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(HANSARD)

Monday, October 20, 2003

THE HONOURABLE DAN HAYS
SPEAKER

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THE SENATE

Monday, October 20, 2003

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

Prayers.

[*Translation*]

ROYAL ASSENT

The Hon. the Speaker informed the Senate that the following communication had been received:

RIDEAU HALL

October 20, 2003

Mr. Speaker,

I have the honour to inform you that the Right Honourable Adrienne Clarkson, Governor General of Canada, signified royal assent by written declaration to the bill listed in the Schedule to this letter on the 20th day of October, 2003 at 9:14 a.m.

Yours sincerely,

Barbara Uteck
Secretary to the Governor General

The Honourable
The Speaker of the Senate
Ottawa

Bill Assented to Monday, October 20, 2003:

An Act respecting the protection of the Antarctic Environment (*Bill C-42, Chapter 20, 2003*)

[*English*]

SENATORS' STATEMENTS

POLITICAL PARTY SYSTEM

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, our Canadian system of governance, as with all models of government, has or ought to have as its objective the public interest and common good of its society. Since 1867, the public interest in the practise of Canadian freedom has been well served by our Canadian system of parliamentary democracy. Notwithstanding a number of bumps along the road, social justice and progress have enjoyed a grand success. Clearly, there must be something right about our system of governance, but as with the British Westminster parliamentary model, this system is based on successful political parties.

We are witness today in Canada to important developments in the Liberal and Conservative parties. It is good that the development remains focused on the primary objective, which is the good of Canadian society more than the good of any political movement.

I encourage all Canadians to take an active role in this period of partisan discernment. In particular, I extend best wishes to my friends in the Liberal Party of Canada as they prepare for their leadership convention and set in place the appropriate mechanisms to embrace the various policy attitudes.

Indeed, any political party that is more focused on the good of the country, rather than itself, needs to identify the methodology and means to accommodate within national parties a spectrum of policy attitudes. As R.M. Punnett wrote in his book *British Government and Political Parties*, at page 105:

> Thus the existence of a predominantly two-party system in Britain does not necessarily mean that numerous different policy attitudes are not to be found within the community — it means that numerous different policy attitudes are contained in the two parties. Thus in a sense, every Government in Britain is a "coalition" of the several interests, elements and attitudes that are covered by the broad umbrella of the Labour or Conservative Party label.

Honourable senators, it is noteworthy that the discernment process currently underway by many Canadian Conservatives is being guided by such principles as progressive social policy; right to health care regardless of income; regional, cultural and socio-economic diversity; individual rights and responsibilities; equality of all Canadians; equality of the English and French communities in Canada; the right to security and privacy; the right of the individual; environmental rights; the right to own property; solidarity rights for the peoples of the world; and the right to fair trade.

Guided by these principles, Canadians wish Conservatives well during this period of discernment for the greater good of our parliamentary system of governance.

[*Translation*]

THE HONOURABLE LOUIS J. ROBICHAUD, P.C., Q.C., C.C.

CONGRATULATIONS ON RECEIVING RED CROSS HUMANITARIAN AWARD

Hon. Marilyn Trenholme Counsell: Honourable senators, I am proud to extend my congratulations to our former colleague, the Honourable Louis J. Robichaud who, last week, on October 15, received the humanitarian award of the New Brunswick Red Cross.

In so doing, he has joined the ranks of a number of highly distinguished New Brunswickers: Herzel Herchetsky, the Honourable Margaret Norrie McCain, the Honourable Gordon Fairweather, retired Supreme Court Justice Gérard LaForest and another former colleague here in the Senate, the Honourable Erminie Cohen.

Among the other honours this gentleman has recently received are the following: a certificate of honorary membership in the Association des enseignantes et des enseignants francophones retraités du Nouveau-Brunswick; a Life Membership in the Law Society of New Brunswick; the New Brunswick Pioneer of Human Rights Award; the Order of New Brunswick 2002; the Prix de mérite, Association des enseignantes et enseignants francophones du Nouveau-Brunswick; an honorary graduation diploma from l'École Louis-J. Robichaud; and the presentation by the Université de Moncton of a copy of the University's original charter.

• (1410)

What is more, on October 25, 2003, he will be receiving the Légion d'honneur from France. Our friend, "le petit Louis" is an inspiration to us all. His message is clear: never cease working to ensure equal opportunities for all. The Red Cross humanitarian award he received on October 15 was just one more recognition of his passion and his many wonderful contributions to New Brunswick and to Canada.

[*English*]

GOVERNOR GENERAL

STATE VISITS TO FINLAND AND ICELAND

Hon. Bill Rompkey: Honourable senators, all of us who accompanied Their Excellencies on the recent visit to Finland and Iceland witnessed the extraordinary leadership they give to this country. The Governor General led a group that had more depth and breadth than any other I had been on in 30 years of parliamentary life. With Senator Oliver, Karen Kraft-Sloan and myself were architects, winemakers, musicians, art gallery directors, anthropologists, writers, businessmen and Aboriginal leaders from the Arctic. It was this diverse mixture that Their Excellencies presented to the circumpolar world as the face of Canada.

The offer to these countries was to join us in a partnership to protect and enhance our neighbourhood, the polar region. In their thoughts, in their words, in the power of their personalities, Adrienne Clarkson and John Ralston Saul drove home the message that the health of the northern ecosystem and northern peoples is important, not just for that region, but also for the world. That is why organizations like the Arctic Council and the University of the Arctic are so important. It is a message that southern Canadians need to hear, and it was delivered to our northern neighbours by two of our finest ambassadors.

The reception we received from presidents and fishermen, from mayors and reindeer herders was in marked contrast to carping criticism here at home, including some from members of my own party in the other place. For me, this criticism is a product of narrow minds and parochial thinking. Canada has an important role to play in the circumpolar world.

Although Labrador is subarctic, it nevertheless feels part of the polar world. Visiting with friends and neighbours to discuss common issues is essential to its enhancement. The rapidly melting ice cap and the plethora of seals in our northern waters are just two warning signs that we need to address our problems in the polar region jointly as well as severally.

Honourable senators, this was the finest Canadian mission that I have witnessed, and it was an honour for me to be part of it.

NATIONAL SECURITY AND DEFENCE

NEW BRUNSWICK—ALLEGATIONS OF CAMPBELLTON AS ENTRY POINT BY ILLEGAL ALIENS

Hon. Colin Kenny: Honourable senators, there was some interest expressed in this chamber on Thursday, October 9, 2003, about one of the recent hearings of the Standing Senate Committee on National Security and Defence, which I chair. Permit me to provide some background information on this matter.

During the third week in September, our committee held public hearings in Halifax on coastal defence and first responders. It is our intention to table reports on these subjects in the near future.

At the public hearing on coastal defence held on Monday afternoon, September 22, we heard testimony from officials from the Canada Customs and Revenue Agency. During this meeting, one of the committee members asked these officials about illegal migrants arriving by boat at Campbellton, New Brunswick. The officials indicated they were unaware of such illegal activities. A copy of the proceedings is available for anyone interested in reading this exchange.

Honourable senators, this is simply a case of an individual senator asking questions that he deemed to be relevant to the subject under discussion. A number of newspapers carried articles about this exchange, but upon reviewing them, it is clear from all the articles that I have seen that it was an individual senator asking questions.

A concern was raised subsequently in this chamber about "what evidence there is to support the claim made by the National Security and Defence Committee that illegal aliens are coming into North America via the port of Campbellton, New Brunswick."

I can assure my honourable colleagues that the committee has not expressed a view on this specific issue, and there has been no indication in our deliberations on coastal defence that there will be any comment about Campbellton in our forthcoming report.

In closing, I want to underline that the Standing Senate Committee on National Security and Defence is a conscientious and hard-working committee that has a proven track record in conducting studies carefully and thoroughly.

NATIONAL DEFENCE

SNOWBIRDS—CONDITION OF TUTOR AIRCRAFT

Hon. Donald H. Oliver: Honourable senators, I rise today to speak about the Snowbirds' air show. The Snowbirds are arguably one of Canada's most recognizable national symbols. About 22 months ago, I rose in this chamber to warn of the continuing deterioration of the Snowbird Tutor jet aircraft. Government authorities now confirm that the Snowbird Tutor jet aircraft are still a threat to the lives and safety of the Canadians who fly them and must be replaced as quickly as possible.

In December, I referred to a captain who had worked on Tutor aircraft maintenance for more than 20 years. At that time, he said that the Snowbirds should be grounded because they were suffering from metal fatigue and there could be a major catastrophe unless something was done about their condition. A short time later, the Department of National Defence called tenders to price out a supply of the aircraft for the Snowbirds in the future.

Now, almost two years later, this initiative is again in the news. In today's *Ottawa Citizen* and *National Post*, there are comprehensive articles detailing the need of the government to replace the aging aircraft with Hawk jets made by British Aerospace.

The *National Post* revealed it obtained an executive summary from an internal review done by the Department of National Defence. It said the following:

> Replacing the Tutor is a question of "when," not 'if"... With each passing year, the technical, safety and financial risk associated with extending the Tutor into its fifth decade and beyond will escalate. These risks are significant.

The cost of the project, according to the leaked report, is estimated at $330 million. As an alternative, the military is also considering an upgrade package for its jets at an estimated cost of $32 million. It would extend the life of the jets to 2010, but honourable senators must realize that the upgrade is only a short-term solution.

It will take approximately five years for the Hawk jets to be built in the United Kingdom, delivered and converted to the Snowbird air demonstration and for the pilots in the show to be properly trained. If that decision is made before the end of 2003, our new Snowbirds will be safely in the air for the 2009 air show, only three years after the Tutor jets reach their maximum lifespan.

My concern is that the aging, dangerous Tutors not fly anymore but be replaced. That way, the safety of pilots and Canadians will become the first and highest priority. Since their inception in 1971, five Snowbird pilots have met their deaths: four while flying or training in air shows and one in a motor vehicle accident after an air show. There was also the incident in Scotland where two Scottish jets crashed while in training for a London air show.

To these statistics, I have but one remark to make: Replacing the Tutor aircraft with updated, safe, new jets would reduce the chance of air fatalities significantly. It is time to ensure the safety of Canadian pilots.

In conclusion, I am glad to see that the government is taking steps to ensure that the Snowbirds' pilots fly mechanically sound aircraft. I believe the Snowbirds are an important symbol of and to Canada. It is imperative that they be able to update their equipment, not only to save lives but also to save the air show that has come to mean so much to so many.

ALBERTA

UNIVERSITY OF ALBERTA—DISCOVERY IN ELECTRICITY GENERATION

Hon. Tommy Banks: Honourable senators, I rise happily and proudly today to talk about an important scientific breakthrough that has just now been made at the University of Alberta. It is nothing less than a new means of generating electricity. It has apparently been known for many decades, although certainly not to me, that when a liquid such as water comes into contact with a non-conducting solid, such as glass, ceramic or stone, an interaction occurs between the two at a microscopic level that creates a charge on the surface. Because of the water next to the surface being positively charged and the solid being negatively charged, there is an interaction.

Two scientists at the University of Alberta, operating on the theory that if one put the water through a microchannel, the positive and negative ions would move so that one end becomes positive and the other negative to create, in effect, a battery, have succeeded in the first new breakthrough in electricity generation in 160 years.

University of Alberta engineering Professors Daniel Kwok, Larry Kostiuk and their associates have been able to light a small bulb by squeezing a syringe of plain, ordinary Edmonton tap water through a ceramic filter containing microscopic holes. They call it an electrokinetic battery. It can easily produce up to 10 volts at that size, roughly equivalent to a car battery but with a current of only a fraction of an ampere. It is not likely that we will be seeing this used as a flashlight generator any time soon, but the potential applications are truly shaking. This could be regarded as an effective energy source for nanotechnology applications, and could be used for powering electrical devices like palm pilots, calculators, cell phones, and so on, using water batteries. The discovery was published today by the Institute of Physics.

• (1420)

I hope honourable senators will join me today in congratulating the University of Alberta team for this outstanding breakthrough and wishing them all the luck in pursuing the exploitation of this excellent new technology.

ROUTINE PROCEEDINGS

NATIONAL SECURITY AND DEFENCE

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

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

> That the Standing Senate Committee on National Security and Defence have power to sit at 5:00 p.m. today, Monday, October 20, 2003, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

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

Did the Honourable Senator Prud'homme wish to withhold consent?

Hon. Marcel Prud'homme: No, I want to ask the usual question. How many other chairmen intend to ask permission to sit while the Senate is sitting, so that we better exercise our judgment whether or not to agree? If this were the only request for today — it being at five o'clock and not being a member of the committee myself — I would find it difficult to deny that request. However, if there are too many others who have the same kind of request, we will have to re-evaluate our rules; otherwise, there will be no honourable senators left in the Senate, they will be in committees.

If this is the only request, in this instance I will agree; however, if there are other senators who intend to ask for the same thing, please ask now. Do not take us by surprise later this afternoon by rising and asking for unanimous consent at a time when those who usually object are temporarily absent. If the honourable senator is the only one, I will not repeat the same thing, I will agree.

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

Hon. Senators: Agreed.

Motion agreed to.

[*Translation*]

OFFICIAL LANGUAGES

BILINGUAL STATUS OF CITY OF OTTAWA— PRESENTATION OF PETITION

Hon. Jean-Robert Gauthier: Honourable senators, pursuant to rule 4(h), I have the honour to table a petition with 2,000 signatures, supplementary to the 6,000 signatures tabled last week, asking to have Ottawa, the capital of Canada, declared a bilingual city and a reflection of the country's linguistic duality. The petitioners pray and request that the Parliament of Canada consider the following:

> That the Canadian Constitution provide that English and French are the two official languages of our country and have equality of status and equal rights and privileges as to their use in all institutions of the Government of Canada;
>
> That section 16 of the Constitution Act, 1867 designates the city of Ottawa as the seat of government of Canada;
>
> That citizens have the right in the national capital to have access to the services provided by all institutions of the Government of Canada in the official language of their choice, namely English or French;
>
> Therefore, your petitioners ask Parliament that Ottawa, the capital of Canada, has a duty to reflect the linguistic duality at the heart of our collective identity and characteristic of the very nature of our country.

[*English*]

QUESTION PERIOD

BUSINESS OF THE SENATE

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I have a question for the Leader of the Government in the Senate. Could the minister advise the house — because I know all honourable senators would like to know the answer — of how many more Mondays she anticipates between now and Christmas the Senate will be called upon to sit?

I ask the question knowing that many honourable senators have to make advance-planning arrangements for their many commitments. Could the minister give us a rough idea as to what she anticipates for Monday sittings between now and Christmas?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, all I can indicate at this time is that as legislation requires we will be required to sit on Mondays and Fridays, if in order to have adequate time to debate the bills before us it requires sittings on Mondays and Fridays.

Senator Kinsella: Honourable senators, we all received a copy of the Senate calendar, subject to change, for this year. As of October 20, there are eight weeks set out between now and Christmas to deal with government legislation, and our practice is to sit from Tuesdays to Thursdays.

What legislation is it that is not already on the books in the other place, which I examined in detail this morning, that would anticipate any rush of legislation, given that later this afternoon we have a time allocation motion and there are eight more weeks? Why this rush? Why time allocation, given that we have eight more weeks?

Senator Carstairs: Honourable senators, in regard to the time allocation motion — and we should not really get into this because it is a motion for later this day — we have made some positive amendments to that bill and it is necessary for the other place to have adequate time to deal with those amendments, which I believe are excellent amendments

In terms of the honourable senator's more general question concerning remaining sitting days, it will depend. I am expecting as many as four new bills from the other place this week. We need time to get them to second reading, into and out of committee. It is a timely process. For example, I think we are now on our twelfth day and third reading of one bill alone.

Senator Kinsella: Honourable senators, the published Senate calendar, which is subject to change, has us sitting on Monday, December 15, and not sitting on Monday, December 8, or December 1, or November 24, or November 17. I am particularly interested in the week of November 17. Does the minister expect that we will be sitting on November 17, which is a Monday?

Senator Carstairs: At this stage, honourable senator, I do not.

It will depend on how quickly we deal with legislation prior to November 17.

• (1430)

NATIONAL DEFENCE

AFGHANISTAN—DEATH OF TWO SOLDIERS—AVAILABILITY OF ARMOURED VEHICLES—RESIGNATION OF MINISTER

Hon. J. Michael Forrestall: I have a question, which I have asked at least twice before, for the distinguished Leader of the Government in the Senate. I will try once again; I believe this issue to be serious. Senator Oliver spoke earlier today about the need for safe aircraft. I have spoken a thousand times before about the need for safe helicopters — and the sooner the better.

On July 19 of this year, in combination with other remarks he was making, the Minister of National Defence said that in effect he would resign if it were found that any Canadian died as a result of a lack of preparation or equipment. Sadly, as honourable senators are aware, two Canadian soldiers died while they rode in an Iltis light utility jeep.

The battle group commander said that he has only one third of the armoured vehicles he needs — some 30. The minister has announced that only 15 more will be available.

When will the government ship the 45 armoured vehicles the battle group requires? Will it ship them today, tomorrow, next week, or next month? Will those Canadians who have survived be back in Canada before we get around to shipping the armoured vehicles asked for?

Hon. Sharon Carstairs (Leader of the Government): As the honourable senator is aware, Canadian troops were well equipped when they went to Afghanistan. They had the equipment that was requested by those in command. That equipment went with them, and they began their operation with that equipment. Subsequently, what appears to be a terrorist action has caused them to reassess the dangers of some of the missions — although not all missions because some are still carried out in jeeps, on foot and in armed vehicles. That is why more armoured vehicles are now being shipped to Kabul.

Senator Forrestall: We know it is somewhat difficult to take the Minister of National Defence at his word for anything. I do not like to assume that ministers are prone — and find it interesting, if you will — to making grand statements about resigning if such and such does not prove to be the case. We are beginning to understand what that means.

Would the honourable leader suggest to the Minister of National Defence that many Canadians would want the government to move as quickly as possible to send the 45 additional armoured vehicles the battle group requires, in the stated opinion of its commander. Or would the minister lend some dignity to the office of the Minister of National Defence and resign?

Senator Carstairs: As the honourable senator knows, the additional LAV III armoured vehicles are expected to arrive in Kabul by mid-November, and the Bisons, also ordered, will arrive shortly thereafter.

AFGHANISTAN—AVAILABILITY OF ARMOURED VEHICLES—INTENTIONS OF MEMBER FOR LASALLE-EMARD

Hon. J. Michael Forrestall: Honourable senators, that still leaves a substantial shortfall in the number of armoured vehicles the battle group commander believes, in his judgment, to be necessary for the safe execution of their tasks over there. It is that to which I address my question now.

If the honourable leader does not wish to put that to the Minister of National Defence and to the Prime Minister, I wonder if she would be kind enough to inquire of Mr. Paul Martin whether he could stand up somewhere in Canada during the next two or three weeks to tell us his intentions in respect of this issue?

Hon. Sharon Carstairs (Leader of the Government): The government intends to add to the equipment at the request of the officers on the ground and in the field in Kabul.

CUSTOMS AND REVENUE AGENCY

LAVAL, QUEBEC—THEFT OF COMPUTERS WITH PERSONAL INFORMATION

Hon. Donald H. Oliver: Honourable senators, my question is to the Leader of the Government in the Senate. On September 4, thieves stole four laptop and two desktop computers from the offices of the Canada Customs and Revenue Agency in Laval, Quebec. These computers contain the personal information and the private business files of about 120,000 Quebec residents. This incident constitutes the biggest loss of personal information in Canada to date. However, Revenue Minister Elinor Caplan did not move departmental staff from their regular duties to deal with the situation until September 19 — two weeks after the break-in.

Could the Leader of the Government in the Senate tell us why the revenue minister did not act more quickly on this important matter of privacy?

Hon. Sharon Carstairs (Leader of the Government): It is my understanding, honourable senators, that the department acted quickly when they became aware of the sensitive nature of the information in those computers.

CITIZENSHIP AND IMMIGRATION

NATIONAL BIOMETRIC IDENTIFICATION CARD— SECURITY OF INFORMATION

Hon. Donald H. Oliver: Honourable senators, this is the latest example of the federal government mishandling personal information of Canadians. In May, the personal information of about 200 Canadians was stolen by a Canada Customs and Revenue Agency employee and was sold to another party — most likely organized crime. Last month, the Canada Customs and Revenue Agency in Quebec sent the tax information of 49 Canadians to the wrong address. These incidents should, once again, raise serious questions about the proposed national identity card. The federal government cannot adequately protect the information it now holds, let alone a sensitive data bank that would be of particular interest to criminals.

Could the Leader of the Government in the Senate tell us how a data bank related to a national identity card would be better protected than the information currently in the hands of government?

Hon. Sharon Carstairs (Leader of the Government): As the honourable senator is aware, absolutely no decision has been made in respect of a national identity card. The way in which government could guarantee security and privacy information of Canadians must be carefully considered before such an initiative could be further processed.

