwhelming evidence to support the government case. Every senator that sat in those hearings recognized there was no overwhelming, weighty evidence to support the government's case. When we parse through the evidence, we find that the learned witnesses were sharply divided on whether or not, by excluding the Senate, the bill would be constitutionally flawed.

I, honourable senators, am a lawyer, and I prefer the experience and the weight of evidence led by former justice Estey who stated that, "under our bicameral system, to exclude the Senate would be unconstitutional." I prefer the Laskin-Estey school of legal doctrine. Mr. Estey wondered aloud why, if a minister had such a clear highway under section 18 of the Constitution, he chose a gravel road full of bumps and grinds to exclude the Senate? Why take such a gamble? Why take such a risk? Why roll the dice? What if, in the crucial moment, the clarity bill is found to be constitutionally suspect?

The Hon. the Speaker *pro tempore***:** Honourable Senator Grafstein, your speaking time has expired. Are you asking leave to continue?

Senator Grafstein: Yes.

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

Senator Hays: I propose we give Senator Grafstein leave to proceed for a further 10 minutes.

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

Hon. Senators: Agreed.

Senator Grafstein: I thank you, honourable senators.

I ask again, as Mr. Estey intimated, why take such a gamble? Why take such a risk? Why roll the dice? What if, in the crucial moment, the clarity bill is found to be constitutionally suspect, as Senator Pitfield has pointed out, as opposed to being constitutionally sound? What then could be the disastrous consequences?

I have said from the outset that I am a strong advocate of this measure. I advocate the objectives of the clarity bill. We need clear rules of the road. Perforce we have to ensure that those rules of the road are constitutionally correct. We need a perfect, bullet-proof bill. We need constitutional rules, not arbitrary rules that detract from our long-established legislative practices under our constitutional order that for 133 years has stood Canada in such good stead.

Hence, honourable senators, I move an amendment which allows the Senate to participate equally in a joint resolution on the two questions in the bill. Some senators will say that this will give the Senate powers it does not already have, or by excluding the Senate its powers remain intact. This logic I simply cannot follow. Either the Senate has the inherent power or it does not. Thus, I urge you, honourable senators, to read and reread, as I did this past weekend, the parliamentary debates on Confederation, and, more specifically, the Right Honourable Sir John A. Macdonald, who anticipated exactly this question. He envisioned a profound clash between the popularly elected house and the second chamber, the Senate, the chamber of second sober thought. He anticipated such clashes. He argued that such profound clashes would be of paramount importance in the common, national interest of a stronger union.

Of course, honourable senators, the executive always has an escape valve. We have not talked about that. It has an escape valve, and I thank Senator Beaudoin for again drawing this to my attention. The executive could always swamp the Senate with the appointment of up to eight additional senators to avoid deadlock under section 26 of the Constitution. It has a safety valve, so there is no such thing as a deadlock or veto.

I ask honourable senators to carefully and deeply reflect. Would the Senate, recognizing the profound importance and urgent threat of Canada's dismemberment, act in any way arbitrarily? Rather, would not the Senate carefully navigate its way in order to fulfil each senator's responsibilities and uphold the constitutional order, the law of the land, and recognize that any change can only be supported by constitutional means and the rule of law that we so devoutly serve? Would the Senate use its majority to arbitrarily block a resolution that would both represent the clear and profound, not transitory, popular will and the country's interests?

Honourable senators, ask yourself this question: If the Senate was designed to act as a bulwark against the political whims of the day, arbitrary laws, shifting gusts of public opinion, if the Senate has rightfully been called to answer on all mighty questions of the day, national emergencies and declarations of war, how can the Senate be relegated or relegate itself to spectator status on the mighty questions that would lead to the very dismantling of Canada? I cannot agree.

The fate of the Senate, honourable senators, as former justice Estey points out, rests in our own hands. If we weaken our powers and relegate ourselves to advisory or observer status, which was not what the Fathers of Confederation expressly had in mind, we would derogate from the Constitution and weaken the careful checks and balances of federalism and confederalism within our Parliament. I humbly seek your support for this modest amendment to restore the Senate's lawful and most carefully exercised powers. We have exercised, since Confederation, our powers with care. The Supreme Court reference opined that any constitutional change requires

> ...a continuous process of discussion and evaluation which is reflected in the Constitutional right of each participant to the Federation to initiate Constitutional change.

Only three political actors have a legal right to initiate constitutional amendments: the provinces, the Senate, and the Commons. How, then, can one argue that the Senate could and should be excluded on any constitutional process that could lead to the dismantling of Canada? The Senate has always been and is entitled to be there with its full constitutional powers at the beginning, at the middle, and at the end of any constitutional process.

• (1640)

Finally, honourable senators, as Senator Banks pointed out, there is a real and present danger to our constitutional order. I ask honourable senators to think about when the clarity bill would be deployed. Senators from Quebec, I ask you to reflect on this question: When would the clarity bill be deployed? Would it be when the federal government holds a strong and overwhelming majority in Parliament? No. Only when Parliament is weak and fragmented, as Senator Banks points out. The masters in Quebec have told us that they would not move toward secession unless there are winning conditions. A weak fragmented Parliament, a minority Parliament, would set the stage for those winning conditions. Then, a strong and unified Senate, only interested in the national interest, only interested in the country as a whole, will emerge as a constitutional safeguard. This is exactly what the Fathers of Confederation envisaged.

Think again, honourable senators. Today, in the newspapers, we can see an unholy alliance of strong voices from the West, from my province of Ontario and from the province of Quebec that are united in one cause — to dismantle the federal powers, to weaken and degrade the federal government from within. They will come to Ottawa to weaken the federal powers from within. The Senate was created precisely to stand for a strong and united Canada — one people, one nation, one country under the rule of law.

Honourable senators, I respectfully ask for your support for my amendment to restore the Senate to its full powers.

MOTION IN AMENDMENT

Hon. Jerahmiel S. Grafstein: Therefore, honourable senators, I move, seconded by Senator Joyal:

That Bill C-20 be not now read a third time, but that it be amended

(*a*) in clause 1,

(i) on page 2,

(A) by replacing line 34 with the following:

"**1.** (1) The Senate and the House of Commons shall, within", and

(B) by replacing lines 40 and 41 with the following:

"Canada, consider the question and, by joint resolution, set out their determination on whether the",

(ii) on page 3,

(A) by replacing line 7 with the following:

"dum question, the Senate and the House of Commons shall",

(B) by replacing line 32 with the following:

"dum question, the Senate and the House of Commons shall",

(C) by replacing lines 40 and 41 with the following:

"resolutions by the representatives of", and

(D) by replacing line 45 with the following:

"any other views they consider to be relevant", and

(iii) on page 4, by replacing line 4 with the following:

"the Senate and the House of Commons determine, pursuant"; and

(*b*) in clause 2,

(i) on page 4,

(A) by replacing lines 15 to 18 with the following:

"Canada, the Senate and the House of Commons shall, except where they have determined pursuant to section 1 that a referendum question is not clear, consider and, by joint resolution, set out their deter-",

(B) by replacing line 27 with the following:

"province cease to be part of Canada, the Senate and the House",

(C) by replacing lines 33 and 34 with the following:

"(*c*) any other matters or circumstances they consider to be relevant.", and

(D) by replacing line 38 with the following:

"province cease to be part of Canada, the Senate and the House", and

(ii) on page 5,

(A) by replacing lines 1 and 2 with the following:

"formal statements or resolutions by",

(B) by replacing line 6 with the following:

"on secession, and any other views they consider", and

(C) by replacing line 11 with the following:

"unless the Senate and the House of Commons determine,".

My amendment is in both French and English. Essentially, honourable senators, it requires a joint resolution of both Houses for the trigger mechanism in Bill C-20 to be activated.

Some Hon. Senators: Hear, hear!

[*Translation*]

Hon. Gérald-A. Beaudoin: Honourable senators, I wish to support the amendment put forward by my colleague Senator Grafstein.

The clarity bill stipulates that it is up to the House of Commons, and only the House of Commons, to determine whether the question is clear and whether the referendum result is clear. The House of Commons must then tell the government whether or not to negotiate. The Senate, in this respect, has an advisory role only.

Bill C-20 provides that the House of Commons shall decide on the clarity of the question within thirty days after it is tabled in the legislative assembly of the province concerned.

[*English*]

Some people say that the delay of 30 days is so short that it is a valid reason to exclude the Senate. This argument is ill-founded. If the House of Commons, with 301 members, may do it in time, then why not the Senate with only 105 senators? I shall come back to the question of the joint resolution.

The minister and some officials explain the exclusion of the Senate by the fact that the vote of confidence is taken only in the House of Commons. This is true. The principle of responsible government comes from the conventions of the Constitution. It is unwritten, but it is part of the Constitution.

[*Translation*]

It is true that confidence is not the sole prerogative of the House of Commons. However, Bill C-20 has nothing to do with the principle of the vote of confidence. It is a constitutional convention that has existed since 1847 in Quebec and Ontario, and since 1846 in Nova Scotia. It exists as such. Whether or not there is a Bill C-20, this convention can always be enforced. The federal executive arm is at all times subject to a vote of confidence by the House of Commons.

As for the Senate, and this is my main point, Bill C-20 assigns it a marginal role, that of merely being consulted. This is where the problem lies. This is contrary to the legislative equality of both Houses in our bicameral Canadian parliamentary system.

[*English*]

In Canada, as in the United States, and in many other modern democracies, the courts of last resort attach the greatest importance to the Constitution and, in their interpretation, they refer to the intention of the Fathers of Confederation or the framers of the Constitution.

Sir John A. Macdonald and Sir George-Étienne Cartier, as it appears clearly in the debates on Confederation, have enshrined in the House of Commons the principle of representation by population. In the upper house, our house, the house of sober second thought, they have enshrined the principle of a regional Senate or a divisional Senate. In 1867, it was 24 senators from Ontario, 24 from Quebec, 24 from Atlantic Canada; and after 1867, 24 from the West, Newfoundland being an exception in 1949, with six senators. The three territories obtained one senator each.

[*Translation*]

By voting in favour of Bill C-20, the Senate is excluding itself from the process of adopting a resolution on the clarity of the question and the clarity of the referendum outcome.

[*English*]

We are invited to vote in favour of our exclusion.

[*Translation*]

• (1650)

The Senate, which has admirably acquitted itself of improving legislation over the years, must be able to fulfil its role and to pass a resolution indicating its decision on the clarity of the question and the clarity of the referendum results, on equal footing with the House of Commons. This is the intent of the fundamental principles of Canadian bicameralism. Yet our Parliament is, by assigning legislative power to a single chamber, working against the legislative equality of the two Houses.

[*English*]

In the legislative field, the two houses are equal. In the sphere of constitutional amendments, however, the Senate has a suspensive veto only. Section 47 of the Constitution Act of 1982 says so, but section 47 was adopted by a constitutional amendment, not by an ordinary statute. Here, we are not concerned with a vote of confidence at all. We are not concerned with a money bill. We are not concerned with a constitutional amendment. We are concerned with the bill, an ordinary statute.

The Senate is certainly a political actor in the sense referred to in the advisory opinion of the Supreme Court on the secession of Quebec, 1998. The court, in that advisory opinion, used the words "political actor" many times.

Honourable senators, the Senate is regional. It is not only a legislative house, which is already something very important, but it is also the protector of the regions in our federal system.

[*Translation*]

Neglecting to put the Senate on the same footing as the House of Commons constitutes a direct contravention of Canadian bicameralism, which is entrenched in the Constitution.

[*English*]

If the Senate does not fight for its rights and prerogatives, which institution will? Some say that the executive branch of the state has the power to negotiate secession without Bill C-20. Yes, that is true. We may ask why the government has introduced Bill C-20. It is a choice. The government has the power to do it, but the moment the government selects the legislative path, the government must follow the principle of equality of the two Houses.

We must distinguish between the legislative field and the constitutional field. We should avoid such confusion, and some experts did not make that distinction all the time.

[*Translation*]

During hearings of the special committee, we heard experts say that Bill C-20 did not interfere with the powers and privileges of the Senate. This opinion is not shared by professors Garant and Smith, by Claude Ryan, or by former Supreme Court judge Willard Estey.

During his appearance on May 29, Professor Garant told the committee:

> It is not correct to consider that it will be up to the elected representatives to determine the content of the question, because the Supreme Court said that it will be up to political actors.

On June 15, Professor Smith had this to say:

[*English*]

> I cannot think of anything more basic than the future of the country. It requires, it seems to me, the broadest and most informed opinion. Therefore, in a sense, to amputate one of the houses is not in the interests of the public for the future.

[*Translation*]

Claude Ryan agreed and said:

> ...in my opinion, the federal government is wrong to try to reduce the role of the Senate in examining the two principal subject matters of Bill C-20...It would seem bizarre, to say the least, for the drafters of Bill C-20 to give the impression that they want to substantially reduce its role in examining the subject matters addressed by Bill C-20.

Finally, former judge Estey is of the same opinion:

[*English*]

> How is it that Bill C-20 has survived its unconstitutionality when it has effectively and indirectly undermined the concept of a bicameral Parliament? Bill C-20 has put one half of the bicameral power in the invidious position of losing its status in the general operations planned in this bill the moment that this body, the Senate, signs the proposed legislation.

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

[*Translation*]

Rarely in its history will the Senate have had such a wonderful opportunity to justify its existence and its vital role in the Canadian parliamentary system.

[*English*]

The proposed amendment uses the terminology of a "joint resolution." This is of the utmost importance. We are then avoiding a clash between the two Houses.

The powers of the Senate and the House of Commons come from the written Constitution and from the conventions of the Constitution, which are unwritten. However, both are part of the Constitution.

Some people affirm that we have precedents for the inequality of the two Houses. They are apparently minor. In any case, it is time to stop the process and to act in conformity with the principle of the equality of the two Houses.

Honourable senators, few authors and few academics have given to the legislative branch of the state the attention it deserves. If we want to reduce the power of the Senate, we have to do it by the appropriate formula of amendment and not by an ordinary statute as Bill C-20.

In conclusion, I must say that I refuse to accept an erosion of our powers. We shall keep our powers intact. This may be our finest hour.

Some Hon. Senators: Hear, hear!

Hon. Nicholas W. Taylor: Honourable senators, this is the first time that I have spoken on Bill C-20. In case other senators think I am speaking twice, the last time I spoke was on second reading. At that time, I anticipated what was to happen later in committee by saying that it was a bad bill and that it struck at the Senate and the notion of bicameralism.

• (1700)

A number of things have happened since those days. The committee has held its hearings. We heard from the experts. It has been my experience in business that, if you pay people, you can always get the opinion you want. However, in this case the experts came for free and gave opposite opinions. That was intriguing indeed.

There seem to be five areas in which people want to amend Bill C-20: invisibility, national referendum, bicameralism, minority official language, and aboriginal rights, all of which have been eloquently debated. I believe that every one of these issues is valid. I tried to deal with three of the five in a motion which may be debated later today that almost censures the executive for leaving out minority official language, aboriginal rights, and bicameralism.

I placed that motion on the Order Paper recently because I believe that amendments proposed to Bill C-20, though well argued, may not pass, but my motion definitely could. I left out of the motion the issues of indivisibility and national referendum, which may be covered later.

[Senator Beaudoin]

Almost everyone seems to be in favour of the bill, but most people want it amended to make it better and more effective. Those are legitimate positions. I should have considered supporting amendments, but I came up with an alternative in the last few weeks.

The political climate in Canada has changed. Being an Albertan, I have been right in the middle of it. Stockwell Day was Leader of the Government in the provincial legislature when I was Leader of the Opposition there. For two years, we worked together opposite one another. I would not say that I know Mr. Day better than anyone else, but I know him fairly well.

I think that we have to look at this issue politically. If this bill were amended and sent back to the House of Commons in the fall, it would not go back to the House of Commons that passed it initially. It would go back to a House of Commons that most likely will have a new leader of the opposition. This new leader, who has shown no great love for national powers or the Senate, will have the opportunity to give us a good kick in the shins. I have concluded that we do not have much choice other than to support the bill as is, in order to ensure that there is no way in which the new leader of the opposition will be able to do that.

Hon. Senators: Oh, oh!

Senator Taylor: I hear rumblings from the other side.

Senator Lynch-Staunton: No wonder you never got elected.

Senator Taylor: When you point your finger at them, they growl. When you shake their chain, they start barking.

The fact is that an amended bill would go back to a House with a different leader of the opposition this fall, and that would reopen the whole case. I have heard time and again from both sides of the House that Bill C-20 is a step in the right direction, but not a big enough step. If you argue that, you must support Bill C-20, because amending it accomplishes nothing. Amending it would put Stockwell Day back in the harness. I know that Stockwell Day once said, “Let Quebec go.” God knows what he will think next year. I used to call him the Elmer Gantry of the Tory Party. One never knows which violin he will play in the fall.

I can assure you that, if Bill C-20 is returned amended, it will not be simply passed. Mr. Day will have a trick up his sleeve. He will use it as a lever for something.

Therefore, although I should like to see the bill amended, the time to make all these changes is in the fall when we already have the platform of Bill C-20 to work from. It would be very difficult to put Bill C-20 in place this autumn or winter if the Leader of the Opposition in the House of Commons is arguing something entirely different, or if there is an election in the meantime. If there is an election before the House resumes in the fall, Bill C-20 will be lost.

I say to all honourable senators that those are two good reasons for doing this incrementally. We can have our cake and eat it, too, if we take our time and not try to overhaul the bill. We cannot make five amendments to the bill all at once, but we could make them one by one this fall and winter, regardless of what government is in power or whether there is a minority government.

If we try to amend the bill now, Bill C-20 will not come into force until the House of Commons resumes, and at that time it will be a different House of Commons. Stockwell Day has no intention of retaining the status quo. He will be looking very carefully for handholds. He listens to what his party says, and he will have some schemes and ideas. We shall be playing into his hands if we amend this bill and send it back. That will give him the opportunity to open up the entire issue.

Hon. Pierre Claude Nolin: Honourable senators, is Senator Taylor entirely convinced that his government will lose its majority during this summer?

Senator Taylor: It is possible. Not everyone in this country is smart. Don't forget that I spent 14 years as an opposition leader trying to get into government. I know that the public can be very capricious.

Senator Nolin: Is Senator Taylor saying that if Stockwell Day becomes the leader of the Alliance Party, he can influence the Liberal government not to adopt the amended bill?

Senator Taylor: It is not a question of whether he will adopt the amended bill. My point is that, if it is sent back to the House of Commons, it will be subject to debate. What tactics he will use from then on, I do not know. We would stand a chance of losing Bill C-20, because the margin was not that large. Stockwell Day, as leader of the opposition, with the support of the Bloc, would have a substantial toehold. I certainly think he can make it impossible to pass the amended bill.

[*Translation*]

Hon. Marcel Prud'homme: Does Senator Taylor, as a man who has always defended the Senate, come hell or high water, in a province that is not all that sympathetic to it, not consider his attitude today the greatest miraculous conversion since St. Paul's on the road to Damascus? He is denying everything he has ever said about the Senate in one of the least pro-Senate of provinces, which would explain the general amazement at this time.

[*English*]

• (1710)

I am sure that Senator Taylor will understand my friendly reaction to his comments. There are those of us who look at him as a champion, ready to go against the wind, including in his province, where, if I remember, I campaigned for him 27 years ago. Does Senator Taylor not realize that he has always stood up for the two houses? For him to suddenly deny the honour to at least defend the Senate is rather difficult for me to understand.

Since his time has not expired, would Senator Taylor please take a few minutes to give me his explanation, as I once asked Senator Fraser, as to why we came to the Senate and what the Senate is all about for him?

Senator Taylor: I thank the honourable senator for his question. I am still in the corner defending the Senate.

Senator Prud'homme recited the biblical story of St. Paul falling off his mule on the way to Damascus. We might also look to the story of the Athenians fighting the Spartans, where it was said that he who runs away lives to fight another day.

My point is this: I want to defend the Senate, but I think we lose the opportunity to do so by trying, as the old farmer used to say, to give one bale of hay to the horse, maybe two, but five all at once and the horse will choke. We are trying to put through five amendments, and I think most of them are good. I also think the bill is weak but it is not lousy.

If honourable senators had followed my recommendations at second reading and returned the bill to the House of Commons at that time, we would have had a chance to change it. The House of Commons has now adjourned for the summer. We may have a new Leader of the Opposition in the fall, unless there is a whole new miracle in the sky. I say that we can address this issue incrementally by first getting this bill through and then changing it after Parliament has returned. However, if we try to send this bill back to that mixed up House, where nobody knows what is going on, we shall not get anywhere.

Honourable senators, there is one thing of which I am sure, and that is that I doubt very much it will be a Tory leader of the opposition when we return.

Hon. Anne C. Cools: Honourable senators, I rise to speak to Bill C-20. At the second reading vote of Bill C-20 I abstained, reserving my judgment, giving the government ample opportunity to hear and heed the concerns of Liberal senators. The government has declined to improve the bill. I am disappointed in the government's unrelenting intransigence. I am disappointed in the government's wanton disregard of Liberal senators.

Honourable senators, I shall speak as a Liberal from Ontario who was influenced, as was Sir Wilfrid Laurier, by classical 19th century British Liberals, including Britain's great Liberal Prime Minister William Ewart Gladstone and others. I shall also speak as a black woman, the senior female of the Liberal caucus and the first black member of the Liberal caucus. I understand, as do mature and experienced public men and women, that when human beings come together in assemblies, their strengths and ideals are assembled, but so too are their weaknesses and prejudices. These weaknesses include racial and regional prejudices, male and female jealousies, and personal vanities. St. Augustine described some of these vanities as *libido dominandi*, the lust for power. In deference to political and party loyalty and to the high goal of civic and public service, I have abided some bigotries and have done so without public comment or criticism. I have protected my side, the Liberal Party, nobly in this regard. I have been described by some Liberals unflatteringly by many descriptors not excluding such terms as "that black bitch." For myself, I have borne much in the name of party loyalty and public service. I believe that the goal of public service is greater than any personal hurts and injuries. However, I must articulate that the greatest personal and racial slight offered to me to date has been my exclusion from the special committee on the study of Bill C-20. I view that exclusion as apartheid, and I condemn it yet again. I shall name it "Stéphane Dion's apartheid."

Honourable senators, for the study of Bill C-20, I offered the government my force of personality, conviction and intelligence. In addition, I offered my length of caucus service, my seniority in caucus, and my considerable personal public support. All of these were unwanted by my side. My side did not want or need what I had to offer. It seems my side wanted and demanded weakness from me. That was something I could not give. I could not offer that, honourable senators; I could not offer weakness. Minister Stéphane Dion does not seem to know the difference between party loyalty and character weakness. He is also unlearned in liberalism, in Liberal Party history, and in Liberal Party principles. He is especially unlearned in the human relations that are necessary to the maintenance of a political party and a party caucus.

Honourable senators, throughout this debate I have maintained consistently that the first duty of a government, a ministry, is to uphold and defend the constitutional order — that is, to maintain the stability and existence of the state, being the territorial integrity of the nation with its system of governance. It is to that purpose, that law, the expression of collective, began. The oldest form of law is the law of the prerogative, the *lex prerogativa*, or the law of the lord king, the *jus regis*. The second oldest form of law is the law of Parliament, the *lex et consuetudio parliamenti*. These two sets of law, buttressed by statutory law, have been the mainstay of political stability for our citizens. To do the contrary was to risk the wrath of these two sets of law and face treason.

[Senator Cools]

Honourable senators, the authorities and the law tell us that the first object of all political associations of society and all constitutions is to produce a state of things in which the citizens' various pursuits of life may be conducted without interruption or disruption according to the famous maxim of our law, that is, to keep the monarch's peace — thus, the meaning of the words "peace, order and good government," as stated in the British North America Act 1867 at section 91.

Honourable senators know that I do not approve of the Supreme Court of Canada's foray into politics in its 1998 advisory opinion, the subject of this bill. I agreed with former prime minister Pierre Elliott Trudeau in his 1991 criticism of the court's foray into politics in the 1981 *Patriation Reference*. Mr. Trudeau was right and was supported by 150 years of constitutional history. I stand by the essential principle of liberalism that the courts and judiciary must not be deployed for political ends, a liberal principle supported by the law of Parliament and by the constitutional practices in respect of the proper relationship between Parliament and the courts.

Honourable senators, in my two speeches on this bill, on May 16, 2000, I have shown that there is no Royal Prerogative that authorizes the Government of Canada to terminate Canada and/or to partition, to divide or to dismember Canada. I also showed that the government's and Senate government leader Bernard Boudreau's assertions about the Senate are wrong and are unsupported by Canadian constitutional practice and history.

• (1720)

I remain bewildered that Senator Boudreau made such patently wrong assertions and that, further, when challenged, has declined to defend or withdraw his mistaken assertions. I cited high authorities, including Prime Minister R.B. Bennett, demonstrating clearly the right of the Senate to pass confidence votes. I shall record today two more pieces of parliamentary evidence on the proper role of the Senate in respect of confidence votes.

The first is a citation from Canada's own highest authority on Parliament, the 19th-century author, Alpheus Todd. The 1894 edition of his book entitled *Parliamentary Government in the British Colonies* states:

> It is true that a vote of want of confidence in an existing administration may properly be passed in either house of parliament, without it being necessary to assign any reasons for the same.

I repeat, Todd stated in uncontrovertibly plain, easy-reading language that want-of-confidence votes can be passed in this Senate Chamber.

Honourable senators, my second citation is about a particular want of confidence motion or a motion of censure that passed here in the Senate. In fact, the Senate's role was pivotal. I speak of the Senate's role in the 1879 dismissal of Quebec Lieutenant-Governor Luc Letellier by the Governor General, the Marquis of Lorne, on the advice of the two Houses, the Senate and the House of Commons. I speak of the parliamentary motions of censure against Lieutenant-Governor Letellier and his ultimate dismissal and replacement by Governor General Lorne in July 1879.

The question, honourable senators, was a matter of high constitutional crisis and a lengthy and complex one which was explored in the proceedings of the two chambers. Of importance to senators is the Senate's important role in this censure and dismissal.

In this Senate, on April 16, 1878, a censure motion, moved by the Leader of the Opposition in the Senate, Conservative Senator Alexander Campbell, carried censuring Lieutenant-Governor Letellier. A similar motion of censure had failed in the House of Commons the day before. However, some months after its adoption in the Senate, the related censure motion carried in the House of Commons.

I shall read Prime Minister Sir John A. Macdonald's action as recorded in the "Report of a Committee of the Honourable the Privy Council" approved by His Excellency the Governor General on July 25, 1879. It stated:

> That...Sir John A. Macdonald, as first minister, waited on your Excellency and informed you that after the resolution of the Senate in the last session of Parliament, and the resolution of the House of Commons just referred to, it was the opinion of your Excellency's advisers that the usefulness of Mr. Letellier as Lieutenant-Governor of Quebec was gone, and they advised that in the public interest it was expedient that he should be removed from office.

These were votes of non-confidence.

It continued:

> ...that the decision on the present case would settle for the future the relations between the Dominion and Provincial Governments as far the office of Lieutenant-Governor, is concerned...

Finally, it concluded, stating clearly, that the assigned cause for this removal was the motion of censure as passed in the Senate and, later, in the House of Commons.

The document continues:

> He further begs to report that the cause to be assigned for such removal according to the provisions of the 59th section of the British North American Act, 1867, is that after the vote of the House of Commons during last session and that of the Senate during the previous session Mr. Letellier's usefulness as a Lieutenant-Governor was gone. That your Excellency's advisers are fully aware of the responsibility of making this recommendation, and they feel it their duty to accept it in every sense.

Honourable senators, Lieutenant-Governor Luc Letellier was removed on July 26, 1879, and Lieutenant-Governor Theodore Robitaille was appointed in his stead.

Sir John A. Macdonald, in that Privy Council document, had mentioned section 59 of the British North America Act, 1867. I shall share with honourable senators section 59, which states in part:

> A Lieutenant Governor shall hold Office during the Pleasure of the Governor General; but any Lieutenant Governor...shall not be removable...except for Cause assigned, which shall be communicated to him in Writing...and shall be communicated by Message to the Senate and to the House of Commons within One Week thereafter...

Both Sir John A. and the Governor General had honoured that section: first, Sir John A. in his observance and adherence to the advice of the two Houses, and, second, the Governor General by his obedience and by his early, voluntary transmittal of the relevant petitions and documents to the Senate.

Senator Alexander Campbell, in speaking to his motion on April 12, 1878, spoke about the Governor General's communications and messages to the Senate. He stated:

> Another reason which makes me think it is expedient to move as I am now doing, is the fact that two messages from His Excellency with papers on the subject have been transmitted to this House, not at our request, but on the mere motion and grace of His Excellency. In my judgment some action ought to be taken by us lest our silence be misunderstood...

That, honourable senators, is the proper and intended role of the Senate in Canada, not the fanciful inventions of Minister Dion and others.

Honourable senators, it is important that we understand that Bill C-20 is seeking to limit this particular power as granted to us under section 18 of the BNA Act. Section 18 of the BNA Act granted to the Senate that which Edward Blake, one of the greatest Liberal legal minds ever to serve in Parliament, described as the great power of Parliament to advise. Bill C-20 attempts to limit the Senate's power to advise in respect of both federal and provincial actions in respect of national unity.

Honourable senators, the Senate embodies the federal principle, but Bill C-20 is digging away at that principle in a very underhanded way, and I do not like it.

Honourable senators, on May 29, 2000, Minister Dion first appeared before the Special Senate Committee on Bill C-20. In response to a question from Senator Kinsella about the divisibility of Canada, Minister Dion said:

> I knew that Canada was divisible before the court reference. I think that very few people are arguing the reverse.