FOREIGN AFFAIRS

IRAQ—RECONSTRUCTION ASSISTANCE

Hon. Douglas Roche: My question is to the Leader of the Government in the Senate. Could the government leader clarify Canada's position concerning the Iraq reconstruction conference, which will be held in Madrid later this week? Today, it was announced that a new agency, which will be run by the World Bank and the United Nations, would determine how to spend billions of dollars in reconstruction assistance for Iraq. This change effectively establishes some of the international control over Iraq that the U.S. has previously opposed.

Doubtless, the unanimity of the Security Council last week in adopting the latest Iraq resolution has strengthened, somewhat, the role of the UN. Where is Canada's money for Iraq currently being directed? What channels were used for the first $100 million? Where will the forthcoming $200 million be directed? Can the government leader confirm that Canada's money for Iraq will not go to the occupation authorities but will go directly to Iraq reconstruction?

Hon. Sharon Carstairs (Leader of the Government): I can assure the honourable senator that the money is to be used for Iraq's reconstruction. In respect of the precise vehicle for that expenditure, I shall express the honourable senator's concern to my cabinet colleagues and obtain that information. I assume it is the honourable senator's representation that he would like to see the money go through a specific donor group comprising the World Bank and the United Nations.

Senator Roche: I thank the honourable leader for that. Where will Canada's $300 million for Iraq come from? Will it come from CIDA's budget? United Nations Secretary-General Kofi Annan today called for bold action by developed countries to end world poverty. He said that as many as 24,000 people in developing countries, many of them children, die every day from hunger and extreme poverty. There is no time to lose, he said, if we are to reach the millennium development goals.

• (1440)

Can the minister assure the Senate that Canada's Official Development Assistance, still far below the 0.7 per cent UN target, will not suffer as a result of our new contributions to Iraq, which is certainly not a developing country?

Senator Carstairs: My honourable friend is quite right; Iraq is not a developing country in the normal sense of the word, but it is a war-ravaged country at the present moment.

The senator's question is very specific. I would suggest to him that since the National Finance Committee is meeting this week to study the Estimates, he might want to take that question directly to them. They may be able to provide an exact answer of where those dollars are coming from and from what line of the budget.

BUSINESS DEVELOPMENT BANK

UPCOMING AUDITOR GENERAL'S REPORT— DISBURSEMENT OF SPONSORSHIP FUNDS

Hon. Marjory LeBreton: Honourable senators, my question is for the Leader of the Government in the Senate. Weekend newspaper reports state that the Auditor General's report on government sponsorships and advertising is causing concern within the bureaucracy for those people who are normally trying to prepare a departmental response to the issues raised in the report. *The Globe and Mail* states that Crown corporations, including the Business Development Bank, were big players in sponsorship programs. It reports a source saying that Crown corporations were used to "launder federal funds."

Can the Leader of the Government tell us if the government has identified the individuals responsible for the so-called laundering of federal funds, and was Mr. Jean Carle of the Business Development Bank involved in any way with the disbursement of sponsorship funds on behalf of the Business Development Bank?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I will not comment on an Auditor General's report that has yet to be tabled.

NATIONAL DEFENCE

UPCOMING AUDITOR GENERAL'S REPORT— REPLACEMENT OF SEA KING HELICOPTERS

Hon. Marjory LeBreton: The Auditor General's report apparently will be critical of the purchase of two Challenger jets last year to replace the executive jets used by the Prime Minister and cabinet. We know that the jets that were in service at the time had a 99.1 per cent reliability rate, according to the Department of National Defence. Honourable senators will know from an answer to an Order Paper question tabled in the Senate last year that DND submitted the requisition for the two Challenger jets on March 28, 2002, signed the contract that very day and, indeed, took title to the jets on that very day. Honourable senators will also know that the request for proposals for the replacement for the Sea Kings is still not out.

Can the Leader of the Government tell us why a requisition, a contract and a title transfer can occur in one day for jets for the cabinet, while Canada's military is still waiting for replacements for the Sea Kings 10 years after the Prime Minister cancelled the EH-101 contract?

Hon. Sharon Carstairs (Leader of the Government): The honourable senator again asks me to comment on a report that has not been tabled and will not be tabled for over a month from now. I will not comment on speculative papers and decisions about what the Auditor General may say when she tables her report, presumably around November 25.

Senator LeBreton: Is the reason we have all these Monday and Friday sittings the fact that the government does not want to be sitting at the end of November when the Auditor General's report is expected to come out?

Senator Carstairs: The government will have to sit, otherwise the Auditor General cannot table her report.

BUSINESS OF THE SENATE

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, the minister suggested that the report will be tabled on November 25. Can she tell us, yes or no, that it will be tabled on November 25? Will the House of Commons be sitting then?

Through these questions, we are attempting to find out how we can organize our work. The calendar that has been approved indicates that we can be here until Christmas Eve if need be. If the government has other intentions, through whatever means, it should have the courtesy to tell both its members and the opposition that it wants certain legislation passed by a certain date and that this is the way it intends to operate. Do not keep us in this false suspense. Tell us what the intentions are.

Hon. Sharon Carstairs (Leader of the Government): When I am informed of the Prime Minister's intention and am allowed to share it, I will certainly share it with my honourable friend.

Senator Lynch-Staunton: On that basis, our intentions are to respect the calendar agreed to on both sides. Hopefully both sides will also respect the calendar and we will not be pressed to move things fast to accommodate certain political intentions of one individual in particular.

[*Translation*]

FOREIGN AFFAIRS

UNITED STATES—CANADIAN CITIZEN DEPORTED TO SYRIA—POSSIBILITY OF PUBLIC INQUIRY

Hon. Pierre Claude Nolin: Honourable senators, about 10 days ago, the Leader of the Government in the Senate answered my questions about Mr. Arar. Her answer was substantially the same for each question: she did not wish to comment on internal operations of the Canadian security service or the internal operations of the Royal Canadian Mounted Police.

Since then, Mr. Arar has asked the government for a public inquiry into the activities of the Department of Foreign Affairs, CSIS and the RCMP. Is it the government's intention to respond to Mr. Arar's request?

[*English*]

Hon. Sharon Carstairs (Leader of the Government): Mr. Arar has not, to my knowledge, taken any steps. He has indicated that he wants to clear his name. If his name can be cleared, then clearly all of us would like to see that happen on his behalf.

[*Translation*]

Senator Nolin: Am I to understand that if Mr. Arar were to make his request personally, your government would be open to setting up such a public inquiry?

[*English*]

Senator Carstairs: No, it is not the intention of the government to conduct a public inquiry.

Hon. Marcel Prud'homme: I take it for granted that if Mr. Arar is in need of support from the Canadian government to sue the authorities in the United States who arrested him — after all, he was arrested in the United States, not in Canada — support would be given to him. What happened in the United States on his return from Tunisia? What happened in Jordan, where it took 12 days to transfer him? Anyone who has been in that region knows it could take three hours, but I will be liberal. A 10-hour drive is more than sufficient, but he was kept 12 days in Jordan and close to a year in Syria.

The government may not like to have an inquiry in Canada, but would it support a Canadian citizen in taking the necessary action in the three countries that I mentioned, starting with the United States?

Senator Carstairs: As the honourable senator knows, the Government of Canada has already protested to the United States about the fact that Mr. Arar was deported to Syria — and, according to the information that my friend seems to have, via Jordan — and has made it very clear to the United States we think that is entirely inappropriate on behalf of a Canadian citizen. A Canadian carrying a Canadian passport, if he is to be deported anywhere, should be deported to Canada.

I can assure the honourable senator that if Mr. Arar needs help in making his case with foreign countries, we will help him do that.

[*Translation*]

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour of laying upon the table three delayed answers to oral questions: one delayed answer to a question raised in the Senate on September 24, 2003, by Senator Andreychuk regarding compliance with sole source contractual regulations; one delayed answer to the question raised in the Senate on September 17, 2003, by Senator LeBreton regarding the services of Aline Dirks and Paul Cochrane; and one delayed answer to a question raised in the Senate on October 7, 2003, by Senator Lawson regarding Employment Insurance and the eligibility of flight attendants.

CANADIAN INTERNATIONAL DEVELOPMENT AGENCY

COMPLIANCE WITH SOLE SOURCE CONTRACTUAL REGULATIONS

(Response to question raised by Hon. A. Raynell Andreychuk on September 24, 2003)

CIDA has in place an effective monitoring process to ensure that it complies with government contracting regulations and delegated authorities. This process includes ongoing monitoring, audits and evaluations.

In order to ensure itself that compliance was being achieved, CIDA, as part of its continuous improvement process, has undertaken a follow-up audit to the Office of the Auditor General 1999 and 2000 Reports on sole source contracting to determine the status of the progress being made. In the spirit of openness and transparency, CIDA made the audit findings available to the public in December 2002.

CIDA's Internal Audit Report of December 2002 underlined that CIDA had made significant progress in addressing systemic issues raised by the Auditor General. For example, an agency-wide contract management training program for managers and contract officers began in October 2002 and is on-going. As part of the Agency's training program, audit findings are used to give concrete examples of the importance of doing a contract plan, when sole source contracting should be used and how to substantiate the use of sole source contracting, as well as how to document files to ensure their completeness.

CIDA will continue to regularly assess and report on the progress being made on sole source contracting and government contracting regulations.

HEALTH

RESIGNATION OF FORMER ASSISTANT DEPUTY MINISTER OVER ALLEGATIONS OF FRAUD AND BREACH OF TRUST

(Response to question raised by Hon. Marjory LeBreton on September 17, 2003)

In December 2002, PWGSC's Human Resources Branch entered into a contractual arrangement with CMS, to assist Consulting and Audit Canada (CAC) with its human resources requirements. CMS assigned Ms. Dirks. Her services were retained through a call-up on an existing standing offer with CMS. Total cost for Ms. Dirks' services for the period spanning December 2002 to June 2003 were $74,385.00.

December 2002 - March 2003	$ 49,153.12
April 2003 - June 2003	$ 25,231.94
Total	$ 74,385.06

When Ms. Dirks took a two-week vacation (March 2003), CMS recommended the services of Mr. Paul Cochrane. CAC hired the services of Mr. Cochrane through a call-up against the CMS standing offer. Because of the accumulated workload in the HR sector, it was later decided to retain Mr. Cochrane to work on the preparation of job descriptions and on the Service Level Agreement between CAC and the Human Resources Branch. Total cost for Mr. Cochrane's services were $23,834.26.

March 2003-June 2003	$ 23,834.26

HUMAN RESOURCES DEVELOPMENT

EMPLOYMENT INSURANCE— ELIGIBILITY OF FLIGHT ATTENDANTS

(Response to question raised by Hon. Edward M. Lawson on October 7, 2003)

As of April 1, 2003, there was a change to the interpretation of the insurable hours of flight attendants. This, coupled with recent events within the Airline Industry, has had an impact on flight attendants. However, you may rest assured that flight attendants, like all Canadians working in insurable employment, do indeed have a legal entitlement to employment insurance and are in fact receiving those benefits to which they are entitled.

Here is an explanation of the situation. Under the EI Regulations (Section 11(1)) when a full-time employee's hours of work are restricted to less than 35 hours per week because of a federal or provincial statute, they are deemed to be insured for 35 hours per week.

As a result of an insurability ruling requested by an employee of Royal Aviation, the Canada Customs and Revenue Agency (CCRA) determined, with Transport Canada, that only the Flight Crew have restrictions, and contrary to our understanding and that of CCRA, only the Pilot and Navigators are considered to be Flight Crew.

There is no federal or provincial statute covering flight attendants with respect to the total hours they are permitted to fly. Therefore they can only be insured for the actual hours worked and paid.

Until such a federal statute is put in place by Transport Canada, HRDC has no option but to consider the flight attendants' actual hours worked and paid, as is done with most Canadian workers.

In March 2003, the airline industry was advised that any Record of Employment completed on, or after April 1, 2003 would be considered under the normal contract of service provisions; that is, coverage only for those hours that are worked and paid by the employer.

In the midst of these changes, Air Canada announced massive lay-offs. HRDC recognized that the necessary modifications to Air Canada's Record of Employment (ROE) system would impact on their ability to issue Records of Employment promptly. Therefore, in concert with Air Canada's payroll department, interim procedures were put into place. Air Canada used their current ROE system showing 35 insured hours but the number of hours was manually reduced until final ROEs with the correct number of insured hours could be issued. This temporary measure allowed the flight attendants' claims to be put into pay quickly while preventing overpayments of benefits.

At the same time and at the request of Air Canada, CCRA reviewed the flight attendants' collective agreement with Air Canada and issued a 'non-binding' opinion with regard to the number of insurable hours to be considered. The total number of insurable hours now includes duty time on the ground, in addition to flight time, since these hours are remunerated. This opinion was used by Air Canada to make the appropriate modifications to their ROE system.

Air Canada issued the amended/final ROEs to their flight attendants at the end of September 2003 with insured hours based on the flight attendants actual hours of work and remuneration. To date, the majority of these EI claims have been recalculated.

• (1450)

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, on the Order Paper, under Motions, I would like to call Item No. 1, move on to Item No. 2, under Bills, and then continue according to the order set out in the Order Paper.

SPECIFIC CLAIMS RESOLUTION BILL

MOTION FOR TIME ALLOCATION ADOPTED

Hon. Fernand Robichaud (Deputy Leader of the Government), pursuant to notice given on October 9, 2003, moved:

> That, pursuant to rule 39, not more than a further six hours of debate be allocated for the consideration for third reading of Bill C-6, An Act to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts;
>
> That when debate comes to an end or when the time provided for the debate has expired, the Speaker shall interrupt, if required, any proceedings then before the Senate and put forthwith and successively every question necessary to dispose of the third reading stage of the said Bill; and
>
> That any recorded vote or votes on the said question shall be taken in accordance with rule 39(4).

He said: Honourable senators, the bill that is currently subject to this time allocation motion has been before us since March 19, 2003. Second reading commenced on March 25, 2003 and, over five sitting days, six senators spoke during the debate.

Bill C-6 was then referred to the Standing Senate Committee on Aboriginal Affairs on April 2, 2003. The committee studied the bill for 20 hours and a half and heard 47 witnesses. The committee tabled its report on June 12, 2003, with five amendments to the bill.

That is when the Honourable Senator Chalifoux moved to adopt the report, which was adopted on June 19, 2003.

Debate at third reading commenced and continued into September. On September 25, 2003, with leave of the Senate, Bill C-6 was sent back to the Standing Senate Committee on Aboriginal Affairs for further study. The committee tabled its report on October 7, 2003. During that time, the committee had heard from seven witnesses.

The debate then continued on third reading; out of 10 sitting days, seven days were given over to this bill. To date, honourable senators, 26 senators have taken part in the debate on this bill. Today is the tenth day of debate on third reading.

Two weeks ago, I gave notice of my intention to propose the motion we now have before us, that is allocation of six more hours on third reading of this bill and all related motions.

Honourable senators, I believe we have ensured that senators wishing to express their views have been able to do so, because Bill C-6 was studied in depth in committee, where amendments were moved, and these were then adopted in this chamber. The bill was also returned to the committee, and now we have it back again.

I believe, therefore, that it is high time the Senate finished third reading debate so that the bill can get back to the House of Commons. As I have already said, this is an amended bill, so it must go back to the other place for consideration.

I feel honourable senators have had ample time to speak. With the adoption of this motion, which I encourage honourable senators to support, there will be six more hours of debate.

[*English*]

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I would like to ask the Deputy Leader of the Government whether he agrees that by imposing time allocation, he in effect confirms that the letter written by the newly elected National Chief of the Assembly of First Nations strongly condemning this bill should be dismissed completely and that the views of the main spokesmen for Aboriginals on this particular bill, who are recognized as such by every governments, are not even worth considering?

I find it reprehensible that once again a bill with no deadline imposed on it is being subjected to time allocation. Yes, it has been before Parliament for some time, but what controversial bill does not take time to go through the process? The bill, fortunately, has some amendments that will improve it, but it also lacks some key amendments. Parliament, which as far as we know is here for another two months and could be recalled in January, is being told that suddenly there is an immediate need to get this bill through.

The second question is, why the rush? However, the main question is, how can the honourable senator be so dismissive of soundly-based, strong objections from the Chief of the Assembly of First Nations?

[*Translation*]

Senator Robichaud: Honourable senators, I do not think the intent of the motion was to say that we would ignore the people who have expressed their opinions. On the contrary, all interested parties had a chance to make their points, both in committee and here in this chamber.

Many senators from both sides have spoken on this question, with great passion, whether for or against the bill. We have come to the point where a decision must be made. The debate is not cut off now, because there will be extra time to debate this bill. I am certain that senators who wish to use this allotted time will do so.

[*English*]

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Does the honourable senator see a distinction between allocation of time because of calendar and allocation of time because of sufficiency of debate?

Senator Robichaud: Honourable senators, an allocation of time is an allocation of time. It means that so much time will be given on the question before us.

• (1500)

It is my belief, and the belief on this side, that ample time has been given for the study of this bill. People have had the chance to speak. The bill has been before us for many days, and no one has expressed any opinion on it. We have to come to some decision as to whether we want to pass this bill at third reading. We are here to study bills and to come to decisions. This chamber must come to a decision and then send this bill, as amended, to the House of Commons for further consideration.

Senator Kinsella: Would the honourable senator not agree that, if we have eight weeks left before the end of this fall sitting and if there is a question as to the sufficiency of the time for debating, there is ample time for the government to reach its objective and, therefore, that it would be quite inappropriate to bring in time allocation to try to manage or to limit the time? We have eight weeks, or is there a hidden agenda? Is it that we do not have eight weeks, but rather that we will rise on November 7 and therefore we only have three weeks? Will the government come clean on this point?

Senator Lynch-Staunton: Hear, hear!

[*Translation*]

Senator Robichaud: Honourable senators, this is not the first time we have heard the honourable senators opposite speculating that we will not be here after a certain date. We are going to stand by the calendar. I sincerely believe that we have had enough time to express our opinions and propose amendments, in particular during the two separate periods when the committee considered the bill. The bill is now back before the Senate. We must come to a decision at some point. I believe the time has come, no matter what is going to happen in the future.

[*English*]

The Hon. the Speaker: Honourable senators, I regret to advise that Senator Robichaud's 10 minutes have expired.

Senator Nolin: It is 30 minutes.

The Hon. the Speaker: The next speaker would be Senator Nolin.

Senator Kinsella: It is 30 minutes for the leader.

Senator Nolin: Read your rules!

Hon. Anne C. Cools: Honourable senators, obviously senators have questions for the leadership. I am sure that if the deputy leader were to ask for an extension of time, we would happily give it.

[*Translation*]

Hon. Pierre Claude Nolin: Is it possible to seek agreement to extend the debate?

Senator Robichaud: Honourable senators, I do not intend to seek agreement to continue; I would prefer to listen to what the other senators have to say about this motion.

[*English*]

Senator Lynch-Staunton: But we want to ask you why. Shame!

Senator Kinsella: Perhaps His Honour would help bring clarity to this matter. My understanding of the rules is that each of the leaders has 30 minutes, rule 40(2)(b).

The Hon. the Speaker: Honourable Senator Kinsella, you are correct. We are operating under a rule that is not the norm in terms of time given for debate. We are operating under rule 40. I will read rule 40(2)(b), which covers this question, I hope:

> (b) the Leader of the Government in the Senate and the Leader of the Opposition may each speak for no longer than thirty minutes, and each leader of a recognized third party in the Senate may speak for no longer than fifteen minutes;
>
> (c) except as provided in sub-paragraph (b) above, no Senator may speak for longer than ten minutes...

There are other places in our rules where the Leader of the Government and the Leader of the Opposition are referred to and where the titles of deputies are added, but they are not added in this case. Accordingly, I would interpret this as being applicable only to the office-holders referred to specifically in the subsection. Accordingly, Senator Robichaud had only 10 minutes.

Senator Lynch-Staunton: Too clever by half! Very smart.

Senator Cools: Your Honour, this opens up another question, because obviously the subject matter of closure on this particular bill is very important. It seems to me, then, that perhaps the chamber could have been asked by the leaders which one of the two it wished to speak to the particular motion. It seems to me that senators have very many important questions and that the government has a duty to answer those questions.

If Senator Robichaud does not want to continue to answer these questions, perhaps, then, Senator Carstairs would be happy to take over in his stead, in which case she would be allowed another 15 minutes.

It seems to me, honourable senators, that this is an important matter and that there should be an exchange between the government and between the government leadership and senators here.

Senator Carstairs: Question!

[*Translation*]

Senator Nolin: Honourable senators, rather than asking the question, I am going to give a short speech.

Senator Robichaud: A short sermon?

Senator Nolin: The honourable senator has just informed us that, very magnanimously, he was allowing all those who wanted to express themselves to do so, be they honourable senators or members of the public. He also stated that the committee held hearings to hear from witnesses twice. Does the honourable senator, in advising the Senate of this great magnanimity, realize that, when the committee met for its second consideration of the bill, the meetings were abruptly halted and not all the witnesses were heard?

I find it strange that the government — to use the words of the Leader of the Opposition — would dismiss a letter from the new leader of a Canadian organization representing the First Nations. He is hiding behind the fact that those wishing to speak had the opportunity to do so, when he knows — if he did not know, then he should have known — that not all the witnesses wanting to speak were able to do so the second time the committee considered the bill.

Honourable senators, we are being asked to vote on a time allocation motion to limit debate at third reading, when not all the witnesses were able to appear, including the individual who signed the famous letter, the substance of which this chamber has failed to respect.

Honourable senators, the answer is ours to give: Will we bend to the will of the government or will we recognize the rights of those Canadians to be heard, as they deserve?

[*English*]

Senator Cools: Your Honour, I have a few problems here. Maybe we have a question of order before us, or maybe we do not. It seems to me that the chamber and members in the chamber have a right to expect answers from the government. The government has moved a motion of closure. It seems to me that under all the rules of our system, and under all the principles, the government should give adequate explanation and adequate clarification to members.

Your Honour, maybe we could proceed under point of order. My understanding is that governments cannot simply decline to give reasons for their actions and that the constitutional purpose of any chamber of Parliament is to ensure that the government answers for all these questions of public policy and for every single question or every decision of state.

• (1510)

I have never seen anything quite like this where the government relies on the Speaker of the Senate to read a rule saying, "Well, it seems to me that the government leader does not have to speak on this important matter and that the deputy leader has spoken and, furthermore, only for 10 minutes."

There is something very wrong here, Your Honour. I do not know to whom to talk. Perhaps that is the whole idea — perhaps we are supposed to talk just to ourselves. If that is the way it is supposed to be, I am sure there are many here who could oblige us.

However, since I am not yet in the habit of talking to myself, this chamber, if it is an honourable chamber, should find a more noble way to proceed. This is an important matter. I, for one, am not content or happy with just being sloughed off by the government in this way.

When the government moves a motion of closure, the government has a duty to attempt at least to persuade members of the Senate to vote for it. As a Liberal member sitting on the benches of those who support the government, I would expect that my own side would at least try to persuade me, to use reason, intelligence and principles to guide the debate rather than a sleight of hand saying, "We just want this closure because we feel like it." That is not how Parliament proceeds.

If Your Honour wishes, perhaps I could raise this as a point of order.

The Hon. the Speaker: Honourable senators, that is probably the basis on which Senator Cools rose. I gather she was not speaking to the motion. As well, because Senator Robichaud has not allowed an extension of time, the honourable senator's intervention could not be a question directed to him.

Do other senators wish to speak to Senator Cools' point of order?

Senator Cools: Since we cannot speak to the government here, from what I can see, then we have to speak to Your Honour. Since it is your judgment which seems to be carrying the day, perhaps your judgment should carry the day again.

His Honour must admit that it is very unusual for a government to decline to answer on such important matters. If the government's reasons are sound, then they should put those reasons before us. We would be happy to make a judgment.

[Senator Cools]

We seem to forget that this chamber is being asked to make a judgment on the question of closure itself. The government is asking members of this house to vote with the government, thereby stating that closure is desirable and desired and that it is a proper way to proceed. It seems to me that the government leaders have a duty to get to their feet and to give us sound reasons as to why they are going down this road.

We do not live in the Dark Ages. This is not a medieval house where the leader stands and says, "We want it that way, and that is enough." The government leaders have a duty to get to their feet, to answer us and to help us understand why this particular motion has been brought forward when there is no urgency in sight. In my mind, there seems to be no sound reason to move this motion other than as an act of absolutism.

Senator Kinsella: Hear, hear!

The Hon. the Speaker: As presiding officer, I have been asked by Senator Cools whether there is a method by which a senator, presumably the leader or the deputy leader, can be compelled to take the floor. I am aware of no rule, provision, custom or practice to allow such a step to be taken, even by the Senate acting under motion.

[*Translation*]

Hon. Aurélien Gill: Honourable senators, 20 hours of debate in this house would be quite the feat. Yet, it pales in comparison to the patience of members of the First Nations. I know that some senators are prepared to discuss it further. I also know that the system requires us to move to a vote. However, is it not one of our objectives in this chamber to defend the rights of minorities? Is holding non-partisan debates not another of our objectives?

For once, there is consensus among First Nations. The members of the committee heard most of the witnesses say they did not want this bill and, at worst, we should make major changes to it. For once! What are we waiting for? Life will go on. Tomorrow we will still be alive and still be senators. Why insist on adhering to the system when it does not suit our needs? Generally speaking, each time the courts seriously study the Aboriginal issue they always reach fair judgments that are favourable to First Nations, because the judges take the time to assess the situation. I understand that here in the Senate we may have more experience than others. We may have more rights than others, but here, we resolve things more quickly.

I have always had a great deal of respect for this chamber and its members, but please, for once, let us put our foot down and make a decision to take our lead from the First Nations. Four hundred years of history also represent a feat for the First Nations. Should we not listen to them for once, in the off chance they may be right? What if problems suddenly stopped multiplying? What if the suicide rates dropped all of a sudden? Let us put our trust in the process. It is not and never will be too late.

Sometimes, I get the feeling that we are trying to blame how long this debate is taking on them. I hope this tactic will fail. That has been our approach so far. Discussions about the status of Aboriginal people are always too lengthy. Honourable senators, I hope this time will be different.

[*English*]

Hon. Charlie Watt: Honourable senators, I, too, would also like to say a few words on the motion for closure.

Honourable senators, I do not understand why there is an urgent need at this point to end the debate. I believe all of us in this chamber are fair-minded people. I am not here to judge honourable senators on their individual motives for taking this measure. However, at times, we need to address certain matters that are sensitive to the people this affects.

• (1520)

We heard witnesses from across the country state very strongly why Bill C-6 is not workable. I made a speech in this regard quite some time ago. I sympathize with the leadership and the fact that they have been dealing with this bill for some time, but I think it deserves to be dealt with in this fashion.

In addition to being fair-minded people, we are all sincere. I believe that we are all doing our jobs with sincerity. One of our responsibilities in this occupation is to represent the people who are not always fairly and properly represented, who are under-represented, as are Aboriginal people.

Many honourable senators have dealt with Aboriginal people over the years. I have dealt with my own people over the years. I know the conditions in these communities, and I am sure that many of you understand those conditions.

This legislation will give one answer now and another answer tomorrow, but we do not know when the first answer will no longer be acceptable. I hope honourable senators hear me clearly on this issue. This bill deals with the issue on a piecemeal basis. It says that this is good enough for now and that we will think tomorrow about what else is needed. That is no longer acceptable.

Honourable senators, it is very important that we do our job properly. That is difficult today, especially in light of the vacuum of leadership in this country.

I would like to make a recommendation on this issue. I know that we have talked about it for quite awhile, but I think that we need to talk about it some more. This bill will not disappear completely, even if the current government does not continue to govern the country. We can pick it up again under a new government, and hopefully we can improve it. I still maintain that the four amendments that were put forward are nothing more than an administrative arrangement.

This bill has legal and constitutional implications that have impact on Aboriginal people, as we have continually said. I did not attend the first hearing of the Aboriginal Peoples Committee; I went to the second hearing and to the last hearing to listen to what people had to say. At the final hearing, there was a motion to send the bill back to the Senate without any amendments. Our intention — and I include myself because I am part of the establishment — was that nothing would happen, regardless of what we heard from the witnesses.

One of the witnesses was Peter Hudson, with whom I have dealt in the past. He is a well-qualified litigator, negotiator and councillor. I do not think he was heard. He indicated what is wrong with this bill. He alluded to the fact that there is a legal problem with it. He even alluded to the fact that there are constitutional complications attached to it. However, we did not hear him; we did not say that we would attempt to correct the problems. Rather, it was decided to send the bill back to the Senate for third reading and passage so that the matter would be done with. That is not right. In my opinion, we are not handling this matter in the right way at all.

I would like to suspend this debate until the arrival of a new government and a new approach to the whole question of regional matters. I hope that I have been heard clearly.

Hon. Thelma J. Chalifoux: Honourable senators, I had not intended to speak on this motion today, but I believe that in the interests of the committee and the Senate, and having regard to our rules, I should speak.

This issue first arose in 1946 when the government of the day, with the participation of the Senate, raised the issue that First Nations needed a separate institution to deal with specific claims. The issue was addressed in the 1960s, the 1980s and the 1990s. Therefore, it is incorrect to say that the issue has not been dealt with for very long. It has been dealt with for a very long time.

We have a choice in the Senate. Our committee did proceed with an open mind, as it must. I cautioned committee members, as I always do, to ensure that they listened to all sides and not only the government side, and we did that.

This past weekend, I reviewed several of the presentations made to the committee. The Blackfoot Confederacy has been a government of First Nations for hundreds and hundreds of years. It is a definite government. The Assembly of First Nations wanted to have total control over appointments, but Chief Shade said no. He said that all nations should have participation in the appointments.

The Blackfoot Confederacy is a government and we must listen to that government. They were not happy with the bill, but they said that with a few amendments they could live with it because it is a work in progress.

I reviewed the presentation from Tsuu T'ina Nation of southern Alberta. Ron Maurice, their legal counsel, said that he was not happy with the bill, but that the Tsuu T'ina could live with it as a start. They wanted something similar to a human rights commission, but he said that that could be part of the work in progress.

Honourable senators, we have a choice to make today. Either we move forward one step or we stay with the status quo, which would mean that it would take another 30 or 40 years to deal with the smaller claims.

This is an opt-in bill. First Nations do not have to participate in this legislation if they do not want to. They can choose the commission or this bill and the institution.

Honourable senators, I know that this is not a perfect bill. I know that there are many concerns. However, there have been amendments as well as observations. Rather than having a review in three or five years, we can start the review process now so that in three years the lobby groups and the Aboriginal governments can begin a good dialogue. This bill represents a beginning; it is a framework — a framework of an independent institution.

Last night, I spoke to Joe Cardinal, a very wise elder from Saddle Lake, about this bill. He said, "Thelma, I think it is time. We have to begin to put in place institutions in preparation for self-government."

• (1530)

I asked Mr. Cardinal about self-government and he said that the confederacy is a government and the government should be dealt with, but that is a matter for the Blackfoots. The Crees are also a work in progress. By the time this institution is done, the Crees will also have a form of government.

I totally support this motion. It has been a long time from 1946 to 2004 and it is time to move forward.

Senator Cools: Will the honourable senator take questions?

Senator Chalifoux: No.

Senator Cools: I shall ask the honourable senator a question as chairman of the committee, then.

The Hon. the Speaker: I want to be as liberal as I can in these matters, honourable senators. The rule to which the honourable senator is alluding allows that questions may be put to committee chairs during Question Period. We are debating the time allocation motion at present.

Senator Cools: Your Honour, we are crystal clear on the motion before us, there is absolutely no doubt. However, my understanding is that, whereas some senators have the luxury of being able to decline to answer questions, chairmen of committees have no such luxury. I rose and asked the honourable senator in her personal capacity as an ordinary senator if she would take a question. Then I rose again and said that I would now put the question to her as the chairman of the committee.

My understanding is that once the preferment of Her Majesty has been conferred upon any individual member of Parliament, he or she is no longer open to making personal choices in respect of answering questions.

My understanding is that the honourable senator who just spoke, Senator Chalifoux, was speaking on a pressing matter in support of the government's initiative on closure and has an obligation to take a question in respect of the committee study. That is my understanding.

The Hon. the Speaker: I may be repeating myself, honourable senators. It is true that we permit questions to committee chairs as well as to ministers during Question Period. However, we are not in Question Period; rather, as we all know, we are debating the closure or the time allocation motion moved by Senator Robichaud, seconded by Senator Rompkey. This is not a situation where we are in Question Period or anything like Question Period. Accordingly, there is no way a senator can be compelled to take a question or even to speak.

Accordingly, the debate resumes.

Senator Cools: Honourable senators, I should like to clarify a misunderstanding. I do not believe that I or anyone else in this chamber was labouring under the illusion that we were in Question Period. I do not believe that any enunciation or reminder needs to be given to honourable senators that they are not in Question Period.

As a matter of fact, the point that senator after senator is trying to make is that we are in a debate on a motion about closure. However we try, we cannot seem to get a debate going, because the movers and the supporters of the motion will not answer. It seems that they have found some level of support in His Honour.

Senator Robichaud: Order!

Senator Cools: That is quite in order. In the Senate chamber, we can speak to His Honour. This is not the House of Commons; this is the Senate.

Honourable senators, I should like to cite for the sake of the record and for posterity a couple of concerns. The first concern I should like to record is my understanding of the phenomenon of closure and what closure is intended to do.

When the notion of closure and the guillotine and those sets of procedures were introduced, it was my understanding that they were introduced as mechanisms to overcome severe obstruction and obstacles that had been placed in the path of a measure, in this instance, a bill.

Honourable senators, in the interest of redeeming the characters and the honours of two honourable senators, particularly Senator Gill and Senator Watt, I should like to say that, as a senator sitting here, I have seen no sign whatsoever of obstruction, of delay or filibuster. It would take a huge leap of the imagination to treat what has been happening here as an obstruction.

Honourable senators, I was a member of the Senate during the GST debate. I understand and know what a filibuster is. I know the amount of talent and industry it takes to conduct a filibuster. I know that His Honour, Senator Hays, was a member of this chamber during the GST debate and probably recalls the events as vividly as I do.

Honourable senators, the point must be made again that this particular motion that has been moved by the government is unfounded, unfair and unjust. It is also unnecessary. According to the leader's own answers to questions some time ago, there is no urgency whatsoever because the Parliament of Canada may be sitting for many weeks to come. There is obviously no problem with time.

There are two points: First, there is no urgency — these parliamentary measures are supposed to be used because of an urgency; second, there is no obstruction. Honourable senators, those two discrete elements of a closure motion are very much absent.

In respect of redeeming the honour of two of our splendid Aboriginal senators, Senator Gill and Senator Watt, I should like to say that, unlike the government in this chamber, I have heard from these two gentlemen most sincere pleas to this chamber to listen to the concerns of Aboriginals on this subject.

I do not think I am speaking out of turn at all. When Senator Gill spoke about when he was a chief — I did not know that he had been a chief; I do not think I am that well-informed of native and Aboriginal questions — I must say that I was deeply touched.

Some days ago, when Senator Sibbeston, even though there is a disagreement on this bill, was speaking about the real needs of Aboriginal people, again I was deeply touched and concerned. For almost the first time in the history of Canada, we now have represented in this chamber real voices from real members of these communities. Honourable senators, it behooves us to give those senators a good hearing and to listen with care, not just to listen in the abstract sense of not interrupting, but to listen to the extent that we give their concerns voice.

• (1540)

Honourable senators, I do not see life through the eyes of a native person, but I do believe that the native sense of alienation and the native sense of not being heard are indeed deep and profound. These senators have been doing a splendid job of trying to get a hearing. It is unfortunate that there are so many deaf ears.

Some days ago, honourable senators, a letter to Senator Chalifoux from Phil Fontaine, National Chief of the Assembly of First Nations, was appended to the *Debates of the Senate*. I would like to put some of that letter on the record today. The letter includes the question that I wanted to put to Senator Chalifoux.

In one part of his letter, National Chief Fontaine stated:

> The Senate amendments proposed so far are inadequate. The AFN has never been given an opportunity to comment on them before a Senate committee.

Honourable senators, as I said before, I have not been involved deeply or at all in the substantive issues of this particular bill. When one hears a man of the stature of National Chief Fontaine — and he does have stature; his manner is soft-spoken — one must have great respect for him.

National Chief Fontaine rejects the same amendments that Senator Robichaud has told us are so excellent; yet, Senator Robichaud says we must rush to judgment now on a closure motion so that the House of Commons can pronounce on those amendments.

There is something very wrong, honourable senators, because National Chief Phil Fontaine has also said that the AFN has never been given an opportunity to comment on those amendments before a Senate committee. When a chief of this stature speaks to us in this way, the committee should hear what he has to say. Perhaps it was an oversight or a misunderstanding, but I believe this honourable chamber should make sure that the AFN has an opportunity to place its views before us. Would it have been such a strenuous and difficult proposition for this chamber to go into committee of the whole to listen to the Assembly of First Nations?

It is absolutely staggering to me that the Aboriginal committee does not feel wrapped in shame that it has not given to the Assembly of First Nations an opportunity to comment. I just do not understand. All I can say is that I am not a member of that committee, but if I were, I would have had something to say about that.

I am also reminded that Senator Gill and Senator Watt attempted to fix some of these problems by moving motions to recommit the bill to another committee, the Standing Senate Committee on Legal and Constitutional Affairs, which then would have been able to have a fresh look at the bill. Perhaps it would have come to a different conclusion than did the Standing Senate Committee on Aboriginal Peoples. From what I know of the operations of the Legal and Constitutional Affairs Committee, I feel confident that it would have at least attempted to bring Mr. Fontaine before it to give him the kind of hearing he deserved.

Honourable senators, I want you to know that we sit here again and again and feel compelled and driven by governments to pass bad bills or insufficient bills or inadequate bills. I say again and again that we must act in a conscionable manner and in a conscientious manner. We are passing legislation in this instance, moving a motion that attacks the independence of Parliament. We are passing measures that affect thousands and millions of lives. I believe we should give these questions the time they deserve.

The Hon. the Speaker: Senator Cools, I regret to advise that the 10-minute speaking time has expired.

Senator Cools: I wonder if I could have a few moments to finish off my statement.

The Hon. the Speaker: Is leave granted?

Some Hon. Senators: No.

Senator Cools: I am only trying to quote Chief Fontaine.

The Hon. the Speaker: I am sorry, Senator Cools, but the response to the request for leave must be without a dissenting voice, and I heard several voices say no. Accordingly, your request for leave is not successful.

Senator Cools: I am sure National Chief Fontaine will read the record.

The Hon. the Speaker: Senator Chalifoux, you have already spoken.

Senator Chalifoux: Your Honour, I would like to respond to several things that honourable senators have mentioned.

The Hon. the Speaker: Honourable senators, The rule is clear, and that is that senators speak only once to a motion. Senator Chalifoux has already spoken.

Senator Lynch-Staunton: Honourable senators, I would like to do a little historical review of what we are about. It was in June 1991 that our rules were changed to allow a time allocation feature. Before that, until the GST debate, this chamber had its own internal rules, vaguely written, but each senator was respected and respected the chamber. After the GST debate, it was found necessary to put an end to the excessive use of the vague rules we had suffered through. New rules were written under the leadership of Senator Robertson — rules, by the way, which were not approved by our Liberal friends. Even during the study by the Rules Committee, Liberals boycotted the committee. Senator Olson did show up once and was told by his leadership, "You are not to show up in that room again."

That is how these rules came into force, and they have turned out to be very good rules. As a matter of fact, the few amendments made since have not changed the essence of them and that is —

The Hon. the Speaker: Sorry, Senator Lynch-Staunton, but a question has been asked as to what you are doing.

Senator Lynch-Staunton is speaking to the motion.

Senator Kinsella: He has 30 minutes.

Senator Maheu: He has already spoken.

The Hon. the Speaker: I think Senator Lynch-Staunton asked a question. I will ask the Table to clarify.

Senator Lynch-Staunton: If the attitude of the other side is that I cannot speak because it is in such a hurry to meet a November 7 deadline, I wish they would just say so and end this charade. I do not want to waste my time nor the Senate's time.

Honourable senators, why is Senator Maheu saying that I have already spoken when I have not, and why is His Honour being asked what I am talking about when I am speaking to the motion? What is this sudden urgency? We have eight more weeks here, or do we not?

The Hon. the Speaker: Senator Lynch-Staunton has the floor and has not already spoken. He has 30 minutes.

Senator Lynch-Staunton: I simply want to point out that the rules that were put in place were designed to bring some order to this place and to put an end to endless filibustering and to the excessive use of vaguely written rules to obstruct legislation — legislation which was never overturned once the obstructionists had the power to do so. I am talking about the GST, but let that be a debate for another day.

• (1550)

What concerns me, and what should concern all senators, is that there is no justification for this motion today — none whatsoever. What is the urgency? The only urgency I have heard stated is that this bill has certain amendments attached to it and, therefore, has to go back to the other place for proper debate. I agree with that. However, those amendments are not controversial. They have the full support of this chamber. They have the full support of the government in the other place. Therefore, any debate on them will be perfunctory. There will be objections, perhaps, but the majority on the other side has already decided that these amendments will be supported. Hence, whether they get the bill tomorrow or next week or even next month, the bill will go through without any changes to what we have before us by the time the Christmas adjournment comes.

What is the rush? There is not any, except to meet a yet-to-be-admitted deadline of November 7 to meet the objectives of one individual on whose behalf we will be receiving another bill asking us to accelerate the bringing into force of additional ridings — also to serve the interests of that one individual.