Minister Dion is omniscient. He knew the unknowable. He knew what none of us knew before. He said he has always known that Canada is divisible.

Later, at the same meeting, Senator Michael Pitfield, former clerk of the Privy Council, said to Minister Dion:

> This is heady stuff. I never thought to see the day that the Liberal Party came down in favour of the disunity of the country.

I never thought I would see that day either. The disunity of Canada is contrary to Liberal Party history and policy.

I shall conclude by citing Minister Dion's testimony of June 19, 2000, when he again appeared before the Special Senate Committee on Bill C-20. In respect of allegiance to Her Majesty Queen Elizabeth II as required by the oath of allegiance we all take when we come here, I asked Minister Dion:

> My question to you, minister, is the following: As a minister of the Crown, what duty of allegiance do you owe to the one Dominion of Canada and to the Queen's peace and to the Queen in and of Canada?

Minister Dion responded:

> ...Canada has been created as one dominion. If it was two dominions, we would know. It was one dominion under the Crown. That does not mean that Canada was indivisible. That was not written anywhere. Where are the words "indivisible under the Crown?"...The notion of indivisibility cannot proceed from the fact that Canada is one.

I then asked:

> ...My question to you, minister, was about your duty as a minister, your duty of allegiance to Her Majesty the Queen and to the one Dominion of Canada. That was my question. What is your duty of allegiance?

Mr. Dion responded:

> My duty of allegiance is to the values in which I believe...

• (1730)

Honourable senators, the minister has said that he is omnipotent. He says that he owes allegiance to himself, his own beliefs and his own values. The minister has condemned himself by his own words. I need add nothing more. The minister has declined to defend and uphold the constitutional order of Canada. He has yielded the ground to the sovereignists and so, too, does Bill C-20. They will inevitably and inexorably win, because the ground has been handed to them. That is why I do not support Bill C-20, and that is why, honourable senators, I shall be supporting the amendments that have been moved by other honourable senators.

Honourable senators, in tribute to all those who have believed in Canada as a country, and who have taken risks and served Canada as a country, I should like to end by citing *In Flanders Fields*. That is the very famous poem, which I am sure all honourable senators know, by John McCrae.

> In Flanders fields the poppies blow
> Between the crosses, row on row,
> That mark our place; and in the sky
> The larks, still bravely singing, fly
> Scarce heard amidst the guns below.
> We are the Dead. Short days ago
> We lived, felt dawn, saw sunset glow,
> Loved and were loved, and now we lie
> In Flanders Fields.
> Take up our quarrel with the foe:
> To you from failing hands we throw
> The torch; be yours to hold it high.
> If ye break faith with us who die
> We shall not sleep, though poppies grow
> In Flanders fields.

Honourable senators, it is my bounden duty to throw the torch and, honourable senators, I shall not break faith with the history of this country or with the tradition of the Liberal Party. Honourable senators, I shall not be disloyal to the oath of allegiance that I took when I walked into this chamber and placed my hand on the Bible and I swore. That may not mean much to a lot of people, but it means a lot to this honourable senator. Honourable senators, there is not a duty of party loyalty that can advise any honourable senator to violate his or her oath of allegiance.

[*Translation*]

Senator Prud'homme: Honourable senators, there are several different ways of addressing the subject. There is the written speech, which summarizes everything that may have been said in committee, the speech, which summarizes everything that has been proposed, and the path I have chosen today: reflection. It is the reflection of a political old-timer with 37 years of service to the Parliament of Canada.

The other old-timer is Herbert Gray, in the other place. I am second. That is how I consider my role, even if that raises a smile for some of you, while others may quibble with it. I am very much attuned to people's expressions and reactions, not that I am sensitive and likely to have my feelings hurt by it, but just attuned to people's reactions.

I shall tell you why I was appointed to the Senate. I have never said this publicly before. I was, and I regret to have to say so, thoroughly fed up with always losing out when I spoke up for my people, the French-Canadians of Quebec within Canada. That is a pretty serious statement, and one I shall have to live with for the rest of my days. I could have stayed a member of the House of Commons, for I was not expelled from the Liberal Party. I left it quietly at the end of 1993. I have always been loyal to my country and I have always professed that loyalty, even if it had to be put ahead of party loyalty. At a certain point, there was a clash and I decided it was time to leave. I was already a candidate for the Liberal Party of Canada in the riding of Saint-Denis. I was nominated in June of 1993. The Parti Québécois and the Bloc Québécois dubbed me "l'indéracinable," he who cannot be got rid of. When I saw there was nothing more to be done, I decided to quit — perhaps a bit adolescent of me. It was seen as something temporary, but it was a real crisis for me. In life, it can never be predicted when a person will have had enough. For some, the last straw comes after days or months, maybe a few years; for me it took 30 years.

I have seen people who, with the arrogance of power, did not understand what Canada was. I met with the Right Honourable Brian Mulroney, who is a friend, as is Jean Chrétien. When I left the party, I told him that I should sit as an independent. There are three witnesses to these events: Guy Charbonneau, who has since died; Senator LeBreton, because of her responsibilities, which were similar to those of Senator Fairbairn vis-à-vis the Prime Minister; and the Prime Minister. He was surprised, but he knew very well that I should sit as an independent. That is why I came to be in the Senate. I think I understand the differences, the nuances and the frustrations. In fact, this is why I am so popular in the Inter-Parliamentary Union. I can also understand how the arrogance of power can lead you into all sorts of stupidities, such as the one we are engaged in now. That is my opinion, anyway! What we are seeing is a profound disrespect for Canadian institutions, when we know perfectly well that Parliament is composed of two chambers. I should even be almost prepared to forgive the Prime Minister. Now advisors are telling him that this is the way to proceed because no one is concerned about these issues. Where I come from, we say "It is time to pull a little fast one." This is a very popular expression.

I therefore agreed to be an independent senator. I knew that there would not be many of us. There were only three of us. You listened reverently to the speech by Senator Pitfield — because of the respect in which he is held — in which he defended the institutions. Senator Lawson was also there, and since then, there have been Senators Wilson and Roche. And some of you would perhaps like to be in my shoes as an independent senator.

• (1740)

I understand, and accept, how parties operate, even though a colleague always told me I was not an independent, I always voted with the government. That hurt my feelings, and today I am saying so, but at the time I let it pass.

I vote according to my conscience, in everyone's best interests, without exaggeration, and also without abusing the patience of the group to which I belong. I cannot always be a dissident. I am very familiar with the *Rules of the Senate of Canada* and could quote from them as readily as Senator Molgat and some others did during the GST debate. If I were to read to you from the red book of rules, you would not be able to adjourn for the summer, but that would be going against the group.

Sometimes there are some great events that mark history, and Bill C-20 is one of those. There is terrific pressure; I feel it, and I see it in the faces of others, but that pressure is the very essence of political life! Under such circumstances, we see senators at risk of sacrificing long-standing friendships to do their duty. That is what is happening right now.

I do not mean to say that some senators have more principles than others. I have never said that, but let us stop and think about what Canada is all about. What is it that other people in this country see that we do not?

We could ask Senator Banks if he remembers some young school children in Edmonton who sent some tokens of friendship to a schoolteacher in Quebec City. By bad luck, they chose a school called Saint-Jean-Baptiste and a teacher called Mrs. Lévesque, whose response was that she did not want any tokens of love from their school.

[*English*]

Senator Banks reminded me of that. I phoned immediately because I knew people were being attacked. The children were crying, and I knew the situation would end up in a misunderstanding, so I offered to go to the school. I asked the professor if I could go to the school and tell the children how much I appreciated what they did. He was somewhat surprised that I had offered to go to the school. Having made the commitment, I had to plan what to say. It was a very difficult situation. That is the story in a nutshell.

Honourable senators, we shall have to re-educate ourselves if we want to know what Canada is all about. Are we afraid to say that we are senators? Will we let others continue to show disdain for the Senate? Will we duck our responsibility? Will we walk gently and not say that we are senators? If that is what you believe, then resign. Do not stay in the Senate if you are afraid to proudly say, "I am a senator of Canada."

Canadians are very confused. Last night there was a meeting that was attended by five MPs and three senators. MPs and senators are all members of Parliament. Parliament is comprised of two Houses: the House of Commons and the Senate. Despite that, the press, including *The Hill Times*, continues to report that "Parliament" adjourned because the MPs have left for the summer. Honourable senators, we are MPs, too! I am proud to be one. I have never been insulted in the province of Quebec, yet they know I am a federalist. I never had a better time than the four days I just spent in Quebec City for the unveiling of a statue for Mr. Jean Lesage.

I went to the National Assembly, where they introduced me and my sister — but I shall not talk about that subject — who used to be a judge of the citizenship court. She was appointed twice by Mr. Trudeau and twice by Mr. Mulroney, but was sacked not long after I came to the Senate. That is another story.

We must be proud to be senators. Since the motion in amendment that has been moved involves the Senate it is one that we should naturally support. I should say to Senator Taylor that, come what may if they really want the bill in the House of Commons, does he not think the Prime Minister will hesitate to recall Parliament? The House of Commons may be called back in any event with the possibility of the strike. If they want it, they will call the house back. They will not wait.

Honourable senators, why should we deny ourselves respectability? Why should we accept being pushed around when we have a constitutional duty? I had the nerve to go into a French-speaking Catholic school in Quebec and say, "I am a monarchist," and I shall remain a monarchist as long as Her Majesty lives and the monarchy is not forced out. I have pledged allegiance to Her Majesty 16 times. I am not afraid to say it. That is my constitutional duty. When you explain the role of the Senate, most people still do not understand it. Although many people cannot express it clearly, it is evident that they do not trust politicians of all kinds. That is probably one of the reasons why I am a federalist. I know that they cannot stampede me if I have two chances. I believe that my provincial government will help me, and vice versa. That is why people basically believe that two Houses in a vast country like Canada is far better for their own security and for their own self-respect, because if one lets them down, they hope to rely on the other. If senators are able to help Canadians only once or twice during their tenure as a senator, it will be worth their while to stand up and defend the Senate.

I know that senators are under pressure. I am a friend of the whip and I saw his beautiful smile a moment ago when Senator Taylor finally said, "I shall vote one way or another." That is fair game. I do not mind that. I am not upset by it. In fact, I tip my hat to him and his ability. I have never seen the telephone more red than it is these days. I know there is a price to be paid. You may not be this or that, but what is this little sacrifice compared to doing the duty that you were called upon to play when you came here, to the Senate, the duty that Canadians give to you?

Honourable senators, I shall finish, with agreement, in two minutes.

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I propose that we give leave for Senator Prud'homme to extend his time by five minutes.

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

Hon. Senators: Agreed.

[Senator Prud'homme]

Senator Prud'homme: I think we are privileged, honourable senators. We are spoiled Canadians. We belong to the last club of Canada. There is a price for that, though. What is the price? The price is that, in remaining faithful and loyal to your party, at times you must take a step back and say, "The buck stops here. Sorry. Don't take it personally."

• (1750)

If it is not today, I hope it will come some day. It could be on another bill. It could be on another occasion. I am afraid that I do not think any speech would change anyone's mind now.

Yet, that should be the Senate. Here, everything is there.

[*Translation*]

There are French-Canadians from Quebec who are as passionate as I am and others who are not. There are French-Canadians who call themselves Acadians, who say they are not French-Canadians but Acadians. They are proud to be Acadians and they have proved it. There are Franco-Ontarians, Inuit, people representing the First Nations. It is an extraordinary country! There are now 33 women in the Senate — contrary to what was said by Barbara Yaffe, a Vancouver journalist.

[*English*]

I hope there would be 50-50, because the Prime Minister has the option.

Having said all that, I regret that we do not use this opportunity not to be pushed around by the arrogance of power and by people who have a lot of responsibility, and among them I should include these counsellors, these people who sometimes decide for politicians. Perhaps senators could be the ones to say, "Enough. Today, we are going to vote according to what we think is right."

If it were to be the other way, I should bow, because I am a democrat, but I hate to be obliged to vote because of any kind of pressure on such an important piece of legislation.

Senator Taylor: Honourable senators, I have a very quick question. I was named in the honourable senator's speech as not defending the Senate as exuberantly as he maybe wants to do. Has the honourable senator read my Motion No. 80?

Senator Prud'homme: Yes.

Senator Taylor: He has? Will he be voting for it when it comes up?

Senator Prud'homme: Even though I do not have the privilege — and it is my fault — of a research bureau, as recently as last night I was congratulated by Senator Finestone on a job well done, of presenting a thorough briefing on the bill. Of course I read No. 80 on the last page. Of course. Will your government put it to a vote?

Hon. Sharon Carstairs: Honourable senators, Senator Prud'homme and Senator Cools are proud senators. I believe the remaining 100 — 101, if you count me — are also proud senators. I am a proud senator.

Tomorrow, I would rather be in Neepawa, Manitoba, for 75 graduates who, for the last three years under my sponsorship and the sponsorship of others, have raised money for juvenile diabetes and for the Trans Canada Trail. These kids engaged kids in 650 schools across this country. I would rather be with them, I must say, than with my colleagues tomorrow. However, I shall be here because, as a proud senator, I also have a duty as a senator. To the best of my knowledge, I have not missed a single vote in six years.

I was not going to speak on this bill, honourable senators. It was not my intention because, quite frankly, in my lifetime I have been all too often involved in debates on so-called constitutional issues, and it has made me weary. I prefer to concentrate my debate on legislation that influences the daily lives of Canadians. However, I must say that I believe the debate on this bill — and I remind everyone that this is a bill and not a constitutional amendment — has taken on a life that is disproportionate to the issues before us.

Let me begin with a very serious issue and one that I think is of concern to us. That is the argument on the indivisibility or divisibility of Canada. To me, at least, it is clear that the country is indivisible unless at some point it is determined that it is divisible. Why would the country take such an action? I suggest that such an action may well be taken if a large majority of persons in any province, through a referendum, chose to vote Yes to separation. What other action, other than negotiations following that vote, would senators envisage? I see no desire in Canada for civil war. I spent several years teaching American history in the United States. I taught that the American Civil War and the devastation in that country between 1861 and 1865, where the loss of life was greater than the number of Americans lost in World War I, World War II and the Korean War altogether, combined with the wounds that still exist in parts of the United States, is an unacceptable legacy in Canada.

What other choice, other than negotiation, does the government have? Why senators have become so absorbed in this debate leaves me shaking my head a little bit. Senator Pitfield, a few hours ago, spoke of the analogy of how many angels can dance on the head of a pin. He clearly feels differently about this issue than I do, but I totally concur with his analogy. A discussion of indivisibility and divisibility seems to me unanswerable simply because both are correct.

Senator Joyal has argued that a referendum should take place before any negotiations should begin. My response to that is "God forbid." What strength at the negotiation table would the federal government have if an overwhelming majority of Canadians voted in favour of negotiations, stating in a not-so-subtle voice, "Let them go"? Alternatively, if they voted against negotiations, a logjam would exist. The secession-desiring province would be tempted to declare a unilateral declaration of separation, but we have been told by the Supreme Court of Canada that they cannot do that. At the same time, the Supreme Court of Canada has said that the federal government must negotiate. However, the Canadian people have said no.