We are finding now that Parliament is not only the instrument of a party, but also becoming the instrument of the new leader of that party. Do we want to be a party to that? Will the Senate be the handmaiden or the caboose on the Paul Martin train? Well, not me, and I would think that most members here have more respect for the role of Parliament not to fall into that trap. That is the point I am trying to make.

Therefore, I say there is no rush. The amendments are supported by all members here, as far as I can tell. They do not go as far as certain members would like. The government will support them in the other place. We are here, until further notice, until just before Christmas — so, why? Senator Robichaud has not answered. What he has actually said is that he is fed up with the debate. You know, we had 20 hours —

Senator Robichaud: I did not say that.

Senator Lynch-Staunton: It has gone to committee twice —

Senator Carstairs: March 29, 1993, one speech before time allocation.

Senator Lynch-Staunton: So what? So what?

Senator Kinsella: And your point is?

Senator Carstairs: Twenty-six speeches.

Senator Lynch-Staunton: I will let Senator Carstairs answer me. Thank you.

Let me finish on this. When was the last time the Senate was called to sit at two o'clock on a Monday afternoon so early prior to the Christmas adjournment? Well, we looked it up. It was October 1980. As to why that was, I hope I will be able to tell you tomorrow. We are still doing our research. It is highly unusual and exceptional that we be called to sit on a Monday so long before the traditional adjournment for Christmas and New Year's.

In September 1988, on September 12, the Senate was called to sit at three o'clock. Well, there we were, two months from an election. One remembers the debate at the time, so that is understandable.

Therefore, why are we here on this Monday? Why could this debate not have waited until tomorrow? Why are our ranks not as plentiful as they should be? It is because we were not advised in good time. That is why Senator Kinsella asked the government leader to advise us ahead of time when she expects us to sit on Mondays and Fridays, so that we can make our plans accordingly. It is easier for some of us who live nearby, but Senator Carney, Senator Austin and others from the West Coast have to break up a weekend to be here on a Monday. Please let them know ahead of time, as well as Senator Sparrow, Senator Christensen and Senator Sibbeston and all the others who come from so far away. They have a right to know. Do not say, "We will let you know in our good time; it depends on how we feel." I urge the government leader to treat this place with a little more respect.

I do not know if that has much to do with the motion, Mr. Speaker, but I wanted to get it off my chest. I think I speak on behalf of quite a few people here. The main point for me is that we do not need this motion, and I urge all to vote against it. Let us not become parties to one individual's agenda.

The Hon. the Speaker: A question?

Senator Cools: Will the honourable senator take a question, or maybe he is reserving the rest of his time for later on?

Senator Lynch-Staunton: No, I am done, thank you. I will listen.

Senator Cools: Maybe someone on the opposition side will answer a question. I did not know it was so easy to duck questions.

I am looking at Chief Fontaine's letter that was appended to the *Debates of the Senate* of October 9, 2003. I had previously tried to put a question to the chairman of the committee, so I will try the Leader of the Opposition to see if I can get some insight or some understanding as to why.

In his letter, Chief Fontaine's says the following:

> Serious legal and constitutional issues have been identified with Bill C-6. The Bill is not only unsound in policy terms, but incompatible with principles of natural justice...

Chief Fontaine continues further on:

> With respect, these issues were not adequately recognized or addressed by the Senate Committee on Aboriginal Peoples. On some issues, very basic misunderstandings seem to remain. Basic fairness requires no less.

Chief Fontaine, in his letter, is expressing an opinion, which states that he does not believe that the Senate Committee on Aboriginal Peoples addresses particular and important issues.

So far, I cannot get to put a question to the chairman of the committee or to the Leader of the Government or to the Deputy Leader of the Government, so I figured that maybe, as opposition leader, the honourable senator might be able to help me in my distress.

Senator Lynch-Staunton: What I think is important is that the committee has had before it a letter from the official spokesman of the Assembly of First Nations, which has representations to make. Whether I would support that is beside the point. What is important is that the AFN has been, until now, accepted by the government as the official spokesman. Perhaps others here who are more familiar with operations than I am will deny that. That is the way I understand it.

There have been former chiefs who have riled this government or governments and other chiefs who have been more cooperative. That is not the point. They have all been recognized as spokesmen.

Let me read the letter. It was tabled, but tabling is not enough. Listen to the letter and listen to the official spokesman of the Assembly of First Nations, duly elected —

Senator Watt: National Chief.

Senator Lynch-Staunton: National Chief, thank you. It was addressed to the Standing Senate Committee on Aboriginal Peoples, dated October 2:

> The AFN has been invited to comment on how the *Powley* decision might affect Bill C-6. However, a few preliminary remarks are in order. Before commenting on *Powley*, it is necessary to make clear the context concerning larger issues surrounding Bill C-6.
>
> For several years, the AFN and federal officials participated in a Joint Task Force ("JTF") to consider the requirements of an effective, specific claims body. In an unprecedented spirit of partnership, the JTF produced a model of a sound and effective system.

• (1600)

If anyone wants to contradict what I am reading, please interrupt.

> The exercise should have stood as a landmark in cooperative policy development.
>
> Instead, the federal government rejected the model suggested by the JTF and terminated consultations. It produced a Bill that continues, rather than resolves, the problems of the past, including delay and conflict of interest on the part of the federal government.
>
> The AFN has repeatedly called for a return to direct Canada-AFN discussions aimed at producing a genuinely just and effective Bill. So far, this has not happened.
>
> It is not too late. Despite all that has happened, a federal government that wishes to return to constructive, mutually-respectful and results-oriented dialogue will find a willing partner in the AFN.
>
> Serious legal and constitutional issues have been identified with Bill C-6. The Bill is not only unsound in policy terms, but incompatible with principles of natural justice, including the need for an adjudicative body to be genuinely independent. A fiduciary must not only avoid conflicts of interest, but address breaches of its obligations to First Nations with reasonable speed and without arbitrarily excluding whole categories of First Nation claimants — such as those who were unilaterally promised reserves they have never received. With respect, these issues were not adequately recognized or addressed by the Senate Committee on Aboriginal Peoples. On some issues, very basic misunderstandings seem to remain. Basic fairness requires no less.

Once again I invite colleagues, if some of these statements are exaggerated or even edge on excessiveness, to please interrupt. The letter goes on to say:

> Over a year ago, the AFN openly tabled a detailed legal analysis of the Bill. The concerns expressed stand. They are supported by case law that is no less important than *Powley*. It would be unfortunate if First Nations find that going to the courts is the only path through which to find a forum that will respond constructively to these concerns. The Senate Committee on Legal and Constitutional Affairs ought to be given a full opportunity to now study the issues raised, and consider how they can be addressed constructively. If Justice has any technical responses, they ought to be documented and released for public scrutiny and comment.
>
> The Senate amendments proposed so far are inadequate. The AFN has never been given an opportunity to comment on them before a Senate committee.

One amendment "allows" individual claimants to send in suggestions about the appointment of Commissioners, but the Minister retains the power to appoint.

No statutory role is given to the AFN, a national body that has the delegated authority from First Nations to coordinate suggestions and partner with the federal government in ensuring that only qualified and impartial persons are appointed.

The amendment that would increase a cap on individual claims by $3 million (to $10 million) is too small a step in the right direction. Most claims — on the basis of any independent and credible projections — would be denied access to the tribunal.

Another amendment addresses an extremely limited aspect of the conflict of interest issue. Federal control over appointments and reappointments remains. So does a privileged access of federal public servants (but not members of First Nations institutions) to positions on the new bodies.

Another amendment allows a claimant before the Commission to go to the Tribunal to apply for a subpoena. This route is an inadequate substitute for the right that is being stripped from claimants; to obtain a public inquiry from the Commission on a claim with a public report to follow. The minority will be able to proceed to the Tribunal; claims above the cap will have no effective means of pressuring a federal government that is unreasonably stalling or denying a claim.

The federal government still has a chance to meet with the AFN, restore the spirit of partnership, and work together to produce a specific claims Bill that will benefit all Canadians. Moving rapidly to resolve specific claims will promote economic and social development among First Nations and their surrounding communities. It will remove a longstanding obstacle to reconciliation, and help to shift the focus of the First Nations-federal relationships from redressing the past to building the future together. If the federal government instead pushes ahead unilaterally to impose a fundamentally unjust Bill, First Nations will have no choice but to consider and pursue with vigour their legal and political remedies.

The AFN has been asked with very short notice to comment on the *Powley* decision.

Let there be no doubt about some basic principles:

First, the AFN supports reasonable responses to the just claims of all Aboriginal peoples, including the Inuit and Metis.

Second, the AFN recognizes pluralism among First Nations and among the peoples named in s. 35 of the *Constitution Act, 1982*. Equality does not require, or even permit in some cases, an identical treatment of different groups. Their distinctive histories, rights, interests and political choices must be taken into account in appropriate ways.

Turning now to particulars, it is important to recognize that *Powley* is not the only relevant decision handed down by the Supreme Court of Canada that is relevant. In the *Blais* case, the Supreme Court of Canada ruled that Metis are not "Indians" for the purposes of the *Constitution Act, 1930*. It appears that the reasons of the court would surely also apply to the issue of whether Metis are Indians for the purpose of s. 91(24) *Constitution Act, 1867*. The Court has acknowledged, in other words, that First Nations and Metis have, for at least some important purposes, different constitutional histories and positions. In the *Lovelace* case, the Supreme Court of Canada had recognized that the distinctive legal and social position of First Nations means that a government can design programs in partnership with First Nations that extend to them only, and do not necessarily include the Metis. This is not in any way to deny that Metis are entitled aboriginal people; or that governments have (e.g. the *Manitoba Act*, the Alberta legislation the Metis settlements) crafted distinctive programs to address Metis rights.

In addressing specific claims, it is reasonable and appropriate for the federal government and the AFN to develop, in particular, and operate in collaboration, a system that addresses First Nations claims. For over a century, the *Indian Act* has operated to vest a larger and larger measure of control over Indian lands and assets in First Nations. It is from this statute that many specific claims arise. The Indian Act, as the Supreme Court of Canada observes in *Blais*, drew a clear distinction between Indians and Metis.

The AFN recognizes that Metis organizations have brought claims based on their own distinctive constitutional histories and rights. It would welcome the just and prompt resolution of those issues by provincial governments. Perhaps there may even be a role for the federal government to play.

However, given the long history of justice denied to First Nations in the context of specific claims, First Nations cannot be expected to wait while yet a new process of consultation unfolds. After earlier efforts over decades failed to produce consensus, bilateral discussions between the AFN and federal officials produced the JTF model, and it is long overdue that a just system based on that model be implemented.

One of the most problematic aspects of Bill C-6 is its attempt to eliminate the AFN from its role — fully recognized in, and by, the Joint Task Force — of coordinating and effectively representing First Nations opinion on appointments and in the three-year review of the new system. Few organizations operate as democratically as the AFN. A National Chief needs a mandate from a full 60 per cent of Chiefs who represent the overwhelming majority of First Nations. No organization is better suited to consult with and speak for claimants and potential claimants. Its position on Bill C-6 is supported by regional and individual First Nations across Canada. There is no split between the "grass roots" and the leadership. First Nations across Canada will not accept any attempt by the federal government to exclude the AFN from full participation in the creation or operation of a truly just and effective system by using the rationale that Canada is home to other Aboriginal peoples besides First Nations. The federal government should be prepared to engage in separate policy processes with each of the AFN and, when and where appropriate, the proper representatives of the Metis.

The federal government continues to under fund the resolution of specific claims. The backlog grows. Debts that involve the honour of the Crown and lawful obligations remain unpaid. Communities continue to suffer. There must be an increased federal commitment to honouring its obligations. The AFN does not accept any potential federal model in which the claims of Metis are added to the claimants on the same or even shrinking allocation. Metis claims, not yet defined sufficient to rely on, should be addressed in their own right, on their merits, and federal and provincial governments must provide whatever additional funding is required out of their own resources — rather than further denying and depriving First Nations.

It might be noted, incidentally, that *Powley* dealt with a site-specific claim. The Metis claim in that particular case would not fall within the mandate of the specific claims body under either the JTF model or Bill C-6. At federal insistence, neither model permits claims based on aboriginal rights or title to be brought forward. It might also be observed that the federal government has insisted on narrowing the scope of "specific claims" in other ways (e.g. excluding claims less than 15 years old) in order to permit a better focus. There are no doubt challenging, complex and distinctive issues involving the Metis that could be, and should be, the appropriate subject of another dialogue in another system.

In the meantime, the AFN hopes and expects that the federal government will finally pick up where the JTF left off, and restore reason and dialogue to the creation of a just, effective, independent and accessible process for resolving specific claims.

Sincerely,
Phil Fontaine
National Chief

• (1610)

Hon. Jack Austin: Honourable senators, while I am sure that we appreciate the invitation of the Leader of the Opposition to interrupt him at any time, the offer is difficult to accept under the *Rules of the Senate*. For that reason, I did not interrupt him.

However, I want to tell honourable senators, as I have many times, that the letter of Phil Fontaine was submitted by counsel of the AFN, Bryan Schwartz, and examined, discussed and questioned during the course of the committee's proceedings. All of this, honourable senators, comes down to a few simple points.

First, Bill C-6 was passed in the House of Commons and, therefore, the wishes of the House of Commons are now before us.

Second, the bill was referred to the Standing Senate Committee on Aboriginal Peoples, which held hearings over several weeks to examine the issues.

Third, I have spoken four times on the merits of the bill and pointed out a number of key features. The bill enables negotiations and, as Senator Chalifoux said earlier today, does not require any Aboriginal community to submit itself to the processes of the bill.

Fourth, the joint task force spent two years in discussion, from 1996 to 1998. It made recommendations, but the government has not been able at this time, and in the development of policy in this sector, to accept a number of the recommendations of a technical working group. While I highly commend the process of discussion between representatives of the AFN and the Department of Indian Affairs and Northern Development, the government must decide what is appropriate in the governance of all issues and, in particular, of these issues.

The letter from National Chief Fontaine makes clear that a major objective of the AFN — and perhaps the second most important objective of the AFN — is to be given legislative status, and the Government of Canada is not prepared to do that. It is not prepared to create a legislative basis for the AFN, which now exists as a legal entity under the Canada Business Corporations Act.

This chamber should give careful consideration to the policy of official parliamentary standing — statutory standing — of the AFN. That should be considered on its own merits, on its own issues and with the Aboriginal community as a whole. We have not had a submission from major leaders across the country in respect of a legislative standing of the AFN. That they support the AFN in its current legal status does not mean that they agree, either in principle or in detail, to legislating the status of the AFN.

The first most important point is that those who advocate the postponement or cancellation of this legislation do so for a political reason. In my opinion after listening to the evidence, they do not concern themselves principally with specific claims under existing treaties and agreements. They are using this bill to try to establish an order of sovereignty for First Nations. Perhaps that is desirable.

I participated in the joint committee of the Senate and House of Commons in 1980-81. I was very proud of the creation of section 35 and I remain so to this day. Whether the people of Canada will be ready in my parliamentary lifetime to accept a third or fourth order of government remains to be seen. Certainly, that issue should not be included in Bill C-6.

Many major issues relating to Aboriginal relations have been brought into this bill by Senators Gill, Watt and Adams and will have to be dealt with by Parliament, hopefully in the near future. They are not pertinent to this proposed legislation.

Many people want to ride extraneous issues into a simple bill that is an attempt to create an independent tribunal for the adjudication of specific claims. I want honourable senators to understand that point. Please do not be confused by the merits of various arguments. In Bill C-6, we cannot and we do not set out to solve the problems that beset the Aboriginal communities of Canada. The bill tries to solve one problem — specific claims under existing legal treaties and agreements. We are trying to move from an Order in Council regime that was started in 1983 and amended and improved in 1991, as I said previously. We now want to create a statutory process so that the tribunal can meet the test of independence in its adjudication. That is what Bill C-6 is about. It is not about all those other issues that deserve to be dealt with otherwise.

Honourable senators, the government has withdrawn Bill C-7, on the subject of governance, from its Order Paper. Many of the issues raised in this chamber would be properly argued when that piece of legislation is brought forward.

I could continue but I believe that I have given honourable senators the clearest possible basis for understanding the arguments on behalf of the government and the arguments on behalf of others.

[*Translation*]

Senator Gill: Honourable senators, with his permission, I would like to ask a question of Senator Austin.

Honourable senator, you seem to have been suggesting that, in your interpretation, the Assembly of First Nations is asking for a legal status through Bill C-6. I do not know if it was your idea to put it that way, referring to a legal status.

I will tell you that there is a big difference between a "legal status" — as I imagine you are aware — and a "request for real consultation." You have recognized in this chamber yourself, honourable senator, that even if there were consultation and that it pointed to opposition to the bill, you did not have to take into account the consultation process with the First Nations.

My question is the following: Does the letter of the Chief of the Assembly of First Nations ask for a legal status?

[*English*]

Senator Austin: As we like to say, honourable senators, the letter speaks for itself, and the letter is clear on that subject.

• (1620)

Senator Kinsella: Honourable senators, the situation we are in now is clear, where members of this house who have a special responsibility for the Aboriginal peoples of Canada have risen in this place and have asked this house not to proceed along the line that we are proceeding along. Therefore, I call upon the government to withdraw this time allocation motion.

Surely, the government does not need any more explication as to why it ought to withdraw this time allocation motion. The fact of our mandate as senators with special responsibilities for minority communities in Canada should speak for itself — along with the fact that two of our distinguished colleagues have spoken very articulately and reasonably — leads me to question why the government would use this particular power. It is like bringing in a sledgehammer to go after the proverbial mosquito.

Honourable senators, the government is asking by this motion to bring down the guillotine. Why does the government believe it has to use such a radical instrument to bring to conclusion the debate in this matter?

As Senator Lynch-Staunton has pointed out quite clearly, the bill is before us at third reading, it has amendments attached to it, and the amendments are supported by the government, which has a vast majority in the other place. There is no fear that the bill will be lost in the other place, and there is no fear that it will be lost here, given the majority and the dominance of the Liberal caucus in the Senate.

The fact of the matter is that there is lots of time. We have until December 19 for this matter to be dealt with, unless, as has been suggested earlier, the government plans to adjourn Parliament on November 7 — because this government does not want to come back to the House of Commons after a new leader of the Liberal party is elected for fear that it may face a non-confidence vote, which it would probably. The government would fall, I am sure, with a non-confidence vote, after Mr. Martin is elected leader of the Liberal party. That, honourable senators, is putting Parliament at the hands of the Liberal party. All of a sudden, the Liberal party is more important than even Parliament. It is certainly more important than the backbenchers, because they do not count for very much.

Senator Cools: Here, too!

Senator Kinsella: Honourable senators, I know we do not have the power. We do not have the numbers — we can count — in the opposition in this place. This house is dominated by the Liberal senators. However, honourable senators, our Aboriginal senators, our First Nations senators, have risen in this place and have made argumentation. Our status Indian members have risen in this place and have made convincing, rational, reasonable arguments as to why this bill should be dealt with in the manner in which they have articulated. It seems to me that the majority in this place should be listening extremely carefully to those speakers they have told us.

I am concerned, honourable senators...

Senator Chalifoux: If I do not have status, I am discriminated against.

Senator Kinsella: I am concerned, honourable senators, that the use of the guillotine method of time allocation is totally without warrant in these circumstances. There is lots of time on the parliamentary agenda. Is the government suggesting, because they have a secret date in mind of November 7, that even our First Nations people will be ignored and trampled over because of the rush to protect the legacy? That is some legacy, honourable senators, to pick on the weakest of society.

Honourable senators, time allocation is totally unwarranted in this circumstance. The motion should be withdrawn. However, let me turn to the substance — and beyond the process — of our debate.

There are at least six questions raised by Chief Fontaine's letter that need to be underscored. The first one is that this bill is an attempt to change the role of the First Nations people as represented by the Assembly of First Nations. Why, one could ask, did the government not continue the process that was suggested by the JTF? Chief Fontaine suggests to us that this bill — and I quote:

> ...continues, rather than resolves, the problems of the past, including delay and conflict of interest on the part of the federal government.

Second, Chief Fontaine says, and I quote:

> Serious legal and constitutional issues have been identified with Bill C-6. The Bill is not only unsound in policy terms, but incompatible with principles of natural justice...

That alone, honourable senators, should be cause for serious reflection by this house — and particularly by this house. Chief Fontaine goes on and particularizes one area of natural justice failure of this bill, and that is the adjudicative body that, in his mind, is not genuinely independent.

His third question that has gone unanswered speaks to the promised reserves that were never received. With respect to those kinds of issues, Chief Fontaine says that they were not adequately recognized nor addressed by the Senate committee.

Chief Fontaine's fourth question, which remains an open question — why are we going to close the debate when we have these many outstanding questions from the Assembly of First Nations — speaks to the amendments that we have adopted from the committee. In his view, they are quite inadequate.