With the greatest respect to Senator Joyal, I think his desire to hold a referendum at this stage would just confuse things totally and absolutely.

The second issue that causes all of us some angst and concern is the aboriginal issue. When Canada repatriated our Constitution in 1982, in my view we did two significant things. We included a role for aboriginal people for the first time in our Constitution, and we introduced a Charter of Rights and Freedoms. No longer could we speak only of our two founding peoples. As of 1982, we had to recognize that there were people here before our founding peoples and that they had rights. Sections 35 and 35.1 made certain that the concerns of our first people had to be engaged in constitutional issues that had an impact on them. This is a far stronger defence of our first people than the amendment presently before us.

Governments can and frequently do change bills, and with great ease. Constitutional changes are far more difficult to achieve. That is why they are in the Constitution. Therefore, I cannot support Senator Watt's amendment simply because I, like Grand Chief Phil Fontaine, believe it is not necessary.

This leaves us with the third argument and, for me, the most important one. Does this bill diminish the powers of the Senate? To understand this we must clearly examine the purpose of Bill C-20.

• (1800)

I have to ask some questions. Does the executive branch need this bill? Could the cabinet alone not declare the referendum question unclear and, therefore, not acceptable for the basis of negotiations? Could the executive branch itself not determine that the majority was insufficient and so declare? I should suggest that, yes, of course, they could do both of those things.

Why, then, did the cabinet determine that they wanted Bill C-20? Since none of us were in the room and I do not sit at the cabinet table, I do not know what they talked about in that room, but I should suggest it was because they wanted a stronger hand. They alone did not want to make this decision. They wanted to be supported by their colleagues in the House of Commons and if that support was not granted, they would go to the people and fight an election on this matter since it would be considered a confidence issue.

Why would they not be willing to also request a resolution in the Senate? Honourable senators, nothing in this bill prevents the Senate from debating such a resolution. Any senator could move a motion and the Senate could vote on such a motion, but it is true that such a vote in this chamber would not force or even require the government to call an election.

Would the House of Commons be required to consider the opinion of the Senate as expressed in our resolution? The answer is no, they would not have to if they did not choose to, nor would they be required to listen to the provinces, which might also move resolutions or, indeed, to our aboriginal peoples. However, I should suggest that they ignore these views at their electoral peril.

It does make me uncomfortable that the Senate has not been included. Regrettably, I cannot find a reasonable way to include the Senate which would ensure — which is, after all, the purpose of Bill C-20 — clarity. How strong would the federal voice be if one chamber voted yes and the other chamber voted no? Would the secession-desiring province not simply laugh in the face of a federal position that was divided and unclear? So much for clarity.

Does this mean the Senate has lost constitutional powers? I would argue no.

Honourable senators, we lost constitutional powers in 1982 when the Canada Act limited our role in a constitutional amendment to a six-month suspensive veto.

Many of us were in this chamber when our position was overruled in the first Newfoundland school question. That vote did not stop us, however, from going to Newfoundland and listening to the people of that province. We have, constitutionally, a severe limitation on our amendment role. However, we can make our views known to the Canadian people in the six months given to us.

As a result of the Charlottetown Agreement, I think it highly unlikely that any constitutional amendment will pass in this country without being preceded by a referendum either nationally or provincially.

The Hon. the Speaker *pro tempore***:** Honourable senators, it is six o'clock. Is it agreed that I not see the clock?

Hon. Senators: Agreed.

Senator Carstairs: Depending on the relevance of the amendment, that is when we can take our case to the Canadian people.

Honourable senators, let us remember: This is just a bill. Yes, it gives a role to the House of Commons that it does not give to us. However, my greater concern is that no province — no province — with secessionist ambition can produce an ambiguous question without having that question examined and pronounced to be ambiguous. The clarity of the question, the clarity of the majority, is the purpose of this bill. It is clarity that motivates me to say yes to this legislation; it is clarity that will cause me to vote no to the amendments.

Hon. Lowell Murray: Would the honourable senator permit a question?

[Senator Carstairs]

Senator Carstairs: Certainly.

Senator Murray: The honourable senator's speech has served to remind me, for a number of reasons, why I believe the bill is so inadvisable politically and why I oppose it in principle. The question I should like to put to her, however, is how will the bill strengthen the hand of the federal government in negotiations to have had a large majority vote in the House of Commons declaring that the question on secession had been clear and the majority had been sufficient? Will that not also give an unmistakable "let them go" signal, which my friend says would put them in the effect of a referendum?

Senator Carstairs: I deeply respect my honourable friend's view that he is opposed to this bill in principle because I think that is certainly the alternative position to take rather than through the various amendments that have been proposed.

When the House of Commons speaks, it speaks as the elected representative of all of the people of Canada. I cannot believe that a government can whip its majority members on an issue so important as this to the future of the nation.

Senator Murray: Perhaps my friend could explain what she believes — since none of us knows — the process would be in the event of a referendum being called, let us say in Quebec, on the question of secession. Senator Bryden earlier today indicated that the bill does not oblige the government to do anything and that perhaps the question to be put before the House of Commons would arise by osmosis somehow. If a referendum were called, I should think that the government would bring in a resolution stating that in the opinion of that House, the question is clear or not clear, as the case may be, and put it to a vote. I should like to have my friend's opinion as to whether she agrees with me that this is the likely process.

The alternative is that the House would simply sit and wait for someone to get up because the House is required by this bill to make a determination. Surely, the government would lead the House on the matter. I do not think Senator Bryden has thought his comments through.

Senator Carstairs suggests that it would not be possible for a government to whip or to impose party discipline on such a vote. That is very much at odds with the position taken by Minister Dion, implicitly, when he justifies the exclusion of the Senate on the grounds that the House of Commons is the confidence chamber. A question I should have asked him — I did not get around it because I had other questions and other senators had other questions — is to confirm that the vote on that matter would be regarded as a matter of confidence.

The Hon. the Speaker *pro tempore***:** Excuse me, Honourable Senator Murray, but the 15-minute period for questions and comments has expired.

Senator Hays: Honourable senators, I propose that we give leave to extend Senator Carstairs' time for a further five minutes.

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

Hon. Senators: Agreed.

The Hon. the Speaker *pro tempore***:** Proceed.

Senator Carstairs: I think that the Honourable Senator Murray is correct with respect to the process. The government would have to come forward with a resolution.

• (1810)

As to whether members can be whipped, even on a confidence issue as significant as this one, Senator Murray is well aware that in the past I have not insisted that, on matters of this degree of significance, my caucus not vote according to their own consciences. In fact, they were told on two separate occasions to vote totally according to their own consciences and not as their leader was voting. Perhaps that reflects my idealism.

Senator Murray: I appreciate that, honourable senators, but my friend was leader of the opposition in Manitoba at the time. We are talking here about a situation in which a minister of the government of the day would bring in a resolution saying that it is the sense of the house that the question is clear or not clear or, later, that the majority was sufficient or insufficient.

It is inconceivable to me that the government would not insist that the matter is a question of confidence. Think of the consequences if, having brought in the resolution, even in a minority house, the government lost the vote on the resolution. At a time of a national unity crisis, we would be left without a government or in the midst of an election with the necessity to cobble together some kind of coalition.

The more I think about the bill, the more I think it is inadvisable and the more I am sustained in my view to oppose it in principle.

Senator Carstairs: Honourable senators, I think that Burke had it right when he said that there are times when individuals have to act in their own conscience.

Senator Grafstein: Honourable senators, I hope that the learned senator will understand that we are not talking about a constitutional amendment, according to the minister, but an extraordinary piece of legislation. It is somewhat confusing to combine them. I thought I had separated the two, but perhaps not.

Is it the view of Senator Carstairs that this bill, which exempts the Senate from the legislative process, is constitutional or unconstitutional?

Senator Carstairs: First, honourable senators, I do not see this as extraordinary legislation. I see it as quite ordinary legislation, and I believe it is constitutional.

Hon. Gerald J. Comeau: Honourable senators, earlier today, Senator Taylor expressed grave concern about Stockwell Day possibly leading the opposition in the House of Commons. Senator Taylor swallowed himself whole and decided to completely embrace this bill. God knows what conversations he has had with the leadership in the last three or four hours.

In his speech earlier this afternoon, Senator Banks discussed the possibility of a coalition government, perhaps led by Stockwell Day, and the possibility that it may not be quite as responsible as the current government.

If it happened that Mr. Manning and Mr. Duceppe formed a coalition government, what kind of responsible reaction would Senator Carstairs expect from those individuals if a vote were to be held? Would she not expect them to provoke the winning conditions needed by Mr. Bouchard in Quebec to precipitate a crisis of this kind? What would she expect these gentleman to do if such a vote were successful? Would she not expect them to create the country of Quebec and the country of Western Canada, with Preston Manning at the helm?

Senator Carstairs: Honourable senators, I have discovered over the years that my best friends are members of the Liberal Party and the Progressive Conservative Party. I have little in common with members of the Reform Party.

In response to Senator Comeau's other questions, I believe that when individuals are elected to the House of Commons they must take on a certain responsibility. They grow into the office. The suggestion that there will be coalitions between the Alliance and the Bloc Québécois is not realistic. There is no basis for believing that such a coalition will ever exist.

I also believe that, on a question as serious as the secessionist wishes of any province in this country, members of the House of Commons will act responsibly. If I did not have that faith, I should not have much faith in the whole democratic process.

Hon. Charlie Watt: Honourable senators, Senator Carstairs has said that she cannot support my amendments. She believes that there are already enough protections and guarantees in section 35 of the Constitution. Can she tell me where she sees the guarantee that aboriginal peoples will be directly involved in negotiations?

The Hon. the Speaker: Honourable senators, I regret that Senator Carstairs' allotted time has expired.

Senator Carstairs: Honourable senators, may I have leave to respond to this one question?

Hon. Senators: Agreed.

The Hon. the Speaker: Leave is granted.

Senator Carstairs: In my view, honourable senators, a constitutional guarantee has the force and effect of no other guarantee in this country. Even if Senator Watt's amendment were to pass tomorrow, that amendment would not have the power of sections 35 and 35.1, for the simple reason that any government, at any time, with a simple majority, can amend the bill. They cannot, with a simple majority, amend sections 35 and 35.1. That belongs to the aboriginal peoples forever.

Senator Watt: Honourable senators, on that point, section 35 may not be easily amended or removed, but any government can change any legislation at any time. We do not want to amend this bill because it takes something away from us. We want to insert something into this bill to guarantee that we shall be direct participants in the negotiations.

I do not understand the point of the Honourable Senator Carstairs.

On motion of Senator Lynch-Staunton, debate adjourned.

CANADA NATIONAL PARKS BILL

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Banks, seconded by the Honourable Senator Ferretti Barth, for the second reading of Bill C-27, respecting the national parks of Canada.

Hon. Donald H. Oliver: Honourable senators, the parks of Canada help us define our Canadian culture. Our parks and our policy are a reflection of who we are and what we do with our land. Clause 4(1) of Bill C-27 states:

> The national parks of Canada are hereby dedicated to the people of Canada for their benefit, education and enjoyment, subject to this Act and the regulations, and the parks shall be maintained and made use of so as to leave them unimpaired for the enjoyment of future generations.

With that in mind, a few very serious questions arise as we look through other clauses of this bill. First, Bill C-27 will change the process of establishing or enlarging future parks or park reserves to one carried out by cabinet once a park establishment agreement has been concluded. Currently, a new park can only be established through an act of Parliament. The issue, as very carefully explained in the excellent exposition last night by Senator Rossiter, is the future role of Parliament in relation to preserving our parks as part of the culture of Canada. Will it be done only by cabinet and Order in Council?

• (1820)

As Senator Rossiter said last night, the government proposes that new or existing parks and park reserves be created or enlarged by means of an Order in Council. This will be done without the passage of new legislation and all the debate and scrutiny that occurs when legislation is passed through both chambers in this Parliament.

That, honourable senators, is a major concern to many on this side. The reason for taking the adjournment last night and wanting to raise this matter in support of the issues raised by Senator Rossiter is that we wanted to make sure that the committee that studies this bill will have ample opportunity to ensure that the people of Canada will have their views known and expressed through Parliament and both Houses of Parliament.

We in the Senate represent the regions and, if we are not afforded a fair opportunity to express the views of the regions in relation to a new parks policy, then we shall have failed utterly.

I strongly, therefore, urge all honourable senators to have this matter go to committee and to provide the committee with ample time to call the witnesses necessary to ensure that the legislation is enhanced.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I wish to make a few comments with reference to Bill C-27.

My first comment speaks to the interpretation clause of Bill C-27, in particular clause 2(2), which states:

> For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from the protection provided for existing aboriginal or treaty rights of the aboriginal peoples of Canada by the recognition and affirmation of those rights in section 35 of the *Constitution Act, 1982*.

The question I should like the committee to explore is why was that clause placed in the bill? If we are only dealing with parks, and there is a fair degree of hesitation in certain quarters of this chamber to put something similar into Bill C-20, hopefully the committee will take a look at that issue.

Perhaps the committee would want to inquire as to why we have to put in something that will be redundant? The Constitution applies notwithstanding what any statute says. Why are we beginning to see in some statutes a clause stating that a certain section of the Constitution applies? Surely that, at a minimal degree, is redundant. At the maximum degree, it is a statement of insecurity about our Constitution.

My second point, honourable senators, is one to which Senator Oliver alluded regarding clauses 6 and 7. I should like the committee to take a careful look at those provisions because as I read them, they speak to the issue of the Governor in Council making an order. Those orders would be tabled happily in both Houses of Parliament. It is interesting that some statutes recognize that things should go to both Houses and yet other statutes recognize only one House of Parliament.

Honourable senators, the following clause should be as troubling for the other place as it is for me in this house. In reference to the proposed parks schema, clause 7(1) states:

> ...the proposed amendment shall be tabled in each House of Parliament, together with a report on the proposed park or park reserve that includes information on consultations undertaken and any agreements reached with respect to its establishment, and —

— listen to this —

> — an amendment so tabled stands referred to the standing committee of each House...

Why do we accept in a statute such a provision? We are quite capable of deciding what we shall do with anything that is tabled in this house. If we decide to refer to a document that has been tabled with a standing committee or the Committee of the Whole, surely our rules should be determinative.

We should watch this creep that is occurring. It is "executive power creepage." The bureaucracy is encroaching on the prerogatives and the jurisdiction of the legislative branch, and the committee should look at that very carefully.

Finally, honourable senators, look over at clause 34 of this bill. In terms of encroachment, clause 34 is an even greater matter of concern. If an amendment will be made to Schedule 4, which appears at the back of the bill, the proposed addition to the schedule would be tabled in each House of Parliament. On tabling, they stand referred to the standing committee of each House that normally considers matters relating to parks or to some other committee.

Listen to this: The legislation will provide how we are to deal with that matter in our committee. The legislation will tell senators, as legislators, that our committee may, within 30 sitting days, approve or disapprove of this proposed change.