Listen to this, honourable senators. This is from Chief Fontaine. He says that the Assembly of First Nations has never been given an opportunity to comment on the amendments. I will read from the letter, to make it perfectly clear. This is what Chief Fontaine said in the letter of interest at the table, and which has been read into the record today by Senator Lynch-Staunton:

> The Senate amendments proposed so far are inadequate. The AFN has never been given an opportunity to comment on them before a Senate committee.

• (1630)

Point number five, honourable senators, is that Chief Fontaine, the elected Chief of the Assembly of First Nations, told us that the federal government was pushing ahead unilaterally to impose a fundamentally unjust bill. Having the chief say in writing that this is an unjust bill sends chills up one's spine.

I conclude with point number six. The Chief of the Assembly of First Nations said one of the most problematic aspects of Bill C-6 is its attempt to eliminate the Assembly of First Nations itself from its role.

Honourable senators, I think that the government, if it were prudential, knowing there is all kinds of time, ought to withdraw this motion for time allocation.

Senator Cools: Honourable senators, I thought Senator Kinsella was asking Senator Austin a question. I wanted to ask him a question.

The Hon. the Speaker: I was about to rise to indicate that Senator Kinsella's time has expired. I was assuming you were going to want to ask him a question.

Senator Cools: When Senator Kinsella was speaking, I thought he was in the process of putting a question to Senator Austin, but I guess the calendar has moved on a bit.

Senator Robichaud: Order.

Senator Cools: Does Senator Kinsella have some time left so that he can perhaps take a question?

The Hon. the Speaker: I regret to advise honourable senators that Senator Kinsella's 10 minutes have expired.

Senator Carstairs: Question.

The Hon. the Speaker: Is the house ready for the question?

Senator Cools: No, no.

The Hon. the Speaker: Senator Cools, you have spoken.

Senator Robichaud: Order.

Senator Cools: I rise on a point of order. We have heard very clearly that there is usually a philosophical and a moral basis to warrant motions of closure.

Senator Robichaud: Order.

The Hon. the Speaker: Senator Cools, I find myself in the difficult position of having to weigh the interests of the senators in their desire to speak and the interests of the Senate as a whole in its desire to have adherence to the rules and to move on to one of the most important things that it does, that is, vote on motions. The floor is open if other senators wish to speak. You have spoken, Senator Cools, so I cannot see you again.

If other senators wish to speak, please rise.

Senator Cools: Your Honour, I was not asking you to see me again.

I am quite in order, honourable senators. It is the government that is out of order. It is the government that is expecting honourable senators to vote without proper explanation and proper justification. I am quite in order.

Yes, Your Honour, you do have a role in determining order, but that role does not mean that you can unilaterally cut off senators who are trying to raise points of order. The fact of the matter is that there is a point of order before us. The fact of the matter is that this chamber is being asked to repress and to oppress members' rights to debate by introducing this particular motion. These motions have a long history of acrimony.

Senator Robichaud: Order.

Senator Cools: I must say, Your Honour, I find it very tiresome and very tedious, again and again, when I rise to speak in this chamber, that the Deputy Leader of the Government in the Senate calls out "Order" and immediately Your Honour springs to his feet. That is out of order.

Some Hon. Senators: Oh! Oh!

Senator Carstairs: Shame, shame.

Senator Cools: That is out of order. I know the system quite well.

Senator Carstairs: Shame!

Senator Cools: There is absolutely no reason for any discipline here. What gives the deputy leader the right? The deputy leader was out of order. I ask Your Honour —

The Hon. the Speaker: I was listening to Senator Cools to see whether there was something in her comments that related to the rules or the practices of Parliament as described in our texts to which we normally refer.

Senator Cools: I have not made them yet.

The Hon. the Speaker: I have not heard anything that gives me reason to believe that there is a point of order here. Accordingly I ask again, is there an honourable senator wishing to speak? If there is not, I would ask if the house is ready for the question.

Senator Robichaud: Question!

Some Hon. Senators: Question!

Senator Cools: No, we are not ready, Your Honour. The chamber is not ready for the question. I think that is crystal clear and that has —

The Hon. the Speaker: Senator Cools, I am sorry that I cannot see you to speak again. I regret that —

Senator Cools: We should not use closure —

The Hon. the Speaker: Is the house ready for the question?

Some Hon. Senators: Question!

The Hon. the Speaker: Senator Kinsella, you had a point —

Senator Cools: This is out of order, Your Honour. You should not allow this, Your Honour. As a matter of fact you should be the one who is called out of order —

Senator Robichaud: Put the question. Let's go.

The Hon. the Speaker: I see no senator rising to speak who is eligible under our rules to speak.

Did you have a question, Senator Kinsella?

Senator Kinsella: On a totally different topic, honourable senators, I think it would be helpful to all members if we understood exactly the rules that govern us as we proceed now under the motion for time allocation. Perhaps the Speaker might want to review that. In terms of the voting, what happens after the vote? For example, honourable senators, it may be important to realize that, should the motion carry, we would go immediately into the debate and we do not see the clock. It would be important for all honourable senators to know how it works. Maybe the Speaker wants to —

Senator Robichaud: Question!

The Hon. the Speaker: I have heard you, Senator Kinsella.

I would refer all honourable senators to the rule and reading it will not change it. I rely on honourable senators to inform themselves as to the provisions of the rules.

I proceed now to look once again to the house to see if another senator wishes to speak who is entitled to speak.

I see no one rising. Accordingly I will put the question.

It was moved by the Honourable Senator Robichaud, seconded by the Honourable Senator Rompkey:

> That, pursuant to rule 39, not more than a further six hours of debate be allocated for the consideration for third reading of Bill C-6, to establish the Canadian Centre for the Independent Resolution of First Nations Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other acts;
>
> That, when debate comes to an end or when the time provided for the debate has expired, the Speaker shall interrupt, if required, any proceedings then before the Senate and put forthwith and successively every question necessary to dispose of the third reading stage of the said bill; and
>
> That any recorded vote or votes on the said question shall be taken in accordance with rule 39(4).

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

Will those honourable senators in favour of the motion please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those opposed to the motion please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators. The bells will ring for one hour, meaning the vote will be taken at 5:40 p.m.

• (1740)

Motion agreed to on the following division:

YEAS
THE HONOURABLE SENATORS

Austin	Kroft
Banks	LaPierre
Carstairs	Maheu
Chalifoux	Merchant
Christensen	Milne
Cordy	Moore
Day	Pearson
De Bané	Phalen
Fairbairn	Poulin
Finnerty	Ringuette
Fraser	Robichaud
Furey	Rompkey
Graham	Smith
Hubley	Stollery
Kenny	Trenholme Counsell
Kirby	Wiebe—33
Kolber	

NAYS
THE HONOURABLE SENATORS

Andreychuk	Kinsella
Atkins	Lawson
Beaudoin	LeBreton
Carney	Lynch-Staunton
Cochrane	Meighen
Cools	Nolin
Corbin	Oliver
Di Nino	Prud'homme
Forrestall	Robertson
Gill	Spivak
Gustafson	St. Germain
Johnson	Watt—24

ABSTENTIONS
THE HONOURABLE SENATORS

Bacon	Gauthier
Ferretti Barth	Mahovlich—4

SPECIFIC CLAIMS RESOLUTION BILL

THIRD READING—MOTION IN AMENDMENT—
DEBATE CONTINUED—VOTE DEFERRED

On the Order:

> Resuming debate on the motion of the Honourable Senator Austin, P.C., seconded by the Honourable Senator Joyal, P.C., for the third reading of Bill C-6, to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts, as amended,
>
> And on the motion in amendment of the Honourable Senator Gill, seconded by the Honourable Senator Watt, that Bill C-6 be not now read the third time, but that it be read a third time this day six months hence.

Hon. Charlie Watt: Honourable senators, I hope the majority of honourable senators will still be here as I seriously outline the matter with which we are dealing.

I am pleased to participate in debate on legislation that was formulated in the other place and sent to the Senate some time ago. It was referred to the Standing Senate Committee on Aboriginal Peoples and studied by that committee. I will not repeat exactly what I have said in the past in regard to the conduct of the committee itself.

I sincerely believe that this legislation is bad legislation. It will help neither the government, nor the Aboriginal people.

It is time for us to understand the role and responsibility of parliamentarians. I, for one, feel at times that I am not being heard by the majority in this place. Unfortunately, they happen to be members of my party. That is too bad. That is the way it is. Hopefully, in the future, it will change.

I hope the next leader of the government will look seriously into whether we have provided legislation that is nothing more than an obstacle to the benefit of the country and the Aboriginal people in terms of their moving forward. At times we pass laws without taking into consideration the consequences.

I speak now of looking at things economically. In that regard, we have not examined this bill enough. What does it mean in the long run economically to the country as a whole? We have not examined that closely at all. In fact, I do not think we ever have. For that reason, I am very disappointed.

Our role and our responsibility is to uphold the importance of this institution. In that regard, honourable senators, today, we have failed once again.

As Aboriginal people in this country, we work hard to stay alive, to survive, economically, socially, politically, educationally — you name it.

At times, we are very disappointed when certain actions are taken by our southern neighbours — that is, the government. Once again, we have seen that today. Once again, I point out that I hope this will change in the future.

• (1750)

Maybe I am optimistic, but I have a job to do. Like it or not, there comes a time when I have to take a stand; there comes a time when I have to say things people might not want to hear. I have responsibilities. My responsibilities are to the people who are under-represented. I honour the Senate. The role of the Senate is to represent the regions and the minorities that are not fairly represented by the House of Commons. More important, we have responsibility for the Aboriginal people, whom I think we have failed again today.

I do not know what it is that honourable senators do not want to hear. If Aboriginal people are given an opportunity to grow and flourish, will that become an obstacle to the society of this country? I do not think so. We should take the view that this would improve relations between the two groups. It will also be beneficial economically.

I heard a man, invited by the Assembly of First Nations, address a large crowd of Aboriginal people. He highlighted how important it has always been and still is today for Aboriginal people to move ahead and improve themselves. I was very encouraged by this man's willingness to bring Aboriginal people forward at the same time as he tries to bring the rest of the country forward. That man will probably be our next Prime Minister.

He spoke from his heart, I believe, using as an example two canoes going down a river side by side, with open dialogue and a positive future for all. Today, I see one canoe way ahead and the other canoe, in the midst of legal uncertainties, way behind. This is not what is supposed to happen.

Honourable senators, I am running out of words, because I have been dealing with this bill for a long time, trying to persuade individual senators. I have been speaking in committee and in the Senate chamber, trying to persuade senators how important it is that we not allow this bill to pass because it is not good for Aboriginal people, it is not good for government as a whole and it is not good for the country.

Honourable senators, as I indicated in my remarks on closure, I would now like to move a motion to suspend debate on Bill C-6 until the arrival of a new government, when a new approach will be taken. I hope you will take this very seriously. I move, seconded by Senator Gill, suspension of debate on Bill C-6. Senator Gill earlier moved for a six-month suspension. My motion is that we wait for the arrival of the new government with a new approach.

The Hon. the Speaker: Honourables senators, I see several procedural problems. First, there is already an amendment before the house. Accordingly, a subamendment would be the only type of amendment we could consider. The motion proposed by Senator Watt is not a subamendment to a hoist motion.

Even more serious, rule 39(7) of the *Rules of the Senate* governs the procedure when a matter has been made subject to time allocation. Rule 39(7) reads as follows:

> When an Order of the Day has been called, to which a specified period of time has been allocated for its consideration, the same shall not be adjourned and no amendment thereto, nor other motion, except that a certain Senator be now heard or do now speak, shall be received.

The rule is clear that, now that we have passed the time allocation motion, we are not able to receive any amendment to the matter under debate, which is, of course, the amendment of Senator Gill.

I, unfortunately, have to rule the amendment out of order.

Hon. Anne C. Cools: Your Honour, you were not asked for a ruling. No one in this chamber raised a point of order and no one questioned Senator Watt's initiative. The custom in this chamber is that Speakers do not rule on points of order unless they are asked.

I recall to honourable senators that only a week or two weeks ago it was His Honour who was busy entertaining all manner of amendments and subamendments simultaneously, or consecutively, and I was the one on my feet insisting that subamendments should be amendments to the amendments. I believe His Honour, at the time, overruled me and said that we are very flexible in the Senate and that we can allow these different motions, amendments and subamendments simultaneously. You will remember that I, in jest, at one point said to another senator, "Perhaps you could take the adjournment on the main motion and he could take the adjournment on the subamendment."

There is an inconsistency here. Granted, there are some very real procedural problems with what Senator Watt has proposed. However, I would suggest that Your Honour has acted precipitously in ruling him out of order for two reasons. First, you were not asked to rule. Second, if the situation were clarified, Senator Watt might be prepared to withdraw this initiative and place it in another way before the chamber, because he is actually asking for the issue to be discussed.

I do not know how to ask you to rule on yourself, Your Honour, but in a funny kind of way that is what is happening here. There is no point of order because no point of order was raised.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I had assumed that His Honour was operating under rule 18(1). Perhaps I am mistaken.

The Hon. the Speaker: I was not raising the problem as a point of order but rather as a matter I wished to draw to the attention of Senator Watt.

• (1800)

I suppose if the chamber wished to hear an amendment under the unanimous consent provisions that that might be possible. However, I was not trying to find Senator Watt out of order. I was proceeding under the rule we were operating under. The motion that the honourable senator put was not one that we could receive in accordance with the rules. That is all I was trying to do.

Senator Cools: I understand.

The Hon. the Speaker: I take your criticism, Senator Cools, and I will try to be more reticent in the future in terms of raising these matters.

Senator Cools: No, I know that Your Honour has no improper intention; I am absolutely certain of that. These things are just very honest mistakes. However, Your Honour is free to enter the debate at any time. That is one of the wonderful things about this chamber. The Speaker has a vote and can take part in the debate. Tradition has it that, when the Speaker chooses to enter a debate, he should leave his chair and go to his seat as a senator and raise the point from there. This is an old and worthy tradition. However, I know that there was no improper intention on the part of Your Honour.

The Hon. the Speaker: On the question of order, Senator Carstairs.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, with the greatest of respect to Senator Cools — and thanks to Senator Kinsella, because he has laid before the chamber the procedure by which the Speaker is directed to behave. Rule 18(1) reads:

> The Speaker shall preserve order and decorum in the Senate. In doing so the Speaker may act without a want of order or decorum being brought to his or her attention. Furthermore, the Speaker shall be authorized to act on his or her own initiative to interrupt any debate to restore order or to enforce the *Rules of the Senate*.

Some Hon. Senators: Hear, hear!

Senator Cools: Your Honour, what Senator Carstairs has put before us is certainly a misapprehension if not a misunderstanding of rule 18(1). I was in the Senate when rule 18(1) was positioned, and I know very well the intentions.

It is true that rule 18(1) was intended to give the Speaker some opportunity or power to act on his own initiative. However, the prerequisite condition to that must be a state of disorder in the chamber. Disorder does not mean a mistaken assumption on the part of a member or a mistake in procedure or, perhaps, moving a defective motion or something of that nature.

The power of the Speaker in this rule was intended to be able to act in the instance of real disorder, as we saw in the case of the GST, where one could have said that the senators were in a state of aggression and agitation. I appreciate the explanation of Senator Carstairs in regard to this rule. However, with all due respect, I understand the rule, and the rule was put there as a protection against grave disorder.

The system of the Senate, after all, is that senators are supposed to be the master of their own chamber, much more so than the members of the House of Commons. The system is such that if a senator makes an incorrect, insufficient or deficient proposal, there should be enough senators on the floor of the chamber who realize that such a mistake has been made and who will rush to their feet to be able to assist the senator and to correct the situation.

When it comes to understanding and implementing these rules, we would do well to follow not only the words of the rules, but also the principles of the rules. The principles are that the chamber should have an opportunity to decide what to do with Senator Watt's motion. I believe that is the state of affairs and where the debate stands.

Senator Watt has made a proposal that may be wrongly put, but if Senator Carstairs wants his proposal ruled out of order, she must rise and say in a reasoned way, and cite precedents and authorities, why Senator Watt should be ruled out of order.

Hon. Gerry St. Germain: Honourable senators, I should like to propose a question to Senator Watt, if the time for his intervention has not expired.

The Hon. the Speaker: The time for Senator Watt's intervention is still running, if you would like to put a question to him.

[Senator Carstairs]

Senator Cools: You may ask him a question, but he is not out of order. That is the whole point.

Senator St. Germain: I am not interfering with a point of order, am I?

The Hon. the Speaker: No, Senator Watt was never out of order. It was his motion that was unacceptable because of the rule that I read. Senator Watt still has seven minutes of time, and you may use that if he will take a question.

Senator St. Germain: Will the honourable senator accept a question?

Senator Watt: Yes, I will.

Senator St. Germain: Honourable senators, I sit here in bewilderment to a degree because I see two of my Aboriginal friends and colleagues on the government side of the house who have traditionally supported the government in most aspects. On certain bills, such as C-68, these senators questioned issues that were so outlandishly discriminatory against Aboriginal peoples but, in the final analysis, they did everything they could to support the government.

Here we have proposed legislation that seems so egregiously flawed that two of our Aboriginal colleagues say that they will stand, debate and do everything they possibly can to hoist this bill for six months, as was the last request. They asked that the bill not be passed at all, but they have now asked that it be hoisted for six months. I find that to be a reasonable request based on their opposition.

I ask a simple question: Of all things in Bill C-6 that offend our Aboriginal peoples, what is the most repugnant part of this bill, the part that makes it unacceptable to our First Nations people? I should like to have an answer to that question, and then I should like to ask a supplementary question.

The Hon. the Speaker: I know that some honourable senators have asked why we have not risen, it now being past six o'clock. When we are on an item for which time allocation has been passed pursuant to motion, as we are now, the rules provide that we not see the clock. In other words, we proceed through. Our only limits are the six-hour time period, which would be applicable in this case, or midnight, midnight not being applicable because the expiration of six hours will occur before midnight.

Senator Watt: I am glad that the honourable senator has asked me the important question of what is important and fundamentally wrong with this proposed legislation in regard to how the proposed legislation will affect Aboriginal people.

Honourable senators, I highlighted four areas to focus on in regard to the argument of legal implications and infringement of constitutional rights. These four items were included in the amendment that I put forward earlier.

The cap on claims was $7 million and was raised to $10 million. That figure is still not acceptable. I do not think we should be setting a precedent. In a sense, we are putting a ceiling on what Aboriginal people can claim. That is not fair.

• (1810)

The other area is the fact that the Minister of Indian Affairs, going back to the time that section 91.24 of the British North America Act was created, was given a role not only to accommodate, but to supervise and to help the Aboriginal people. The minister understood that his responsibility was to run the lives of the various individual people at the community level — at the reserve level. I do not think this is acceptable.

Those are two areas that I can point out that will never be accepted by Aboriginal groups.

What is wrong with the bill itself? First, it is not bulletproof. We heard Senator Lynch-Staunton read a letter that was forwarded by Chief Phil Fontaine of the Assembly of First Nations. He mentioned that a number of areas still require some clear examination. The Standing Senate Committee on Legal and Constitutional Affairs wanted to be given full opportunity to study the issues raised and consider how they can be addressed constructively. It wanted to determine if the Department of Justice had a technical response to be documented and released for public scrutiny and comment. A letter coming from a national chief outlining what is wrong with this bill is, to my mind, important.

Once again, honourable senators, I do not know what else I can say other than the fact that, once again, the Aboriginal people are not being listened to.

Senator St. Germain: May I ask a supplementary question?

The Hon. the Speaker: Before you do that, Honourable Senator St. Germain, I must advise that Senator Watt's 15 minutes have expired. He may ask for time, however.

Senator Watt: May I have an extension of time?

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: I am sorry, Senator Watt, leave is not granted.

Senator St. Germain: Although Senator Watt's 15 minutes have expired, does he still not get a certain time allocation for questions and answers?

The Hon. the Speaker: No, that must be done within the 15 minutes. Unless he is granted leave for additional time, that is not possible. You can speak, however, Senator St. Germain.

Senator Cools: Your Honour, I heard no leave denied. Maybe I was sitting too far away.

The Hon. the Speaker: Leave can only be granted without a dissenting voice, and I heard a "no."

Senator Lynch-Staunton: They are imposing closure on closure. That is really neat!

Hon. Laurier L. LaPierre: Is it possible that Senator St. Germain said "no" because he did not totally understand or comprehend what was going on?

[*Translation*]

Senator St. Germain: I am not the one who said no. It was the Leader of the Government.

[*English*]

Senator Cools: I think Senator St. Germain should get on his feet and answer that question because the "no" came from down the aisle. The "no" did not come from this corner.

Senator LaPierre: I am suggesting that he misunderstood. I am not suggesting that he said "no" to Senator Watt having extra time. I do not want my attempt to be construed wrongly, which would be valid under normal circumstances, but in this case it is not.

Senator Robichaud: Debate.

Senator Watt: Your Honour, do I still have seven minutes, or is it gone?

The Hon. the Speaker: No, unfortunately the allotted 15 minutes have expired. The rules provide clearly that there is an opportunity for senators to put questions and make comments, but it is within the senator's time. Unfortunately, Senator Watt's time has expired. I point out that we have not included in his time the time that was taken with the point of order that was raised.

Do you wish to speak, Senator St. Germain?

Senator St. Germain: May I partake in the debate?

The Hon. the Speaker: Yes.

Senator St. Germain: Honourable senators, I find myself bewildered and disappointed by the government on this particular bill. Simply put, I had always hoped — maybe I am dreaming in technicolour — that somewhere in this world we would be able to deal with certain issues in a non-partisan, open-minded way, in the best interest of the constituency that we are trying to serve. That constituency happens to be our own Aboriginal peoples. I will go off Bill C-6 for a moment.

I am a Metis. Our people have been recognized in the Constitution since 1982; yet, we have not been recognized as such. We have had to pursue everything through the courts. Any rights that we have had as Metis people have not been recognized legally within the system unless we have pursued them through the courts. The *Powley* decision that just came down is a glowing landmark of recognition. When Senator Austin was putting forward the case for the government on Metis rights, this issue was brought to the committee simply because of this landmark ruling. It was deemed to be in the interest of everyone that it should be at least discussed at the committee level and in this place, which it was. He proudly got up and stated, "Well, in the 1982 Constitution, we gave our Metis people certain rights," but these rights were not granted. They were written rights, but they were never put into force.

From the inception of the Indian Act, honourable senators, we have done things to these people, not for them. It is strictly "we know best." We have established an empire in the Department of Indian Affairs and Northern Development that has dictated and tried to dictate down, as Senator Watt said, right to the reserve level — telling individuals how they should live, what they should do, how they should raise their families, how they should assimilate with the rest of the communities in this country, and how they should be forced to go to a residential school and not speak their language. We denied them of their traditional ways. Now, we have a disaster on our hands. We have hundreds of thousands of Aboriginal peoples in our inner cities. They are without a compass. They wander around with no hopes, no dreams and no aspirations. This is all as a result of doing things very similar to what is being done here today.

• (1820)

Senator Gill has been a chief. He has worked for the Department of Indian Affairs and Northern Development as a regional director. Senator Watt has been a chief in his area; Senator Adams has been a leader in his community. They would not be saying what they are saying, or doing what they are doing, if they did not see justification and the need to do something. I wonder when we will truly grasp this challenging part of government, and do it in a manner that reflects the best interests of the constituency of the people we are trying to serve.

We talk about a cap — and they are worried about the fiscal well-being of the country, which is a proper way of approaching things. Indian and Northern Affairs Canada has a total budget in excess of $10 billion. Why would we impose a cap, where the lands in question under specific claims have been taken away from these people where these people have been denied the right to use these lands, for some odd reason? I cite as an example the Okanagan Valley of British Columbia, where native lands were designated to the native peoples of the Penticton area. The natives were denied the use of this land, and now we are saying that this is a big deal. I just cannot understand.

The economics do not line up. It does not make sense to put a cap of $7 million when there are billions of dollars in this ministry. I no longer know the exact percentage, but the percentage that goes towards administration is mind-boggling. It is in the billions of dollars. The government is suggesting a cap, when in fact they are dealing with something that has been taken away from these people after it was given to them. Why put a cap on it and restrict them? The whole process was to expedite and bring justification to these people so that they would be treated justly with regard to these claims that have been denied them for the last 100 and some years.

Phil Fontaine, the Grand Chief of the AFN, has requested that the bill go to the Standing Senate Committee on Legal and Constitutional Affairs. Obviously, there must be some sincere thought and assessment on the part of that particular organization, which is representative of a vast number of our Aboriginal peoples across this country. They have asked for this. There must be some reasonable justification for this request. I cannot believe that honourable senators would try to rush something through this place when a simple request of this nature is made.

I am not trying to take anything way from the Aboriginal Peoples Committee, because I have sat on that committee over the years. However, there are particular matters that should be considered by certain committees because of the expertise within these committees. Senator Austin has tried valiantly to give us a reason why this bill must pass, but it is not justified, given the constituency we are trying to serve.

The appointment of commissioners is another consideration. I realize that this is a sensitive area, but as opposed to placing this in the hands of the department and the minister instead of satisfying both sides, the government and the Aboriginals, a middle ground could have been established with the appointment of these commissioners that would have given a transparency to the process, so that at least there would have been a certain amount of comfort given to our Aboriginal peoples. Honourable senators, there is always a recourse. I am sure that any recommendation from a commission would include checks and balances. I have a lot of respect for the taxpayers' dollars, but I also have a lot of respect for our Aboriginal peoples. There must be a balance. You cannot say you will do something and then really not do it.

What I am hearing from Aboriginal peoples is that this proposed legislation is window dressing, aimed at making the world believe that we are doing something positive for them. In reality, it could end up being more of a hindrance — it could reduce the value of their specific claims. By virtue of putting a cap on anything, it often forces people to accept less by virtue of seeking a settlement. I believe that is unfair to them.

Honourable senators, I realize that the majority rules and that we live in a democratic society. The government, obviously, has invoked closure against a minority group of people who are virtually powerless in society. This is a huge disappointment. Their representatives are fighting valiantly in this place and before the committee. In the committee hearings that I attended, the majority of Aboriginal people who appeared before the

committee were opposed to this legislation in the form it was being presented. If we continue on this path, we will erode any possibility of truly helping our Aboriginal peoples. If every time they turn around there is total despair in anything they try to deal with, how is it possible for them to have hope and to have dreams and aspirations?

As I started speaking today, I thought of our inner cities and what has happened in the past. Be it not for the grace of God, as an Aboriginal person or as a Metis, for there go I in our inner cities, where our people walk aimlessly around with no direction and no hope. The paternalistic attitude of INAC has virtually inhibited them from developing their rightful position and their rightful roles in our society. Whether it was the reserve type or the residential schools, or the litany of legislation that has come down in regard to them that has really impinged and gone right to the lower levels of the community through INAC, I think it is horrific.

Senators Watt and Gill have put up a valiant struggle on this piece of legislation, but, unfortunately, what I see here tonight is the will of the government doing what it has traditionally done to our Aboriginal peoples. As I said earlier, it is doing things to them instead of for them. I asked the government to reconsider Senator Watt's request of hoisting this bill for six months and giving it some serious thought. We will obviously have a new prime minister, and I would like to think that a different administration might look at the aspects of dealing with our Aboriginal peoples in a different light.

• (1830)

In saying so, I thank you, honourable senators, for your kind attention.

[*Translation*]

Hon. Aurélien Gill: May I speak?

[*English*]

The Hon. the Speaker: Senator Gill, I do not know but I will ask the Table. My list indicates that you have spoken to your motion and we are on your motion in amendment. An honourable senator may only speak once and you have spoken. You could ask a question of Senator St. Germain.

[*Translation*]

Senator Gill: Is my motion still with us?

[*English*]

The Hon. the Speaker: Yes.

[*Translation*]

Senator Gill: May I ask a question? I will start with a comment.

[*English*]

The Hon. the Speaker: Honourable senators, there are only a couple of minutes remaining.

[*Translation*]

Senator Gill: Honourable senators, we can see how history keeps repeating itself in this chamber. No matter how much we talk, chat, gripe, criticize, power is implacable. We are told: "We know what it is you need, we know your requirements, we will settle all that for you, just keep quiet and stay on your reserves." I see history implacably repeating itself.

I too hope for what Senator Watt has already talked about, and I still hold out hope that, in the end, we will communicate. That first requires respect for the other party, and interest in the other party. Otherwise it is clear there will be no communication. That is what we have been trying to establish ever since the beginning: communication between those who were already here, and those who have come since. Establishing that communication is a very hard thing to do.

All that I ask is that you try to recognize us some day, and I hope it will not take 50 years to do so.

My question for Senator St. Germain is this. I know he has already indicated that he has Metis status. Does he, in light of that status and of his experience, feel he is capable of taking part in a decision that is right for his fellow citizens? I do not know what percentage of Indian blood he has, but I presume it is the Indian side that makes him Metis, or both. I presume that is it. Can he share his experience with us?

[*English*]

The Hon. the Speaker: Honourable senators, there is one minute remaining and Senator St. Germain should have an opportunity to respond.

Senator St. Germain: Senator Gill, I appreciate your concerns. I do not think I could walk in your moccasins because people such as you and Senator Watt have lived a different experience.

I can understand how you should be treated but I cannot understand your actual needs because I am not you; I am Metis. I am not Aboriginal and I am not First Nations. However, part of my cultural upbringing was Aboriginal and I also had a strong European influence in my life.

Until one walks in someone else's actual moccasins, which I have not done, one cannot fully understand. In respect of Aboriginal peoples, I am intelligent enough to recognize their plight in this country. I am saying, as I have said before, that the historical treatment of our native peoples is repeating itself here. It is a continuum and it does not matter which party is the government — Liberals, NDP, Conservatives or the Alliance. It is always the same, Senator Gill. The government tells native peoples what is best for them; and that is wrong, as you can see by the results.

My Metis relatives in Winnipeg are living among the Aboriginal peoples in our urban centres, and I see the results of the mistakes that were made. We are talking about responsibility. Our people are entitled to rights, but it is entitlement with responsibility and they want that responsibility. That is key, that is why they want to control their own destiny, and that is why they should control their own destiny.

The Hon. the Speaker: I am sorry, Senator St. Germain, your time has expired.

Hon. Eymard G. Corbin: Honourable senators, I rise on a point of order. By waiting the six-hour time limit for debate on this legislation before calling the vote, the government has taken its pound of flesh.

Senator Cools: That is right.

Senator Corbin: We have before us now a limited period of time for credible debate to continue until the guillotine falls. Your Honour, I say this with the utmost respect, but given the circumstances, there should be much leeway exercised to hear senators out on this issue. Six hours provides time for 24 senators, more or less, to take the floor and speak to the issue. Some senators will have their say in two minutes while others may need more time. We ought to exercise patience and provide whatever time is required to anyone who wishes to intervene and we ought not to cut anyone off, as the rule would provide.

As I say, the government has taken its pound of flesh — it will get its way. That is fine with me except in this instance because of the issues at hand; that is why I stand with Senator Watt and Senator Gill and others. There ought to be an accommodation for those who wish to put their opinions on the record, even though their allotted 15 minutes may have expired.

The Hon. the Speaker: The Chair is bound by the rules and Senator Corbin has raised a point for the Senate to reflect upon. I do not think Senator St. Germain had asked for leave to extend his time for a definite or limited period, but sitting in the Chair, I cannot divine sufficiently well the wish of each senator. A departure from the rules requires no dissenting voice.

I leave it to all honourable senators to take into consideration Senator Corbin's comment, which we all understood. I do not need to repeat that we have a limit on the amount of time to be spent. Is the 15-minute rule reasonable in that context?

Having said that, I have no choice but to live by the rules and do what I can to see that the rules are observed.

Senator St. Germain: Honourable senators, should I ask for leave to continue?

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

Hon. Senators: Agreed.

[Senator St. Germain]

Senator St. Germain: Senator Gill, to repeat what I said in response to your question concerning my self-image as a Metis, I cannot put myself in your shoes because I have never experienced what you have experienced. However, I can see the consequences of what has happened in this country as a result of governments not listening to people like yourself who have walked the walk, and not just talked the talk, of living as Aboriginal peoples, of trying to lead Aboriginal communities as chiefs and trying to work with a huge paternalistic bureaucracy like Indian Affairs.

• (1840)

At a meeting of the Rotarians in British Columbia the other day, I was asked that if I had my choice of eliminating a department in Ottawa, which one would it be? I thought carefully and I said — with great hesitation because I said that I would not want to further jeopardize our Aboriginal peoples — that the department that requires the most consideration would be the Department of Indian Affairs and Northern Development, not because of what it costs, but just because of what it does and what it has failed to do for our Aboriginal peoples.

I believe Bill C-6 is being driven by the department. It is the department that is driving this agenda, and it is the bureaucrats who are pushing it. This is an added control feature in their lives of how they can dominate and how they can dictate right to the lowest levels of our Aboriginal communities. That, I feel, is totally wrong.

I have the greatest of respect for Chief Stewart Phillip from Penticton because he has taken stands for his people. When he tells me that Bill C-6 is totally unacceptable in its present form and the way it has been drafted will not assist us in any way, shape or form, and may be more problematic for us, I bow to my Aboriginal colleagues here and those who came before us because they have the greatest to gain if this bill were to die on the Order Paper and the most to lose.

[*Translation*]

Senator Gill: Honourable senators, looking at how Bill C-6 is constructed, I have trouble seeing how this tribunal or the appointed commissioners or judges would be independent. I have a lot of trouble seeing that independence.

I am not a lawyer. They tell me that in Canada, judges must have some independence — total independence, in fact, which is even more demanding. I cannot see that independence in this bill.

I think that sometimes there is a desire to create the illusion that we are about to do something new, create a new tool that did not exist before, to enable groups to hope a little more. I think we would be better off if we stopped creating illusions. Real action is needed. I should ask my question of a lawyer, perhaps.

Considering the experience of the honourable senator, could he, perhaps, answer my question? Can he see some independence; some hope that there will be a distinction made between the judge and the parties?

The problem we have is that the department will be acting both as judge and as one of the parties. Judges make rulings. As an interested party, as well, the department can see to it that it will not be too hard.

And what happens to the First Nations? I understand that we are minors under the law. The minister must always sign or co-sign on anything we do. But from there to leaving us the room to manoeuvre that would permit us to live and function normally and participate in the life of the country is a giant step.

What about independence? What about judges? Is there a double standard? Is there one way to appoint judges across the country and another way to appoint Aboriginal judges or judges to deal with Aboriginal institutions?

[*English*]

Senator St. Germain: I am no legal expert by any stretch of the imagination. The Department of Indian Affairs and Northern Development has never, in its history, wanted to relinquish an ounce of power. Its agenda is to maintain absolute and unequivocal control over the lives and the functioning of our Aboriginal peoples. This piece of legislation is obviously just an extension of this behavioural pattern.

Honourable senators, this pattern will never change until a government comes along — and I do not know who will lead the next government, if it is to be Paul Martin or perhaps Senator Andreychuk, if she decides to run for leader of the proposed Conservative Party of Canada — with the strength and the will to change the thought process that exists in that department.

The fiduciary responsibility that the minister and the government have toward our Aboriginal people has been used to the detriment, unfortunately, of our Aboriginal people. They have established this paternalistic attitude toward our peoples. They say, "If we do not treat you right, take us to court." This is the same adage. If it does not work, you always have access to the courts.

That should not be. Our people should not have to go to court for every cause. My understanding is that Bill C-6 is purely an extension of the department saying, "Look, we will name commissioners, and nobody else has any say." There is no arm's-length appointment. It is not like appointing judges to the Supreme Court or to our judiciary. It is strictly an extension of the department. We have to somehow break down a huge amount of the authority that the department has over our Aboriginal peoples.

Senator Watt: Honourable senators, I rise on a point of order. I would like to get back to my original motion in order to expedite this matter. Since I seconded Senator Gill's motion, I think it is only right for me to highlight the fact that I am prepared to make an amendment. If Senator Gill is agreeable, I move that the motion in amendment be amended by adding after the word "hence" the following words: "when a new government and a new prime minister and a new approach are in position."

Senator Carstairs: The problem is, honourable senators, as His Honour has already indicated, that a further amendment at this time is not in order. It is not within the rules of this place to allow my honourable friend to make an amendment at this time. Senator Gill has moved a motion in amendment and that motion is still before us. However, it is not within Senator Watt's power, under our rules, to make a further amendment.

• (1850)

Senator Kinsella: Honourable senators, perhaps Senator Watt is suggesting that the amendment of Senator Gill be modified. In other words, rather than make a motion or a subamendment, we can have a clarification of the motion before us. I agree with Senator Carstairs that at this stage we cannot have any more amendments. Perhaps there would be unanimous consent for Senator Watt to repeat to us the correction he would like to bring to the motion that is before us.

Senator Watt: Honourable senators, I am agreeable to proceeding in that fashion.

The Hon. the Speaker: Do honourable senators wish to comment on Senator Watt's point of order?

Senator Watt: Honourable senators, may I read it again?

The Hon. the Speaker: I will ask you to read it.

Senator Watt: It states that Senator Gill's motion be further amended by adding after the word "hence" the following words: "when a new government and a new prime minister and a new approach are in position."

Senator Cools: Honourable senators, I am of the impression that this is what Senator Watt had been trying to do at the outset. What we have before us is a hoist motion. As honourable senators know, a hoist motion is one of the rare forms of motions that can be made at second reading. It does not matter if the rules say how many more amendments can be brought or not. The fact of the matter is that at second reading the number of motions and amendments that can be brought again is fixed and constant.

What Senator Watt is saying is consistent with what Senator Kinsella is saying. However, it is also very consistent with Senator Gill's motion. Senator Gill's motion is saying that the bill be not now read a second time but be read six months hence. Essentially, Senator Watt is putting an editorial comment on that motion in amendment saying when, and clarifying the hoist motion a little bit more. Senator Watt's motion would add those few words after the word "hence" in Senator Gill's motion.

Thus, what we have before us would be the same motion. It is still a hoist motion. That has not changed at all. The substance of the motion is that the bill be read this day in six months' time. Thus, there is no alteration. If anything, Senator Watt is adding an editorial comment to it.

The fact of the matter is the hoist motion is in order. This motion was in order. This addition or modification is in order.

The Hon. the Speaker: Earlier on, I volunteered some comments by reference to the rules not in request for a ruling but to assist Senator Watt in terms of the orderliness of what he had proposed. I have now been asked by Senator Watt to rule in a formal way.

I begin by referring to the rule I quoted earlier, which is rule 39(7). It is fairly clear. It states:

> When an Order of the Day has been called, to which a specified period of time has been allocated for its consideration —

— which is exactly what we have here —

> — the same shall not be adjourned and no amendment thereto, nor other motion, except that a certain Senator be now heard or do now speak, shall be received.

The latter words refer to another provision of the rules that allows the Senate as a whole to override a decision of the Speaker when he or she sees a senator. That part of the rule is not relevant. I am explaining it because it can be confusing the first time it is read.

The rule is clear. No amendment can be proposed.

There are also the texts that we often use in cases such as this. The sixth edition of Beauchesne's deals with hoist motions, which is what Senator Gill has proposed and which is the matter we are debating now and have to deal with first before we return to the main motion.

Senator Gill, seconded by Senator Watt, moved a motion that the bill not now be read a third time but that it be read a third time this day six months hence.

Paragraph 668 of Beauchesne's sixth edition states:

> A traditional way of opposing the second reading of a bill is to move an amendment to the question that deletes all the words after the word "That" and substitutes the following; "Bill C-..., An Act..., be not now read a second time but that it be read a second time this day (six months) hence."

Paragraph 669 states:

> An established form of amendment such as the "six months" formula, used to obtain the rejection of a bill, is not capable of amendment.

Thus, both our rules and the general practice are clear that this amendment of Senator Gill's, seconded by Senator Watt, is not capable of amendment. I think the reasoning would be fairly clear: In effect, it kills the bill. To revert to a motion that would end deliberation on the bill is not consistent with what is before the chamber at this time.

Therefore, I rule that the motion is not in order.

Senator Kinsella: Honourable senators, I rise to participate in the debate on the matters before us, in particular the motion of Senator Gill.

Not only am I pleased to associate myself with Senator Gill on this motion, I am pleased to associate myself with he and his colleague, Senator Watt, on their position on the main motion.

Honourable senators, in particular, my friends opposite will recall that in the 1993 Liberal Red Book there was a promise to establish an independent claims commission to resolve certain types of disputes between the government and First Nations. We are speaking about a commitment that the Chrétien Liberals made in writing in their 1993 Red Book.

Senator Watt seems to be suggesting in the way he wanted to have clarification brought to the motion of Senator Gill that under a Paul Martin Liberal government there may be a better chance of having that Liberal Red Book promise brought to fruition.

• (1900)

Therefore, in the political context, it makes eminent sense to support the motion in amendment of Senator Gill because it will afford my friends opposite the opportunity to fulfil a Red Book promise that Senator Watt is telling us prime minister-to-be Paul Martin would deliver on. I do not even sit on the other side, yet, but we are going through our own process of discernment on our side, as I mentioned during Senators' Statements.

In any event, this is something we should reflect upon. His Honour said a few moments ago that if we do this, the bill is dead. Why is it dead? It does not have to be dead at all. Much work has been done. It is being argued that we should do this right. Let us do what the Red Book promised; let us do what Senator Watt is convinced that prime minister-to-be Martin will do.

Therefore, honourable senators, I hope we will receive a lot of support from Liberal senators when this question is finally called for a vote.

In 1998, a joint task force report from the government and First Nations also concluded that a claims commission should be independent and not controlled by the government. We have heard a lot of debate on that very specific topic and very good argumentations adduced around it. However, based upon what we have heard, I find myself unable to draw any implication other than that in Bill C-6 the government has broken its promise to have a truly independent claims commission. In committee, the government seemed not to want to see amendments that would have brought a significant degree of independence to the commission.