Let us say we want to take more time and choose a timeline deemed appropriate by the Senate. Here, the bureaucracy makes a proposal through a cabinet document. The minister takes that, gets the support of his or her colleagues in the cabinet, and then a bill is introduced into Parliament to tell the legislative branch how it will conduct its business.

Clause 34(3) states:

> The motion shall be debated for not more than three hours and disposed of in accordance with the procedures of the House.

This proposed law is telling us that the motion shall be debated for not more than three hours and disposed of. That statute is providing that an amendment to Schedule 4 will be brought in, tabled and automatically referred to a standing committee that must deal with it within 30 days. Then it will come back to the chamber, but we shall only have three hours to deal with it. That is what the statute is saying. They are putting time allocation right into the statute.

The committee should take a very close look at that proposal and scrutinize it. Bring in the bureaucrats from the department and ask who came up with the idea of putting time allocation on the work of the legislative branch.

The Hon. the Speaker: If no other honourable senator wishes to speak, I must inform Honourable Senator Banks that if he speaks now, his speech will have the effect of closing the debate on second reading of the bill.

Hon. Tommy Banks: Honourable senators, I thank you for your questions, particularly those by Honourable Senators Rossiter, Oliver and Kinsella.

I am very glad to hear that the thrust of many remarks here is that we should get this bill into committee and that it should be examined. That is precisely what we think.

Senator Prud'homme: All summer!

Senator Banks: There are a number of things in this bill that, as Senator Lynch-Staunton pointed out yesterday, have never been done before. Senators are right to notice those things. I shall work backwards, if I may, in answering those questions.

• (1830)

I should like to refer to Senator Kinsella's last question, in respect to clause 34. In any other bill, the matters that are referred to in that clause would be and are in the present proposed act, as I understand it, a regulation, not a law. That deals only with the addition of parks communities under this bill, not the establishment of new parks and not the addition of new lands to old parks. Schedule 4 specifically sets out parks communities, by which the bill means, according to its definition, towns like Banff, Jasper, Waterton National Park, and Field, B.C. Therefore, the matter that Senator Kinsella has raised would, as I believe is the case in the present bill and in most legislation of matters of that kind where something has been added to the schedule at the end of an act, fall within the purview of what would normally be called a regulation.

In fact, in this case, as I shall refer to in other instances in this bill, it is precisely regulation that is being made subject to the approval of the Senate and the Commons in circumstances in which it would otherwise not be. I think this is again, if anything, at least in most instances in this bill, parliamentary scrutiny that does not normally exist over what would otherwise be regulations.

I was delighted to hear Senator Rossiter refer to the ecological integrity of our parks as being their most important aspect. I was glad to hear Senator Oliver restate the purpose, which is set out in clause 4 of the bill, which is a restatement of the act as it was promulgated in 1930 and exists until today. This is in fact precisely that — it is a restatement. Aside from the streamlining and getting rid of an act that has existed from 1930 and which has had amendments on the amendments, making it almost impossible to read, this bill is a restatement of precisely the elements to which Senator Oliver referred. This is reminding people, and particularly the communities in those parks, who have come to regard parks in some respects as a profit point and as commercial undertakings that no, these are parks, and we are obliged to maintain them so that successive generations can enjoy them in the way that we have.

The three-hour limit that is referred to in the house for debating a motion of displeasure that has come from the committee is a debate, in effect, on a regulation that we do not often otherwise enjoy. It is important to remember that there are hundreds of acts of Parliament that delegate regulation-making powers to the government. In almost every example, that delegation of authority is unqualified. Once Parliament has given the power to make regulation, it loses its direct control of that power. That has been the norm in Canada for decades.

In Bill C-27, the government proposes a regulatory method in which each house of Parliament retains its direct authority over the establishment of new parks and adding new lands to old parks. This is unusual, to say the least. Instead of limiting the Senate's role in the making of regulations, the government is proposing to strengthen that role in this bill. Honourable senators have every reason to applaud this approach.

Senator Kinsella asked the other day whether the bill overrides the *Rules of the Senate*. Like many other acts of Parliament, this bill provides that a report, when tabled, is automatically referred to committee. To the extent that the referral of the report to committee would otherwise require a motion properly moved after notice, yes, this bill supersedes the *Rules of the Senate*. However, there are many acts of Parliament that provide for automatic referral of a report to a committee of the Senate. Recent examples, all adopted within the current Parliament, include the DNA Identification Act, the Canada Customs and Revenue Agency Act, and the Canadian Environmental Protection Act, 1999, to name just a few.

Senator Kinsella is also correct in that the *Rules of the Senate* are superseded in connection with procedure for dealing with a motion to disallow the regulations. Normally, the motion to concur in a report would not be automatic, as it is in this case, but would be moved by the chairman of the committee making the report. Those are the only two minor statutory infringements on the Senate's usual procedures that are contained in this bill. For the rest, nothing interferes with the Senate's ordinary functioning. The committee is not required by this bill, or by the ministerial act, to do anything. This bill does not require that the committee report to the Senate, but it permits the committee to object to an action of the minister and to disallow.

Let us compare this to an example in another act. I have only been able to find one single precedent where the Senate has retained its power to disallow regulations, and that is in subsection 87.(1) of the Official Languages Act, which requires that the proposed regulations be tabled in the Senate. Subsection 87(2)) provides, with respect to a motion for the consideration of the Senate, that:

> ...to the effect that the proposed regulation not be approved, signed by no fewer than fifteen senators...is filed with the Speaker of that House, the Speaker shall, within five sitting days after the filing of the motion, without debate or amendment, put every question necessary for the disposition of the motion.

In the case of the House of Commons, it requires the signature of 30 members. Subsection (3) of that act provides that, if both chambers pass such a motion, the minister's power to make the regulation is inoperative.

The *Rules of the Senate* were superseded by the Official Languages Act. That act establishes limitations on the debate and amendments to a motion, which limits are not automatic in our rules. However, I am sure that senators at the time judged it reasonable that, in return for retaining greater control over that delegated authority, they could accept that the process to be followed for disallowance would be defined in the statute, rather than in the *Rules of the Senate*. I also note that the Official Languages Act is much more intrusive into the *Rules of the Senate* than what is contemplated in Bill C-27. The Senate accepted that procedure because it seemed like a reasonable trade-off.

Bill C-27 is much less intrusive. Under it, the Senate alone cannot disallow the regulation, nor can the other place alone disallow that regulation. My understanding, when it comes to scrutiny of regulations, is that the Standing Joint Committee for the Scrutiny of Regulations is limited to disallowing regulations that would arise and would directly contravene the intent of the act. In this case, with Bill C-27, the Senate is treated as fully equal to the other place and can disallow ministerial regulation without a reason, with no questions asked, whether it is to policy or politics or intent or content. We simply disallow it, no questions asked, and that power exists in both Houses of Parliament.

Far from being an infringement on the jurisdiction of the Senate, I suggest that Bill C-27 should be examined by all honourable senators to serve as a future model for the delegating of power to make regulations. I take pleasure in moving that this bill be now referred to the Standing Senate Committee on Energy, the Environment and Natural Resources.

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

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Banks, bill referred to the Standing Senate Committee on Energy, the Environment and Natural Resources.

• (1840)

PARLIAMENT OF CANADA ACT MEMBERS OF PARLIAMENT RETIRING ALLOWANCES ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Hays, seconded by the Honourable Senator Robichaud, P.C. (*L'Acadie-Acadia*), for the second reading of Bill C-37, to amend the Parliament of Canada Act and the Members of Parliament Retiring Allowances Act.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I have a lengthy and learned analysis of Bill C-37 but I shall spare colleagues both the length — of my making — and the intellectual content, being that of an excellent research staff.

This bill, as we all know, is the one that touches on certain benefits for members of the elected House.

I wish to say at the outset that I have absolutely no objection to elected members being properly remunerated and given some security once they leave office because of the insecurity of that office in terms of how many years they can be there. That is not the point at issue.

The point at issue is that this bill was passed in a rather indecent fashion by the House of Commons. It was given first reading after a house order, was given unanimous approval on Monday, June 12, in the early evening, and was passed on Wednesday, June 14, in the early evening. There were no witnesses called. It was done before Committee of the Whole, and clause-by-clause elicited no debate.

I accept the argument in part that the Senate should respect the decisions that elected members make regarding their own salaries and benefits. However, I do feel that there is a problem in the other place in that every so often they are faced with the embarrassing situation of having to have presented before them proposals regarding their benefits which, no matter how soundly based, how deserved and how comparable with others, still cause a tremendous amount of embarrassment, which is unfair to them. They brought it on themselves this time because they acted too hastily, in the thinking of many people. They are being condemned in an exaggerated fashion because the popular sport now, after picking on the Senate, is to pick on elected members as being overpaid and having benefits and pensions which are outlandish.

I am the first to say that that is not true. They are deserving of what they get. I have absolute respect for elected members, no matter what party they are supporting. They come here with high expectations, great devotion, a great work ethic, yet it is probably one of the most frustrating occupations in this country to be an elected member of the House of Commons. I have no problem with what they request.

The problem I have, and perhaps the Senate can help them although it may be presumptuous, is to find a formula or system when this bill goes to committee that will spare them the occasional embarrassment of having to publicly decide on their own remuneration. Whether it should be done by independent committee, the ultimate responsibility is theirs and, I guess, ours. We are immune to the criticism that is so unfairly directed at them.

I hope that when this bill goes to committee, beyond examining it — and I know there will be no changes made to it — the committee will take the opportunity to hear recommendations on how to come to a better system to establish both the salaries and other emoluments which they deserve. The system in place now is unfair in the sense that it causes very unfair criticism. I am thinking even of those who, some years ago, decided to back out of the pension plan and now are re-entering it. I respect their decision and I respect the fact that perhaps at the time they made an error. Perhaps at the time they were politically motivated, but they have found that you must leave here with some kind of financial security, otherwise the right people will not be attracted to come here. The important thing for Canadians is to make sure that those who come to Parliament are as free of financial worries as possible. That is the least that the taxpayers owe them.

Hon. Senators: Hear, hear!

Hon. Peter A. Stollery: Honourable senators, I want to join in this discussion for just a moment or two.

Senator Lynch-Staunton has made a very good observation about the question of dealing with the subject in a way that makes it so that members of Parliament — and senators, who, after all, are unelected members of Parliament — can have the question of pensions and the level of salary dealt with in an organized fashion. I should remind Senator Lynch-Staunton that, in 1981, that issue was dealt with. I voted for the bill as a member of the House of Commons, as did the Prime Minister, Jean Chrétien, and other former members of Parliament here. If I recall, it was almost unanimous, the exception being only one member of Parliament. That bill was to introduce a formula that would apply every year to parliamentarians. It was not a formula to give them a raise. It was a formula that would deal with the problems of inflation.

I am going by memory. I did have the the bill with me earlier but I seem to have misplaced it. It took, I believe, the figure of 1 per cent under the Consumer Price Index to be applied to incomes on a continuing basis. Therefore, instead of having a compounded downward spiral of parliamentarians' incomes, it would, to some extent, look after that problem.

The reason for the introduction of the bill was that, in the 1970s, when I was a member of Parliament in four parliaments, we had a time of serious inflation. There were a couple of unpleasant instances when MPs had to raise their salaries which always caused a public outcry. This formula was to take care of that.

When the committee is looking at the issue of MPs pensions — and I am certainly sympathetic to the issue of MPs' pensions — it must also consider the broader issue that has been mentioned by Senator Lynch-Staunton. What happened to the formula that Parliament agreed upon? It was agreed upon almost unanimously and put aside in the recession, I suppose. It was put aside, perhaps unwisely, because we now must again deal with the same problem of what to do.

Honourable senators, I suggest that it is only reasonable that that be looked at again at the same time as the issue of pension and retirement allowances for former MPs. It is a package, and it is time it was examined, using the formula voted by all parliamentarians in this chamber who were members of Parliament at that time.

I recommend to whatever committee deals with this that that issue be revisited in a logical and sensible fashion.

Hon. Tommy Banks: Honourable senators, I want to associate myself with the comments of Senator Lynch-Staunton on this bill. I shall take a second to set the record straight on behalf of the member of the other place who represents me, who had the courage and the moral rectitude to face the cameras after the famous vote in the other place during which he said that he would rather be a hypocrite than stupid. That got a lot of air time. I should like to rise to his defence, since he did not rise to his own. He was not being hypocritical. He was being the opposite of hypocritical. He was saying, "I made a mistake, and I am now changing my mind and fixing the mistake."

• (1850)

I do not know how many of us are able to stick their hand up in the air and say that they have never made a mistake. I, myself, made a mistake. I think it was in 1951 or in 1952, if I recall. Thus, I wish to acknowledge publicly that Mr. Ian McClelland was anything but a hypocrite, and that he was being honest and courageous in a pretty hot place at a pretty hot time. Parenthetically, at the same time, I cannot help but chortle about the fact that not one of those members of his late party who, on that occasion, voted against the bill — and who then went out to their constituents and said, "I voted against it and was dragged kicking and screaming into this against my will" — stood up and objected to the unanimous consent that was required to get the bill through the House of Commons in 48 hours. Nevertheless, they managed, somehow, to take eight weeks to pass the Nisga'a treaty by using exactly the kind of obstructionist tactic at which they are so expert. Those are the hypocrites. They did not stand up and say that this is wrong, unusual or an infringement of parliamentary procedure. They did not say, "We have to go to the people."

[*Translation*]

Hon. Fernand Robichaud: Honourable senators, I have found the debate interesting. I agree with the fact that special attention should be paid to this bill because people are often despised for something they fully deserve.

The committee responsible for studying this bill should not go beyond the scope of the bill itself by examining the salary and benefits of parliamentarians in general. If that is what we wish to do, we should do it in such a manner that people understand clearly what we are doing and not try to sneak it in through a committee that is examining another bill. That is my only reserve.

The Hon. the Speaker: If no other senator wishes to speak, it was moved by the Honourable Senator Hays, seconded by the Honourable Senator Robichaud, P.C., *(L'Acadie-Acadia)*, that the bill be read the second time.

Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

[*English*]

REFERRED TO COMMITTEE

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

On motion of Senator Hays, bill referred to the Standing Senate Committee on Banking, Trade and Commerce.

CANADIAN TOURISM COMMISSION BILL

SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Callbeck, seconded by the Honourable Senator Cook, for the second reading of Bill C-5, to establish the Canadian Tourism Commission.

Hon. Marjory LeBreton: Honourable senators, I am pleased to speak to Bill C-5, entitled An Act to establish the Canadian Tourism Commission. The Canadian Tourism Commission was originally created by Prime Minister Mulroney's government in April 1985 as a special operating agency. The intent of this bill is to transform the commission into a Crown corporation.

This legal change is at the request of the tourism industry and intends to provide greater freedom and flexibility to the commission in executing its duties to plan, manage and implement programs that generate and promote tourism in Canada.