It is hard to understand, first, why the government would not support a proposal to do what it had promised in the Red Book to do and, second, to do particularly what the Assembly of First Nations is advocating, given the very special position that the Assembly of First Nations occupies in our political landscape.

The Assembly of First Nations is very clear that they want to see the development of an independent claims body. This was the position of many of the witnesses who appeared before our Standing Senate Committee on Aboriginal Peoples. I think we all would want to see developed a truly fair, efficient and effective independent claims body. Unfortunately, the reality is that Bill C-6 does not accomplish these objectives. As a result, it is not too late, in my view, for the current Government of Canada to show real leadership, withdraw this legislation and return to a joint table with First Nations. If there is desire by the current government and its leader to have a legacy of real leadership in matters relating to the First Nations peoples, here is an opportunity, at the sunset of the Chrétien government's time, to do something right for the First Nations peoples of Canada and withdraw this bill. All is not lost.

As Senator Watt has told us, we can use this opportunity to reflect on the work that has been done and allow a Martin government to complete the work and fulfil the promise that was made in the Red Book.

Senator Gill's motion in amendment that is currently before us is not to delay this bill for the sake of delaying it but to set it aside, so that a fresher mind, a new team of Liberals, will address this Red Book promise and bring into Parliament a bill that will do the kinds of things that Bill C-6, unfortunately, does not deliver on.

I, therefore, encourage my friends opposite, when the time comes to vote on this matter, to vote in support of the amendment to the motion, moved by Senator Gill. Let us give the new Liberal regime, the dawn of which is not too far away, the opportunity to show real leadership.

Perhaps this could be raised at the caucus of the new leadership to be held tomorrow night. You might give yourself some time to have this discussion in the Martin caucus.

[*Translation*]

Hon. Pierre Claude Nolin: Honourable senators, could it be that there is good faith on both sides?

The government, one must assume, is acting in good faith. We have heard several of our colleagues set out arguments as to why we should support this bill. Most of us who are not familiar with the reality of Aboriginal affairs are somewhat troubled.

On the one hand, we have a group of individuals acting in good faith telling us that this is a good first step. We have been looking for a solution for 45 years. This is not perfect, but it is a step in the right direction.

On the other hand, the elected National Chief of the Assembly of First Nations has told us that the First Nations and government officials have agreed in good faith to participate in a joint reflection process to try and resolve a problem that has gone on for too long.

He said so in a letter, which was laid upon the table and read to us today by Senator Lynch-Staunton.

It is possible that, on both sides, everyone is acting in good faith. On the one hand, the government is convinced it is making a worthwhile effort, a step in the right direction while recognizing that this is but a step, but one made in good faith.

On the other hand, a group of Canadians properly represented by a new chief is telling us that they have participated in the process, but that the solution they have been presented with does not resolve the problem completely and they would like to examine it further.

Senator Gill is the sponsor of this request. He is not asking for much. Naturally, even if the bill were passed, no one will go on the warpath, so to speak. Once again, we have an opportunity to show the First Nations that increasingly, in spite of the ups and downs of history, we are acknowledging our mistakes and, once in a while, we are actually thinking of their best interests and acting accordingly.

• (1910)

Honourable senators — Senator LaPierre will correct me if my history is incorrect — the kings and queens of whatever period, who ruled our lands for almost 470 years, the governors who acted — not all, but most of them — on behalf of these kings and queens, the governments that followed and that assumed this sovereignty misled — to put it bluntly — those peoples who have lived here for over 40,000 years. They misled them, lied to them, raped their women and deported them whenever it satisfied their need to have this sovereignty recognized.

I come from Iqaluit. I understand that the bill before us concerns the First Nations, but Inuit communities were deported to satisfy this need for sovereignty. Chief Fontaine is not asking us for much in saying: "Give me time to digest this measure, to understand it, and raise some public awareness and to tell them what this good faith means, but help me help you." That is what Chief Fontaine is asking us to do. We are saying that we do not believe in him or trust him. We are saying: "We know what is good for you; listen to us." Those people are telling us that they are prepared to go through our legal system, but they feel as if it is a crapshoot. This system is not completely independent.

Both sides are acting in good faith. They are seeking a viable solution. Yes, this problem has existed for too long. The days when those people could be tricked by those who were stronger and richer are over. They are asking us to create an impartial and independent system, and they are questioning the independence of the present system. I think we can grant them six months to raise public awareness in a community that is willing to do this by our rules.

That is why I will vote in favour of Senator Gill's amendment. I implore you, honourable senators, to do the same.

Senator Corbin: Honourable senators, my position vis-à-vis this bill is well known. This is not the first time that I have had to vote on a bill in Parliament with respect to Aboriginals. This bill affects their rights, their lifestyle and their hope for a better future. I have been in Parliament for over 36 years and from one vote to the next, I have been naïve enough to hope that finally the day would come when these issues would be resolved.

I remember after my first election — two days after the election — the first meeting I attended was a meeting, in Moncton, of chiefs of native reserves in the Maritimes. I crossed the province and went to the meeting. They were told that things would change and I was naïve enough to think that things would change for the better, in their favour. In 36 years there may have been some improvements and progress on the negotiations front, but there have also been setbacks and that is part of our history.

As Senator St. Germain was saying earlier — and he knows Western Canada much better than I do, as I have only stayed there occasionally as a tourist — it is true that the situation for Aboriginals and the Metis in major cities in the West is deplorable and is becoming increasingly serious. He put his finger on the problem when he was talking about it earlier this evening. The problem continues because as long as both Houses of Parliament do not take full and complete responsibility and tell the government of the day that it is not doing enough, that it is not going as far as it could, that it is not negotiating in good faith, and that it continues to exert its paternalism on the country's first citizens, then there is not much hope for the future.

Honourable senators, I would have liked to leave political life one day soon with the pride of being able to look back and say that, finally, the claims of this country's Aboriginals have been treated with complete justice after all this time. It is with no light heart that I am voting against the government's proposal. I am doing so because I believe in certain principles of justice for all in a democratic country.

Senator Austin was telling us a while ago that he was proud that certain provisions had been included in the Constitution Act aimed at maintaining and safeguarding certain rights of the Aboriginal peoples and Metis. I was part of that committee, chaired at one time by Senator Joyal, and co-chaired by His Honour's father. I missed only one meeting of that committee and that was because of a snowstorm. When travelling along the St. Lawrence River in early January, there were only two choices: stay in the snow bank or go back home; it was impossible to go forward.

Honourable senators, even during the constitutional process, great hopes were raised. They were partially fulfilled; I am not totally negative tonight. I sincerely believe that, since then, things could have been done better and faster. I share the opinion of a number of my colleagues that the Department of Indian Affairs does not always act in good faith. I have dealt with the Department of Indian Affairs; I have intervened on behalf of Aboriginal constituents. I can tell you that the department is all tied up in red tape, we could never get anywhere with them. There was always a good argument somewhere in the regulations for the department being unable to satisfy the legitimate claims of the people whom I was helping. Many of you have lived with this kind of frustration.

This is not the first time I have risen to stand beside my colleagues who represent the Aboriginal people. I have voted and abstained from voting on government bills, to show my support; I am on their side. I would like to invite more of our honourable colleagues to rise and support their legitimate claims.

• (1920)

From now on, God willing, I will always vote with my Aboriginal colleagues on each and every issue that will show the government and the Department of Indian Affairs just how utterly dissatisfied I am.

Hon. Marcel Prud'homme: Honourable senators, we often hear people say they had not intended to take part in a debate, and then they go on and on. I am going to do the opposite. I did not have the intention of taking part, and I think that the votes I have cast will speak best for me under the circumstances.

I have a lot of questions. I will shortly be celebrating my fortieth anniversary in the Parliament of Canada. I am therefore the most senior parliamentarian, not necessarily in age, but in seniority. The Right Honourable Jean Chrétien is the longest serving in the House of Commons, and our friend and colleague Senator Sparrow in the Senate, but I am the longest serving in both Houses.

When I was appointed to the Senate 10 years ago, I knew the Senate played a different role from that of the House of Commons. I understood that. My professors at university understood that and taught me well.

The Senate is the chamber of sober second thought, the place where the necessary time is taken, the place governed by the maxim that order excludes haste and precipitation, a place that is independent of the rapid changes in public opinion, independent of the hordes that pursue us as if we in the Senate were incapable on our own of reflection on our country. It has almost become a waste of time.

[*English*]

I think it is almost a waste of time. I have often changed my vote after listening to colleagues. That is why I am always here. I do not talk about those who are absent or are indifferent. Each one of us must judge for herself or himself, but that is why I participate in the debate. I am not ashamed to say that I have often changed my opinion. I came in with an opinion. I always have an opinion, very much like most senators, but I am always ready to listen to other opinions and not ashamed to change my opinion.

[*Translation*]

I find it odd that, every time we talk about the Acadians, for whom I have very loving and friendly feelings, we seem to be more sensitive. I am not saying that we are. It must be painful to some to be reminded of the deportation of the Acadians, to hear about it and see those events celebrated. The Senate has no hesitation because we know that a people has been wronged.

I am a French Canadian nationalist from Quebec and a federalist. My differences with my friends in the Bloc Québécois and the Parti Québécois stem from that. I am not ashamed to say that I am a nationalist. My nationalism stops perhaps where that of Senator Cools begins. My pride always stops where the pride of others begins. Mine is a sound nationalism, as opposed to a narrow one.

Honourable senators, we must have a sense of history. Well before my ancestors settled in Canada, there were people living here. For 20 years, I travelled across the country defending all these great policies.

[*English*]

The two founding nations: I was so proud of that until I arrived at the Château Frontenac in Quebec City in 1970, with our beloved Speaker Senator Molgat, to speak in front of over 1,500 people. I stood up and said, "We, the two founding races..." A big, tall man got up and said, "Too bad that tomorrow we can only read and not hear the sounds 'ha, ha, ha'." It was Max Gros-Louis, Grand Chief of the Huron-Wendat Nation. He shamed me, but I liked him. He was a good friend. I started to think that he had a point.

My ancestors came in the 1600s. They displaced some people, and they made alliances with some people. That is why we have less difficulty in Quebec — not because we are nicer, but because we have had a longer association. We are slowly coming to terms with our 11 nations. In case honourable senators do not know, there are 11 nations in Quebec. We are coming to terms with most of them because of our long association with them. I say to you, especially those who live in British Columbia, good luck, because your association with the First Nations is more recent. If you do not have the sensitivity to understand, you will have big problems.

I listened to Senator Austin's speech. To my surprise, it was very affirmative and decisive, but it is a speech that worries me, especially with the rumours that he may eventually be our leader in the Senate. "It is my way or the doorway." That is not my style and that is not the style that should exist in the Senate.

These are only the reflections of an old man at the end of the day, after an exhausting weekend in Montreal attending other business and public affairs and family affairs. I do not think the Senate is playing its true role. It is highly disappointing for an old man like me who strongly believes that the Senate has a role to play.

Do not touch others without understanding them. Understand the First Nations. Do not touch someone because of their religion. If someone is a proud Canadian and of Jewish faith, you had better respect them in front of me; otherwise, there will be quite an argument. Yet, this is not the reputation that some people unfortunately keep repeating to some new senators. Someone just told me this afternoon, "It is unbelievable what people say about you. I did not know you because you do not look like the person who was described to me."

Find out for yourselves. Find out what role you can play. Except for one, two or three senators I see here who are in their fifties, most of us are a bit older than that. Could we be proud to return to our grandchildren? In my case, I have many nieces and nephews and great grandnieces and great grandnephews. I do not have any children that I know of, and I regret it in case someone wants to smile, and you can smile if you want to. We must go back to them and say, "Here is what I can do. Here is what the Senate can do."

• (1930)

Some senators here, as an example, have been around the world. When I make speeches, every one of you inspires me for a story or an event. I will not mention names, so as not to personalize the debate, but I am referring to the inter-parliamentary union. We talk to people about democracy, and they ask us how we are elected. It is very difficult for senators, who are appointed, to talk about democracy and elections in countries where the people do not even know where their next pint of milk will come from.

I hope the new senators will ask themselves, as I do every day, whether they can be proud to have played a role in the Senate, or are they just followers of whips and governments and prime ministers? If that is the case, why do we have a Senate? When people feel as strongly as has been expressed by Senator Gill, Senator Watt, and Senator Adams — I prefer to choose these three, even though I am a good neighbour of Senator St. Germain, which is another matter — it is my duty to listen to them. In that way, Marcel Prud'homme can play a role, teach and preach to the rest of the world to look at us in Canada. We have two Houses, one that gives in rapidly under pressure, which is the elected House. I was elected 10 times — chosen 10 times as a Liberal — and then I came to the Senate. I know sometimes that we make decisions under pressure. That is why the Fathers of Confederation saw fit to have a second chamber where, without modernizing it too much, they could play a role. Every proposal of reform of the Senate can be challenged. I shall do it in due time, across Canada, as quietly as I am obliged to do now, not as I used to do.

If Canadians knew the role we could play, they would defend the Senate before defending the House of Commons. However, we have to play our role. I call on the new senators to play their role as senators. Each of you has a duty to the country and a duty to Canadians not to be pushed around, not to do things that you think may not be exactly right, but to first remember the raison d'être of the Senate, which is to listen to those who may not be great in number, to listen to those who may have a different point of view, who are called minority and may come from a different background from yours. That is very important.

There are people here who are very happy in the Senate. I do not blame anyone who is unilingual English, but on occasion when French is being spoken they do not even put their earpieces on. In that situation, I know I am talking to the wall. That hurts, and it is sad because you know that all your effort is worth nothing and that you are talking to the converted.

Today, we witnessed a magnificent example of an open mind, that of our new senator, Senator Trenholme Counsell. I want to use Senator Trenholme Counsell as an example.

[*Translation*]

She is not a French-speaking senator like myself or Senator Ringuette-Maltais, Senator Bacon or Senator Joyal. What a remarkable tribute she paid to Senator Louis J. Robichaud! She could have done so in English, her mother tongue. She did a dazzling job of it. She demonstrated that she is sensitive to another person, a colleague, someone she knew. How great it was to pay tribute to Louis J. Robichaud, as she did, in the language he always strived to defend! Doing it only in English would not have made her testimony any less valuable, but the truth is that I was impressed. Wonderful things can happen in the Senate.

[*English*]

It may seem very small to some honourable senators, but for a sensitive man like me it is not small. It shows she has a sensitivity to understand what the Senate is all about, which is to care for people who are in the minority.

I will conclude by saying that you may think it is easy. Do you think it is easy? I am talking here to people who can work, play and make money only in English, and I am also talking to French Canadians, because sometimes I believe that bilingualism is for French Canadians. However, do you think it is easy for Senator Adams to express his feelings in a language that is not his? Because he has greater difficulty speaking the English language, he probably participates less in the deliberations of the Senate. That is why we should listen more attentively to him, because he is not as comfortable speaking in English as most honourable senators here.

I will contribute to the debate by describing what happened to me years ago, during the conferences across Canada, in an effort to save Charlottetown. In Vancouver, where I was really in good shape, I tried to explain what Canada was all about. A young man from Saskatchewan, whom Senator Merchant knows, admonished me in English. I was expressing the pride of the Canadien-français. For three days, I kept my cool, but I was about to lose it when a very fine old lady raised her hand. She was an Indian leader. She said she wanted to speak, and I thought I could take it from anyone but not from the First Nations, so I was ready to be hit. She said, "I understand the pride of this man, Marcel Prud'homme, in his desire to save his language and his culture. My only annoyance with you, young man, is that I, Indian leader, woman, have to express my pride in English because I lost my language." Therefore, honourable senators, I understand the people who are attached to their culture in the Senate, which is the best place for reflection before we hurry things too much.

• (1940)

Senator LaPierre: It is indeed difficult to do what I am about to do and, in the process, I do not deny anything in my past that I have done. I have sat here and been profoundly hurt by the sermons that I have heard over and over again. I have been profoundly hurt that I have been associated with all crimes that may have been committed and have been committed against the First Nations of my country. I have sat here and have been led to believe that if I vote against this resolution of Senator Gill and accept the government's position, then I am betraying my past, my future and any form of decency I may have.

I deplore that, honourable senators. I had been led to believe that this chamber is a sacred place in which this kind of attitude does not prevail.

[*Translation*]

Motives should not be impugned, as they have been since the beginning of this debate.

[*English*]

The other day I watched Senator Sibbeston being attacked vociferously and with a baseness that I have not seen in many years. No doubt the debate leads to these kinds of attitudes. I approached Bill C-6 with the understanding in my heart that I would vote against it. For the past several months I have reflected on that and reached the conclusion that because I am a child of the enlightenment and believe in the inevitable perfection of human beings, the bill meets a needed condition — an independent resolution of First Nations specific claims. I asked myself why this bill could not be a new departure so that men and women of goodwill, instead of bashing each other on the head, would be able to continue to consider this bill and perfect it as the years go on. No law is ever written in stone. I am told that the next leader of the Liberal Party will do a better job. All right, let him amend the bill. At least a statement will have been made that this right to an independent tribunal for specific claims exists and must be present. The principle of this bill is just that and nothing else. Consequently, it must be accepted by Parliament so that we can move on and, in time, repair the necessary elements of the bill in accordance with the brilliant testimony of Senator Watt, Senator Adams and Senator Gill.

I will vote against the position of Senator Gill, which is painful to do because I respect him more than I respect almost anyone else on this planet. I will vote in favour of the government because I believe that there should be a new departure. I am tired of feeling guilty that, since 1653, my people have done nothing but assault the native people. I had nothing to do with that. Sometimes I feel like Margaret Mead or the great American James Baldwin, who accused her, in a dialogue they had on

television before most of you were born, of every conceivable crime about the White man and the poverty of the Black people, et cetera. She said that she was not responsible but that she cared that it would never happen again. She said that here must be a departure of understanding of the heart in order to bring people together to a resolution and an affirmation. Thank you for your observation, madam.

At the end of the day, we have to begin somewhere, and that may be in this chamber today by accepting Bill C-6. In that way, we will build upon the new departure and the day will come when we will never again have a debate such as this one — never, never again. The children of our country, the founders of our country and the first inhabitants of our country will live in the full glory of the rights and promises of their future.

Senator Watt: Perhaps I should put it in the form of a question, but I would like to respond instead with a comment to Senator LaPierre.

The Hon. the Speaker: Senator LaPierre, will you permit a comment from Senator Watt?

Senator LaPierre: Yes, this is a free place and he can do what he wants.

Senator Lynch-Staunton: Order.

Senator Cools: We believe in debate.

Senator Watt: Honourable senators, I will try to be sensitive to what I heard, but it will not be easy.

Honourable senators, we are not here to personalize the matters with which we are dealing. The Senate is not the right place for that. If I wanted to personalize the matter I could easily do that. However, I stay away from that as much as possible. The bill deserves to be dealt with on its own merits and that is what we are trying to do.

Honourable senators, we have said over and over again, and it is true, that this bill is not acceptable to the Aboriginal people and that it will not work to the advantage of the Aboriginal people or of the Government of Canada.

I appreciate that honourable senators have indicated their feelings, opinions and experiences. However, we Aboriginals in the Senate are not here to sensitize you to the point where you have to feel guilty. We are not attacking individual senators and we never will.

Rather we are talking about Bill C-6 and a system that does not work. We have been saying loudly that the system is not working and must be fixed. The way we are dealing with it, on a piecemeal basis, will not fix the problem. We have to keep the debate at that level and not personalize the matter or we will never get out of here.

Honourable senators, we have dealt with this issue in depth, which I appreciate, but I do not want anyone to feel that they are being personally attacked. We are not attacking anyone. We are only doing our job. If we do not say what we have to say, we would not be representing our people. Whether you like it, you have to hear what we have to say. This is our responsibility and this is why we are here. We will continue to maintain that responsibility. I have hope that one day we will break through and have more Aboriginal senators in this place. I would like to see those numbers increase. I would like to see Aboriginal women become senators so that honourable senators could hear their points of view and those of the children. Much of what we currently hear in this chamber is second-hand information.

• (1950)

Honourable senators, we ask only that you let us use this instrument, which is accessible to all of us, to the benefit of our people — that is, Aboriginal people, non-Aboriginal people, the country and Canada. Let us maintain it in that level. Thank you.

Senator Cools: Honourable senators, I have been sitting quietly and reflecting, but I must tell honourable senators I feel it is my bounden duty every now and again to give my Aboriginal brothers a hand. I was abundantly clear that I was not involved in the substantive questions of the bill, but I should like to say, honourable senators, that I was wanting to ask Senator Prud'homme a question.

Senator Prud'homme has had the distinct advantage of having served many prime ministers, having served in both chambers — and, quite frankly, having served as a Liberal — and having a long and distinguished service. Senator Prud'homme is very well known for his support of difficult questions, particularly his support of the Palestinian people, and he is held in wide respect across this country.

As I was listening to Senator Prud'homme — and I listen to everyone here talk about their racial collective consciousness and I let a lot of that pass by because I do not talk about mine. If we were to introduce some of those debates, then you would really see the temperatures rise. However, as I was listening to Senators Prud'homme and Watt, I was reminded of something I have not looked at for a while that is, George Grant's *Lament For a Nation*. I do not know what others think of George Grant's book, but I was reflecting on that because what I was hearing in Senator Prud'homme's intervention was a lament for the Senate, and a lament for Parliament, and a lament for the fact that these institutions, the highest achievement of constitutionalism — the Parliament of Canada...

The Hon. the Speaker: Senator Robichaud, point of order.

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I am confused about what we are discussing. Are we on a question to the previous speaker, on a comment or on a speech? Forgive my ignorance, but I have lost track of the debate.

[*English*]

The Hon. the Speaker: Senator Cools is speaking to the bill and has not spoken before, although we did hear from her on points of order and other questions.

Senator Cools: I would have thought it was crystal clear that I was on the main question, because the Speaker ruled a little while ago, at the prompting of many here, that there could be only one question before the Senate. Therefore, I thought it was pretty clear to all that I am speaking on the motion, because it has not been voted on yet, so it is still before us.

The point that Senator Robichaud spurs me on to want to make is that this Senate has a bounden duty to act as an independent chamber with an independent opinion. It has a bounden duty and a constitutional responsibility to review every bill that is put before it, and to question the government in as strong as possible terms — that is what we are supposed to do.

There are many senators and members of Parliament who think they are supposed to do something different from that, but let me inform them that they are wrong. The proper role of Parliament and the Senate is a very jealous relationship. There is supposed to be a very jealous relationship with the government, and we are supposed to seek to uncover that which is wrong with every bill. That is very clearly, to my mind, what Senators Watt and Gill have been trying to do.

Honourable senators, Senator Prud'homme talked a lot about sensitivity. I view myself as being an extremely sensitive person. I also believe that Senators Watt and Gill have been extremely sensitive. They have handled a very delicate situation with what I would consider to be a high degree of magnanimity, eloquence and elegance. I think many of us here feel an enormous debt.

Let me say, in closing that, because of my own background, I do not know that much about native people. I have not had much contact in my life with native peoples. As honourable senators all know, I was born in the British Caribbean, and the native peoples there — the Caribs, and the Arawaks from the island of Barbados — would have disappeared a long time ago except, I think, on one or two islands where there are reserves. Nevertheless, I hope this particular bill, this particular study and this particular coercive action of force called a time allocation is the last occasion this chamber will see a bill proceed in this way.

Honourable senators, I am not one given to confessions and great expression of tears and drama on the chamber floor. It is not my style; I do not think it is appropriate behaviour. However, it must be very painful and very difficult for these gentlemen senators, members of the Aboriginal races, non-White, to stand before this chamber hour after hour, day after day, minute after minute pleading with senators to give them a hearing. It must be very, very difficult. If you see me help them occasionally on a procedural fine point, it is because I sincerely do believe that these gentlemen are operating from a position of deep conviction — that they are attempting to advance the conditions of their own people.

I know there are large numbers from the Aboriginal community in the gallery this evening. I want to ask them to listen carefully and do not misunderstand. At times, what they have been hearing on this floor sounds very cruel and insensitive, but I would ask them to bear in mind that out of this disagreement the future will move ahead. What has been said is now a part of the record. Senators Gill and Watt have taken very strong positions and, while they may not win this battle, at the end of the day I can promise that they are going to win the war.

We are in a state of constitutional confusion in today's community, where the two institutions of Parliament are not being allowed to function as institutions of Parliament. Maybe I am naive — and I must be very overbearing to so many people here to be constantly raising this principle and that principle, and that concept and the other concept — but believe you me, honourable senators, at the end of the day, this debate and this Parliament is the best that we have.

• (2000)

I know that when Aboriginal individuals such as yourselves listen to these debates, the gnawing thought comes into your minds: "There goes those White people again. There goes those White people again not understanding us, not listening to us, deaf to us, not hearing, not feeling." I just want you to know that those are thoughts to be put far away from your minds. Deal with the situation for what it is. As Senator Watt so ably said, this is not personal. It is not a personal attack on any one senator. Please take all of this in a context that within all the limitations here some people are actually trying to do their very best.

Today, I felt strange for a few moments. Why is it historically that the only three senators really carrying this torch happen to be non-White? How could it be? Can it be an accident? We all know that I never talk about race. However, I can tell all honourable senators that I come from centuries of miscegenation. People talk about oppression, and so on. The subject matter of slavery is one on which I have done a great deal of reading.

I am descended of people — and I do not think there are two senators in this chamber who know anything about this — who were called free-coloured people. I want honourable senators to know there was a system called manumission. Remember, slavery was an estate in human flesh. The system of manumission meant that accomplished slaves could buy their way out by manumitting.

For anyone who is sitting here feeling a little uncomfortable that these racial questions have raised their head, in the year 1790, for example, on the Island of Jamaica there were 10,000 of these free-coloured people. The jealousy that group of people used to attract was so enormous that at one point they wanted to tax the phenomenon of manumission. Fines of £500 were imposed. On one island the price of manumission went to £1,000 — so insistent were the powers that be to prevent miscegenation of the races. Those people who were manumitted, the free-coloured people, would quickly become the leaders in the community because of their natural talents.

I do not talk about this often because it may be sentimental, emotional and passionate. As well, it quite often does not advance debate.

I did not want to let the moment go by without letting the Aboriginal individuals in the gallery understand that there are large numbers of senators here who respect and honour the work of Senators Watt and Gill. This exchange is to be viewed as what it is. It is a debate.

At the same time, I have to thank Senator Prud'homme and say that I think his concerns are well-placed. When there is a new leader in the next month, hopefully, dear God, these institutions will be allowed to function as institutions of Parliament are supposed to function. What has happened in the system is that members of both Houses are habituated to the situation as it is.

Whatever it is, whether or not it is sentiment, the fact of the matter is that the debate is winding down. The question will be put. The main question will then be put. It will then be all over. It will be another battle for another day.

I wanted to say that to Senator Prud'homme because he has been around for a long time. I have been around a little while, but not quite as long as you. It is very important that you share those experiences.

I am also of the opinion that Canadians are now beginning to understand a bit about the native and Aboriginal questions. They are now beginning to understand just like the world a couple of years ago began to understand that there was —

The Hon. the Speaker: Senator Cools, I am sorry to advise you that your time has expired.

Senator Kinsella: Ask for leave.

Senator Cools: No. It is over. We are fine now. The point has been made.

Senator Kinsella: Did you ask for leave?

Senator Cools: What?

Senator Kinsella: Did you ask for leave?

Senator Cools: Oh, yes. Can I have leave?

The Hon. the Speaker: No other senator rising to speak —

Senator Kinsella: Do I have time to ask the honourable senator a question?

The Hon. the Speaker: No, her time has expired. She did not ask for leave.

Senator Cools: Do you want me to ask? I thought it was in jest.

The Hon. the Speaker: Are you asking for leave to continue, Senator Cools?

Senator Cools: I was treating it as —

The Hon. the Speaker: Senator Cools has asked for leave to continue. Honourable senators, is leave granted?

Some Hon. Senators: No.

The Hon. the Speaker: I am sorry, Senator Cools, leave is not granted.

I am looking to see if there is another senator who wishes to speak. As we all know, we are operating under a time allocation order of this chamber. If no other senator wishes to speak, it is my duty to put the question.

I see no other senator rising.

Does the Honourable Senator Joyal wish to speak?

Hon. Serge Joyal: Honourable senators, as Cicero said, sometimes patience is a virtue that is easily spent, but I beg your indulgence for 10 minutes more.

This bill is fundamentally important because it is a constitutional bill. It is not like many other bills that we debate in this chamber. It is a bill that essentially addresses itself to section 35 of the Constitution and to the fiduciary responsibility of the Crown.

That fiduciary responsibility places us as government and as legislators in an awkward position. We are at the same time judge and a party to the action. We are judges because we have the responsibility for Indian matters under section 91.24. We are a party to the action because we are trustees of the Aboriginal people dating back to 1763.

Therefore, when there is an Aboriginal issue that relates to the Constitution, we are in a contradictory position. We have to adjudicate and, at the same time, we have to speak on behalf of the Aboriginal people. The mechanism that Bill C-6 would put in place is a mechanism or a system that should be able to solve more than 600 land claims. When we deal with lands in relation to Aboriginal people, we are not talking about the lands which non-Aboriginal people think about. We are talking about the constitutional rights of Aboriginal peoples to their lands. In other words, their lands are protected by the Constitution.

The Department of Indian Affairs and the Department of Justice laboured to produce a joint report in 1998, which was referred to by Senator Austin. The Supreme Court of Canada in *Delgamuukw* established the criteria that we have to follow when we are addressing the land claims issue of Aboriginal people.

In paragraph 168 of the court's voluminous decision, it is stated that when we deal with land claims, we have to consult the Aboriginal people.

• (2010)

"We" refers to the Crown consulting Aboriginal people, but it does not suffice only to get their views. We have to come to terms with the conflicting views in order to resolve the claims.

In this bill, we have a proposal to establish a tribunal. A tribunal is a court of justice; it is an independent body. This independent body, according to any legal advisers, must satisfy three criteria. First, it must be financially secure. In other words, it should not depend on a third party for its supply of money in order to function. Second, the members of that tribunal must have security of tenure, which means that they must remain there for a long period of time, to be immune to undue influence. In other words, they must not make popular decisions to please the person who has the authority to appoint. We can understand that easily. Third, the tribunal must have institutional autonomy. In other words, it must rule its affairs totally outside any kind of influence. Those are the three criteria for an independent tribunal.

What is at stake in this bill? In this bill is essentially the constitutional duty to establish a system of adjudication that meets those criteria so that those who go to the court will have the assurance that their claims will be dealt with properly.

When we apply those three criteria to the bill in question, there are some issues pending. One is that the judges are appointed for five years and that they might be reappointed to that or any other position. That is found in clause 41(7) of the bill. This raises the issue that a person might adjudicate on the basis of an expectation of being reappointed to that position or to another position.

That is a very important element because administrative tribunals such as the one contemplated in this bill are presently the object of an investigation by former Chief Justice Antonio Lamer. His report, expected in December, will analyze the various norms that administrative tribunals must satisfy in order to continue to adjudicate properly, to maintain not only justice but also the appearance of justice.

There are other aspects of this bill that raise problems with regard to institutional autonomy. The bill says, in various aspects, that its people are assimilated to public service. They do not have the autonomy that court personnel should have to remain outside influence.

In terms of financial autonomy, Treasury Board defines the scale of salaries. This is problematic, too. As you know, there has been a decision of the Supreme Court in relation to payment of salaries to judges, and the court has established very stringent criteria. We have had to deal with those problems here.

There are two aspects that we must reconcile in this bill. We must reconcile our duty to ensure that when we act as fiduciaries of the Aboriginal people we are not putting ourselves in a conflict of interest position, that is, adjudicating more for non-Aboriginal people than for Aboriginal people. At the same time, we are the ones who will have to foot the bill. Hence, the system contemplated in the bill is a very delicate balance between those two conflicting objectives. The mechanism put into place by this bill raises serious questions. We must be sure that this bill will meet the test of the court.

As Chief Fontaine said in his letter to us, Bill C-6 raises legal and constitutional issues, but he did not elaborate on those. When I read the letter, following the speech of Senator Gill two weeks ago, I began to question myself about which aspects of the bill might be problematic.

Honourable senators, this is a very important issue. The way we address the system in this bill will have an impact on the resolution of the issue presented by our colleague Senator Chalifoux in relation to the Metis people, because exactly the same principles apply in relation to the Metis as apply to status Indians. It is very important that, throughout all the emotion and all the tension raised in this discussion, we keep that in mind, because once we have taken a decision on this bill, as one would say in French —

[*Translation*]

Our actions will follow us. The representatives of First Nations who will read our debates, the judges who will need to consider the substance of this legislation, independently of the emotion we have brought to this debate, will read the legislation as passed. Their judgment will be based on the text itself and not solely on the very generous intentions that seek to make serious reparations for the past, as our honourable colleague, Senator LaPierre, wanted to mention and with which we all agree.

But when the courts are called upon to test the constitutionality of this bill, they must be satisfied that it perfectly reconciles the joint committee's objectives.

[*English*]

That joint committee had representatives from the Department of Justice and Indian and Northern Affairs Canada, as well as representatives of the Aboriginal people. I read it during our recent recess. It was quite clear that the objective was to establish an independent mechanism to solve the 600 pending claims so that both parties could trust the tribunal or the court system that was put into place. Since it was a court system, there was no doubt that they were creating a very high level of demands over the satisfaction of legal norms that normally apply to a court system.

Honourable senators, read clauses 41 to 70 and you will realize that this is a real court of justice that is being proposed.

• (2020)

A court, in evaluating the reliability of that system, will apply the norms that are usually operational in a court system. This is important because that guarantees that the Aboriginal people will get real satisfaction. If they are not convinced of that, what will happen? All our debates will be for nothing. All of the hours and the long sessions that the Aboriginal Peoples Committee, under the chairmanship of Senator Chalifoux, and the time that other senators will have spent on this bill will be to no avail because the system will not be trustworthy.

We have the heavy responsibility to convince ourselves that this bill satisfies those criteria. I am sure that, in so doing, we are helping the Aboriginal people to come to terms with that typically Canadian problem of unsolved and pending Aboriginal issues that exist for centuries and to develop a new approach that we would like to have as equals.

Honourable senators, it was mentioned earlier this afternoon that the First Nations are not referred to in this bill. First Nations are mentioned in this bill. Clause 45(2) of the bill states that the rules that the tribunal will adopt will be published in the *First Nations Gazette* or a similar publication. In other words, the bill recognizes the status of the First Nations. The *First Nations Gazette* has been the proper vehicle to publish the rules of the court. There is no doubt that if we do not reconcile the trust of the First Nations people in the system we are putting in place, we will not solve the conundrum that we have found ourselves in for centuries.

Hon. Gérald-A. Beaudoin: Honourable senators, I agree entirely with the three principles explained by Senator Joyal. The *Valente* case is clear. That case speaks to independence, financial independence, "inamovibilité" of judges and institutional independence.

The reason I have voted with my colleagues is that justice, as is stated in the *Sussex* case of 1924, should not only be done, it should be seen to be done. That British decision is quite applicable in our country.

Since we have a fiduciary duty toward Aboriginal nations, and since justice should not only be done but should be seen to be done, we should respect the amendment proposed by the Aboriginal nations. That is enough for me because there may be a doubt for them. Perhaps they are not satisfied with the way we addressed this issue. Perhaps they need some time to think about the subject.

We have administrative tribunals, but there is always a right of appeal. The right of appeal is fundamental. In regard to the right to appeal of a decision of an administrative tribunal, it is not the name that is important; it is the duty that is devoted to the tribunal.

I have spoken enough. I have reacted as a jurist, but laws have to respect the rule of law. I will vote as I did the first time because justice should be seen to be done and we have a fiduciary duty toward Aboriginals. That is enough for me and for my vote.

The Hon. the Speaker: Honourable senators, I rise again as your presiding officer with respect to a step I must take now if no senator wishes to speak. Pursuant to the order of this place regarding time allocation, I must put the question with respect to Bill C-6. No senator rising, I will do so.

We begin with the amendment proposed by Senator Gill. I will put it in a formal way. It was moved by the Honourable Senator Gill, seconded by the Honourable Senator Watt, that Bill C-6 be not now read the third time, but that it be read a third time this day six months hence.

Will those honourable senators in favour of the motion in amendment please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the motion in amendment please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators.

Senator Kinsella: Honourable senators, I believe the rules provide that the vote is automatically deferred to 5:30 tomorrow afternoon.

The Hon. the Speaker: The rules provide that the vote be deferred on the request of either whip. Are you so requesting, Senator Rompkey?

Hon. Bill Rompkey: Yes, I am, Your Honour.

The Hon. the Speaker: At the request of the government whip, the vote will be held at 5:30 p.m. tomorrow, with a 15-minute bell.

[*Translation*]

CANADIAN FORCES SUPERANNUATION ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-37, to amend Canadian Forces Superannuation Act and to make consequential amendments to other Acts.

Bill read first time.

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

On motion of Senator Carstairs, bill placed on Orders of the Day for second reading two days hence.

[*English*]

BUSINESS OF THE SENATE

Hon. Marcel Prud'homme: Honourable senators, to be clear, we had six hours of debate and then we took — I do not know how long. I know the clerk's staff will tell us how long it took. Did the hour prior to the vote count as part of the six hours?

By the way, earlier in the exchange, I hope everyone understands that I did not cast any shadow on the actual leadership of the government. I was speaking about the future leadership. I mention that just in passing.

I would like to know exactly how many hours we have left.

Senator Carstairs: None.

Senator Prud'homme: I have to go back and forth to Montreal. How many hours will be left, not counting the vote?

• (2030)

The Hon. the Speaker: The time for debate has passed. The only thing that remains to be done is to vote on all stages of the bill. That will be done tomorrow at 5:30 p.m. The vote will be preceded by a 15-minute bell.

[*Translation*]

PUBLIC SERVICE MODERNIZATION BILL

THIRD READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, An Act to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts,

And on the motion in amendment of the Honourable Senator Beaudoin, seconded by the Honourable Senator Comeau, that the Bill be not now read a third time but that it be amended in clause 12, on page 126, by replacing lines 8 to 12 with the following:

"30. (1) Appointments by the Commission to or from within the public service shall be free from political influence and shall be made on the basis of merit by competition or by such other process of personnel selection designed to establish the relative merit of candidates as the Commission considers is in the best interests of the public service.

(1.1) Despite subsection (1), an appointment may be made on the basis of individual merit in the circumstances prescribed by the regulations of the Commission.

(2) An appointment is made on the basis of individual",

And on the subamendment of the Honourable Senator Di Nino, seconded by the Honourable Senator Nolin, that the motion in amendment be amended

(*a*) by replacing the words "on page 126, by replacing lines 8 to 12" with the following:

"(*a*) on page 126, by replacing lines 8 to 11";

(*b*) by adding after the words "free from political influence" the following:

"and bureaucratic patronage"; and

(*c*) by replacing the words "of the Commission. (2) An appointment is made on the basis of individual" with the following:

"of the Commission."; and

(*b*) on page 127, by adding after line 9 the following:

''(3) The qualifications referred to in paragraph 30(2)(*a*) and subparagraph 30(2)(*b*)(i), and any qualification standards referred to in subsection (1), that are established for an appointment in respect of a particular position or class of positions shall apply to future appointments in respect of that position or class of positions, unless any change established by the deputy head or employer to the qualifications or qualification standards, as the case may be, is approved by the Public Service Commission.".

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I did not ask for the debate on Bill C-25 to stand. The bill is currently subject to an amendment and a subamendment. I would like us to dispose of one of the amendments, unless someone requests adjournment of the debate.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Senator Comeau has prepared a speech. I believe he was going to deliver it tomorrow, but the decision was made to sit today. Senator Comeau requested adjournment of the debate on Thursday, did he not?

Senator Robichaud: Honourables senators, I do not want us to get into debate, but Item No. 3, under "Government Business" on the Order Paper, has not been adjourned in the name of any senator in particular.

My understanding is that the Honourable Senator Comeau is currently travelling out West with the Official Languages Committee, which will not be back for several days; we will therefore not be able to consider any of the amendments if we wait for him. That is why I would like us to move the bill forward by voting on the amendments now before us.

Senator Kinsella: Last Thursday, after the motion in amendment was presented, Senator Comeau asked that the debate be adjourned in his name. I was totally prepared to hear Senator Comeau's speech.

Senator Robichaud: Honourables senators, I am not challenging the fact that, last Thursday, Senator Comeau moved the adjournment or that the order stand until the next sitting of the Senate. The next sitting was today, and Senator Comeau is currently out West with the Official Languages Committee. There is nothing wrong with that, since he is a member of that committee.

If we were to wait for him, we would have to wait at least a week. I just want to move this issue forward.

Senator Kinsella: Honourables senators, the opposition has another point to make on this matter, and I am sure that tomorrow one of my colleagues will be able to speak on the topic and we will not have to wait for Senator Comeau.

On motion of Senator Nolin, debate adjourned.

PARLIAMENT OF CANADA ACT

BILL TO AMEND—SECOND READING—ORDER STANDS

On the Order:

> Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Graham, P.C., for the second reading of Bill C-34, An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I wish to inform you that tomorrow Senator Oliver will be using the 45-minute period allocated to him as opposition critic on this bill. He will definitely speak tomorrow.

Order stands.

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I believe that there would be agreement that the remaining items be allowed to stand and retain their precedence on the Order Paper.

The Hon. the Speaker: Is it your pleasure, honourable senators, that all other items be allowed to stand and retain their precedence on the Order Paper?

Hon. Senators: Agreed.

The Senate adjourned until Tuesday, October 21, at 2 p.m.

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