The tourism industry exerts a substantial financial impact on our country and accounts for nearly $51 billion of income. In Ontario alone, tourism accounts for $6.9 billion of the provincial GDP, well ahead of agriculture, mining, logging and forestry. The far reach of a booming tourism industry is remarkable, affecting, as it does, a wide range of individuals and groups, including local business and, of course, the service industry.

Tourism is one of the world's largest and fastest-growing industries. As Canada competes for a greater share of this growing world market, we must improve our strategic plans to generate interest in what we have to offer. We must also take steps to ensure that Canada reaps the rewards of our unique and vast land. The Canadian Tourism Commission will obviously have a large role to play in this regard.

This change in mandate will allow flexibility in promoting tourism by the Canadian Tourism Commission. This change will enable the commission to conduct itself in a more structured, businesslike way, allowing for greater administrative, financial and personal flexibility.

These changes will also facilitate increased responsibilities for the commission to express rapidly changing trends. Previously, Canadians travelled abroad rather than within their own country. The low value of the Canadian dollar makes travelling abroad financially impossible for a great many Canadians. While the impact of our low dollar is negative, it has had a somewhat positive effect on the tourism industry by encouraging our own citizens to stay home, and it has made Canada an attractive destination for people from other countries as well.

The new Canadian Tourism Commission will ensure, first, a vital and profitable Canadian tourism industry by working with all levels of government, as well as the private sector, to generate increased tourism to our country.

Second, the commission will market Canada as a desirable tourist destination. Although most tourists in this country and from abroad are attracted to our national capital of Ottawa, to Toronto, Montreal, or major cities like Calgary or Vancouver, there are countless other areas of the country that have great appeal. From the wilderness of Gros Morne National Park, to the charm of Lucy Maude Montgomery's home in Prince Edward Island, to the natural wonder of the various hot springs in the Rockies and the uniqueness of Victoria, British Columbia, tourists are amazed at the diversity of Canada. There is much to discover in Canada, and the establishment of a national tourism commission will facilitate this marketing initiative.

Third, the Canadian Tourism Commission will support a cooperative relationship between the private sector and the governments of Canada and the provinces and territories. This will allow the commission to bring key players of the tourism industry together and, in so doing, will improve the scope and reach of the commission's work.

Finally, the commission will provide information about Canadian tourism to the private sector and to the governments of Canada and the provinces and territories. This responsibility will allow all relevant parties to be aware of the current tourism situation in Canada and will result in being able to identify areas that require improvement or change.

Honourable senators, with the establishment of the Canadian Tourism Commission, the Crown corporation will have greater freedom and flexibility to carry out these objectives quickly and without undue delay. I lend my support and voice to this bill because, as we are all aware, this bill has widespread support from the Tourism Association of Canada. This association is comprised of all sectors of the tourism industry.

The tourism industry impacts every sector of our economy. Bill C-5 attempts to ensure that the tourism industry has the best possible framework from which to sustain and generate Canadian tourism. As the Canadian Tourism Commission continues to work toward expanding this industry and enhancing our reputation, our tourism industry will continue to grow and thrive. The result will be a tremendous benefit to Canada, its citizens and to our economy.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

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

• (1900)

SALES TAX AND EXCISE TAX AMENDMENTS BILL, 1999

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Kolber, seconded by the Honourable Senator Bacon, for the second reading of Bill C-24, to amend the Excise Tax Act, a related Act, the Bankruptcy and Insolvency Act, the Budget Implementation Act, 1997, the Budget Implementation Act, 1998, the Budget Implementation Act, 1999, the Canada Pension Plan, the Companies' Creditors Arrangement Act, the Cultural Property Export and Import Act, the Customs Act, the Customs Tariff, the Employment Insurance Act, the Excise Act, the Income Tax Act, the Tax Court of Canada Act and the Unemployment Insurance Act.

Hon. Terry Stratton: Honourable senators, some nine years ago, the visible 7 per cent GST replaced the hidden 13.5 per cent Federal Sales Tax, or the FST as it was known.

Replacing the FST made good economic sense. The old sales tax was an increasingly unreliable way to raise money as business kept finding new and creative ways to get around it. It taxed Canadian-made goods more heavily than imports, while hundreds of exemptions and special rules made it very complicated to operate.

However, good economics is not always good politics. While the GST was designed to raise no more money than the old FST, it angered Canadians who saw it not as a replacement tax but as a new tax. Of course, our party paid a heavy price for having the courage to bring in a sales tax of such reform, and the Liberals exploited that anger, verbally promising in the 1993 campaign trail to eliminate, scrap or abolish the GST.

Paul Martin himself told the other place on November 28, 1989, "The GST is a stupid, inept and incompetent tax." A few months later, as a candidate for the Liberal leadership, Mr. Martin told delegates, in a publication entitled *De Novo, Leadership 1990, Special Edition*, "I am committed to scrapping the GST and replacing it with an alternative."

I would refer to Senator Banks' statement earlier today where he congratulated the government on its integrity and honesty. I refer him to the infamous 1993 Liberal Red Book, which pledged at that time — listen to this, it is wonderful — to:

> ...replace the GST with a system that generates equivalent revenues —

That is $22 billion.

> — is fairer to consumers and to small business, minimizes disruption to small business, and promotes federal-provincial fiscal cooperation and harmonization.

That sounds wonderful. It was a heck of a promise.

A few years later, on April 1996, Ottawa and the governments of Nova Scotia, Newfoundland, and New Brunswick agreed to harmonize their sales taxes. Since April 1, 1997, Ottawa has collected combined federal and provincial sales tax of 15 per cent in those three provinces. This, we are told, was progress on the Liberal promise to eliminate the GST.

Let's face it: The GST is here to stay, no matter what the Liberal Red Book said in 1993.

In March 1997, just after passing Bill C-7 to create the Harmonized Sales Tax, the government announced several of the technical amendments that are in this bill. That was more than three years ago. For three years, the government has administered sales taxes on the assumption that the changes in this bill will some day become law. What would happen if this bill were defeated? Three years of tax assessment would go out the window and have to be completely redone. The government would find itself chasing after businesses that in some cases are now defunct and in other cases have left the country.

There is no valid reason for it taking three years for a tax bill to come before Parliament, even if those changes are mainly technical. Surely the government can do a better job of managing its legislative agenda than this.

Beyond technical changes to the GST, the bill also repeals the special tax on split-run magazines that the government introduced in 1995. The WTO ruled that this was illegal, so it had to be eliminated. Did the government not stop to think when it imposed this tax that it might not stand up to a trade challenge?

Other measures in this bill stem from the government's ongoing battle against tobacco smuggling. The amount that manufacturers can send out of the country without payment of the $8-per-carton tobacco tax falls, thus further reducing the potential profits from smuggling tobacco back into the country.

Back in 1994, tobacco taxes were cut in five provinces to help reduce smuggling. Now that American prices have risen, the government is raising tobacco taxes in those provinces again. It has to be because of a new problem: interprovincial smuggling, with cigarettes cheaper in Ontario than in Saskatchewan.

I would refer to Senator Kolber's speech on second reading where he said:

> The government recognizes that tax reduction is essential to improve living standards. It increases productivity, creates jobs and leaves more money in the pockets of Canadians. This is why, with the deficit eliminated and the debt burden falling, the government took action to begin reducing the burden of personal taxes.

Senator St. Germain: Senator Kolber, great statement!

Senator Stratton: About four paragraphs later, he says:

> Today's legislation puts in place another increase of sixty cents in federal excise taxes per carton of 200 cigarettes on sale in Ontario, Quebec, Nova Scotia, New Brunswick, and Prince Edward Island, the five provinces that are our action plan partners. These provinces are also increasing their taxes on cigarettes by comparable amounts.

He says further that excise taxes on tobacco sticks will also be increased in those provinces.

He goes on to say:

> Furthermore, this bill proposes to make permanent the current 40 per cent surtax on the profits of tobacco manufacturing.

How can you say, on the one hand, that the government took action to begin reducing the burden of personal taxes when, on the other hand, you raise, raise and raise taxes on tobacco products? How can you speak out of both sides of your mouth? The people who are addicted to cigarettes have little choice. If you have ever watched people trying to quit, you will know. The question must be asked when it is sent to committee: How much money is estimated to fall into the government's coffers with respect to these taxes? How much money will fall into their hands with this? They could perhaps move up to their promise of one time to eliminate the GST on books. Let us take this money and reduce the tax somewhere, such as the GST on books. In that way, they would have credibility when they say, "We are truly reducing taxes. We are not taking money on the one hand without reducing taxes on the other."

While the debate over taxes is largely framed in terms of smuggling, revenue and health, it does underline one very simple fact that governments ignore at their peril. People respond to taxes in ways that governments do not always want them to respond.

What is true of taxes on commodities is also true of taxes on earnings. If income taxes are higher in Canada than the U.S., then this will be a factor when our best and brightest decide where they are going to live and earn a living.

• (1910)

Honourable senators, beyond the technical changes to the GST and the timid steps taken in the last budget, what we really need are some significant tax cuts.

I shall not close on this subject without congratulating Senator Kolber for his comprehensive explanation of the bill. It is really a technical bill that does a lot of housekeeping. I thank him for that.

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

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Kolber, bill referred to the Standing Senate Committee on Banking, Trade and Commerce.

WESTERN CANADA TELEPHONE COMPANY

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Fitzpatrick, seconded by the Honourable Senator Callbeck, for the second reading of Bill S-26, to repeal An Act to incorporate the Western Canada Telephone Company.

Hon. Gerry St. Germain: Honourable senators, I am pleased to provide the response for this side in the Senate to the motion for second reading of Bill S-26. I read carefully the excellent presentation of my British Columbia colleague Senator Fitzpatrick on this bill. He was as eloquent as ever and straight as he always is. What more can I say about the man? The one thing I find tough to believe is that he is a Liberal. Anyway, it was a good speech.

The purpose of this bill is to repeal the act to incorporate the Western Canada Telephone Company, commonly known as the B.C. Tel Act. Some of this will be repetitious, honourable senators, but I think it is important that this be on the record.

The repeal of the B.C. Tel Act is really a matter of housekeeping, but it is important to British Columbians. As it stands, it is an outdated piece of legislation. It incorporated B.C. Tel in 1916 and imposed restrictions on its ability to compete in Western Canada. This is inconsistent with current telecommunications policy. By repealing it, we reinforce the ongoing objective of creating a competitive marketplace and a level playing field for all telephone companies across Canada. It will enable B.C. Tel to compete in Alberta, Saskatchewan and Manitoba, and it will stop discrimination against Western Canadians and our corporations.

I should like to point out that the need to repeal the B.C. Tel Act represents a milestone in the history of the telephone industry in Canada, particularly in British Columbia. Telecommunications has come a long way since the days when federal legislation was required to circumscribe the market of a telephone company.

Let me remind honourable senators of just how far telecommunications has come. Telephones were first installed in B.C. in 1878, in two locations on Vancouver Island. One was used to connect a mine and a loading dock. The other connected the home and the office of the superintendent of the British Columbia telegraphs — perhaps an early example of telecommuting. Telephones on the mainland soon followed. As early as the 1880s, Canadians used telephones for communications to overcome the tough terrain that we live with in British Columbia. Responding to those kinds of challenges has put Canadian telecommunications at the forefront of a global industry.

In 1916, Parliament passed an act to incorporate the Western Canada Telephone Company, and three years later the Western Canada Telephone Company merged with the British Columbia Telephone Company Limited and took the name The British Columbia Telephone Company, or B.C. Tel for short. The legislation did more than incorporate B.C. Tel. It included provisions to clarify the sphere where B.C. Tel could operate.

There are two principal types of restrictions that this act imposes on B.C. Tel. The first is contained in section 17 of the B.C. Tel Act. It involves competition in Western Canada, and in one British Columbia municipality, Prince Rupert. Under this section, if B.C. Tel wants to build or maintain facilities in Alberta, Saskatchewan or Manitoba, it must first obtain the consent of the Lieutenant Governor in Council of the respective province. The restriction was put in place in an era of provincial monopolies. It was meant to confine B.C. Tel to British Columbia.

The second type of restriction is contained in sections 8, 9 and 9(*a*) of the B.C. Tel Act. It requires B.C. Tel to obtain the consent of the CRTC prior to a disposal or sale of the entire undertaking or the acquisition of shares or property of another telecommunications company. No other company faces these kinds of restrictions. In all seriousness, I must ask Senator Fitzpatrick: Have we been discriminated against that badly for that long? That is terrible!

There are a few provisions in the B.C. Tel Act that deal with the articles of incorporation of the company and the rights of shareholders and bondholders. To protect shareholders and the third parties from potential loss of value, the bill before us requires a transition provision to preserve the statutory priority until the instruments are terminated in accordance with their terms.

The restrictions I just mentioned were placed on B.C. Tel as a way for the federal government to impose its jurisdiction. At the time, federal jurisdiction over telecommunications was not yet established. In fact, the issue of whether federal or provincial jurisdiction applied to telephone companies was not clarified until comparatively recently, through the 1989 Supreme Court of Canada decision in *Alberta Government Telephones v. Canada (CRTC)*. It found that Alberta Government Telephones, thereby implicating all the other major telephone companies, was an interprovincial undertaking under paragraph 92.10(*a*) of the Constitution Act of 1867. AGT was therefore subject to exclusive federal jurisdiction. B.C. Tel will continue to be regulated by the CRTC. The Telecommunications Act will continue to apply to it as well as to other carriers.

We must not forget that other aspects of the regulatory environment for telephone companies were changing as well. In 1993, the Telecommunications Act placed a strong emphasis on competition in the telephone industry. The CRTC also opened up long distance, and, shortly after, local rates to competition. New technology was opening up enormous opportunities as telecommunications converged with information technology to create the information highway.

B.C. Tel faced new challenges but it was still operating under the 1916 act and the 1916 restrictions. In 1993, the company reorganized under a holding company, B.C. Telecom Inc., which was a key member of the Stentor Alliance which brought together companies in every province. However, in the increasingly competitive market that emerged with the deregulation of telecommunications industries in the 1990s, the Stentor Alliance dissolved as its member companies contemplated the need for competition in one another's provincial markets, which has been nothing but good for the consumer.

In this new environment, where telephone companies needed the size that provided efficiencies of sale and a critical mass to proceed with major capital projects, B.C. Tel merged with Telus Corporation, formerly Alberta Government Telephones, to form BCT.TELUS Communications Inc. Last month, the holding company formally changed its name to TELUS Corporation. Even the telephone operating company, known as B.C. Tel changed its name in October of 1999 to TELUS Communications B.C. Inc. This merger has created the second-largest telephone company in Canada.

Honourable senators, this legislation has taken into consideration the needs of security holders. It has taken into consideration the articles of incorporation of the company. The CRTC has been consulted and has advised that repeal of the B.C. Tel Act would not give rise to any regulatory concerns. The Competition Act will likely apply to the company with respect to mergers and acquisitions to the same extent that it currently applies to other telecommunications common carriers regulated under the Telecommunications Act. All four western provincial governments have been consulted, and each government has written a letter indicating they have no difficulty with repealing this act and removing this outdated restriction. There is no reason to continue the B.C. Tel Act on these grounds.

Honourable senators, the regulatory framework now in place makes the features of the B.C. Tel Act redundant at best and, at worst, inconsistent with current public policy on competition — restrictions that are inconsistent with the Telecommunications Act.

• (1920)

In closing, a fellow from Kelowna, from where Senator Fitzpatrick comes, who ran our province for years always said that if you do not stand for something you will surely fall for anything. W.A.C. Bennett, wherever you are, sir, this is another giant step forward, featuring Senators Fitzpatrick, St. Germain, and others. I urge all honourable senators to expedite the passage of this bill.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

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

CRIMINAL CODE

BILL TO AMEND—REPORT OF COMMITTEE

Leave having been given to revert to Presentation of Reports from Standing or Special Committees:

Hon. Lorna Milne, Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Wednesday, June 28, 2000

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

NINTH REPORT

Your Committee, to which was referred Bill C-18, An Act to amend the Criminal Code (impaired driving causing death and other matters), has, in obedience to the Order of Reference of Thursday, June 22, 2000, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

LORNA MILNE
Chair

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

On motion of Senator Milne, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

PARLIAMENT OF CANADA ACT

BILL TO AMEND—THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Grafstein, seconded by the Honourable Senator Maheu, for the third reading of Bill S-5, to amend the Parliament of Canada Act (Parliamentary Poet Laureate).—(*Honourable Senator Lynch-Staunton*).

Hon. Jerahmiel S. Grafstein: Honourable senators, I move third reading of this bill.

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

Motion agreed to and bill read third time and passed.

SIR WILFRID LAURIER DAY BILL

SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator DeWare, for the second reading of Bill S-23, respecting Sir Wilfrid Laurier Day.—(*Honourable Senator Grafstein*).

Hon. Jerahmiel S. Grafstein: Honourable senators, today I spoke at length about Sir John A. Macdonald. I feel equally strongly about Sir Wilfrid Laurier. I have no objection to this bill.

[*Translation*]

Hon. Marcel Prud'homme: Honourable senators, I should just like to say that there are a number of Canadians who admire Sir Wilfrid Laurier. MacKenzie King, Sir John A. Macdonald and Sir Wilfrid Laurier are certainly the most important prime ministers Canada has ever known, but Sir Wilfrid Laurier and Mackenzie King are the ones who have inspired me most in my research. I should like to take the opportunity afforded by this second reading of the bill, on the very day we have been discussing the possibility of eliminating the Senate from bills of major scope, to tell you that Sir Wilfrid Laurier would be furious that a bill calling for the elimination of the Senate would be brought to this chamber.

It seems that the debate will be over tomorrow, but we could get back to it another time. I find it extraordinarily strange that, the very day we are honouring Sir Wilfrid Laurier, we are dealing with the emasculation of one of the two Houses; that is the Senate.

[*English*]

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

Motion agreed to and bill read second time.

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

Senator Prud'homme: Now!

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, it is not our custom to deal with bills without reference to committee, and I suggest that we should not make an exception.

I am not sure to which committee Senator Lynch-Staunton wishes to refer it.

Senator Prud'homme: Committee of the Whole.

Hon. John Lynch-Staunton (Leader of the Opposition): I do not know to which committee it should go.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Committee of the Whole.

Senator Lynch-Staunton: Why not have third reading at the next sitting?

On motion of Senator Hays, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

• (1930)

SIR JOHN A. MACDONALD DAY BILL

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Grimard, seconded by the Honourable Senator Atkins, for the second reading of Bill S-16, respecting Sir John A. Macdonald Day.—(*Honourable Senator Grafstein*).

Hon. Jerahmiel S. Grafstein: Honourable senators, I have had the pleasure of rereading the words of the Right Honourable Sir John A. Macdonald who was then attorney general of the legislative assembly. I suggest that all honourable senators who are interested in this bill refer to the parliamentary debates on Confederation of the British North America provinces. Start at page 2013 and move on for many dozens of pages to witness a grand display of his eloquence, foresight, thoughtfulness and interest.

I would point out to honourable senators that on one page there is a particular paragraph that is of interest where, in effect, he talked about the Maritime union, as to whether or not the provinces of the Maritimes should join together. He said the only issue at that time was whether it should be a federation or a union, but there was clearly a desire on behalf of all those colonies to become not three but one people.

Based on that, I certainly support this bill because Sir John A. Macdonald's spirit is alive and well in Canada today.

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

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

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

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I move that this bill be placed on the Orders of the Day for third reading consideration at the next sitting of the Senate in the same manner as the bill dealing with Sir Wilfrid Laurier. That would give me an opportunity to consult on whether it should go to committee and, if so, which committee.

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

Hon. Senators: Agreed.

Motion agreed to and bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

PRIVILEGES, STANDING RULES AND ORDERS

EIGHTH REPORT OF COMMITTEE—MOTION IN AMENDMENT—DEBATE ADJOURNED TO AWAIT SPEAKER'S RULING

On the Order:

> Resuming debate on the motion of the Honourable Senator Austin, P.C., seconded by the Honourable Senator Banks, for the adoption of the eighth report of the Standing Committee on Privileges, Standing Rules and Orders (changes to Rule 86), presented in the Senate on June 22, 2000.—(*Honourable Senator Roche*).

Hon. Douglas Roche: Honourable senators, I am glad to say that I support the eighth report of the Standing Committee on Privileges, Standing Rules and Orders as far as it goes. For example, the report seeks to establish two new committees of the Senate. The first would deal with defence and security matters. As Senator Rompkey so eloquently and effectively said last night, there is a great need for this committee. I should like also to pay tribute to Senator Forrestall for his work in this area and for bringing this issue forward.

The second proposed committee would deal with human rights. I will not belabour my support for human rights. I hope that I do not slight any member of the Senate by not mentioning his or her name in developing this subject as I mention the name of Senator Wilson, who has given distinguished leadership in this respect.

I must then ask myself from where this report comes? What happened to the clear understanding that prevailed? A clear understanding was confirmed last night by Senator Maheu, the former chairperson of the committee, that two issues concerning committees would be dealt with at the same time, in tandem. Those issues are the striking of two new committees, on defence and human rights, and the appointment of independent senators to serve on Senate committees.

As we all recall last year when the subject was debated as a result of the presentation of the ninth and eleventh reports of the Rules Committee, the two subjects were clearly linked and now they are separated. I have received no explanation for the separation. Indeed, I have sent off a raft of correspondence to various chairpersons and figures of authority in the Senate indicating my interest in advancing the subject of the appointment of independent senators to committees.

Last night, Senator Austin, whom I also compliment for his leadership, gave, I am sure, an accurate report of the proceedings when he said that there was no consensus in the committee on the issue of independent senators.

I must ask, what is this thing called "consensus" as applied to Senate duties? There is certainly no consensus on the great bills that are before us. We vote in this place. Indeed, to have something called "consensus" prevail over the appointment of independent senators seems to allow a veto to be given to one, two or three senators. I do not believe that is the way the Senate should or is intended to operate. Our rule book certainly does not say that independent senators cannot be members of committees.

Given the time, I will spare honourable senators the history of this matter. With respect to independent senators' issues, I have looked at that history. To date, 820 persons have been appointed to the Senate of Canada since 1867. Of those, 11 have identified themselves as independent senators. Inasmuch as 5 of those 11 are sitting in the Senate today, I do believe this is a relevant issue.

For a long time, independent senators were appointed to sit on Senate committees. In fact, they have even chaired committees on occasion. For example, Senator Hartland Molson, well known and highly respected in this chamber, was the acting chairman of the Standing Senate Committee on Transport and Communications in 1958 and 1961. Our present colleague Senator Pitfield, who is also an independent, was chairman of a special Senate committee on the Canadian Security Intelligence Service in 1983. Thus, the precedent is clearly established for independent senators to be full members of standing Senate committees.

• (1940)

Honourable senators, there was a change in the rules in 1991. I was not here, I had no part of it, and I shall not recite the history of that period, which is probably well known to many senators here. However, the net result of that change in committee memberships was that independent senators were not to be appointed to committees. A few years later, in 1994, this issue surfaced and a survey was taken here in the Senate on the question of whether independent senators should be appointed to committees. The results showed that 87.1 per cent of the respondents in the Senate thought that independent senators should be able to sit on committees, and 9.7 per cent felt that they should not.

On this question of the designation of an independent senator, I pick up in the conversational traffic around here that there is perhaps some possibility of a creeping misunderstanding about the status of an independent senator. I feel obliged to say, in drawing this to honourable senators' attention tonight, that it is not by some whim that a senator comes in here and says that he or she chooses to be an independent because they do not wish to belong to one party or other. For example, when I was appointed, an official document was issued by the Prime Minister's Office, under the date of September 17, 1998, called "Appointments to the Senate." One sentence in that document read: "Mr. Roche will sit as an Independent Senator." The word "independent" is written with a capital "I." The status is recognized in the appointment process.

Honourable senators, I find that I have but one recourse in this matter, which I might say respectfully has gone on for too long to correct the anomaly. I have but one recourse, which is the Constitution of Canada. The Constitution says that the Governor General shall summon qualified persons to the Senate, which is the process by which we all arrived here. The Constitution does not say that you must belong to a particular political party in order to enjoy the rights of the Senate. It is, therefore, very clear to me that a perpetuation of the present situation will allow a second-class status to prevail. I do not think that honourable senators want that to happen. Thus, I am sweeping aside every other issue and asking honourable senators to bring their attention to the deep principle that I am espousing here at this moment, which is the equality of all senators. No one senator comes in here and asks for something that other senators do not have.

Correspondingly, I believe that no one senator should come in here and be deprived of something that other senators have. Therefore, I do believe it is time to act in respect of an amendment to the eighth report. In a moment, I shall read the language of an amendment that I shall submit, and honourable senators will recognize the language, since I drew it from the eleventh report. This is language that has been vetted. The eleventh report got caught in a quagmire, and I am letting that go, but I am now saying that I believe it is time to move forward on this issue.

MOTION IN AMENDMENT

Hon. Douglas Roche: Therefore, honourable senators, I move, seconded by the Honourable Senator Rompkey:

That the Eighth Report of the Standing Senate Committee on Privileges, Standing Rules and Orders be amended by adding, before "Respectfully submitted," the following words:

"Also, that the *Rules of the Senate* be amended as follows:

a. by adding a new Rule 85(2.2)(*a*):

"(2.2)(*a*) The Committee of Selection may make a recommendation to the Senate that two additional members be added to any standing committee."

b. by adding a new Rule 85(2.2)(*b*):

" (2.2)(*b*) Senators may apply to sit on a standing committee either by application to their respective whip or directly to the Committee of Selection."

Honourable senators, I ask your consideration of this amendment.

POINT OF ORDER

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): On a point of order, I think this motion is out of order because it is not congruent with the motion that Senator Austin has made. It is way beyond the scope of the motion that is before us. An examination of the report of the committee that is before us does not deal with the matter that is raised in this motion, and I think that it is indeed even contrary to the proposal that has come forward as reported in the report from the Standing Committee on Privileges, Standing Rules and Orders. Therefore, until we dispose of the motion that we have before us, we cannot have a different kind of motion brought in. I believe that motion is out of order.

Hon. Eymard G. Corbin: Honourable senators, on the same point of order, my interpretation of that motion is that it would have the effect of the Senate deciding not to receive this proposal at this time, but sending the report back to committee for further consideration. That, to me, is the net effect of the rules.

Hon. Jack Austin: Honourable senators, on the question of congruence, it is not a problem for the Standing Committee on Privileges, Standing Rules and Orders to see the recommendation that two new committees be struck added to by a process by which senators may be chosen to serve through the Committee of Selection. I am, however, uncertain how to respond to the point that Senator Corbin made. I have not had the opportunity to consider the rules and I wonder if some other senator could assist in this respect.

The Hon. the Speaker: Honourable senators, are there any other comments on the point of order?

Hon. John Lynch-Staunton (Leader of the Opposition): It is interesting to point out that Senator Maheu was chairman of the committee and she brought the two issues down in two separate reports.

• (1950)

It is confusing Senator Austin's report by introducing an issue which is completely separate from the subject matter of his report. Therefore, I would suggest that the most efficient way to proceed would be to leave the decision on amendment to the Senate Rules Committee which may give an assessment of it in a separate report if it feels so inclined.

Hon. Douglas Roche: On the point of order, in defending my own motion with respect to congruence, I pointed out that, last year, these two issues were conjoined in the ninth and eleventh reports of the committee and, furthermore, Senator Maheu confirmed that the committee was discussing both issues in tandem. Thus, my argument is that the present report is incomplete, having regard to the original intention of what was to be attempted.

The Hon. the Speaker: Does any other senator wish to speak to the point of order?

Honourable senators, my recollection is that the normal procedure to be followed in the event that an amendment is to be made, is that the report is sent back to the committee with instructions. However, I shall be happy to review the rules again to ensure I am correct. Therefore, I shall take the matter under advisement.

Hon. Shirley Maheu: Since His Honour is taking the matter under advisement, I should point out that in the second part of the eleventh report he will find a referral under the subheading "additional members on committee."

The Hon. the Speaker: I must advise Senator Maheu, that I cannot accept anything further.

Senator Maheu: I should ask His Honour if I may be permitted to ask a question of the previous speaker when the point of order has been accepted.

The Hon. the Speaker: The matter has now proceeded beyond any further comment.

Debate adjourned to await Speaker's ruling.

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

ELEVENTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the eleventh report of the Standing Committee on Internal Economy, Budgets and Administration (budgets of certain Committees), presented in the Senate on June 27, 2000.—(*Honourable Senator Rompkey, P.C.*).

Hon. Bill Rompkey moved the adoption of the report.

Motion agreed to and report adopted.

DISTINGUISHED CANADIANS AND THEIR INVOLVEMENT WITH THE UNITED KINGDOM

INQUIRY—ORDER STANDS

On the Order:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Hon. Marcel Prud'homme: Honourable senators, Senator Murray once, when I was alone in my corner, was gracious enough to second one of my motions, but afterwards he added, "But that does not mean, Senator Prud'homme, that I shall vote for you." I did the same last week when a colleague asked for a vote. I do not like to be isolated, and neither do I like to isolate a colleague. That is the reason why last week I may have done something that surprised some people.

We all know that a lot of work has been done in the course of this inquiry. The more I read about it, the more I find it scholarly and interesting, and the more I find that justice should be done to it by leaving it on the Order Paper.

[*Translation*]

Hon. Eymard G. Corbin: Honourable senators, I wonder whether Senator Prud'homme is entitled to speak to the inquiry listed under the name of Senator Cools. I am a bit confused about the procedure being followed at the present time, and should like to know whether Senator Cools has spoken to this motion.

The Hon. the Speaker: The inquiry was made by the Honourable Senator Cools. She is entitled to respond.

According to the rules:

> A Senator who has moved the second reading of a bill or made a substantive motion or an inquiry shall have the right of final reply.

This is indeed an inquiry, and Senator Cools certainly spoke in making it.

Senator Corbin: My question has been clarified. I beg your pardon for the interruption.

[*English*]

Senator Prud'homme: Senator Cools may wish to stay for a few minutes since I am speaking on her inquiry to ask that it not die on the Order Paper. I have already said enough, in fact, more than I said in speaking to my own inquiry which is No. 15. However, if someone wants me to talk longer, I would be more than happy to accommodate them. I should think that you all have had enough. I see that Senator Adams, the chief whip, Senator DeWare, and everyone seems to be of the opinion that I have said enough in order to save this inquiry. Therefore, I shall turn it back to Senator Cools.

Hon. Anne C. Cools: I shall move the adjournment.

The Hon. the Speaker: I should remind the Honourable Senator Cools that if she does that, then she will preclude any other senator from speaking to it because she will, in effect, be closing the debate. Perhaps it would be better to stand the matter.

Senator Cools: I do not mind, honourable senators. I am very generous. If anyone else wants to speak, I shall be happy to yield.

Hon. J. Michael Forrestall: It cannot be done that way.

Senator Cools: Then let it stand.

Order stands.

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

COMMITTEE AUTHORIZED TO STUDY HEALTH CARE SERVICES AVAILABLE TO VETERANS OF WAR AND PEACEKEEPING MISSIONS

Hon. Mabel M. DeWare, for Senator Meighen, pursuant to notice of June 20, 2000, moved:

> That the Standing Senate Committee on Social Affairs, Science and Technology be authorized to examine and report on the health care provided to veterans of war and of peacekeeping missions; the implementation of the recommendations made in its previous reports on such matters; and the terms of service, post-discharge benefits and health care of members of the regular and reserve forces as well as members of the RCMP and of civilians who have served in close support of uniformed peacekeepers;
>
> That the Committee report no later than June 30, 2001; and
>
> That the Committee be permitted, notwithstanding usual practices, to deposit its report with the Clerk of the Senate, if the Senate is not then sitting; and that the report be deemed to have been tabled in the Chamber.

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

Hon. Senators: Agreed.

Motion agreed to.

• (2000)

CONSTITUTIONAL ROLE OF SENATE

MOTION TO INFORM HOUSE OF COMMONS OF INTENTION TO PROTECT STATUS—DEBATE ADJOURNED

Hon. Nicholas W. Taylor, pursuant to notice of June 27, 2000, moved:

> That the Senate of Canada views with grave concern the increasingly frequent practice of the House of Commons to debate and pass legislation which ignores the constitutional role of the Senate, the rights of our aboriginal peoples and official minority language groups;

That the Senate will continue to maintain its legitimate constitutional status by amending any bill that fails to recognize the constitutional roles enjoyed by both Houses of Parliament; and

That a Message be sent to the House of Commons to acquaint that House accordingly.

He said: Honourable senators, this is the moment the whole chamber has been waiting for.

Senator Prud'homme: You bet.

Senator Taylor: The purpose of the motion is plain, old-fashioned, practical politics. I know the independents do not agree with that, but it is politics with a capital "P." I have moved that we send a motion to the House of Commons deploring their ignoring the constitutional role of the Senate, the rights of our aboriginal people, and official minority language groups.

Senator Kinsella: Sold out!

Senator Taylor: There seems to be a mass exodus of senators from the chamber. I, too, find myself sandwiched between the adjournment motion and the Energy Committee that is supposed to be meeting right after this session adjourns.

This is a simple motion, honourable senators. It is as political as the dickens. I must admit, having spent some 14 years in opposition and a few years in this place, that I have always found that politics as developed in Westminster and since the time of the Magna Carta and our mother of Parliaments works better than getting up, beating the table and discussing how many angels dance on the head of a pin.

There seems to be no question that a great many senators feel that official minority language groups have been left out occasionally when legislation was sent over from the House of Commons. Certainly that applies to our aboriginal peoples. My colleague Senator Chalifoux and I have been on a number of committees, along with Senator Watt, and time and again they have had to remind individuals — and I do not mean only MPs and senators but also civil servants of the day — that aboriginal people have been left out of some of the drafting and, lastly, of the constitutional role of the Senate. I shall spend more time on the constitutional role of the Senate because there is no question that we must raise time and time again the rights of official minority language groups and the rights of aboriginal peoples. It is like hitting a mule over the head to get its attention. There is no way that the House of Commons and the bureaucracy will pay attention unless they are continually reminded. This one motion will not do that, but it is one step in the right direction.

As far as the role in the Senate is concerned, we have all been reminded of the fact that it is not incorporated into the bicameral process as much as it should.

One must realize that although I put this motion forward, there is much more than just the House of Commons. I am sure honourable senators realize that the Thompson newspapers, the *Sun* newspapers and Lord Black's newspapers are all headquartered in Ontario, so the political writers in this country are down here where they are paid the most and can be next to the head office where they have the best chance of being promoted. There is an ethos or atmosphere out there that continually hammers at them to abolish the Senate. If a person is from Ontario, he or she has every right to think that, especially if they do not think far enough ahead of Confederation, because Ontario represents darn near double the number of people in the House of Commons percentage-wise than it does in the Senate. Also, Ontario represents perhaps 75 per cent of the governing party's caucus. Lord bless their happy, pointed little heads for voting Liberal, but, nevertheless, there is an attitude and an outlook in this capital that is continually anti-Senate. Whether it is Mr. Jack Aubry or whomever, no sooner do they move down here than they want to appeal to Lord Black, Lord Thompson and *The Sun* to be promoted up the line. The most fashionable thing is to run out and take a kick at the Senate, ignoring completely that Canada would go down the drain quicker with the absence of the Senate than it ever would with the absence of Quebec. This country would not hold together if it did not have the Senate or a bicameral system. There is no way it could survive. A unicameral system would not survive.

Admittedly, someone put forward a similar motion in one of the earlier bills — and I shall not mention the name — but this motion is a sure way of getting the message across completely divorced from a bill or anything else. The point I want to get across, in particular as a westerner, is that the Senate has a key position because it represents regions and minorities.

Senator Nolin: We know that!

Senator Taylor: This point must be hammered and hammered again because civil servants are the people who draft legislation. Members of the House of Commons are dominated by the idea that if running this country were left up to God and Ontario, everything would be fine. That is not so. The fact of the matter is that if we are to get anywhere, we must divorce this question from the bill of the day, whichever bill that happens to be, and look at the question of whether or not the Senate is being ignored.

I looked at some statistics, honourable senators, and I have used something prepared by Minister Dion — examples of legislation where Parliament had given the House of Commons a role that was not given to the Senate. He referred to 14 bills from 1985 to 1997. Bills in which the Senate was overlooked or shuffled off to the side used to run on average one every year or two, but we are now seeing three bills a year. Right now, there are two bills in the process that are shuffling the Senate to the side. I am not speaking about something hypothetical; this is very real.

If honourable senators pick up the newspaper tomorrow, you will read that the Senate is defending itself. That is true, but we are also defending the Constitution. Whether we are elected in the future or appointed in the future or anointed in the future or descendfrom the heavens in the future, it does not matter; we need a bicameral system. I am not arguing how this house is put together and how it will be appointed. I notice the House of Lords recently came up with a system where the winning party and the opposition party appoint roughly two-thirds of the new House of Lords, and the other third is appointed by an impartial body. I am not arguing about how we get here. I am simply saying that we should take our minds off who is in the Senate, although sometimes that is hard to do.

Honourable senators, those are the reasons I put forward this motion. I hope it gets the support of a large percentage of the house. Do not look at it as a political bill. I notice one of my opponents is hiding his head. I do not know if it is in pride or in shame because he took some pride in saying that he knew me some years ago.

Senator Prud'homme: Shame on you!

Senator Taylor: Honourable senators, this motion combines the most obvious faults we see in legislation coming to this chamber. I am referring to the power of the Senate, aboriginal peoples and minority language groups.

The hour is late and I have said enough, honourable senators.

[*Translation*]

Hon. Marcel Prud'homme: Honourable senators, I will not ask any questions. If anyone wishes to ask questions, that is fine. I wish to participate in the debate.

Honourable senators, Senator Taylor's motion, the very day when — I think it was the same senator who spoke — he gave me irrefutable proof of his intention. I am going to be very precise. I know that the translation will be very precise as well. There is an expression that says that making a fool of oneself is not harmful to one's health. I said one's health, not the senator's health. It is a very commonplace expression. At this very time, we have before us at least three amendments to Bill C-20.

• (2010)

[*English*]

One involves the right of our aboriginal people to be consulted; one is on the official minority language group; and there is especially the one on legislation which ignores the constitutional role of the Senate.

[*Translation*]

The very same day, he moved a motion.

[Senator Taylor]

Senator Nolin: The same bill!

Senator Prud'homme: The same bill. Senator Taylor informed us this afternoon what he intends to do in tomorrow's vote, to everyone's surprise moreover. Everyone is entitled to his opinion.

[*English*]

For Senator Finnerty, I will correct myself and what she may have understood me to say.

[*Translation*]

Everyone is entitled to their opinion. Democratic debate means trying to convince each other; that is obvious. I have never dared say, or, if I have, I withdraw anything offensive I might have said this afternoon. Honourable senators have the right to vote as they wish tomorrow. We are entitled to try to impress each other. I do not like to see people arrive here with their minds made up, regardless of what my brilliant colleague Senator Spivak might say on the subject, with which she is very familiar.

So the esteemed honourable senator is leading us to a resolution. I do not know how the vote will go tomorrow, honourable senators. We still have one night to think it over and a lot of work will still be done overnight, although perhaps a little less than this afternoon, in order to get the desired vote tomorrow. I do not know. The angels of the night will surely be at work, along with the whips.

However, the fact that this motion comes at the same time as we are deciding on the exact same proposals by the honourable senator strikes me as — I dare not say outrageous — at least rather odd. I would have understood it happening at the next session, in October. I would even have supported it then, but not today. We will be the total laughing stock of the other House. I have no complexes about that other place, none whatsoever. I was proud to be there for 30 years. I am now here and proud of that. I have no lectures to give them, nor any to receive from them. When the people of Canada decide what they want to do with the institutions, they will let us know.

[*English*]

Not the scholars, not the professors and not the editorialists, but Canadians will decide what to do with the institution. They may decide to change the House of Commons more than to change the Senate when they get to it, because if there is a place that needs to be changed, it is the House of Commons. I am sure Senator Bacon will agree with me. Any institution can be abolished, and that may even apply to heads of state.

The more Senator Bacon wants me to leave this topic, the more I will speak to it, so I would suggest that she be patient. As I said, anyone who has heard enough can leave.

[*Translation*]

I think that Senator Bacon would like to speak. No? If you wish to speak, please rise. I would encourage my colleagues to listen to her again, but I would certainly not encourage my colleagues to vote in favour of this motion. Senator Taylor on the very day that he has spoken to us about the importance of not amending Bill C-20, speaks to us about the importance of bills. I think that he could perhaps ask for this debate to be adjourned until the fall.

[*English*]

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, would Senator Prud'homme entertain a question?

Senator Prud'homme: Certainly.

Senator Kinsella: The new ambassador of Canada to Paris, Raymond Chrétien, is quoted in this week's edition of *Maclean's* magazine as saying, with reference to the Americans:

> You have to stand up to the Americans. They only respect you if you do.

Senator Prud'homme, let "PMO" replace "Americans" in that quote. Does the honourable senator agree that you have to stand up to the PMO and that, 'They only respect you if you do"?

Senator Prud'homme: I am so thrilled to hear that question. I could talk, if I had the permission of the Senate, until at least midnight. That is exactly the point I am making. We must send a message to these people, as we must send a message to the people of the PMO. Raymond Chrétien has been an excellent ambassador for Canada for over 35 years.

Hon. Senators: Hear, hear!

Senator Prud'homme: Yes, you can applaud, because he has served my country very well. He is not a political appointee. He was there long before Mr. Chrétien was in charge, so I shall stand up for him. Have no doubts about that.

What a beautiful quote. Had I read that before, I would have used it. I must admit that I shall read it now; in fact, I shall do that tonight. Perhaps we should send it by special messenger to the Prime Minister, after, of course, making the appropriate change. He may not have read it. We can say, "Here is what Raymond has said," namely, that the time has come to stand up to the PMO, and see the reaction. What a beautiful quote. I hope you will make a speech based on that quote.

Senator Kinsella: I appreciate what the honourable senator said about Raymond Chrétien because when he was the associate under-secretary of state at External Affairs, I had the privilege to be the associate under-secretary of state at Secretary of State, so I know him very well.

My second question to Senator Prud'homme is simply this: In his understanding of Senator Taylor's motion, does the principle of retroactivity apply?

Senator Taylor: Pass it tonight, then!

Senator Prud'homme: That is why I said that this could change a lot of minds. I should kindly suggest to our friend Senator Taylor that he reread his speech of this afternoon, and that he read the three amendments, one put by his colleague and friend beside him who nods in appreciation, Senator Watt, as well as those put forward by Senator Gauthier and Senator Grafstein. These three touch upon exactly what he is saying in his speech.

If Senator Taylor rereads his speech of this afternoon and the speech that he made this evening on the resolution, he may surprise everyone tomorrow, as he surprised us this afternoon.

On motion of Senator Kinsella, debate adjourned.

[*Translation*]

ILLEGAL DRUGS

BUDGET REPORT OF SPECIAL COMMITTEE PRESENTED AND ADOPTED

Leave having been given to revert to Presentation of Reports from Standing or Special Committees:

Hon. Pierre Claude Nolin, Chair of the Special Committee on Illegal Drugs, presented the following report:

Wednesday, June 28, 2000

The Special Committee on Illegal Drugs has the honour to present its

FIRST REPORT

Your Committee, which was authorized by the Senate on April 11, 2000 to reassess Canada's anti–drug legislation and policies, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical, and other personnel as may be necessary, and to adjourn from place to place within and outside Canada.

The budget was presented to the Standing Committee on Internal Economy, Budgets and Administration on Tuesday, June 27, 2000. In its Eleventh Report, the Internal Economy Committee recommended that an amount of $170,062 be released for this study. The report was adopted by the Senate on Wednesday, June 28, 2000.

Respectfully submitted,

PIERRE CLAUDE NOLIN
Chair

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

Senator Nolin: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(*g*), I move that the report be now adopted.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

POINT OF ORDER

Hon. Eymard G. Corbin: Honourable senators, in reading the committee's report, the clerk mentioned the amount of $160,000, when the report says $170,000.

The Hon. the Speaker: In fact, the report gives the amount as $170,062. The point of order has been accepted. We shall change the amount accordingly.

Motion agreed to and report adopted.

[*English*]

ADJOURNMENT

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

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

> That when the Senate adjourns today, it do stand adjourned until tomorrow, Thursday, June 29, 2000, at 1 p.m.

Motion agreed to.

The Senate adjourned until Thursday, June 29, 2000, at 1 p.m.

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